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Case Nos: CR-2024-BHM-000009
And PT-2024-BHM-000122

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
BIRMINGHAM DISTRICT REGISTRY (ChD)

Priory Courts
33 Bull Street
Birmingham
B4 6DS

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Before:

HIS HONOUR JUDGE TINDAL
Sitting as a Judge of the High Court

Between:

(1) RICHARD WOOD
(2) REBECCA WARD
- and -

Claimants /
Defendant

SOPHIE FLEMING

Defendant /
Claimant

MR FELTHAM (instructed by **Enoch Evans LLP**) and **MR DAY** for the **Claimants**

THE DEFENDANT appeared **In Person**

APPROVED JUDGMENT

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HIS HONOUR JUDGE TINDAL:

Introduction

1. Brendan Fleming was larger than life, perhaps one of the most recognisable and well-respected solicitors in Birmingham's legal community for 40 years. On his very sad death at the age of 75 on New Year's Eve 2023, he left his partner Ms Fleming and their six children (whom I will not name in this public judgment, although there is no application for anonymity, indeed Ms Fleming has publicised the case). This litigation has its origin in Mr Fleming's will of 4th December 2020, in which the children and Ms Fleming are beneficiaries, and a regrettable conflict between her and its executors, Mr Wood and Ms Ward. I shall refer to them as 'the Executors', or by name as I will Ms Fleming, as each are claimants in one proceeding and defendants in another.
2. The first proceedings (CR-2024-BHM-000009) originally started life as a companies claim about Mr Fleming's law firm 'Brendan Fleming Ltd' (Company Number 08453309 I call 'BFL'), but are now probate proceedings in respect of his will in which Ms Fleming is a claimant and Litigation Friend for the children as claimants and the Executors the Defendants. The second proceedings (PT-2024-BHM-000122) confusingly are not probate proceedings but a claim by the Executors for an injunction restraining Ms Fleming from 'harassing' them online e.g. by accusing them of misleading HHJ Rawlings in the initial company application on 8th January 2024. I granted that injunction without notice on 2nd July 2024 and renewed it on notice on 19th July. Having now heard Ms Fleming's submissions on it twice – then and today, I will explain why I have concluded her allegations against them are unfounded.
3. Each of the proceedings raises interesting issues of jurisdiction. Ms Fleming lives in Northern Ireland and says an English Court cannot make an injunction against her, nor does it have jurisdiction over a Turkish will distributing Turkish property by an Irish testator (as Mr Fleming made and was) even with English Executors (Mr Wood and Ms Ward) and some English property (principally BFL, of which Ms Ward is now a director). The injunction application also raises an interesting question on Art.10 ECHR Freedom of Expression and s.12 Human Rights Act 1998 ('HRA') in the context of injunctions to restrain a litigant's public comments on ongoing litigation. For example, on 17th June 2024, referring to the ongoing litigation, Ms Fleming in a Facebook post described Mr Wood and Ms Ward as 'criminals'.
4. There are also miscellaneous subsidiary applications to be resolved: Ms Fleming's application for summary judgment in both proceedings, directions on the Executor's application to commit her for breach of injunctions; and in the probate proceedings, Ms Fleming's applications to remove the Executors, to set aside HHJ Rawlings' order of 8th January 2024, disclosure and issues of administrators pending suit; and the identity of the children's litigation friend.
5. Ms Fleming has largely represented herself today. (I say largely because she has the benefit of representation in committal proceedings for alleged breach of that injunction by Mr Taylor to whom I am very grateful). Mr Wood and Ms Ward

are represented in their executor capacities by Mr Feltham and in their personal capacities on the injunction and committal by Mr Day. I am extremely grateful to all Counsel for their very detailed and erudite Skeleton Arguments and submissions today in what has been a complicated hearing.

6. Ms Fleming, I hope she will not mind me saying, is a very impassioned person. She expresses herself with great articulacy and power, but her emotion is never very far from the surface in this litigation. Indeed, today in her submissions that I permitted her to make remotely, which lasted a total of two hours, at times she became very emotional. We took breaks and I tried to assist her to link her points to the legal questions I must answer, by explaining the basic principles and asking her questions.
7. However, Ms Fleming's emotion is unsurprising. She was the partner of Mr Fleming for many years and they had six children. She has lost her partner and her children their father suddenly and shockingly. She is also dealing with concerns about her health and her children I need not detail in a public judgment and her family under financial strain. It is no exaggeration to say that for Ms Fleming, her entire world has been turned upside down in the last year and she is very concerned for her children. It is often said a parent will do anything for her child, but that does not mean that everything a parent does for their child is the right thing to do. Sadly, in her desire to do the right thing for her children, I am not convinced that Ms Fleming's approach to this litigation so far has been the right one, indeed not even for herself and her family.
8. For example, on 7th June 2024, when the matter first came before me, I encouraged all sides to approach a pension scheme 'bypass trust' Mr Fleming set up outside his estate, of which the Executors were trustees, to request an interim distribution to Ms Fleming. However, that was frustrated not by the Executors, but by Ms Fleming herself, when despite my suggestion, she repeated to the pension scheme her serious allegations about the Executors.
9. In summary, Ms Fleming alleges Mr Wood (a financial adviser) and Ms Ward (a solicitor at BFL) have committed criminal and professional misconduct by (i) 'relying on the invalid will' from 2020; (ii) 'changing the domicile' of Mr Fleming from Turkey to Northern Ireland; and (iii) 'misleading' HHJ Rawlings into making the 8th January Order in order to 'misappropriate' BFL.
10. I have not heard oral evidence today but have detailed statements from all the parties and a bundle of over 1000 pages. Whilst the legal position is in issue, the factual background and Ms Fleming's own conduct is not: she accepts writing messages and social media posts and sought to justify them with those allegations. Indeed, she relied on her allegations to seek Summary Judgment under CPR 24. As Mr Day says, that is only available if the Executors' harassment claim and claimed validity of the 2020 will only have 'fanciful' as opposed to 'real' prospects of success e.g. if 'clear there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents', given other documents potentially available at trial: (see [15] of Lewison J's judgment in *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339).

11. However, far from Ms Fleming's allegations against the Executors *justifying* summary judgment, I will explain *they* are inconsistent with contemporaneous documents. Indeed, when I asked her today what her *evidence* for them was, she effectively accepted she had no objective evidence for the allegations at all - they were simply what she genuinely *believed* about the Executors' conduct. However, it is clear those beliefs are based on cumulative *misunderstandings*, aggravated by anxiety over delay in distribution and so her own tight finances. Therefore, it is Ms Fleming's *allegations* that have no real prospect of success.
12. To correct Ms Fleming's misunderstandings that have led to this litigation (and to assist her understanding of what I fear must be a long judgment), I will summarise now my essential conclusions about them. However, equally I also stress now that Ms Fleming may still succeed at trial in her claim that the 2020 will was invalid and in the Executors' claim that she has 'harassed' them, just not due to allegations against the Executors that can and should be rejected.
13. Firstly, as executors of Mr Fleming's 2020 will, it is Mr Wood and Ms Ward's *responsibility* to administer it unless there is clear evidence that it was invalid. Ms Fleming suggests it was invalid on two grounds: that Mr Fleming lacked testamentary capacity and 'knowledge and approval' of his will. Ms Fleming suggests the evidence of this is clear so seeks summary judgment, but I will find it is not clear. So, unless and until the 2020 will is declared invalid, it is not wrong for the Executors to 'rely on' it, it would be wrong *not* to do so.
14. Secondly, as I will explain, the Executors have not 'changed' Mr Fleming's domicile from Turkey to Northern Ireland, which Ms Fleming fears will expose his c.£8 million estate to 40% in UK inheritance tax. Rather, *his decision* to move from Turkey to Northern Ireland a few months before his death legitimately raises a *potential* change in his domicile which Mr Wood and Ms Ward are duty-bound as his executors to consider referring to HM Revenue and Customs. However, as they say, they could apply for this Court to decide whether or not the possibility of change in domicile is sufficiently strong that they are required to approach HMRC. I am not deciding that today. It can be subject of application at that stage by Executors and submissions by Ms Fleming (or I would strongly suggest, her legal representatives).
15. Thirdly, the Executors did not 'mislead' HHJ Rawlings on 8th January 2024 into making an order allowing them to 'misappropriate' BFL. She alleges firstly English Courts did not have jurisdiction as BFL is part of an estate under a Turkish will; secondly that the Executors deliberately redacted the will to disguise from HHJ Rawlings that it was a Turkish will; and thirdly that the will wrongly called BFL 'Brendan Fleming Solicitors Limited' which did not exist as a company. The latter is correct, but that does not invalidate an order in proceedings relating to the *actual* company BFL replacing as its sole shareholder Mr Fleming with his executors after his death. The redaction of the will in order to focus exclusively on BFL, removing references to Turkey, was understandable since BFL is an English company plainly within the jurisdiction of the English Companies Court and the Turkish elements were irrelevant. Ultimately, HHJ Rawlings made that order as without a living director, BFL was breaching Solicitor's Regulatory Authority ('SRA') rules and had to close, which Ms Fleming herself says Mr Fleming would not want.

Factual and Procedural Background

16. Mr Fleming built up his law firm over decades and over that time he came to trust, in particular, his colleague and fellow solicitor, Ms Ward. Indeed, it is actually not disputed by Ms Fleming that it was always Mr Fleming's intention that Ms Ward, should she remain part of the firm, should step into his very big shoes after he retired. It was one of the tragedies of this case that Mr Fleming died before he could fully retire and enjoy the benefits of a retirement, which I do not doubt he originally planned over many years to be in Turkey, which is where he had bought land, moved and made a will.
17. Mr Fleming's will refers to his previous marriage and a previous relationship and older children. He met and began to live with Ms Fleming and they spent much of his last over a decade of his life together. They had, as I have already explained, six children together (whom as I said, I do not name as they are still children and it is entirely unnecessary for this judgment). Over the course of an incredibly successful career, Mr Fleming built up a considerable portfolio of personal assets which I can take from the schedule of assets and liabilities.
18. In England there is Brendan Fleming Limited ('BFL'), as I say incorrectly called Brendan Fleming Solicitors Limited in the 2020 will, recently valued by Mr Wood's financial firm as £2.4 million. Another company, Brendan Fleming Properties Limited, was valued in similar circumstances as £743,000. A third, Jewellery Suites Limited, was valued at £822,000. There were a number of properties, particularly in Birmingham where the law firm is based: in Victoria Street, in Newhall Street, an apartment in Victoria House, 81 Caroline Street, as well as several cars, a canal boat and so on.
19. Mr Fleming also left eight properties in a number of locations in Turkey which have been collectively valued at £2.5 million. He also had a bank account in New Zealand and some assets in Canada. He was, as an Irishman working in England for decades, a truly international person. I do not doubt that over the course of the last ten years or so when winding down his involvement in the firm and handing over to Ms Ward, that he planned to retire in Turkey. Indeed, when he made the disputed will at the height of Covid on 4 December 2020, he gave his address as Villa Fleming, Fethi Akkoç in Kas, Antalya in Turkey. Ms Fleming contends he chose Turkey as his domicile and that did not change.
20. In his will, Mr Fleming made specific provision in favour of Ms Fleming, from whom then he was temporarily separated, for property in Turkey held in a trust for her provided that she occupied it as her main residence. Of course, she no longer lives in Turkey and there is a debate about whether she is still a beneficiary. The trustees were also the Executors, Mr Wood and Ms Ward. Mr Wood was his financial adviser, Ms Ward, Mr Fleming's 'right-hand woman' at his law firm. He also left a number of specific legacies to other family members, including his ex-wife and ex-partner and other children, to Ms Ward of £10,000 and it will be relevant later, to his nephew Trevor Fleming of £10,000 and Trevor's four children of £2,500.
21. The key and most hotly contested aspect of Mr Fleming's will is his provision in relation to his law firm BFL and the residuary estate, the latter including

several properties in Turkey, shares in Brendan Fleming Properties Limited, Jewellery Suites Limited, and Canadian properties and investments. The will inaccurately referred to BFL as 'Brendan Fleming Solicitors Ltd' at clause 5:

“I give all my share or interest in Brendan Fleming Solicitors Limited to be divided as to 50% thereof to Rebecca Ward absolutely provided that she is still employed by Brendan Fleming Limited as at the date of my death and the remaining 50% shall form part of my residuary estate.”

Whilst made in Turkey in part about Turkish property, the residuary estate provisions are in standard English terms, that following usual expenses, the trustees would hold it on trust as to capital and income for Ms Fleming's children, in equal shares subject to their attaining the age of 25 years and then obtaining a vested interest. Clause 10 refers to the standard provisions of the Society of Trust and Estate Practitioners and, indeed, disapply section 11 of the Trusts of Land and Appointment of Trustees Act 1996.

22. Mr Fleming's will was drafted by English solicitors and included English property, most importantly, BFL. The only references to Turkey in the will are the address of Mr Fleming and the Turkish properties. The will was also witnessed by two people with addresses in Halesowen in the West Midlands, not in Turkey. Therefore, this will was effected in England in standard terms by English solicitors with English witnesses. Moreover, Mr Fleming himself had worked in England for many years, though he was in fact an Irish national.
23. As I say, at the height of Covid Mr Fleming was separated from Ms Fleming. She tells me that was a very difficult time for him where he was a very different person to how he normally was. She contends that he lacked testamentary capacity and 'knowledge and approval' for his will. I return to this on her application for summary judgment in the probate claim.
24. In any event, the separation was temporary and Mr and Ms Fleming soon reconciled. They may well have planned until that stage to spend the rest of their lives in Turkey, but in 2023 they decided to move to Northern Ireland. The circumstances of that decision are fundamental to the question of domicile, which I have already explained I am not resolving today. However, it is Mr Wood and Ms Ward's understanding that was a conscious decision by Mr Fleming and Ms Fleming for the education of their children. In fact, Ms Fleming says it was something Mr Fleming did not want to do, but specifically related to her son and his personal circumstances at the time. The facts of their relocation will have to await the resolution of domicile on another occasion. However, since Ms Fleming's conflict with the Executors is rooted in what she (mis)understood they were saying about domicile, I will address that now.
25. In a WhatsApp exchange between Ms Fleming and Ms Ward, less than a month after Mr Fleming's death - a time when they saw eye-to-eye, they discussed the property in Northern Ireland which Mr Fleming had bought in Ms Fleming's name, where she still lives with their children (her financial difficulty is lack of income, not property). Ms Fleming herself messaged Ms Ward to say that 'Brendan wanted this to be his kids' forever home'.

26. It is principally that message, others like it and various other evidence which has led Mr Wood and Ms Ward – in my view understandably - to form the view Mr Fleming *may have* intended to live in Northern Ireland, which *may suggest* his domicile had changed from Turkey to Northern Ireland. Whilst I am not resolving that today, it is relevant to say this view is based upon what Ms Fleming herself told Ms Ward, so cannot rationally be characterised as an unreasonable view still less a dishonest scheme as Ms Fleming characterises it.
27. It may well be that the legal position is more complex and not too much weight should be placed on a one-line WhatsApp message from Ms Fleming. It may well be she is right that Mr Fleming’s domicile remained in Turkey and that he never wanted to put down roots in Northern Ireland and saw it as a temporary base not a change in domicile. However, it is unfair of her to criticise Mr Wood and Ms Ward for forming the tenable view to the contrary. Given Mr Fleming was already in his mid-70s when they moved to Northern Ireland, if he did see that as the ‘kids’ forever home’, that may suggest he saw it as his likely home the rest of his life, which is how it actually turned out, although tragically sooner than he or his family expected. Ms Fleming’s real grievance may be that he never had the chance to ‘re-inherit’ in a new will.
28. Mr Fleming died suddenly - and shockingly to his family - on New Year’s Eve 2023. Initially, as that WhatsApp message shows, Ms Fleming and Ms Ward were initially communicating positively after his death. But Ms Fleming had a poor relationship with Mr Wood. So, on 18th January 2024, she posted on Facebook a picture of a vulture (she accepts referring to him) saying:
- “Grief gets more painful when vultures arrive, people grabbing or hiding his assets using his bank cards, he’s not even had a funeral yet.”

As Ms Fleming’s grievance about the will increased, her conduct increased.

29. The trigger for the aggravated grievance was the Executors’ urgent application to HHJ Rawlings in Birmingham Companies Court on 8th January 2024 for permission to make an ordinary resolution appointing a new director of BFL. Whilst those proceedings are now for probate, as their ‘CR’ case number shows, they were initially Companies proceedings relating to BFL, an English-registered company for which an English Companies Court indisputably has jurisdiction. The only role the 2020 will – redacted or not – played was to prove not that Mr Wood and Ms Ward were entitled to *inherit* BFL (only Ms Ward was and only then 50% and if still employed by it) but that they were Mr Fleming’s *executors*. So, the Turkish aspects of the will – including his address – were simply irrelevant. Indeed, it may have breached confidentiality of Ms Fleming and her children had those redactions *not* been made. It is true *the will* wrongly referred to ‘Brendan Fleming Solicitors Limited’, but that did not prevent it proving that Mr Wood and Ms Ward were the *executors* of Mr Fleming, so entitled under s.125 Companies Act 2006 to have *BFL’s* public register amended to name them as shareholders in place of him after his death. So, the set-aside application is misconceived.

30. Ms Fleming’s frustrations and misunderstandings appear to have prompted her not only to enter a caveat against the Estate in February 2024, but to ‘take up arms’ against the Executors online, as a quintessential 21st Century ‘keyboard warrior’. She began not only emailing Mr Wood and Ms Ward making accusations of professional misconduct against them – misleading the Court, seeking to ‘steal’ the inheritance etc. On 2nd March 2024, she then repeated these – I repeat, unfounded – allegations to the Solicitors Regulatory Authority about Ms Ward and to the Financial Conduct Authority about Mr Wood.
31. In early March 2024, Ms Fleming also reported the Executors to the Police, but they said - correctly - that contesting the will is a civil matter. On 14th March, Ms Fleming posted again on Facebook, not naming Mr Wood or Ms Ward but making serious accusations, plainly now about Ms Ward specifically:
- “Solicitors can get very greedy and immoral when there’s a chance to manipulate the will to inherit from someone in a vulnerable condition.”
32. Ms Fleming also told the Executors’ solicitor in an email in March that:
- “Prior to Brendan’s death I promised him I would do nothing to jeopardise the continuation of Brendan Fleming Solicitors and I am loyal to that promise. What remains clear at this moment is whether honouring Rebecca’s gift would place Brendan Fleming Limited in jeopardy or whether the opposite is true.”

Moreover, by the end of April 2024, Ms Fleming was emailing staff at BFL:

- “The dispute is very nearly at the end and the inevitable result will be that Rebecca Ward would no longer be any part of Brendan Fleming Limited and due to professional negligence Brendan died intestate. He made it very clear to me and everyone that he intended the solicitors’ business to continue after his death if at all possible. I believe with a little restructuring that’s entirely possible. I’ve copied in the SRA who’ve been investigating Rebecca’s misconduct and the other solicitors who were involved in the misappropriation of Brendan Fleming Limited.”
33. One of the striking things to me today is that when I asked Ms Fleming about this, to try and understand why she, as the children’s mother, would want to internally destabilise BFL which aside from her former partner’s public legacy was a significant asset in their residuary estate, she said that BFL would never make any money for her and the children. That perhaps illustrates that Ms Fleming did not see that she had anything particularly to lose from attacking her former partner’s law firm, though she plainly was not thinking about the effect her actions were having on its completely innocent employees. I am afraid that is reflective of how Ms Fleming has not really thought about the implications of many of the things she has done over the last seven months.
34. Ms Fleming then pursued *Larke v Nugus* requests of the Executors about Mr Fleming’s will, who obtained and provided to her the file from the solicitors

who originally drafted it. She then emailed the Court on 20th April 2024, complaining of Contempt of Court, misappropriation of BFL and demanding a transfer in the shares of BFL and for Ms Ward to resign. This was not a valid application, nor was Ms Fleming's email request of HHJ Rawlings to set aside his order of 8th January which he refused in any event), but on 12th March she made that formal application and on 5th May she applied to commit the Executors.

35. On 3rd June 2024, in those company ('CR') proceedings Ms Fleming then launched a probate application to declare the 2020 will invalid and remove the Executors. Since the Executors have since made a cross-application for probate of the 2020 will in that 'CR' proceedings, it is now in all but name probate proceedings. To add to the confusion, the Executors' later injunction application was issued as fresh probate ('PT') proceedings, not in the KBD.
36. In any event, all those applications were listed for directions before myself on 7th June 2024. Fortunately, before that hearing, Ms Fleming obtained representation who had assisted her to draft the application to remove the Executors. At the hearing, the Executors expressed concerns about Ms Fleming's allegations online and in correspondence, including to the FCA and SRA, but there was no application at that stage for an injunction. I dismissed Ms Fleming's application to set aside HHJ Rawlings' order (that she invites me to reopen today); and I also dismissed her application to bring Contempt proceedings against the Executors about HHJ Rawlings' order, as it was clear they had not interfered with the administration of justice, simply sought to save BFL from closure. I hoped that would clear up Ms Fleming's misunderstanding about this issue, but it clearly did not do so (as I hope to do still more clearly today). I then listed her removal application for this hearing.
37. However, my main goal at the 7th June hearing was encouraging distribution of at least something to Ms Fleming and her children because she was saying, then through her Counsel, that she was in financial difficulties and urgently needed funds. I did my best to broker an agreement that there would be a joint approach to the pension scheme which fell outside the estate but in a trust of which the Executors were trustees. Their solicitors Enoch Evans wrote to Ms Fleming's then solicitors shortly after the hearing on 14th June to explain what would need to be done, essentially the provision of certain information and details to justify to the pension trustees why they should make a distribution to Ms Fleming. Had that co-operation happened, an interim distribution of the pension scheme could have provided enough money for Ms Fleming and the children to live off until the final distribution of the estate.
38. However, Ms Fleming almost immediately disinstructed her solicitors and rebuffed the Executors' solicitor's attempts at the end of June to explain their position both on domicile (which I have already set out) and discuss the process for releasing funds from the pension scheme. On 20th June, Ms Fleming wrote to the pension scheme and queried the addresses that had been given for Mr Fleming as part of the pension trust but, more specifically, said:

"I've informed the FCA about the fraud [Mr Wood] and others at Barnett Ravenscroft are committing by using bypass trust

funds and s125 Companies Act to embezzle the estates of their deceased clients. I've also informed the Serious Fraud Office.”

Understandably in those circumstances, the pension trustees undertook an investigation but refused to make any interim distribution. Therefore, the opportunity for Ms Fleming and her family to have some money was actually frustrated by Ms Fleming's own actions, not by the Executors.

39. The dispute accelerated when someone made an anonymous referral to Northern Ireland Social Services in relation to Ms Fleming's children. Without going into unnecessary detail, for circumstances purely related to Ms Fleming's health, there was already Social Services' support and the social worker told Ms Fleming he accepted the referral was malicious and would be ignored. She suspects it was the Executors, but does not seem to have publicly alleged that, as she knows she has absolutely no evidence of it, which is why she seeks a Third Party Disclosure Order from those Social Services.
40. I do not doubt for a moment that malicious referral gravely upset Ms Fleming, but it also fuelled what were becoming her unfounded 'conspiracy theories' about the Executors' conduct of the estate and so she 'doubled-down' online about her existing allegations. For example, on 11th June 2024 she said on Facebook:

“To my Facebook friend sending my post to the fraudsters robbing my children of their inheritance and making us suffer poverty, please tell your friends there's no way their fraud is going to be kept quiet. Their disgraceful and criminal behaviour is going to be made very public. They will be household names especially among the legal community....They can only reduce the sentence if they hand over Brendan's estate now.”

Ms Fleming set up a GoFundMe page seeking crowd-funding for herself as:

“Victim to a fraudster who's been masquerading as a wealth management financial adviser but has been setting Brendan up to defraud Brendan's children of their inheritance.”

That referred to Mr Wood. On 17th June 2024 – *after* I had refused her application to set aside HHJ Rawlings' order explaining her misunderstanding, despite what I had decided, Ms Fleming persisted in her baseless allegations and named both Mr Wood and Ms Ward on her Facebook post as 'criminals' and saying that they had:

“...misappropriated an SRA registered regulated solicitors' practice by misleading the Court with a redacted will to hide the fact the will is an invalid will and they exhibited false fabricated evidence to mislead the judge that he had jurisdiction to make the order.

41. Ms Fleming also started posting on Facebook pages of other online campaign groups, including 'Awareness UK Children Are Stolen by Social Services'. Most relevantly, on 26th June 2024, she reposted there this Facebook post:

“Brendan Fleming Solicitors is now owned by a fraudster and a solicitor who lied to the court and misappropriated the company.

The two of them are relying upon an invalid will to embezzle the inheritance of Brendan's children and leave them suffering severe hardship. The new director has no morals to be able to make her late boss' family suffer."

'Brendan Fleming', BFL's public name, is well-known in Birmingham for representing parents facing Care proceedings – just the people who might subscribe to such a group. By repeating her (unfounded) allegations on it, Ms Fleming deterred potential clients of BFL: her own children's inheritance.

42. That threat triggered the Executors to apply on 1st July 2024 for an injunction restraining Ms Fleming's conduct (albeit issued as probate 'PT' proceedings). They applied without notice as HHJ Rawlings' order had initiated what had since become Ms Fleming's online campaign against them and the Executors understandably feared that service of their application would throw fuel on that fire. So, exceptionally, as secrecy of the application was essential to avoid not just the frustration of the injunction but the aggravation of the alleged tort (c.f. PD25A para 4.3(3) and *NCB v Olint* [2009] 1 WLR 1405 (PC at [13])), on 2nd July I made a without notice injunction. It prohibited contact by Ms Fleming with Mr Wood and Ms Ward or their friends or family, publication of their confidential information, or public (including online) personal criticism of them. But I limited the latter to criticism *outside* of the litigation, to encourage Ms Fleming to redirect it within the litigation where it is inherent and away from social media posts. Moreover, I also refused to order Ms Fleming to take positive steps, such as taking down online posts or ordering apologies on social media. I intended just to 'hold the ring' until the return date which I listed on 19th July 2024 to give Ms Fleming time to arrange to instruct English lawyers if she wished to do so.
43. The injunction was personally served on Ms Fleming on 3rd July. However, I am afraid it did not stop her posting about Mr Wood and Ms Ward, prompting their Committal application on 17th July. I do not make any findings about those new posts now, as I am only making directions about Committal. However, Ms Fleming has openly said they were her posts and rather defiantly asserted today she had ignored my injunction. But I do not make any findings based upon that admission, which would be unfair, since like much of the rest of her submissions to me today, she made it in a very emotional frame of mind.
44. However, I can record, because it is not part of the committal application, that on 5th July 2024 Ms Fleming starting emailing Mr Wood and Ms Ward's own solicitor (another Ms Ward but no relation) in very stark terms saying:
- "You're wasting your time with all your trickery, double speak, riddles, caginess and refusal to co-operate in a reasonable and caring manner, aggressive litigation, pursuit of unwarranted ex parte draconian orders, false accusations, malicious social services referrals, financial hardship, abuse of power is not going to coerce me to allow your clients to escape justice..."

Ms Fleming's attacks on the Executors' lawyers have continued since, with emails and posts Mr Day engagingly referred to as a 'Rogue's gallery', interfering with the ability of the Executors' solicitors to do their jobs. This is

on top of the appendix of Ms Fleming’s almost 70 Facebook posts, emails and other communications on the Executors themselves from February to June.

45. At the injunction return date on 19th July, I again attempted to engage Ms Fleming (whom I agreed could appear remotely from Northern Ireland with official consent) to enable her family to be financially supported. She did not suggest at that stage that the injunction was too wide or violated her freedom of expression, instead she justified her conduct as not ‘harassment’, disputed the jurisdiction of the English Courts and said the proceedings should be transferred to Northern Ireland. However, as they were inextricably linked with the probate proceedings not before me, I continued the injunction (again refusing to make mandatory orders) but listed both proceedings together today to consider Ms Fleming’s application. Just before that hearing, the Executors applied (in the company ‘CR’ claim where Ms Fleming had applied for declaration of invalidity of the 2020 will), seeking a grant of probate and the appointment of interim administrators. I turn to the probate issues first.

The Probate Proceedings

Jurisdiction

46. As Mr Feltham explains in his very helpful Skeleton Argument, the question of jurisdiction for the probate proceedings is rather different than in relation to the injunction proceedings. The position on jurisdiction of probate proceedings has to be considered at two levels and this perhaps explains some of Ms Fleming’s (partly) legitimate confusion on the relevance of ‘domicile’.
47. Under the Non-Contentious Probate Rules 1987, Rule 30 provides that:
- “Where the deceased died domiciled outside England and Wales, a district judge or registrar may order that a grant [of probate or representation] do issue to... the following persons: (a) to the person entrusted with the administration of the estate by the court having jurisdiction at the place where the deceased died domiciled; or (b) where there is no person so entrusted, to the person beneficially entitled to the estate by the law of the place where the deceased died domiciled.”

However, Rule 30(3) provides:

“Without any order made under paragraph (1) above—(a) probate of any will which is admissible to proof may be granted—(i) if the will is in the English or Welsh language, to the executor named therein.”

Of course, the 2020 will is in the English language, was drafted by English solicitors, in English standard terms, involving some clearly English property, including BFL, as well as Turkish property. In any event, this litigation is anything but ‘non-contentious’, so the 1987 Rules clearly do not apply.

48. The starting point is actually s.25 Senior Courts Act 1981 (‘SCA’):
- “...[T]he High Court shall...have ...probate jurisdiction...in relation to probates and letters of administration as it had

immediately before commencement of this Act, and in particular all such contentious and non-contentious jurisdiction as it then had in relation to... (b) the grant, amendment or revocation of probates and letters of administration.”

49. As Mr Feltham says, s.25 SCA had its original statutory origin in s.2 Administration of Justice Act 1932 which replaced the old equitable rule of domicile. *Re Wayland* [1968] P 1041 confirmed that s.2 of the 1932 Act gave the High Court jurisdiction to make a Grant of Probate even where the deceased was not domiciled in and left no estate in England. However, *Re Wayland* also clarified - as has become standard practice - the Court will not ordinarily make a Grant of Probate unless there is property of the deceased in England. However, as Mr Feltham says, here there is English property - not least BFL and the other English companies, as well as land in Birmingham.

50. Accordingly, as s.25 SCA applies and probate and administration matters do not fall within scope of the Civil Jurisdiction and Judgments Act 1982 ('CJJA') (to which I return later), the position on jurisdiction is as summarised in *Dicey and Morris on the Conflict of Laws* (16th Ed, 2022) at Rule 153:

“The High Court has jurisdiction to make a grant of representation [including probate] in respect of the property of any deceased person, but in the absence of special circumstances will not ordinarily make a grant unless there is property of the deceased to be administered in England.”

As Mr Feltham also pointed out, *Dicey* goes on to say at para.27-02 that the general rule in England is that no one is entitled to distribute or otherwise deal with the property of a deceased person unless he or she has obtained the authority of the Court. That is the relevance about the caveat Ms Fleming entered on 19th February 2024: until lifted it *disables* the Executors from making a distribution. This is another misunderstanding by Ms Fleming. The blockage on distribution since February has not been the Executors' conspiracy, reluctance or even just delay, but her own caveat. This again shows how she is the author of her own misfortune. The swiftest way to receive a distribution for the children is to lift it herself.

51. Accordingly, I am satisfied that the relevant principle for jurisdiction is not one of domicile as might be thought under a quick reading of the Non-Contentious Probate Rules, but is instead s.25 SCA which recognises the High Court's jurisdiction over English property in a will. Therefore, as Mr Feltham rightly says, the question is not whether this Court has jurisdiction – it plainly does. Nor is the issue whether the Court should 'transfer' the proceedings to another jurisdiction as ventilated at the last hearing – as there is no such power in English law as Mr Feltham submits. Instead, the issue is whether the English Court should *stay* its own proceedings on the grounds that proceedings should be started in a more convenient forum in another legal jurisdiction (the Latin expression is a stay '*Forum Non Conveniens*' or 'FNC stay').

52. The principles of FNC stays, classically set down by the House of Lords in the leading case of *Spiliada v Cansulex* [1987] AC 460, were conveniently summarised by Richards J in *Assam v Tsouvelekakis* [2022] EWHC 451 at [9]

and [12]. First, the Court must identify the live issues in the case, in order to evaluate the suitability of the rival jurisdictions to determine *those issues*. Secondly, the onus is then on the stay applicant to establish the proposed alternative court is available to adjudicate those issues - if not, the application fails. Thirdly, if the alternative jurisdiction is 'available', the onus is on the stay applicant to establish it is 'clearly or distinctly more appropriate' than the English Court as a forum for determining those issues, if not the application fails. Fourthly, if the alternative jurisdiction is more appropriate than England, the stay respondent must then establish that justice none the less requires the issues are tried in England, if not the application for a stay of proceedings here succeeds. I will now turn to consider these stages in the present case.

53. The real issue in the probate proceedings is the disputed validity of Mr Fleming's 2020 will. I emphasise what may seem obvious: that the issue is not whether that will did not make reasonable financial provision for Ms Fleming and whether she has a claim from the estate under the Inheritance (Provision for Dependents) Act 1975. As Mr Feltham fairly acknowledged, that may well be a stronger claim for Ms Fleming on her own behalf than will invalidity, irrespective of the position of the children.
54. Be that as it may, as it is the validity of Mr Fleming's 2020 will which is in issue, the questions any Court here or abroad would need to decide are: firstly, whether that Court has jurisdiction; secondly whether Mr Fleming's will was formally valid under the applicable law (in English law whether Mr Fleming had testamentary capacity and knew and approved the will); and thirdly, who should be the interim administrators of the estate pending that resolution, since it is now agreed that independent administrators should now be appointed.
55. On jurisdiction, Mr Feltham in his Skeleton Argument dealt principally with *Re Wayland* and the alternative jurisdiction of Northern Ireland where the Executors suspect Mr Fleming was domiciled for tax as at his death. However, in oral submissions he also dealt with the alternative of Turkey, because Ms Fleming revealed today that she issued in May 2024 in the Turkish Courts a claim relating to Mr Fleming's will, although she was not able to give any detail – let alone documents - about the current state of the Turkish proceedings. However, I am prepared to accept there may be a live Turkish case, although it is far from clear that the Turkish Court has been told about the English proceedings, nor why Ms Fleming *also* issued in England a claim in June 2020 to declare the 2020 will invalid.
56. Mr Feltham in his Skeleton Argument also addressed the applicable law in whichever jurisdiction applies. That is distinct from jurisdiction but relevant to a FNC stay, because if the validity of the will turns on Turkish law, that might point in favour of Turkey being the proper forum. If, on the other hand, the validity of the will turns on English or Northern Irish law, that would point in favour of England or Northern Ireland being the proper venue. In fact, this is, as Mr Feltham submits, a somewhat artificial issue because it does not make a real difference which of those applicable laws actually applies to this case.

57. Dilligent research by Mr Feltham has found an English copy of the Turkish Act on Private International and Procedural Law (5718) regulating what we would call ‘applicable law’ and jurisdiction. Article 20 provides:

“The *national law of the deceased* shall govern inheritance. *Turkish law shall apply to immovable property located in Turkey.....* A testamentary disposition executed in compliance with *the national law of the deceased* shall also be valid. The legal competency to execute a testamentary disposition is governed by the *national law of the executing person* at the time of execution.” (my italics)

Whilst Turkish law applies to immovable property located in Turkey, in other respects, in Turkey the applicable law is that of Mr Fleming’s nationality (as distinct from his domicile). He was not Turkish, Northern Irish, or English but Irish. Mr Feltham also has found that under Irish law - s.78 Irish Succession Act 1965 - the formal requirements of will validity are the same as English law under s.9 Wills Act 1837: formal validity, testamentary capacity, knowledge and approval, absence of undue influence. The same is true in Northern Ireland under s.5 Wills and Administration Proceedings Order (Northern Ireland) 1994. So, if the will is valid in English law, it will be valid in Irish and Northern Irish law and therefore in Turkish law as well. Moreover, whilst Turkish law applies to immovable property located in Turkey, for those properties only, an English Court could apply Turkish law if pleaded: see *Brownlie v FS Cairo* [2021] UKSC 45. More importantly, so far as everything else is concerned in Mr Fleming’s estate, including BFL and the relevant companies, even under Turkish law, Irish law applies which is the same in the relevant respects as English law. If Ms Fleming in due course proves that a Turkish Court has determined succession of the Turkish properties (which she does not yet say), the English Court will bear it in mind.

58. So, taking the second and third stages of the *Spillada* approach together, even on the assumption Turkey is ‘available’ as an alternative, I am entirely satisfied the proper place for the adjudication of the validity of the 2020 will is England. Even assuming there is a pending claim in Turkey and Turkish law of succession applies to Turkish properties, Turkey is not ‘clearly or distinctly more appropriate’ than England given that the applicable law will only be Turkish in respect of the properties there and Irish (the same as English) in other respects. Moreover, no relevant party is still based in Turkey, or even still was when Mr Fleming died. The will was drawn in England on English standard terms by English solicitors. The Executors are in England, much of the property is and the beneficiaries are here or in Northern Ireland.
59. Furthermore, it is not clear that Northern Ireland is even ‘available’, as there is no property in Mr Fleming’s estate there (c.f. *Re Wayland* which applies there). Even if ‘available’, Ms Fleming has not established Northern Ireland is ‘clearly or distinctly more appropriate’ for the dispute than England, not least because Northern Irish law will be the same as English law and there are pending English proceedings in which she has been participating, albeit remotely. Ms Fleming chose to issue a probate claim (and a committal application) in England, so presumably it cannot be too practically inconvenient for her.

60. In short, particularly given Mr Fleming's 2020 will was drawn by English solicitors on English terms, with English executors and (minor) beneficiaries and the estate includes significant English companies and property, I conclude England is actually clearly and distinctly *more* appropriate than either Turkey (where the only connection is some of the properties) or Northern Ireland (where the only connection is the residuary beneficiaries and Ms Fleming). For those reasons, I am satisfied the English High Court has jurisdiction and that I should not stay the probate proceedings either for proceedings to be conducted in Northern Ireland where there is no estate at all, or indeed in Turkey where there is a pending application about which I have been told very little indeed. On that footing, I proceed to adjudicate the other applications before me today on the probate proceedings, albeit comparatively briefly.

Summary Judgment

61. Ms Fleming's application for summary judgment on the probate claim is really based upon two grounds, one of which I have just dealt with - the question of Mr Fleming's domicile. As I have explained, the question of domicile does not affect the English Court's jurisdiction for probate proceedings, nor even the applicable law the Court applies in determining the question of the validity of the will. Moreover, the issue of domicile can be the subject of an application for directions in the way in which Mr Feltham described. So, that ground fails.
62. The other ground for summary judgment relates to the formal validity of Mr Fleming's will on the basis of knowledge and approval and testamentary capacity (which Ms Fleming only raised in submissions today), where Ms Fleming relied on her allegations against the Executors. Mr Feltham's point was simple and unavoidable. Unlike Ms Fleming's own conduct, which is effectively undisputed, both Mr Fleming's 'testamentary capacity' and his 'knowledge and approval' of the 2020 will are quintessentially questions of evidence for determination at trial. On the summary judgment standard under CPR 24, there is plainly a 'real' as opposed to a 'fanciful' prospect of the Executors establishing the will is valid. By contrast, Ms Fleming's misconduct allegations against the Executors have *no* (let alone 'fanciful') prospects of success, as they are unsupported – indeed contradicted – by the contemporary evidence (including HHJ Rawlings' order) and based on her misunderstandings. If necessary to grant summary judgment under CPR 24 to the Executors on those allegations of my own motion, I do so unhesitatingly, as they have been fully ventilated in Ms Fleming's own application and Mr Feltham (and Mr Day's) submissions; and there is a compelling need to correct her misunderstandings *now*, which have fuelled this litigation. Moreover, that decision is irrelevant to the 2020 will's invalidity (and does not prevent her resisting a finding of 'harassment' or establishing a defence to it).

The application to set aside HHJ Rawlings' Order

63. I have already explained why Ms Fleming's application to reopen HHJ Rawlings' order of 8th January 2024 is misconceived: it was an entirely legitimate order of the English Companies Court in respect of an English company (BFL) to replace as shareholder its sole director Mr Fleming after his death with his executors, Mr Wood and Ms Ward. It did not rely on Ms Ward's

(conditional) legacy of 50% of the shares in BFL (misnamed Brendan Fleming Solicitors Ltd), or Mr Fleming's Turkish address and properties, which were irrelevant.

64. Indeed, I go further. Ms Fleming had already made essentially the same application to set aside HHJ Rawlings' order to him (informally) and then to me (formally), which I refused for detailed reasons on 7th June. Ms Fleming also told me she has appealed HHJ Rawlings' order to the Court of Appeal, although she is unclear about the stage that has reached, certainly there has been no grant of permission. Despite all that, she has made yet another application to reopen my decision not to reopen HHJ Rawlings' order. At one stage in her submissions, Ms Fleming made an (inapposite) reference to *res judicata* – i.e. previous judicial determination. If anything is *res judicata*, it is HHJ Rawlings' order on 8th January and this now third attempt to try and reopen it with no grounds to do so is totally without merit and indeed I certify it as such.

Disclosure

65. Ms Fleming's disclosure application falls into two parts. The first part is for Third Party Disclosure Orders from Northern Irish Social Services about the identity of the person making the malicious referral. It is natural that Ms Fleming wants to know who it was (but it seems to me the appropriate route given Social Services have found it misconceived is a data subject request). In any event, as I said, there is no evidence whatsoever that it was Mr Wood or Ms Ward. But even if it was, it does not make any difference at all in relation to the validity of the will and so disclosure is unnecessary. (I will come back to it on the harassment claim). The other part of Ms Fleming's disclosure application, which does purely relate to the probate claim, is an application for information about Ms Ward's other clients. However, that has absolutely nothing whatsoever to do with the probate proceedings, is clearly a fishing expedition and I refuse it summarily.

The Application to Remove the Executors

66. Whilst this was originally the main application in the probate proceedings and the reason this hearing was listed, much of the force has been removed by the fact that it is now agreed, as I will explain in a moment, that administrators should be appointed pending suit. Therefore, I can deal with this application briefly without going into all the principles helpfully set out in Mr Feltham's Skeleton Argument. Nevertheless, in summary the purpose of an application for removal of Executors under s.50 Administration of Justice Act 1985 is whether the trusts are being properly executed and the main guide is welfare of the beneficiaries. That goes back to *Letterstedt v Broers* [1884] 9 AC 371, recently followed in *Re Savile Deceased* [2015] WTLR 635 (CA). The issue of an 'impasse' was dealt with in *Harris v Earwicker* [2015] EWHC 1915 which recognised there may be cases where the 'impasse' between the beneficiaries and the Executors is such that it is in the interests of all the beneficiaries and the proper execution of the trust and the will that the Executors be replaced even if there were not at fault, but that principle does not apply where it is the applying beneficiary who has created the impasse.

67. This is indeed a case where Ms Fleming has created the impasse and is seeking to use it to remove the Executors who, in my judgment, have done nothing wrong. In those circumstances, it is of particular importance that the testator's choice be respected: *Kershaw v Micklethwaite* [2011] WTLR 413. It was Mr Fleming's choice that Ms Ward in particular – his chosen successor in managing BFL, as well as Mr Wood, should be the executors, not least because one of the key assets in the will and in the estate is BFL itself, which even Ms Fleming admits Mr Fleming intended Ms Ward to take over.
68. For that reason, it is important that Ms Ward remain an executor and indeed for that matter Mr Wood as well. There is no basis whatsoever to remove them and putting it summarily, as Mr Feltham does in his Skeleton Argument, Ms Fleming has put forward no willing replacement executors. Her original application was based upon her being represented by solicitors willing to act as such, but they have since ceased to act. The fact she only today suggested the proposed interim administrators could be replacement Executors takes her nowhere, as they have not agreed to act in that particular capacity.
69. There is also the fundamental point that Ms Fleming, strikingly for these sorts of applications, is only a conditional rather than residuary beneficiary under the will. Her beneficiary status relates to Turkish properties which she says she is litigating in Turkey. Even then, the 2020 will assumes she occupies them as her main residence, which she no longer does. So, it is clearly inappropriate for her, as at best a minor beneficiary who may not even be able to exercise her rights under the will, to be able to oust the Executors in the name of the other beneficiaries. Of course, she also brings this application as proposed Litigation Friend for her children who are main residuary beneficiaries under the will, but that just brings into sharper relief whether she should be Litigation Friend as she may have a conflict of interest, as I discuss below. Whilst I do not doubt for a moment that Ms Fleming intends to do her best for her children, by her conduct she has in fact worsened their position, as I have explained. For those reasons it would be entirely wrong to allow Ms Fleming to procure the replacement of chosen Executors by making unfounded accusations against them. I therefore refuse her s.50 application.

Administrators Pending Suit

70. The application for the appointment of interim administrators is no longer contested (though Ms Fleming did contest it until she realised the solicitor proposed to being appointed is who she originally wanted to be appointed if the Executors were replaced, but who did not consent to act as such). She has now conceded to the appointment and indeed, welcomes it. I too welcome it, but for very different reasons - simply because it is only fair to the Executors to step back and let an independent professional run the administration. It may well be easier for the latter to work with Ms Fleming to arrange for interim distributions by the pension scheme trustees. Be that as it may, I grant that application and appoint the proposed solicitor to be an interim administrator. However, it is directly relevant to the last probate issue today – the children's Litigation Friend, that Ms Fleming initially opposed an application which she now accepts is effectively what she had originally requested. It is an illustration of how at

best she does not understand these proceedings and at worst does not think though the implications of her own actions in them.

Litigation Friend

71. The Litigation Friend issue is governed by CPR 21.3.21.4, 21.6 and 21.7. Their effect is that if children are proposed claimants, as here, the Court should appoint a Litigation Friend to conduct proceedings on their behalf. In choosing or removing that Litigation Friend, it should apply the criteria in CPR 21.4 (a) to (c), namely whether the proposed Litigation Friend can fairly conduct proceedings on behalf of the children, has no interest adverse to the children and has undertaken to pay any costs they may be ordered to pay.
72. Ms Fleming applied to be the Litigation Friend for her children. She has never been appointed by the Court, so the children's claims are in abeyance. One would normally expect in civil litigation that child claimants' parents should be Litigation Friends. Unfortunately, by her conduct Ms Fleming has disabled herself from that role and has demonstrated she cannot fairly and competently conduct proceedings on behalf of the children. Indeed, the manner in which she has conducted the proceedings so far has actually been *against* the interests of the children in frustrating a swift and effective distribution of money to them by unfounded accusations of fraud and criminal conduct against the Executors. In those circumstances, and not least because I have already certified one of her applications as totally without merit, Ms Fleming is a wholly inappropriate person to act as Litigation Friend. In any event, she has a potential conflict of interest with the children because she is an obvious potential claimant for reasonable financial provision under the will. As Mr Feltham says, what normally happens is that a parent who has been effectively cut out of a will where the children are the beneficiaries will go to mediation for a negotiated settlement where the estate can be appropriately split between the two. That is the way forward in this case too, but that way has been blocked so far by the way in which Ms Fleming has conducted the litigation. Moreover, she has not given an undertaking to pay the costs and so if only for that reason should no longer be the children's Litigation Friend.
73. Instead, Ms Fleming puts forward her mother to be an alternative Litigation Friend for the children. I fully accept that if the only issue were the possibility of Ms Fleming making a 1975 Act claim against the estate, that would be fine. However, we are not in that situation because of the way in which Ms Fleming has conducted the litigation. Moreover, whilst I make no criticism whatsoever of Ms Fleming's mother personally, she herself would be in a conflict of interest situation between the stance that Ms Fleming has taken through this litigation and the best interests of the children. It is not fair to put her in that invidious position. What these children need is a broadly independent member of the family who has not been involved in this litigation, who has not reached a trenchant view against the Executors or be subject to the influence of Ms Fleming's strong views and is prepared to act objectively and rationally to be a Litigation Friend.
74. The children are fortunate that Mr Fleming's nephew, Trevor Fleming, is prepared to act as their Litigation Friend. I am entirely satisfied he can fairly

and competently conduct the proceedings on behalf of the children even though he is not particularly close to them or Ms Fleming. That appears to be down to her choice, not his suitability. It will be appropriate for Ms Fleming to be open to Trevor Fleming as a relative of Brendan Fleming and as someone who clearly has her children's interests at heart, since he is prepared to give an appropriate undertaking to pay costs to be their Litigation Friend. Moreover, although Trevor Fleming is a beneficiary under the will and so are his children, they are very minor not residuary beneficiaries and the estate is so large there will be no conflict of interest. Indeed, he seems to have less of a conflict of interest than Ms Fleming who is a potential claimant under the 1975 Act. I am very happy to confirm the appointment of Mr Trevor Fleming as Litigation Friend for the children.

The Injunction Application

Revisiting the Injunction

75. I now turn to Mr Wood and Ms Ward's injunction application against Ms Fleming. As I have explained, on 2nd July 2024 on a without notice application, I granted them an injunction against Ms Fleming prohibiting harassment of Mr Wood and Ms Ward personally by direct or indirect contact with them or their friends or family, or further public (including online) criticism of them personally outside the litigation, but declined to order mandatory steps like retractions and apologies. At the return date on 19th July, I renewed the injunction effectively unchanged pending this hearing on whether English Courts have jurisdiction to make an injunction against Ms Fleming in Northern Ireland or whether to discharge it. However, pending that, I was satisfied England had jurisdiction due to s.24(1) Civil Jurisdiction and Judgments Act 1982 ('CJJA'):

“Any power of a court in England and Wales or Northern Ireland to grant interim relief pending trial... shall extend to a case where— (a) the issue to be tried... relates to the jurisdiction of the court to entertain the proceedings.”

76. To recap my reasons for making (and renewing) that injunction, it is effectively undisputed as a fact that Ms Fleming has been conducting what has really become a campaign against Mr Wood and Ms Ward, including:

- i) On 2nd March 2024, not long after HHJ Rawlings' order on 8th January 2024, Ms Fleming reported Mr Wood to the FCA as an independent financial adviser and Ms Ward to the SRA as a solicitor, making what I have now found to be unfounded allegations of professional misconduct. Shortly afterwards, she reported them both to the Police on unfounded allegations of criminal offences like 'fraud'.
- ii) At the end of April 2024, Ms Fleming emailed staff at BFL repeating her unfounded allegations against Ms Ward, internally destabilising BFL.
- iii) In June 2024, most clearly in her Facebook post of 17th June, even *after* I had refused her application to set aside HHJ Rawlings' order and to commit Mr Wood and Ms Ward for contempt, Ms Fleming on her

Facebook page named them both, calling them ‘criminals’ and alleging they misled HHJ Rawlings, contrary to what I had determined.

- iv) On 20th June, Ms Fleming repeated her allegations against Mr Wood to the pension scheme of which he and Ms Ward were Mr Fleming’s trustees, so frustrating any potential interim distribution to herself.
- v) On 26th June, Ms Fleming posted on Facebook her allegations against Ms Ward naming ‘Brendan Fleming Solicitors’, linked to a campaign group for parents in Care proceedings – BFL’s potential clients.

I make no findings about Ms Fleming’s conduct towards Mr Wood and Ms Ward after 2nd July 2024, as that is the subject of committal proceedings, but note between February and July there were approaching 70 different online attacks on the Executors and since July Ms Fleming has also attacked by email their solicitors.

77. However, before me today, Ms Fleming has not only renewed her challenge to the English Court’s jurisdiction, she has applied for strike out of the harassment proceedings under CPR 3.4(2)(a), which in fairness Mr Day accepts is really a reverse summary judgment application under CPR 24: that Mr Wood and Ms Ward’s prospects of proving ‘harassment’ under s.1 Protection from Harassment Act 1997 (‘PHA’) are only ‘fanciful’ rather than ‘real’. Ms Fleming also raises a new point that the injunction wrongly restricts her freedom of expression under Art.10 ECHR. That was not raised on 19th July, but in fairness to Ms Fleming, I prefer to revisit the issue of jurisdiction then summary judgment, Art.10 ECHR and s.12 Human Rights Act 1998.
78. Therefore, I propose to look at the injunction issue – including ‘harassment’ - entirely afresh and with additional authorities which arguably supported Ms Fleming’s position which I researched and gave to Mr Day and explained to Ms Fleming. This issue was fundamental not just to whether the injunction should be discharged as she says, but also if it is, to the committal proceedings. Therefore, I consider jurisdiction first, then disclosure, summary judgment, freedom of expression and lastly the terms of the injunction.

Jurisdiction

79. As I said, on 19th July, I determined that the English Courts had interim jurisdiction to make an injunction against Ms Fleming despite her residence in Northern Ireland due to s.24(1) CJA. I was also satisfied of English jurisdiction as she could be validly served there, as service is how a defendant is subjected to the Court’s jurisdiction: *Barton v Wright Hassall* [2018] 1 WLR 1119 (SC) at [8]. As confirmed nearly a century ago in *Re Liddell’s Settlement Trusts* [1936] (Ch) 365, as an injunction operates *in personam* (i.e. personally) the English High Court may make one over a defendant living abroad, providing they can be validly served with English proceedings. Whilst this generally requires the Court’s permission (CPR 6.36), as Mr Day pointed out, under CPR 6.32 and 6.40(2), the Court’s permission is not required for service of a defendant in Northern Ireland of English proceedings (given there are no pending proceedings elsewhere in the UK) provided they can be personally served, which was indeed done here on 3rd July 2024. I remain of that view.

80. In any event, there is a yet further basis for jurisdiction of the English Courts to make an injunction for harassment under the PHA – a statutory tort - against a defendant in Northern Ireland like Ms Fleming. s.16 CJA provides that Sch.4 CJA allocates jurisdiction between different Courts in the United Kingdom for people domiciled (here relevant) in the UK. This includes Ms Fleming in civil proceedings (which excludes probate proceedings, but it includes injunctions). As s.16 states, Sch.4 CJA is a ‘modified version’ of the EU ‘Brussels Recast’ Regulation 2012 on Jurisdiction (the EU Regulation). Like Art.2 of that, Sch.4 para.1 states:

“Subject to rules of this Schedule, persons domiciled in a part of the United Kingdom shall be sued in the courts of that part.”

Therefore, on the face of it, an injunction application for a claim in tort against Ms Fleming would have to be brought in Northern Ireland. However, Sch.4 para 2 provides a defendant there may be sued elsewhere in the United Kingdom, including England, under Rules 3 to 13 Sch.4. Rule 3(c) provides:

“A person domiciled in a part of the United Kingdom may, in another part of the United Kingdom, be sued... in matters relating to tort... in the courts for the place where the harmful event occurred or may occur.”

81. In *Cornwall Renewable Developments v Wright, Johnson & Mackenzie LLP* [2022] EWHC 3259, Richard Smith J (as he now is), held where there was a jurisdiction dispute between England and Scotland in a claim in contract, it was governed by Sch. 4 CJA. Moreover, s.16(3) CJA provided (even after Brexit) that ‘regard should be had’ to a relevant decision of the EU Court of Justice (‘CJEU’) on the interpretation of the corresponding ‘gateway’ in Sch.4 CJA. Whilst *Cornwall* was a claim in contract (where the intra-UK jurisdiction provision on contract in Sch.4 is effectively identical to the contract provision in the EU Regulation), the same plainly applies to a claim tort (like the present) under Rule 3(c) Sch.4, which is effectively identical to Art.7(2) EU Regulation. Therefore, it is relevant to note that in *Bolagsupplysningen v Svensk Handel* [2018] 3 WLR 59, the CJEU confirmed Art.7(2) EU Regulation (‘the courts for the place where the harmful event occurred’) meant, in the context of harm due to the internet, the jurisdiction where a tort claimant ‘locates their centre of interests’ – i.e. not just where the tortfeasor is, but also where the injured party ‘is based’ and experiences harm.
82. Here, as Mr Wood and Ms Ward are English and work and are ‘domiciled’ in England, they plainly have it as their ‘centre of interests’ for Art.7 EU Regulation and indeed Rule 3(c) Sch.4 CJA. They have plainly experienced harm here, not least Ms Fleming’s complaints to their professional regulators and the impact for Ms Ward on BFL of Ms Fleming’s conduct. Indeed, it is well established and indeed reiterated in *Cornwall* there only needs to be a ‘good arguable case’ on jurisdiction. In my judgment, it is entirely clear that English Courts have jurisdiction to make an injunction for Mr Wood and Ms Ward in England injuncting ‘harm’ due to Ms Fleming’s internet conduct, albeit she lives in Northern Ireland. I am satisfied I had jurisdiction to make the injunction on all three bases on 2nd July and 19th July and indeed have jurisdiction even to

make a final order on the latter two bases although I am not being asked to do so at this stage. The issue of jurisdiction is therefore finally resolved.

Disclosure

83. In the probate application, I refused Ms Fleming’s application for disclosure by Northern Irish Social Services of the name of the anonymous referrer to them about her family in June but return to that element in relation to harassment (the other disclosure application is irrelevant to it). I accept it follows from what I have said that the English Court also has jurisdiction to order such disclosure from Northern Ireland Social Services authorities. However, as Mr Day says, under CPR 31.17, that application must be supported by evidence and where the documents are ‘likely to’ (in the sense of ‘may well’) support or adversely affect either side’s case and be ‘necessary to dispose fairly of the claim’, namely the claim of harassment by Mr Wood and Ms Ward against Ms Fleming.
84. However, in this case, Ms Fleming’s application is unsupported by evidence, which is particularly relevant as she has already received the – anonymised - referral itself from Social Services, the terms of which are unclear to me yet obviously relevant to this application. In any event, even if the anonymous referrer had been Mr Wood or Ms Ward, that is ‘unlikely’ to affect either side’s case on harassment, still less be ‘necessary to dispose fairly of the claim’. Whilst it would have been extremely unattractive conduct, it would make no difference to what Ms Fleming had already done by the referral in June and her reaction to it was not to allege that the Executors had wrongly made the referral (which would have been entirely legitimate), but to attack BFL itself on posts linked to Care proceedings groups That is ‘likely’ (in the sense of ‘more likely than not’) at trial to be found to contribute significantly to her course of conduct amounting to ‘harassment’ at least of Ms Ward. However, I repeat there is no evidence whatsoever that it was Ms Ward or Mr Wood, indeed I consider that extremely unlikely, as they would have known to do so would fuel the fire against them, as it did. Others are much more likely culprits and Ms Fleming must pursue them by data subject request.

Summary Judgment on ‘Harassment’

85. The next question is whether – as Ms Fleming suggests, the prospect of a finding at trial of online harassment under s.1 PHA by her of Mr Wood and Ms Ward is only ‘fanciful’ not ‘real’ under CPR 24. The key principles were summarised by Nicklin J in *Hayden v Dickenson* [2020] EWHC 3291 (QB) (and have been applied since by Chamberlain J in *McNally v Saunders* [2022] EMLR 3 and most recently by Mr Eardley KC in *Sully v Mazur* [2024] EWHC 1999 (KB)). However, I start with the relevant statutory provisions. s.1 and 7 PHA provide, so far as material:

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

(1A) A person must not pursue a course of conduct (a) which involves harassment of two or more persons, and (b) which he knows or ought to know involves harassment of those persons, and (c) by which he intends

to persuade any person (whether or not one of those mentioned above)—
(i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do.

(2)...[T]he person whose course of conduct is in question ought to know that it amounts to... harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) or (1A) do..not apply to a course of conduct if the person who pursued it shows— (a) it was pursued for the purpose of preventing or detecting crime... or (c) in the particular circumstances the pursuit of the course of conduct was reasonable....

7(2) References to harassing a person include alarming the person or causing the person distress.

(3)A “course of conduct” must involve— (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.....”

ss.3-3A provide a course of conduct amounting to harassment under s.1(1) or indeed s.1(1A) give rise to a civil remedy and may be restrained by injunction.

86. In *Hayden* [44], Nicklin J summarised the general principles of the law on ‘harassment’ under s.1(1) PHA in previous authorities (citations omitted):

“i) Harassment is an ordinary English word with a well understood meaning: a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person...calculated to and does cause that person alarm, fear or distress: ‘a persistent deliberate course of targeted oppression’.

ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody’s day-to-day dealings with other people. The conduct must cross the boundary between [conduct] that is unattractive even unreasonable and conduct that is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under s.2. A course of conduct must be grave before the offence or tort of harassment is proved.

iii) The provision, in s.7(2), that ‘*references to harassing a person include alarming the person or causing the person distress*’ is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it. It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment; that would be illogical and produce perverse results.

iv) s.1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would

think the course of conduct involved harassment. The test is wholly objective. The Court's assessment of the harmful tendency of the statements complained of must always be objective, and not swayed by the subjective feelings of the claimant.

v) Those who are 'targeted' by the alleged harassment can include others 'who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it.'

87. It is also relevant that Ms Fleming's 'course of conduct' took place in the context of litigation. Mr Eardley KC added to *Hayden* in *Sully* at [16]:

"It is the course of conduct itself that must have the requisite harassing quality, not each individual piece of conduct. Harassment can, and often does, arise through the persistent, unwanted repetition of acts which, viewed in isolation, may be innocuous: see *Iqbal v Dean Manson Solicitors* [2011] EWCA Civ 123 at [45] [Iqbal] ...also illustrates that harassment can arise through the sending of inter partes correspondence in connection with legal disputes. Rix LJ said, at [41] 'The judge was perhaps concerned, and rightly so, not to set up every complaint between lawyers as to the conduct of litigation as arguably a matter of harassment within the Act. It must be rare indeed that such complaints, even if in the heat of battle they go too far, could arguably fall foul of the Act'. He added, at [54], 'Whatever the hardships involved in litigation, it is not the occasion for irrelevant and abusive dirt to be thrown as part of a malicious campaign. Just as even freedom of the press may be abused in a rare case ...so even litigation, whose natural contentiousness also requires its own freedom of speech, can exceptionally be abused...'

Indeed, Mr Eardley KC found *Sully* was such an 'exceptional' case of true 'harassment' in conduct of land litigation, including frequent, repetitive, lengthy demanding communications; personal abuse of opposing litigants including to their employers; and objection taken to their choice of lawyers.

88. I am satisfied that Mr Wood and Ms Ward have a 'real not fanciful' prospect of establishing that Ms Fleming's 'course of conduct' against them on the internet between March and June 2024 alone amounted to 'harassment' under s.1(1) PHA. It was plainly 'targeted at' them and amounted to a 'deliberate and persistent course of conduct', causing them 'alarm and distress' (as they say in their statements). Whether it went beyond the 'unattractive' into the 'oppressive' is plainly a matter for trial. This is especially so since I have found that Ms Fleming's allegations were unfounded. I accept Ms Fleming may still also have a defence under s.1(3) PHA even if her conduct did amount to 'harassment'. She would doubtless say her *purpose* was to 'prevent crime' i.e. 'fraud' by the Executors, which even though wrong might still have been 'rational': *Hayes v Willoughby* [2013] 1 WLR 935 (SC), which is clearly a matter for trial. However, on the other hand, whilst *Sully* was a case of oppressive conduct of bitter litigation, here Ms Fleming has also involved Mr Wood and Ms Ward's professional regulators and dragged in innocent third

parties like employees of BFL, destabilised by her emails. All these issues are for trial. I dismiss her summary judgment application.

Art.10 Freedom of Expression, Defamation and the legal test for interim injunctions

89. Nevertheless, the ‘real, not fanciful’ prospect of a finding at trial of ‘harassment’ on Mr Wood and Ms Ward’s underlying claim under the PHA is not necessarily enough to justify an *injunction*. I found on 2nd July and 19th July that on the classic *American Cyanamid* criteria for an interim injunction, damages for Mr Wood and Ms Ward would be inadequate and the ‘balance of convenience’ pointed clearly in favour of an injunction. Those conclusions are still clearer now I have found that Ms Fleming’s allegations are unfounded. The third *American Cyanamid* criterion - ‘serious issue to be tried on the merits’ – is plainly also met for the same reasons I have given on the summary judgment application.

90. However, that third criterion is adjusted where an injunction ‘might affect freedom of expression’ under Art.10 ECHR. Sweeting J in *North Warwickshire DC v Baldwin* [2023] EWHC 1719 (KB) at [123]-[137] said injunctions restricting ‘freedom of expression’ are ‘interference’ by the Court with Art.10(1) ECHR which are ‘prescribed by law’, must also be ‘justified’ under Art.10(2) as ‘in pursuit of a legitimate aim’ and be ‘proportionate’ in the sense of that aim being ‘sufficiently important to justify interference with a fundamental right’, the injunction must have a ‘rational connection’ with that aim, there are ‘no less restrictive means available to achieve that aim’ and the injunction ‘strikes a fair balance between the rights of the individual and the general interest’. Moreover, s.12(3) HRA provides:

“[Injunctive] relief is [not] to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.” (my underline)

The test where Art.10 freedom of expression is engaged to restrain ‘publication’ is not a ‘serious issue to be tried’ but success being ‘likely’, meaning ‘more likely than not’: *Cream v Banerjee* [2005] 1 AC 253 (HL).

91. Moreover, quite aside from Art.10 ECHR ‘freedom of expression’, I also bear in mind the domestic law principle on the tort of defamation, which Nicklin J described in *Hayden* at [52]:

“The court will not grant [interim] injunctions to prevent publication of defamatory words if the defendant says that they will defend the publication as protected by any of the defences in ss.2-4 of the Defamation Act: truth, honest opinion, or publication [in the] public interest. A claimant cannot avoid this rule by framing his claim in alternative causes of action. The court will scrutinise the claim being made to determine whether the ‘nub’ of the claim is the protection of reputation and therefore subject to the stricter rules.”

92. In the light of those principles, in *Hayden* at [44], Nicklin J added to the principles I have quoted earlier the following in the specific context of defamatory internet ‘speech’ engaging Art.10 ECHR (citations omitted):

“...vi) Where the complaint is of harassment by publication, the claim will usually engage Art. 10 [ECHR] and, as a result, the Court’s duties under ss.2, 3, 6 and 12 [HRA]. The [PHA] must be interpreted and applied compatibly with the right to freedom of expression. It would be a serious interference with this right if those wishing to express their own views could be silenced by, or threatened with, proceedings for harassment based on subjective claims by individuals that they felt offended or insulted.

vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) provides that harassment includes ‘alarming the person or causing the person distress’. However, Art 10 expressly protects speech that offends, shocks and disturbs... ‘Freedom only to speak inoffensively is not worth having’.

viii) Consequently, where Art.10 is engaged, the Court’s assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant’s Art.8 rights. If so, the Court will have to assess the interference with...rights and the justification for it and proportionality. The resolution of any conflict between rights under Art.8 and Art.10 is achieved through the ‘ultimate balancing test’.

ix) The context and manner in which the information is published are all-important. The harassing element of oppression is likely to come more from the manner the words are published than...content.

x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by [its] use.... There is no principle of law that publishing publicly available information about somebody is incapable of amount to harassment.

xi) Neither is it determinative that the published information is, or is alleged to be, true. ‘No individual is entitled to impose on any other person an unlimited punishment by public humiliation...’. That is not to say that truth or falsity of the information is irrelevant. The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under s. 1(3)), particularly when considering any application for an interim injunction. On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger. The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.”

93. Applying those principles, in *Hayden* itself, Nicklin J was not satisfied that an injunction was justified to restrain a campaign of virulent online criticism of another person in the context of a public battle on gender rights, as both

participants were voluntary participants in a public debate quintessentially engaging ‘freedom of expression’ (especially as the defendant was on Police bail so an injunction was unnecessary).

94. However, whilst litigation itself has its own ‘freedom of speech’ as Rix LJ said in *Iqbal*, ss.1-2 Contempt of Court Act 1981 recognises ‘strict liability’ contempt for conduct which ‘creates a substantial risk that the course of justice in legal proceedings will be seriously impeded or prejudiced’ with an exception under s.4 for ‘fair and accurate reporting’. I do not suggest for a moment that one party to litigation’s online posts about their opposing party usually pose any risk to the course of justice in proceedings to be determined by a judge: almost all cases on the 1981 Act relate to prejudicing juries in criminal trials. I simply suggest Courts *may* give less leeway to a party’s *public* comment *on* litigation – which is in many cases unnecessary - than their more *private* comment *in* litigation, which is inherent in civil justice. For similar reasons, if a party comments publicly on *their own* litigation, that is less likely to fall within what Chamberlain J in *McNally* at [70]-75] called ‘the enhanced protection Art.10 ECHR gives to journalistic expression’.

The Present Case

95. Even assuming Ms Fleming’s online campaign against Mr Wood and Ms Ward engages her Art.10 ECHR ‘freedom of expression’, I am satisfied at trial they are ‘more likely than not’ to succeed in proving Ms Fleming’s conduct was harassment and in restraining such ‘publication’ by her. I am also satisfied that harassment is the genuine cause of action in substance as well as form, this is not a claim for ‘defamation in disguise’. The nub of the harassment claim is not the Executors’ reputation but three other fundamental interests.
96. Firstly, Mr Wood and Ms Ward seek protection not just of their reputation as in a defamation claim, but their ability to conduct their responsibilities and duties as Executors and during the conduct of the proceedings relating to the validity of the will under which they were appointed as Executors. In other words, the real nub of this is *their ability to be Executors*. This is not just bitter litigation: I have never previously seen one litigant publicly attack another with quite the ferocity as Ms Fleming has done in this case by email and Facebook. Her conduct goes well beyond that in *Sully*, even before I granted the first injunction on 2nd July. That does not mean that I am finding now that it was unlawful ‘harassment’ under s.1 PHA, as I say that is a matter for trial. But that is ‘more likely than not’ to be established.
97. Secondly, the most serious element of Ms Fleming’s ‘course of conduct’ towards Ms Ward and Mr Wood personally has been the complaints to regulatory bodies. Those ‘targeted’ not just their ‘reputation’ but their professional right to practise in their chosen fields and so in reality their *livelihoods* (falling within their Art.8 ECHR ‘private life’: see *Hayden*). Whilst ‘the ultimate balancing test’ between Art.8 and Art.10 ECHR Nicklin J referred to in *Hayden* is absolutely a matter for trial, again the balance is ‘more likely than not’ to fall in favour of a finding of harassment and a final injunction. Applying *Hayden*, it is not just the *content* of Ms Fleming’s allegations (which I have also determined were unfounded), but also her *manner* in attacking not

only Mr Wood and Ms Ward's reputations, but also their professional status and livelihoods, with persistence and unpleasantness. In my judgment it is 'more likely than not' that at trial the judge will find Ms Fleming's conduct 'crossed the boundary from the unattractive to the oppressive and unacceptable', even given the greater leeway to her in the context of freedom of expression and litigation (and I stress without needing to rely on any lesser leeway for public comments on one's own litigation).

98. Thirdly, in particular Ms Ward is also affected by the impact of the conduct on innocent third parties. Ms Fleming's destabilisation of BFL internally (by emails to staff) and externally (by posts critical of Ms Ward as BFL's director linked to groups for parents facing Care proceedings) was plainly 'targeted at' Ms Ward, quite possibly in the hope of ousting her from BFL, which appears to be one of Ms Fleming's underlying objectives. But innocent victims were caught in Ms Fleming's fire: BFL's employees, themselves suffering bereavement from Mr Fleming's death. Ms Fleming's conduct, especially by her linking posts to social media groups discouraging parents who might instruct BFL, went far beyond personal criticism of Ms Ward and undermined the firm itself and the livelihoods of the people working for it who loyally worked for Mr Fleming for many years. The fact that Ms Fleming herself does not think that these attacks will affect her family is fundamentally misguided and even reckless with her own children's inheritance. Whilst I leave entirely out of account Ms Fleming's conduct since 2nd July towards Ms Ward (and Mr Wood) which is the subject of committal proceedings, it is also relevant that Ms Fleming has begun attacking their lawyers too.
99. In summary, the cumulative effect of all Ms Fleming's conduct against Ms Ward and Mr Wood cannot simply be judged on its tone, but also its frequency (at least 70 posts and emails before my order on 2nd July) and the indiscriminate and unfounded manner of her accusations of fraud and criminal conduct, including to regulators. The impact of those accusations on innocent others is also highly relevant: destabilising the employees of BFL and targeting the Executors' solicitors. This is not just 'bitter litigation' – indeed I have deliberately not taken into account Ms Fleming's many failed applications within it – it is overwhelmingly outside the scope of the litigation as well as even more exceptional than the conduct enjoined in *Sully*. Ms Fleming's conduct towards Mr Wood and Ms Ward is entirely different from unattractive or even abusive online posts or messages targeting people choosing to express personal beliefs publicly as in *Hayden* and *McNally*. This was hardly 'journalism' even of the broadest kind as in *McNally*. Very few people look at Ms Fleming's Facebook page, doubtless still fewer give credence to her wild allegations. She has not just targeted Mr Wood and Ms Ward directly, but also their profession and livelihood and harmed innocent third parties by undermining – deliberately, or simply recklessly – BFL: Mr Fleming's public legacy. Whether or not she is exercising 'freedom of expression', Ms Fleming's course of conduct this year is not only 'more likely than not' to amount to harassment under s.1(1) PHA, it is also 'more likely than not' not to have a statutory defence under s.1(3), but I repeat one final time, those issues are for resolution at trial.

100. For her part, Ms Fleming argued that an injunction was now unnecessary because she intends to ‘clean up’ her Facebook page, as she put it, of all these intemperate posts and will not feel a need to criticise Mr Wood and Ms Ward from now on because she can speak to the interim administrators. I am afraid this is a case where Ms Fleming has not even been dissuaded from making posts by the original injunction (Contempt or not). Mr Wood and Ms Ward should have the protection of an ongoing order and the potential threat of further committal proceedings, which it seems have already started to reinforce to Ms Fleming that this sort of behaviour is unacceptable and unnecessary. I very much hope that she complies with the injunction. As I have explained, her approach so far has created only conflict and has not achieved any distribution to support herself and her family financially, despite their pressures, indeed it has prevented such distribution. Therefore, ironically, Ms Fleming’s own children have an interest in their mother ceasing this conduct from now on. Therefore, I am satisfied the injunction should continue because I am satisfied, as I have said, that Mr Wood and Ms Ward are more ‘likely’ than not, for the purposes of s.12(2) HRA even allowing for Ms Fleming’s freedom of expression, to obtain a final injunction at trial against her on the basis of conduct which is not factually disputed, even if whether it amounts legally to ‘harassment’ is.

The Terms of the Injunction

101. Whilst I am satisfied for those reasons that I should continue an injunction against Ms Fleming, I am also satisfied that it requires some degree of adjustment in the light of three factors. Firstly, I have now taken into account Art.10 ECHR freedom of expression. Second, the position has changed on the ground, because of my appointment of the interim administrators. Thirdly, in the light of Ms Fleming’s subsequent conduct since the original injunction on 2nd July 2024 (Contempt or not) it seems to me appropriate to adjust some of the language in the original injunction. That in part narrows that language, but actually in part widens it.
102. I will maintain the prohibition on Ms Fleming telephoning, texting, emailing or otherwise contacting or attempting to contact Mr Wood or Ms Ward in the ways prohibited by paragraph 5(a) of the existing injunction, likewise contacting their friends and family in the terms prohibited by paragraph (b). However, paragraph 5(c) needs to be narrowed. A prohibition on Ms Fleming criticising Mr Wood and Ms Ward ‘outside the litigation’ – to put it neutrally whether or not there has been a Contempt – has not worked. Moreover, as they are now taking a back seat in terms of the administration of the estate pending suit, that wording can in my judgement fairly be tightened, which would also enhance the scope of Ms Fleming’s Art.10 ECHR right to freedom of expression.
103. There is a difference, as both Ms Fleming and Mr Day accept, between her criticism of Mr Wood and Ms Ward which might fall within the scope of freedom of expression even if unpleasant on one hand; and her allegations of professional misconduct and criminal misconduct on the other which are completely unjustified and are ‘likely’ to fall outside the protection of Art.10 ECHR even with the additional latitude for freedom of expression in *Hayden*. I remind myself that my assessment of whether the conduct crosses the boundary

from ‘the unattractive, even unreasonable, to the oppressive and unacceptable’ must ‘pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly’. With that fully in mind, I am nevertheless satisfied that a prohibition on publishing or communicating only *allegations of criminal or professional misconduct* against Mr Wood and Ms Ward would suffice. Paragraph 5(d) as it now will be including instructing, encouraging or in any way suggesting any other person should do likewise.

104. Clause 5(e) of the existing injunction should remain to prohibit publication or otherwise communicating any *confidential* information relating to Mr Wood or Ms Ward. This is narrower and less restrictive than ‘any personal information’ criticised in other cases. Likewise, I will delete paras. 5(f) and 5(g) of the existing injunction as now unnecessary the Executors now the interim administrators will be dealing day-to-day.
105. However, I will widen the scope of the existing injunction in two other ways. Firstly, now I have found Ms Fleming’s allegations against Mr Wood and Ms Ward to be unfounded (although that does not mean she has ‘harassed’ them under s.1(1) PHA or if so, does not have a defence under s.1(3) PHA) and had fuller argument, I am now prepared to make - in part- a mandatory injunction. This will require Ms Fleming to take down, remove and/or delete any posts on social media including on Facebook/Meta and her GoFundMe page ‘Fundraiser for Sophie Fleming’ and/or any other posts or publications alleging criminal or professional misconduct by Mr Wood or Ms Ward. This is limited to the scope of the injunction as narrowed on the prohibitory criteria, but simply requires Ms Fleming to undertake the hardly too onerous task of ‘cleaning up her Facebook’ as she says she wants to do in any event. However, I decline to go further than that as Mr Day suggested by informing the relevant social media platform that the posts are untrue, that is unnecessary in the light of that previous order. Similarly, whilst I am tempted to require Ms Fleming to withdraw reports and complaints to the Solicitors Regulatory Authority or the Financial Conduct Authority about Ms Ward and Mr Wood respectively, it seems to me that it is safer having regard to the question of Art.10 ECHR freedom of expression for those matters to await until trial. In that first sense, I slightly widen the injunction.
106. Secondly, I also widen the injunction to address Ms Fleming’s attacks on the Executors’ lawyers. In *Linemile Properties v Plater* [2023] EWHC 810 (KB) an injunction was made not simply to protect a litigant in a vicious land dispute but also their solicitors threatened by the other party. Of course, the solicitors here have not been threatened, but they have been subject of continuing vitriolic emails and posts from Ms Fleming since the 2nd July injunction. So, as in *Linemile*, I extend the injunction to offer the same protection from Ms Fleming’s allegations of criminal or professional misconduct against the lawyers acting for Mr Wood and Ms Ward, because they have the right to do their jobs without being bombarded with her vitriolic comments for which there is no justification, even allowing for her ‘freedom of expression’. That conduct not only falls within the scope of ‘harassment’ in s.1(1A) PHA, the protection of the Executors’ lawyers involved in this litigation falls within the High Court’s

general jurisdiction to make injunctions under s.37 SCA 1981, creating a wide discretion to make orders which are ‘just an convenient’, but bounded by established practice as in *Linemile*, where the injunction was an ancillary order to protect and control conduct of the litigation.

107. However, despite my sympathy for the employees of BFL destabilised by Ms Fleming’s scattergun allegations, I decline to go further to add them as further potential protected parties to the order. In my judgment, that would have to be done by means of a specific application for the appointment of representative parties under CPR 19.6: see *Smithkline Beecham v Avery* [2009] EWHC 1488.

Conclusion

108. In short, that completes my judgment and deals with the various contested applications before me. I should record that Mr Taylor confirmed that Ms Fleming’s application to strike out the Committal is not pursued. I would add, as Mr Day submitted, there is no express power to do so under CPR 81 and only a limited power under the Court’s inherent jurisdiction which is really confined to narrow issues of abuse of process: *Super Max v Offshore Holdings Malhotra* [2019] EWHC 2711. Nothing like that could be argued in the present case at this stage, although that does not stop Ms Fleming making any other argument in the Committal proceedings that is appropriate and on which I am sure she will take advice. I will now deal with the agreed directions on those proceedings and questions of other directions and costs.

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