

THE HIGH COURT

[2023] IEHC 56
[2020 No. 1480 P]

Between:

X

Plaintiff

– AND –

GOOGLE IRELAND LIMITED

Defendant

JUDGMENT of Mr Justice Max Barrett delivered on 8th February 2023.

SUMMARY

This is an application by Google in which it seeks that the court strike out Mr X's action against Google.

A. The 'Distressing Material'

1. There is material on the internet saying that Mr X is involved in the disappearance of a particular child and that he has drugged women and brought them back home for his sexual gratification. (I refer to that material in this judgment as the 'Distressing Material'.) Mr X says

that the Distressing Material is untrue. However, it is so damaging that I have chosen to anonymise Mr X's name, rather than add to his woes by giving further prominence to his name.

2. I can understand why Mr X is so upset if what is being written about him is untrue. He is not just upset because the thought of having horrible things written about oneself is horrible. He feels that people have read things about him online and are shunning him as a consequence. He has also expressed concern for his personal safety (a purported home address has been published online). He maintains too that his business has suffered as a result of the things that have been stated about him in the Distressing Material.

B. Procedural Background

3. By way of plenary summons of 24th February 2020, Mr X, who is self-represented, commenced a claim against Google seeking the following reliefs:

“(a) Damages for having permitted the publication on their websites for many years of diverse defamatory statements about the plaintiff, in particular having regard his requests for the deletion of same, in breach of their statutory duty...

(b) Damages for breach of the plaintiff's general constitutional rights”.

4. In his statement of claim, Mr X observes, amongst other matters, as follows:

“(5) The defendant has knowingly permitted, for many years, the publication of online third party content that is very seriously defamatory of the plaintiff.

(6) The said online third party content is also in breach of the plaintiff's general constitutional rights and his rights under various data protection legislation.

(7) Despite many requests over the years and, in recent times, for example, his correspondence to the defendant of 20th August 2019 and the 17th October 2019, the defendant has significantly failed to modify or amend the said online content”.

5. Mr X then summarises the content of the Distressing Material and proceeds as follows:

“Particulars of Loss and Damage

The plaintiff has been so defamed by the intentional actions of the defendant that his reputation in the eyes of right-thinking members of society has been irreparably damaged.

The Plaintiff Seeks the Following Reliefs

- (a) The removal of all online third party content relating to him by the defendant.*
- (b) Compensation.”*

6. By notice of motion of 19th April 2021, Google has come seeking, the following reliefs:

- “1. An Order dismissing the plaintiff’s herein, being proceedings which were issued outside the time limit prescribed by section 11(2)(c) of the Statute of Limitations 1957 (as amended by s.38 of the Defamation Act 2009).*
- 2. Further and/or in the alternative to the foregoing, an Order pursuant to O.19, r.28 RSC striking out the plaintiff’s claim in these proceedings for failure to disclose a reasonable cause of action as against the defendant.*
- 3. In the alternative to the foregoing an order pursuant to the inherent jurisdiction of this honourable court dismissing the plaintiff’s proceedings as against the defendant, being proceedings which are bound to fail”,*

as well as certain ancillary reliefs.

7. I note and accept as a true statement of the position at law when it comes to strike-out proceedings, the following observations made in *Delany and McGrath on Civil Procedure* (4th ed), p. 677:

“The constitutional right of access to the courts which is guaranteed by Art.40.3 has been interpreted as encompassing the right ‘to litigate claims which are justiciable’ and to ‘initiate litigation in the courts’. However, it is necessary for the courts to balance the constitutional rights of plaintiffs to institute and prosecute

proceedings with the interest of defendants who should not be forced to defend proceedings that are vexatious or bound to fail.”

C. The Right to Seek Delisting/Be Forgotten

8. Mr X has engaged with Google since at least 2015 seeking to invoke his right to seek to be delisted, as identified in the seminal decision of the Court of Justice in Case C-131/12 *Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González* (ECLI:EU:C:2014:317) (the so-called ‘Costeja’ case) and the right to be forgotten under Art.17 of the GDPR Regulation.¹

9. A problem that seems to have arisen is that Mr X, as he stated in court, is only “*semi-literate*” (his wording) when it comes to using computers and/or the Internet. (Mr X, I note, is an elderly gentleman. Physically he gives the impression of being in his late 60s or early 70s. The pleadings do not indicate his exact age.) In the past Mr X has made complaints about certain URLs which Google (on 20th June 2015) indicated that it was not satisfied to delete and then (on 26th July 2018) indicated itself already to have deleted. (A ‘URL’ or ‘Uniform Resource Locator’, the evidence before me indicates, is a unique string of characters which acts as a precise set of directions identifying the exact location of a webpage on the internet).

10. I do not know what the substance of the material was to which the just-mentioned delisted links provided access. However, in successive emails that he has written since July 2018 Mr X has written various vexed (sometimes very vexed) emails to Google to the effect that the Distressing Material is online (one or more links to it come up when one googles his name) and he wants it removed. At points he seems to think that Google has placed or is maintaining in place the Distressing Material. This is not what Google is doing. It is a so-called ‘search engine’, it brings up various URLs when one googles Mr X’s name, and via at least one of those links one can access the Distressing Material. I am unaware of any basis (and none is asserted by Mr X) on which Google could modify or amend third party web content.

¹ *I.e.* Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (O.J. L119, 4.5.2016, 1-88).

11. It is not entirely clear to me why Mr X cannot provide whatever URL/s he finds offensive. His view seems to be that Google has his name, address, and telephone number and should therefore be able to act on his complaint (that people continue to be able to access the Distressing Material by way of a Google search). Google's stance is that unless it is provided with a URL it will do nothing in terms of removing listed links to the Distressing Material. The end result of the impasse between Mr X and Google is that links to the Distressing Material continue to be listed when one does a Google search of or against Mr X's name.

D. *Costeja* and Article 17 GDPR

12. As I sat listening to the parties, I could not recall that there was any mention of mandatory provision of URLs in the *Costeja* judgment as a pre-requisite to the operation of the right to request a de-listing.² I can see why a demand by Google for a URL may make some practical sense but, as will be seen later below, one of Mr X's contentions in the proceedings that he has commenced is that by acting as it has Google has acted in breach of data protection law.

13. In passing, I note that in *Costeja* the website complained of by Mr Costeja González was clearly identified by him. Likewise, in the Irish case of *Savage v DPC* [2019] 1 I.R. 628 (HC), Mr Savage, when he complained to Google, provided the relevant links of which he made complaint. However, I respectfully do not see that it is "*manifest*" from these cases, as posited by Google in its written submissions, that "*the failure of [Mr X] to furnish URLs (or similar)*"³ *of the material complained of, would...be fatal to any claim of breach of data protection legislation*". No such conclusion is expressly stated in nor necessarily flows from either or both of those decisions.

² I am mindful too that the later Art.29 Working Party Guidelines on the implementation of the *Costeja* ruling indicate by way of guidance that a URL should be provided. However, these are only Guidelines, and the law is as stated in *Costeja*. And I note that I happen just to be aware of this element of the Guidelines: I was not referred to it by the parties. The relevant reference appears in Article 29 Data Protection Working Party, *Guidelines on the Implementation of the Court of Justice of the European Union Judgment on 'Google Spain and Inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González'* C-131-12, 14/EN WP 225, 7.

³ Here, as will be seen from the averments that follow later in the main text, it is the URLs that Google requires to be provided before it will action Mr X's request. Though it may be to read too much into the written submissions, it could perhaps be contended that by referring to a "*failure...to furnish URLs (or similar)*", Google in fact acknowledges that to provide something other than a URL might be acceptable. That said, its contention in the application before me was that it requires a URL to proceed and I have decided this application on that basis.

14. Google in its written submissions (the point was not made at the hearing) also seeks to rely upon paras.71 and 72 of the judgment of the Court of Justice last December in Case C-460/20 *TU and RE v. Google LLC* (ECLI:EU:C:2022:962). There, the action which eventually led to a preliminary reference to the Court of Justice commenced when TU and RE requested Google, as the controller of personal data processed by its search engine (1) to de-reference the links to the articles at issue in the main proceedings from the list of search results, on the grounds that they contained inaccurate claims and defamatory opinions, and (2) to remove certain thumbnails from the list of search results. Google refused to comply with this request, referring to the professional context in which the articles and photographs at issue were set, and arguing that it was unaware of the alleged inaccuracy of the information contained in the articles. Among the questions raised with the Court of Justice in that case were, in essence, whether Art.17(3)(a) GDPR (Art.17 GDPR is considered later below) must be interpreted as meaning that, within the context of the weighing-up exercise which is to be undertaken between the rights referred to in Arts. 7 and 8 CFEU, on the one hand, and those referred to in Arts. 11 and 16 CFEU, on the other hand, for the purposes of examining a request for de-referencing made to the operator of a search engine seeking the removal of a link to content containing claims which the person who submitted the request regards as inaccurate from the list of search results, that de-referencing is subject to the condition that the question of the accuracy of the referenced content has been resolved. (This issue has not been raised in these proceedings). In responding to this first question the Court of Justice indicated, amongst other matters, as follows:

“⁷¹ [W]hen such a request is processed, the operator of the search engine concerned cannot be required to investigate the facts and, to that end, to organise an adversarial debate with the content provider seeking to obtain missing information concerning the accuracy of the referenced content. In so far as it would require the operator of the search engine to contribute to establishing itself whether or not the referenced content is accurate, such an obligation would impose on that operator a burden in excess of what can reasonably be expected of it in the light of its responsibilities, powers and capabilities, within the meaning of the case-law referred to in paragraph 53 of the present judgment. That obligation would thereby entail a serious risk that content meeting the public’s legitimate and compelling need for information would be de-referenced and would thereby become difficult to find on the internet. In that regard, there would be a real risk of a deterrent

effect on the exercise of freedom of expression and of information if the operator of the search engine undertook such a de-referencing exercise quasi-systematically, in order to avoid having to bear the burden of investigating the relevant facts for the purpose of establishing whether or not the referenced content was accurate.

⁷² *Accordingly, where the person who has made a request for de-referencing submits relevant and sufficient evidence capable of substantiating his or her request and of establishing the manifest inaccuracy of the information found in the referenced content or, at the very least, of a part – which is not minor in relation to the content as a whole – of that information, the operator of the search engine is required to accede to that request for de-referencing. The same applies where the data subject submits a judicial decision made against the publisher of the website, which is based on the finding that information found in the referenced content – which is not minor in relation to that content as a whole – is, at least prima facie, inaccurate.”*

15. As regards:

– para.71 of the above-quoted text, it commences “[W]hen such a request is processed...”. So it is clear that the Court of Justice is dealing with a scenario where Google has commenced processing a request. Here, Mr X’s complaint is that Google has *not* commenced processing his request when he considers that he has provided sufficient information for Google so to do but Google (which wants to receive a URL) considers that he has not. So one has not, in this case, even reached the point of departure from which the analysis of the Court of Justice commences. As will be seen from the averments that follow below, Google will action matters once it receives one or more URLs from Mr X.

– para.72 of the above-quoted text, that simply indicates circumstances in which Google must accede to a request for ‘de-referencing’. The quoted text does not indicate that there is no other circumstance in which Google must or may accede to a reference to de-reference.

16. Today, provision for the right to erasure (‘right to be forgotten’) is made in Art.17 of the GDPR. Again, no provision of the GDPR has been proffered to me which requires the mandatory provision of a URL as a pre-condition to exercising the right to erasure (the ‘right

to be forgotten’). Nor have I been referred to any provision of the European Data Protection Board Guidelines on the Right to be Forgotten which suggest, even by way of guideline, that due invocation of Art.17 rights requires the mandatory provision of a URL by a complainant.

17. In an affidavit sworn for Google by a solicitor from A&L Goodbody, that solicitor has averred, amongst other matters as follows:

“A specific and complete URL is the only way to properly notify the Defendant of allegedly unlawful online third party content and enable it to precisely locate that content. Therefore in order to assess a request for removal of results appearing on Google Search, the Defendant must be provided with the URLs of the webpages on which the allegedly unlawful content appears. The Defendant provides a dedicated online tool by which individuals can submit URLs and request this removal of third party content from, or accessible via, the Defendant’s online services (the ‘Online Tool’). The Online Tool is the most expedient way of providing a content removal request to the Defendant.”

18. Given the point made previously above concerning the reference in Google’s written submissions concerning Mr X’s *“failure...to furnish URLs (or similar)”*, the *“or similar”* arguably suggesting that something other than a URL might be acceptable, I note that the solicitor for Google is expressly clear that *“A specific and complete URL is the **only way** to properly notify the Defendant”* [emphasis added] and also that *“[I]n order to assess a request for removal of results appearing on Google Search, the Defendant **must** be provided with the URLs of the webpages on which the allegedly unlawful content appears”* [emphasis added].

19. Though eloquently worded, the essence of the above-quoted averment by the solicitor for Google is that, so far as Google is concerned, material such as the Distressing Material can and will continue to be listed for so long as an affronted person does not provide a URL. As I have indicated above, no legal basis has been offered to me for the notion that the provision of a URL is a pre-requisite to exercising the right to seek a de-listing and/or to invoke Art.17 of the GDPR.

20. In its affidavit evidence, and in the submissions to the court, Google indicated that another problem that presents is the following (per the affidavit evidence sworn by the above-mentioned solicitor for Google):

“Google Search results are dynamic and constantly changing, depending on hundreds of different factors (including the words of the search query, relevance and usability of web pages, expertise of sources, and the user’s location and settings....The Defendant does not know if Google Search results are returning links...alleged to be unlawful, unless it is notified of this by receiving the URL(s) that identifies the webpage(s) where the third party content is appearing”.

21. Again this seems but another way of stating that, so far as Google is concerned, material such as the Distressing Material can and will continue to be listed for so long as an affronted person does not provide a URL. As I have indicated above, no legal basis has been offered to me for the notion that the provision of a URL is a pre-requisite to exercising the right to seek a de-listing and/or to invoke Art.17 of the GDPR.

22. In passing, I cannot but note that it arguably follows from the last quoted averments that Mr X in his dealings with Google (and on Google’s worldview) does not quite have a right to be forgotten but only ‘a right to be forgotten insofar as Mr X can provide the URLs through which one can access a site in which Mr X has not been forgotten’. No authority has been cited before me for such a proposition. Mr X, as I understand the evidence before me, takes the view that (i) Google has created the “*dynamic and constantly changing*” environment in which people continue to be able easily and readily to access links to the Distressing Material, and (ii) it is for Google to ‘clean up’ a “*dynamic and constantly changing*” mess of its own making.

23. The solicitor for Google also avers as follows:

“The plaintiff in the second replies indicates that it is within the defendant’s power to locate the information (i.e. by carrying out its own search of the plaintiff’s name on Google Search). However...providing the Defendant with a search term does not, on its own, identify the exact content at issue because the returned content for such a query will be dynamic and constantly changing depending on hundreds of different factors.”

24. Again, this seems but another way of stating that, so far as Google is concerned material such as the Distressing Material can and will continue to be listed in search results for so long as an affronted person does not provide a URL. Mr X clearly takes an alternative view.

F. Article 15(1) of the Electronic Commerce Directive

25. Google's deponent also avers as follows:

“[A]ny imposition of a requirement on the defendant to proactively search for and/or monitor for unlawful content is expressly prohibited under Article 15 of the Electronic Commerce Directive.”⁴

26. Though I do not see that Mr X has expressly treated with this aspect of matters in his pleadings, it is clear that he considers that what he is seeking of Google is not in breach of the law but rather is consistent with law.

27. Article 15(1) of the Electronic Commerce Directive, which is the particular provision being referred to by Google's deponent, provides as follows:

“Member States shall not impose a general obligation on providers, when providing the services covered by Articles 12 [‘Mere conduit’], 13 [‘Caching’] and 14 [‘Hosting’] to [i] monitor the information which they transmit or store nor [ii] a general obligation actively to seek facts or circumstances indicating illegal activity.”

28. So I understand that the point being made by the deponent to be along the lines that:

- were these proceedings to be allowed to continue, and
- were a court eventually to order Google to fulfil its Art.17 GDPR obligations by reference to such detail as is provided where such detail does not include a URL,

⁴ *I.e.* Directive 2000/31/EC of the European Parliament and of the Council of 8th June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal market (Directive on electronic commerce) (O.J. L178, 17.7.2000, 1-16).

- such a specific order (crafted by reference to the particular facts presenting and limited to such results as the Google search undertaken by Google would reveal) would involve the court as an organ of the state establishing a general obligation on providers of the kind contemplated in Art.15(1).

That is one way of reading matters.

G. Complaint via Online Tool a Mandatory Element of Invoking Right to Delist/Be Forgotten?

29. It is not entirely clear to me from the pleadings whether Google also insists on complaint being made via the Online Tool before it will action delisting requests. There is reference in the affidavit sworn by a solicitor for Google to the plaintiff being “*invited on a number of occasions to use the Online Tool*”. Mr X has indicated that he will not (or cannot?) operate the Online Tool and a dispute has arisen between the parties as to whether Mr X has or has not used the Online Tool in the past. *If* it is the case that Google insists that complaint be made via the Online Tool as a pre-requisite to its acting on a delisting request, then this seems to be Google stating that, so far as Google is concerned material such as the Distressing Material can and will continue to be listed for so long as an affronted person does not proceed via the Online Tool. It seems – again this is not clear from the pleadings – that Mr X takes an alternative view. No legal basis has been offered to me to support the notion that making a complaint via the Online Tool is a pre-requisite to exercising the right to seek a de-listing and/or to invoke Art.17 of the GDPR (if that is in fact being contended).

H. The Bases for Relief as Mentioned in Google’s Notice of Motion

30. Turning to the specific bases for relief mentioned by Google in its notice of motion (as indicated in Bold text below:

31. “***1. An Order dismissing the plaintiff’s herein, being proceedings which were issued outside the time limit prescribed by section 11(2)(c) of the Statute of Limitations 1957 (as amended by s.38 of the Defamation Act 2009).***”

32. Google has drawn my attention to the fact that Mr X has been liaising with it for several years (since at least 2015) and if he is hoping to sue for defamation he is outside the standard (one-year) and court-directed (two-year) limitation period referred to in s.11(2)(c) of the Statute of Limitations, as amended. If one looks to Mr X's statement of claim he states that "*The Defendant has knowingly permitted for many years, the publication of online content that is very seriously defamatory of the plaintiff*". He does not state that he is seeking to sue for all of the allegedly defamatory content. However, his replies to particulars indicate that he is seeking to sue over "*defamatory content [that] has been up on the internet for years*", that "*has been published for a long time*", and of which he has been "*aware...for a considerable number of years past*". So it does appear as if Mr X is hoping to sue over allegedly defamatory material that has 'timed out' under the Statute of Limitations.

33. I note that in their comments on the inherent jurisdiction to strike-out (though the point seems to me to apply with equal rigour to an application under O.19, r.28) the learned authors of *Delany and McGrath on Civil Procedure* (4th ed.) observe as follows, at pp. 683-684, when it comes to the restraint that judges have traditionally shown when treating with strike-out proceedings:

"A consequence of this judicial restraint is that if the pleading in question is capable of an amendment which will remedy the deficiency in the case as pleaded, then an application to strike out will not succeed. In Sun Fat Chan v. Osseous Ltd [[1992] 1 I.R. 425, 428] McCarthy J. expressed the view that 'if the statement of claim admits of an amendment which might, so to speak, save it and the action founded on it, then the action should not be dismissed,' This proposition was accepted by Fennelly J. in Lawlor v. Ross, [[2010] IESC 110, at [25], where he]...stated that 'the court should be willing to assume in favour of the plaintiff that an appropriate amendment of the pleadings might save his case'".

34. It seems to me that the fairest way to proceed in this regard is to allow Mr X to proceed with his defamation claim insofar as it relates (if it relates at all) to material in respect of which such claim could be brought under s.11(2)(c)(i) of the Act of 1957, as amended, as of the date of his summons, subject to that claim being properly pleaded and a related application to amend the pleadings proving successful (see further my observations below concerning the application made under O.19, r.28 RSC). If Mr X wishes to make future application under s.11(2)(c)(ii) of

the Act of 1957 that is a matter for him. No s.11(2)(c)(ii) application has been made at this time and it would be inappropriate for me to comment further.

35. In passing, I note that Google suggested in argument that even if Mr X were to be allowed to proceed with his defamation claim it would be doomed to failure as Google is not liable as a primary or secondary publisher of any of the allegedly defamatory material. Counsel for Google referred me in this regard to various (if I might respectfully observe) illuminating judgments of (i) the English courts in *Metropolitan International Schools Ltd v. Design Technica Corp* [2009] EWHC 1765 (QB), *Richardson v. Facebook* [2015] EWHC 3154 (QB), and *Tamiz v. Google Inc* [2013] 1 WLR 2151 (CA) (ii) the High Court of Australia in *Google LLC v. Defteros* [2022] HCA 27, and (iii) closer to home, the decisions of the Northern Ireland High Court in *HL (a minor) v. Facebook Ireland Ltd* [2012] NIQB 25 and *Galloway v. Frazer and Ors* [2016] NIQB 7. The just-mentioned decisions clearly indicate how the law is trending in the common law world and they comprise an impressive collection of decisions that one could well imagine might strongly influence a future decision of the Irish courts. That said, there is as yet no decision of the Irish courts on whether or not (and in what circumstances) Google would or would not be a primary/secondary publisher for the purposes of Irish law.

36. Google has also indicated that even if it is found to be a publisher it will be able to rely on the defence of innocent publication under s.27 of the Defamation Act 2009 or the immunities arising from regulations 15, 17 and 18 of the European Communities (Directive 2000/31/EC) Regulations 2003.

37. Google has referred me to *Muwema v. Facebook Ireland Ltd* [2016] IEHC 519, as showing that the s.27 defence could be relied upon by Google. In terms of the facts presenting, *Muwema* is not strictly on point. It was concerned with an application for interlocutory relief under s.33 of the Act of 2009, not with a strike-out application; and the question that the court saw to present in that case (see para.64) was whether it was clear that the defendant had no defence reasonably likely to succeed. That is not the same question that presents in a strike-out application where a court is fundamentally concerned with whether a particular set of proceedings is frivolous, vexatious or bound to fail. It is perfectly possible that in any one set of proceedings a defendant could have a defence likely to succeed but those proceedings nonetheless would not be frivolous, vexatious nor bound to fail (and the notion that something is bound to fail is a high threshold to meet).

38. The differences between this case and *Muwema* aside, it does seem to me to be *ostensibly* likely that Google would be able to rely on s.27 of the Defamation Act *if* it were found to be a publisher. However, I do not see that there is enough in the evidence before me, for me to be satisfied that the various criteria in s.27(1) and (3) are satisfied. That there is not enough in evidence before me is not simply down to Mr X. For example, if I look even to s.27(3)(c) there is no evidence before me concerning the previous conduct or character of Google, save that it seems to process Art.17 applications when presented with a URL and otherwise appears not to do so.

39. As regards the Regulations of 2003, much the same point arises. The relevant provisions of those regulations would require Google, amongst other matters, to establish various factual matters that would fall to be established on the balance of probabilities before a court could find that Google is eligible for the immunities it claims under those Regulations. In the present application, beyond mere assertion in this regard, Google has done nothing to indicate that as a matter of fact it comes within the terms of regulations 15 and/or 17 and/or 18 of the Regulations. So I have no idea if what Google has asserted in this regard is true.

40. ***“2. Further and/or in the alternative to the foregoing, an Order pursuant to O.19, r.28 RSC striking out the plaintiff’s claim in these proceedings for failure to disclose a reasonable cause of action as against the defendant.”***

41. Order 19, rule 28 provides as follows:

“The court may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just”.

42. I note and accept as a true statement of applicable law the following observations in *Delany and McGrath on Civil Procedure* (4th ed.), p. 678:

“In Aer Rianta cpt v. Ryanair Ltd [[2004] IESC 23] it was emphasised by Denham J. that the jurisdiction under rule 28 is one which a court will be slow to exercise and it should ‘exercise caution in utilising this jurisdiction’. However, she went on to say that ‘if a court is convinced that a claim will fail’, a pleading will be struck out.”

43. I have indicated in Section B above what Mr X has pleaded. His pleadings thus far are, with every respect, clearly inadequate and have obviously been drafted by someone who has no experience in drafting pleadings. At their most basic, pleadings need to demonstrate a recognised cause of action and the necessary elements of that cause of action. Mr X’s pleadings in this case are entirely deficient in this regard. Putting matters at their most elementary, by reading the pleadings Google cannot discern exactly what case is being made against it and what defence it might usefully proffer and what arguments it might usefully make were this case to continue to trial.

44. Again, however, I note the text from pp. 683-684 of *Delany and McGrath on Civil Procedure* (4th ed.) that I have quoted above, in which the learned authors point to how the restraint that judges have traditionally shown when treating with strike-out proceedings has also led to judges declining to order a strike-out where it is possible that an amendment to pleadings might remedy whatever deficiency has been identified. I consider that there is enough in what is before me for the most just course of action to be that I stay these proceedings for six weeks so as to give Mr X time to amend his pleadings as he sees fit and then bring application for any amendments that he might propose to be allowed.

45. Though I cannot oblige Mr X to retain legal advisors, I respectfully do not believe that these proceedings will go much further without the involvement of legal advisors. Mr X should note that (1) any application that he might make to amend his pleadings may or may not succeed, (2) I am not recommending or directing (it is not for me to recommend or direct) that he should engage legal advisors, and (3) this judgment and any (if any) future judgment allowing him to amend his pleadings, should not be treated by him as an indication that he will necessarily be successful in the case that he wishes to bring.

46. Mr X and Google may assume that if the pleadings remain as is, or any application to amend the pleadings is unsuccessful, I will strike out the claim either (i) in six weeks' time or (ii) after any (if any) application to amend that is heard around that time proves unsuccessful (if it proves unsuccessful), whichever is later.

47. “3. *In the alternative to the foregoing an order pursuant to the inherent jurisdiction of this honourable court dismissing the plaintiff’s proceedings as against the defendant, being proceedings which are bound to fail*”.

48. As to whether the defamation proceedings are bound to fail, while Mr X will face a *very* uphill struggle in this regard I cannot conclude, for the reasons already stated above, that they are bound to fail. I have no idea what the constitutional law point is so I cannot say that it is bound to fail. What I can state is that the constitutional law point and also the claim as to breach of data protection legislation are entirely deficient in terms of how they are pleaded at this time and unless they are amended (and a related application to amend is successful) the pleadings will be struck out, so in this sense they are bound to fail as presently formulated. I have already indicated how I intend to proceed as regards the deficiencies in the pleadings.

‘PLAIN ENGLISH’ NOTE

Dear Mr X, Dear Google

I have just written a detailed judgment about the application brought by Google regarding Mr X’s case. The judgment contains a lot of legal language which can be hard (even boring) to read.

In a bid to make my judgments easier to understand by those who receive them I often now attach a note in ‘plain English’ briefly summarising what I have decided. Because Mr X is self-represented I thought it might assist for me to add such a note in this case This note is a part of my judgment. However, it does not replace the text in the rest of my judgment.

In a bid to ensure that people do not know who Mr X is, I have not used his real name in my judgment. This may seem a bit artificial. However, I think it is for the best.

Mr X’s pleadings in this case are, with respect, inadequate. At their most basic, pleadings need to demonstrate a recognised cause of action and the necessary elements of that cause of action. Putting matters at their most elementary, by reading Mr X’s pleadings Google cannot tell exactly what case is being made against it and what defence and what arguments it might usefully make were this case to continue to trial.

Judges, however, have traditionally declined to strike out proceedings where it is possible that an amendment to pleadings might remedy whatever deficiencies have been identified. I consider that there is enough in what is before me for the most just course of action to be that I stay these proceedings for six weeks so as to give Mr X time to amend his pleadings as he sees fit and then bring application for any amendments that he might propose to be allowed. Though I cannot oblige Mr X to retain legal advisors, I respectfully do not believe that these proceedings will go much further without the involvement of legal advisors.

Mr X should note that (1) any application that he might make to amend his pleadings may or may not succeed, (2) I am not recommending or directing (it is not for me to recommend or direct) that he should engage legal advisors, (3) this judgment and any (if any) future judgment

allowing him to amend his pleadings, should not be treated by him as an indication that he will necessarily be successful in the case that he wishes to bring.

Mr X and Google may assume that if the pleadings remain as is, or any application to amend the pleadings is unsuccessful, I will strike out the claim either (i) in six weeks' time or (ii) after any (if any) application to amend that is heard around that time proves unsuccessful (if it proves unsuccessful), whichever is later.

In the unlikely event that there is a conflict between the text of this letter and the text of the main body of my judgment, the text of the main body of my judgment shall prevail.

Yours sincerely

Max Barrett (Judge)

Date: 8th February 2023.