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Case No: QB-2022-000921

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 25/01/2024

**Before :**

**THE HONOURABLE MRS JUSTICE COLLINS RICE**

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**Between :**

- (1) SHAH TASMINA HUSSAIN  
(2) SHELIM HUSSAIN  
(3) EURO FOODS GROUP LTD

**Claimants**

**- and -**

**Claimant**

- (1) SHAMIMUR RAHMAN  
(2) MASUM AHMED  
(3) ECO FOODS SERVICES LTD  
(4) MOHAMMED MASOOD AHMED  
(5) FARIHA RAHMAN  
(6) PERSONS UNKNOWN

**Defendant**

**Defendants**

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**Mr William McCormick KC & Ms Beth Grossman** (instructed by Harding Evans LLP) for  
the **Claimants**

**Mr Dirk van Heck** (instructed by direct access) for the **1<sup>st</sup> & 5<sup>th</sup> Defendants**  
**Mr Michael Smith & Mr Harry Bithell** (instructed by Woodford Wise Solicitors) for the **2<sup>nd</sup>**  
& **3<sup>rd</sup> Defendants**

**Mr Ellis Sareen** (instructed by M & M Solicitors) for the **4<sup>th</sup> Defendant**

Hearing dates: 22<sup>nd</sup>-26<sup>th</sup> May & 6<sup>th</sup>-9<sup>th</sup> June 2023

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 25<sup>th</sup> January 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HONOURABLE MRS JUSTICE COLLINS RICE

**NOTE: This judgment was originally handed down on 15<sup>th</sup> August 2023 in anonymised form as *LGC & Ors v OVD & Ors [2023] EWHC 2058 (KB)*. Following a hearing of consequential applications on 19<sup>th</sup> December 2023, the Judge ordered, among other things, the revocation of previous orders anonymising the identities of the parties. Her reasons for doing so were given in open court on that date. This version of the judgment accordingly supersedes and replaces the version previously handed down.**

**Mrs Justice Collins Rice:**

## **SECTION A**

### **INTRODUCTORY**

#### **Introduction**

1. The second claimant in the case, Mr Shelim Hussain, is a prominent businessman with a national profile. He came to the UK from a poor home in Bangladesh as an 11-year-old boy with instructions to stay with extended family living in a local expatriate settled community in South Wales, find work, and send money home. He started by getting several paper rounds, and went on – thanks to his extraordinary vision, focus, drive and sheer hard work – to build up a multi-million-pound business empire importing food and other commodities for supply to the UK’s Asian restaurant and retail grocery sector. His company, the third claimant, Euro Foods Group Ltd, is a dominant and thriving business force in this space. He is its managing director, and the principal shareholder in the holding company that owns it. He is justifiably proud of his considerable achievements, and the national recognition he has attained, and says everyone now knows him in the South Wales community in which he started out and where he still lives and works. He and his company recently featured in ITV’s reality series *Undercover Big Boss*.
2. As the firm grew and prospered over its first twenty years or so, Mr Hussain brought in close and trusted family members to help him run and expand it, and to share in its prosperity. These included the first defendant, Mr Shamimur Rahman, his first cousin and childhood friend (his mother and Mr Rahman’s father were sister and brother); and another cousin, the second defendant, Mr Masum Ahmed (Mr Hussain and Mr Masum Ahmed grew up as children together in the latter’s mother’s home). His own brother joined as an employee also.
3. The cousins and brother rose to trusted positions in the firm. But it seems the cousins grew restless. They became dissatisfied with Mr Hussain’s leadership, and started to develop business ambitions of their own. They decided to leave and set up in business on their own account in the same sector. The firm Mr Masum Ahmed in due course set up, and which Mr Rahman then joined, is the third defendant, Eco Foods Services Ltd, in the case.

4. Although the cousins' departure from Mr Hussain's firm was, at the time, effected amicably enough on the surface, once he realised the extent of their ambitions, and began to feel the impact of their competitive efforts on his customers, he instructed his lawyers. He sought to constrain the cousins to a six-month contractual undertaking not to compete or make competitive use of the information and knowledge they had obtained while they were working for him. The cousins acceded to that.
5. But that did not resolve matters between them. Mr Hussain thought he had reason to believe the cousins had not adhered to the six-month contractual undertaking. So he instructed his lawyers to pursue a *ten-year* non-competition agreement (which he acknowledged that their lawyers, if they had any, would tell them not to sign). And he issued a legal claim against them alleging breach of contract, breach of fiduciary duty and breach of confidence. (It is fair to say that litigation featured prominently in Mr Hussain's business model; before he left, it had been among his cousin Mr Rahman's responsibilities as credit control manager to preside over a substantial legal operation in pursuing debt enforcement against customers who were not prompt in paying their bills. One witness said the firm was in court 'all the time'.)
6. Then suddenly the national covid pandemic hit, with what might have been an existential threat to both businesses, relying as they did on hospitality sectors highly impacted by the pandemic. Abruptly, without consultation within the firm, and citing the pandemic, Mr Hussain instructed his lawyers to withdraw the claim against the cousins, and the claim was discontinued by consent order.
7. By bringing the present proceedings against his cousins, Mr Hussain now places a dramatically different narrative before the Court. He says the real reason he withdrew the claim was that his cousins were blackmailing him. He says they had, by underhand means, obtained recent photographs from his daughter's private Instagram account (she was at the time a student living away from home at a nearby university). He says that, together with another of Mr Masum Ahmed's cousins, the fourth defendant – Mr Mohammed Masood Ahmed – they embarked on a course of conduct to harass and intimidate him into dropping his legal claim and surrendering his legal rights, with a view to advancing their own business prospects, including by threatening publication of the photographs. He says that although the photographs are entirely blameless and unremarkable by general (and generational) UK standards – which they are – they indicate departure from what he says were his, and the wider local community's, expectations of conduct to be observed by a young, single, Muslim woman. He says the public disclosure he alleges was threatened was such a traumatic prospect for him, and for his daughter (the first claimant in this case, Ms Shah Tasmina Hussain) he had no choice but to give in and compromise his business interests, and has been enduring a sustained onslaught on his immediate family's peace and privacy then and ever since.
8. And so he and his firm bring these claims, alleging duress and undue influence in the matter of dropping his earlier claim; misuse of private information in that the photographs were wrongly obtained (in which he says the fifth defendant – Mr Rahman's daughter, Ms Fariha Rahman – was also implicated) and then wrongly used against him; and harassment. His daughter Ms Hussain sues on her own account for the misuse of her pictures.
9. The defendants say quite simply that no pictures were improperly obtained by them, that Mr Hussain was not blackmailed – at any rate by any of them – and that they are

not responsible for any actions capable of amounting to harassment as alleged. They say instead that Mr Hussain's own course of conduct – including by bringing this claim – has been oppressive, unfair and anti-competitive. They say the claim, into which he co-opted his daughter, proceeds from his mood of retrospective post-covid regret (or 'buyer's remorse') for not having pursued his claim while he had the chance, and is part of a campaign of abuse of power, intimidation and punishment being meted out to them for defying his attempts to control and constrain their family loyalties and their business enterprise. It is an exercise, they say, in other words, in baseless scapegoating.

10. So this is a case about a long-running business disagreement, about deep family schisms, and about a young woman's entitlements and expectations in the use of social media. It is a case in which feelings and resentments run deep on both sides, and two very different factual narratives compete for attention. It is also a case in which the course of this litigation itself plays a prominent role, each side taking strong exception to the way the other has gone about things.
11. This is a long judgment. The claim is multi-faceted. The fact-finding exercise I am tasked with is extensive and complex. I received a substantial amount of oral evidence. The procedural history of the case is also extensive, complex and relevant. The parties are entitled to a full explanation of why I have reached the conclusions I have.
12. I have divided the judgment up into sections for ease of navigation. This first section is introductory. The procedural history is set out in the second section. The third covers some preliminary considerations raised by the claim. The fourth is a thematic review of the most relevant evidence. I set out and explain my findings of fact in the fifth. And my conclusions on legal liability are then explained in the sixth.

### **Legal framework**

13. There is no material legal disagreement between the parties as to the applicable legal framework. This is a dispute largely about the facts. The legal framework itself is, however, a highly fact-sensitive one.

#### ***(a) Misuse of private information***

14. The tort of misuse of private information traces its origins to the decision of the House of Lords in *Campbell v Mirror Group Newspapers Ltd* [2004] UKHL 22, which explained the consequences of the Human Rights Act 1998 incorporating into domestic law Articles 8 and 10 of the European Convention on Human Rights. From that case comes the classic statement of the tort as concerned with '*the protection of human autonomy and dignity—the right to control the dissemination of information about one's private life and the right to the esteem and respect of other people*'.
15. A claim in misuse of private information has to establish the components of a two-stage test. In the first place, a claimant must show they had '*a reasonable expectation of privacy*' as to the information in question. That test was confirmed by the Court of Appeal in *Murray v Express Newspapers plc* [2009] Ch 481 at [36] to be:

a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the places at

which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.

These have come to be known as the '*Murray* factors', but they are illustrative, and not exhaustive, of '*all the circumstances of the case*'. In a case such as the present, relevant factors would also include the content of the pictures, the circumstances in which they were created and held, and how and why any claimant had and asserted an entitlement to prevent or control their accessibility.

16. If a reasonable expectation of privacy is established, then a court must go on to consider whether a breach of that privacy has been made out. The starting point there is whether a defendant '*knows or ought to know that there is a reasonable expectation that the information in question will be kept confidential*' (*Campbell*, [134]). Establishing a breach, too, is highly fact-specific. Expectations of privacy, and breach, may not be all-or-nothing matters, and it may be necessary to consider the nature and extent of the unwanted audience.
17. The second stage of the test asks whether, if a claimant does have a reasonable expectation of privacy, and it has been breached, there are relevant considerations that might outweigh that privacy. A balancing exercise is required, looking at the nature and purpose of the interference with privacy and whether there is any justification for it, usually considered in terms of anyone's competing Art.10 rights of freedom of expression (*Campbell*, [137]). Art.10 also protects the right to '*receive and impart information and ideas without interference*'.
18. Where the privacy of more than one person, or a series of breaches, may be in issue, it is important to take a careful step-by-step approach to this two-stage analysis, including considering to what extent any individual's privacy survives any breach that may have occurred, so that it may be capable of being breached more than once.

**(b) Harassment**

19. Harassment is a statutory tort. Section 1 of the Protection from Harassment Act 1997 provides as follows.

**1. Prohibition of harassment.**

- (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) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows—

(a) that it was pursued for the purpose of preventing or detecting crime,

(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or

(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

20. Section 7 of the Act makes further provision as follows:

**7. Interpretation of this group of sections.**

(1) This section applies for the interpretation of sections 1 to 5A.

(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.

(3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—

(a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); and

(b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(4) "Conduct" includes speech.

(5) References to a person, in the context of the harassment of a person, are references to a person who is an individual.

21. There are accordingly a number of key components of the tort. The first is that there must be a *course of conduct* – two or more acts, that is things said or done, direct or indirect. Indirect acts include participation by helping or encouraging others, or by material or active approval for a course of conduct (see Majrowski v Guy's & St Thomas's NHS Trust [2006] UKHL 34, [2007]1 AC 224 per Lord Hope at [20]).
22. The nature of the tort was considered more generally by Nicklin J in Hayden v Dickinson [2020] EWHC 3291 (QB). He characterised it as '*a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress*'. The conduct '*must cross the boundary between that which is unattractive, even unreasonable, and conduct which 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*' ([40]).
23. He continued with the following survey of the relevant authorities on harassment ([44]):
  - i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; "a persistent and deliberate course of targeted oppression": Hayes v Willoughby [1], [12] per Lord Sumption.
  - 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 that which is unattractive, even unreasonable, and conduct which 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: *Majrowski* [30] per Lord Nicholls; *Dowson* [142] per Simon J; *Hourani* [139]-[140] per Warby J; see also *Conn v Sunderland City Council* [2007] EWCA Civ 1492 [12] per Gage LJ. A course of conduct must be grave before the offence or tort of harassment is proved: *Ferguson v British Gas Trading Ltd* [17] per Jacob LJ.

iii) The provision, in s.7(2) PfHA, 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: *Hourani* [138] per Warby J. 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: *R v Smith* [24] per Toulson LJ.

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: *Dowson* [142]; *Trimingham* [267] per Tugendhat J; *Sube* [65(3)], [85], [87(3)]. “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”: *Sube* [68(2)].

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”: *Levi v Bates* [34] per Briggs LJ.

vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court’s duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The PfHA 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: *Trimingham* [267]; *Hourani* [141].

vii) In most cases of alleged harassment by speech there is a fundamental tension. s.7(2) PfHA provides that harassment includes “alarming the person or causing the person distress”. However, Article 10 expressly protects speech that offends, shocks and disturbs. “Freedom only to speak inoffensively is not worth having”: *Redmond-Bate v DPP* [2000] HRLR 249 [20] per Sedley LJ.

viii) Consequently, where Article 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 Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality: *Hourani* [142]-[146]. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" identified in *In re S* [2005] 1 AC 593 [17] per Lord Nicholls.

ix) The context and manner in which the information is published are all-important: *Hilson v CPS* [31] per Simon LJ; Conn [12]. The harassing element of oppression is likely to come more from the manner in which the words are published than their content: *Khan v Khan* [69].

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 the use of that information. There is no principle of law that publishing publicly available information about somebody is incapable of amounting to harassment: *Hilson v CPS* [31] per Simon LJ.

xi) Neither is it determinative that the published information is, or is alleged to be, true: *Merlin Entertainments* [40]-[41] per Elisabeth Laing J. "No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do": *Kordowski* [133] per Tugendhat J. That is not to say that truth or falsity of the information is irrelevant: *Kordowski* [164]; *Khan v Khan* [68]-[69]. 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 interim injunction (see further [50]-[53] below). 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: *ZAM v CFM* [2013] EWHC 662 (QB) [102] per Tugendhat J. 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.

xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional: *Thomas v News Group*

Newspapers Ltd [34]-[35], [50] per Lord Phillips MR; Sube [68(5)-(6)].

24. Nicklin J's summary was approved by the Divisional Court in Scottow v Crown Prosecution Service [2021] 1 WLR 1828. The Court continued (at [25]):

Three further points may be added:

(1) A person alleging harassment must prove a “course of conduct” of a harassing nature. Section 7(3)(a) of the PfHA provides that, in the case of conduct relating to a single person, this “must involve ... conduct on at least two occasions in relation to that person”. But this is not of itself enough: a person alleging that conduct on two occasions amounts to a “course of conduct” must show “a link between the two to reflect the meaning of the word ‘course’”: Hipgrave v Jones [2005] 2 FLR 174, para 74 (Tugendhat J). Accordingly, two isolated incidents separated in time by a period of months cannot amount to harassment: R v Hills [2001] 1 FLR 580, para 25. In the harassment by publication case of Sube v NewsGroup Newspapers Ltd [2020] EMLR 25 I adopted and applied this interpretative approach, to distinguish between sets of newspaper articles which were “quite separate and distinct”. One set of articles followed the other “weeks later, prompted, on their face, by new events and new information, and they had different content”: paras 76(1) and 99 (and see also para 113(1)).

(2) As Ms Wilson reminded us, where the claimant is, by choice, a public figure that should influence any assessment of whether particular conduct amounts to harassment of that individual; such a person has “inevitably and knowingly laid themselves open to close scrutiny of their every word and deed”, and others can expect them to be more robust and tolerant accordingly: Porubova v Russia (Application No 8237/03) (unreported) 8 October 2009, para 45, and domestically, Trimingham v Associated Newspapers Ltd [2012] 4 All ER 717, paras 249–250.

(3) In a case of alleged harassment by publication the court, in order to protect the right to freedom of speech,

“should take account of the extent to which the coverage complained of is repetitious and taunting, as opposed to being new, and prompted by some fresh newsworthy event. The imposition of liability in respect of coverage that falls in the latter category will be harder to justify”: Sube at para 106(2).

25. An essential element of ‘harassment’ is that the conduct is ‘persistent’. A nexus between the harassing activities complained of is required. A court must assess whether the acts complained of are separate or linked. Whether the activities can be classified as a course of conduct will depend on factors such as ‘*how similar they are in character,*

*the extent to which they are linked, how closely in time they may have occurred, and so on*: *Merelie v Newcastle Primary Care Trust [2004] EWHC 2554 (QB)* at [22].

(c) *Duress and undue influence*

26. In order to establish that the contractual withdrawal of the claim was procured by duress, it will be necessary to show that that act was invalid as a matter of law, because Mr Hussain's agreement to do so was procured by illegitimate pressure which coerced him and resulted in an absence of practical choice.
27. There is considerable overlap between duress and undue influence. But whereas duress focuses on specific threats, undue influence requires the exploitation of a pre-existing relationship between the parties, such that a defendant had the capacity to influence a claimant and exercised that influence, the influence was undue, and the influence brought about the transaction in question.

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## SECTION B

### LITIGATION HISTORY

28. I need to set out some of the litigation history in this case, in order to explain my decision-making fully. I begin with the claimants' first explanation of, and evidence for, the detail of their claim. As will be seen, matters took some turns thereafter, not fully envisaged by the Civil Procedure Rules. The Rules are there to ensure fairness between parties, so the fairness, as well as the substance, of these proceedings – and the potentially weight-bearing strength of the evidence – have been important preoccupations as I have gone about my task. I explain that more fully below.

#### **The without-notice application for injunctive relief**

29. On 18<sup>th</sup> March 2022, the claimants made a without-notice application to the High Court for an injunction to restrain the defendants from disseminating 'harmful photographs', from breaching their family privacy, and from harassment. They indicated the nature of the claim they intended to issue and asked for the anonymisation of all parties. The application was accompanied by a number of witness statements.
30. Mr Hussain filed a witness statement dated 24<sup>th</sup> February 2022. In this, he said that, before he had issued his claim for breach of the non-compete undertakings but after he had indicated an intention to do so, on 14<sup>th</sup> October 2018, his cousin Mr Rahman approached him at around 2pm, after Friday prayers, in the car park of his local mosque. Mr Rahman told him they should not be fighting court cases, and that he should stop sending threatening solicitors' letters, but that he should instead be concentrating on the fact that his daughter had 'gone astray'. When Mr Hussain asked him what he meant by that, he said Mr Rahman showed him 'approximately 8 Instagram photographs'. He said these included (a) a picture of his daughter, Ms Hussain, on a dinner date with a boyfriend which showed them 'kissing and embracing', (b) a picture of his daughter 'with her top open', (c) a picture of his daughter 'with her chest upwards bare', (d) a

picture of his daughter in a hotel room in a foreign city, bare-legged and (e) a picture of his *younger* daughter, taken when she was 17, ‘chest up without clothes’ – all of which had been taken from Ms Hussain’s private Instagram account.

31. Mr Hussain’s witness statement sets out that he had told his wife and daughters what had transpired, and that this episode subsequently caused himself and his elder daughter, Ms Hussain, trauma and mental ill-health which in turn interrupted her university career. He said she became suicidal, including over the potential impact of dissemination of the photos on her marriage prospects. He said he had no contact with his daughter for the next 8 months, and that they did not resume a normal family relationship until 4 years after the incident.
32. He said he went straight to the police on the same day to report blackmail. He learned from the police that Mr Rahman admitted to possession of the photographs and said he had got them from his daughter Ms Rahman, who had in turn obtained them ‘as a friend’ of his own daughter. He said that that could not be true, as his daughter’s Instagram was private and Ms Rahman had not been accepted as a follower. He said that his daughter suspected that ‘a third party’ created an Instagram account posing as his own younger daughter, in order to follow Ms Hussain on Instagram and get access to her photos. He heard from the police that Mr Rahman confirmed to them that the pictures had been deleted.
33. Mr Hussain’s witness statement sets out that he received silent telephone calls from withheld numbers during 2019. He said he suspected Mr Rahman and Mr Masum Ahmed of making them. He thought these were some kind of attempt to intimidate and worry him at the time.
34. He said that on 27<sup>th</sup> February 2020, more than a year after the subsequently-withdrawn claim had been issued, his brother received a text from an unknown number. It said this:

Dear shahjahan sir iam from Manchester this is a true message please read carefully you need to understand something which is very important. You are not shelim Hussain MBE brother your original father is Mr kodu miah village rajapur he was working in shelim Hussain Bari as the housekeeper if you have any doubt about this u can do a DNA test. I am sending you this message as request from your father Mr Kodu miah his is very unwell he needs your help his is very poor. Have little brothers and sisters who also need help. Life is very short please help him. If you don’t help him I have no choice but to tell your family and extended families you should also talk to your mother as she has been keeping this truths from everybody. Please help you’re father and real family.

Mr Hussain and his brother thought this was designed to harass them, break their relationship and make them withdraw the legal proceedings. They believed Mr Rahman and Mr Masum Ahmed were responsible ‘*as the text language and style is what Masum Ahmed would write*’.

35. The witness statement continued that ‘*the photographs were again used against me in March 2020*’. He said he received an anonymous call in his office on the evening of 22<sup>nd</sup> March 2020 telling him to ‘drop the charges and send them proof’ or the photographs would be published on social media. By ‘the charges’ he understood his claim for breach of the undertakings. He did not recognise the voice, but the photographs could only have been ‘passed around’ by Mr Rahman and the caller must have been instructed by the defendants to the claim. He says he passed a sleepless night, terrified of the effect on himself and his daughter of disclosure of the pictures – he feared his daughter’s life ‘would be destroyed’ and they would end up having to flee the country. At 5.31am the following morning, he emailed his solicitors to withdraw the claim. He felt his world was falling apart and he had no other choice. He then used covid as a pretext or camouflage when his fellow directors at his firm queried his actions. He blind-copied the email to Mr Masum Ahmed by way of sending ‘proof’ as requested. The claim was then settled.
36. The witness statement continues that, five months later, on 22<sup>nd</sup> August 2020, Mr Mohammed Masood Ahmed posted this story on Instagram:

Shelim Hussain owner of Eurofoods, your brother Shahjahans son your nephew Nazmul Jahan @00\_nj just signed his death warrant commenting on my live post ‘I like to touch up little kids’ Don’t forget Instagram is a small world and I’m coming after you guys. Last time Mr shelim rang my number begged for forgiveness when I was about to take him out! I’m not making the same mistake twice!

Shelim was my dads tea boy, yes google the MF he fucking rich but his nephew is finished. Money is not going to save you this time.

37. The statement recounts how, the next day in the office, everyone was talking about this, and Mr Hussain openly declared his intention to sue Mr Mohammed Masood Ahmed. Two days later, he says Mr Mohammed Masood Ahmed (or someone acting on his behalf) sent him a message on a Russian number ‘with the photographs’. It said this:

hello Shelim

This is sergey from Moscow I have something to share with you curtesy of a mutual friend

[9 photographs are then inserted]

these will be published online and all social media soon. all depends on how you handle our mutual friends situation. just letting you know moscow dont care about uk and russia relationship. police. we will post just for fun. enjoy the game. good night god bless

Mr Hussain's statement says that, as a result of this threat, he did not press charges or sue. He also says that these photographs are '*the exact same photographs shown to me by Shamimur Rahman on 14<sup>th</sup> October 2018*', so he concluded that Mr Rahman had not in fact deleted them, but had passed them to Mr Masum Ahmed for the purposes of the March telephone call, and to Mr Mohammed Masood Ahmed for the purposes of the August Instagram post.

38. The statement then says that on 10<sup>th</sup> October 2020 his brother posted a job advertisement for a salesperson on the local community WhatsApp group and that within three hours his brother received the following anonymous email message:

You son of bitch why are you trying to pinch other companies employee People are sick to the teeth of you and your brother fucking about with people. You bloody snake everyone knows your character you are bigger than Hitler, all your employees knows all about you you're are criminal bloody hitler. You are fake person full of bullshit and lies.

It's getting to a situation where you and your brother need a good beating, nobody likes you or your brother. People in Cardiff and your hometown Newport fucking hate you, they smile when they see you they spit on you when you turn your back.

You are disgusting individuals Your brother preaches about religion and invite scholars to his business but he is the biggest hypocrite in this world his a liar and a fraud take this message as a wake up call respect people don't think you own everybody in this world just because you're Brother fluked his way to wealth. when your brother talks to people he's always bullshitting his lying and he actually believes his bullshit and lies people are tired of his nonsense and we all know he's the biggest liar in this world. He prays 5 times a day but lies after.

Do me a favour tell your brother stop all the bullshit and lies and become a good Muslim, everybody knows he's a number one liar even your employees know this.

People see you and your brother as small fishes in a big Pond.

Mr Hussain says that he heard that Mr Masum Ahmed boasted to others about sending this. He says that on the same day 'cars were following me and were parked outside my gate for long periods of time and taking video recordings of my house'. He reported this to the police on 18<sup>th</sup> November, but did not press charges because he feared for the welfare of his family and considered Mr Mohammed Masood Ahmed to have a reputation for violence.

39. Mr Hussain's statement details the impact all of this had on his health and wellbeing, and on his social life. He says he went from being supportive of his extended family to starting '*to hate all my extended family members from my father's side, as I feel all are after my wealth and want to damage me and my family*'.

40. He goes on to give an account of how he instructed solicitors' letters to be issued to the defendants on 23<sup>rd</sup> December 2021. The following day, his brother received a telephone call '*from Masum Ahmed and his mother, Shahana Begum, during which I was repeatedly threatened with a physical assault and 'shame' if we did not reach an agreement*'. A transcript of that call was attached to the witness statement. He says another call was made to his brother on 21<sup>st</sup> January 2022 stating his life was in danger; the call was partially recorded and it could clearly be heard that Mr Masum Ahmed was instructing the caller to make the threats. Then a call was made to himself the following day, 22<sup>nd</sup> January 2022, by someone with the same voice, whom he now recognised as 'JK', an employee of Mr Masum Ahmed. And he later heard a rumour of Mr Rahman boasting of calling his brother from a pay-as-you-go phone.

41. Then the statement attaches a WhatsApp message dated 24<sup>th</sup> January 2022 to Mr Hussain's brother which said this:

2 year ago we gave you warning about your past regarding who you be really are,

Let me make it clear to you we will expose you to your wife, your children, your local community your customer and your employees, and your business partners.

YOU ARE NOT SHELIM HUSSAINS BROTHER, YOU ARE THE SON OF KODOU FROM RAJAPUR VILLAGE.

we will liter your home town and all the surrounding areas about the truth about you.

YOU NEED TO LOOK AFTER YOUR REAL FATHER HE IS STRUGGLING THIS IS YOUR DUTY

IF YOU DONT BELIEVE IT GET A DNA TEST

Mr Hussain says he knows it was from Mr Rahman and Mr Masum Ahmed because he has a named witness who heard the latter's mother making the same accusations in the past, and because he recognised Mr Masum Ahmed's text language and writing style.

42. This was the narrative Mr Hussain placed before the court in support of his application for injunctive relief. He said events were ongoing. He feared the defendants would, if put on notice, take steps to destroy evidence. He had been advised by the police of a risk from them of harm to himself or his family.

43. His daughter, Ms Hussain, also filed a witness statement. She explained she grew up in a conservative Muslim community, and in the UK she dressed 'modestly' although she did not wear a headscarf. But if she was on holiday abroad with friends she would wear a swimsuit to go swimming. She said in the community, dating, especially outside your own ethnicity and faith, was frowned upon as sinful.

44. She explained she had used an Instagram account for storing and sharing photographs with her friends. She changed the account handle in 2017. She always had it on private



settings. She ‘tried to make sure’ the accounts she added were people she knew and trusted. Except for her sister, none of her followers were from her home community. She was happy to share pictures of herself in swimwear, and with a boyfriend, with these (female) followers. Her sister went through a phase in 2017 of repeatedly changing her Instagram handle; when she received a follow request from her sister she would accept it.

45. Ms Hussain says she found out ‘around a month or so later’ from her parents that Mr Rahman had admitted obtaining pictures from her Instagram account via his daughter Ms Rahman. She says she ‘put the pieces together’ and realised that Ms Rahman had impersonated her sister to get access to her private account, using her picture and name. She says the pictures – exhibited, and (*largely* – as discussed below) corresponding to the ‘sergey from moscow’ set included (a) a picture with a non-Muslim boyfriend on a private or foreign dinner date, a relationship only their close mutual friends knew about because they did not show affection publicly; (b) two pictures of her wearing swimwear by a private pool in a foreign city and (c) a picture of her at a private gathering with friends.
46. She gives evidence of the impact of what she says were Mr Rahman’s actions. Her father cut her off, and stopped supporting her financially, and refused to speak to her unless essential. She suffered ‘extreme detriment’ to her mental health. She suffered ‘crippling anxiety’, felt ‘extremely paranoid’ about threats to her safety from her home community (including in relation to ‘honour killings’), and became suicidal. The events complained of caused her to split up with her boyfriend. She was on and off medication, her education was disrupted and she had to step down from her role as president of a student committee. She lost many job opportunities.
47. Mr Hussain’s younger daughter also provided a witness statement. She said Ms Rahman had created an account on Instagram using *her* name and picture. She confirms she did not distribute any photograph of herself or her sister to anyone else.
48. On 24<sup>th</sup> March 2022, Nicklin J gave directions for the without-notice application to be listed, and for a claim form to be issued in anonymised form in the meantime. The claim was issued on 28<sup>th</sup> March.
49. The application came before Chamberlain J on 11<sup>th</sup> April 2022. He granted the relief sought and fixed a return-date hearing, on notice, for 4<sup>th</sup> May 2022. Anonymised amended particulars of claim were filed and served on 13<sup>th</sup> April.

### **Subsequent interlocutory history**

50. At the return date hearing before Murray J on 4<sup>th</sup> May 2022, the claimants were represented by Counsel. None of the defendants attended, was represented or provided evidence. But Murray J had before him letters from solicitors for all the named defendants except Mr Mohammed Masood Ahmed confirming their consent to the orders sought at that hearing. He was content that Mr Mohammed Masood Ahmed had been duly served.
51. The orders sought, and made, included (a) continuation of the injunctive relief (under a penal notice), including in relation to the photographs identified and published in the ‘sergey from Moscow’ message, (b) anonymity and other derogations from open

justice, (c) directions for affidavit evidence from the defendants as to the obtaining, use and disclosure of the photographs, and (d) detailed directions for an expedited trial, with timetabled steps to be taken up to and including the middle of June 2022. The named defendants, apart from Mr Mohammed Masood Ahmed, filed and served their defence on 25<sup>th</sup> May 2022. Mr Mohammed Masood Ahmed continued to fail to engage, and the claimants issued contempt proceedings against him in June 2022 and sought judgment against him in default.

52. Nicklin J reviewed the entire case in mid-July 2022. He gave directions in relation to these, and a number of other, matters, including the possibility of the claimants pursuing delivery up and inspection orders further to a request under Part 18 of the Civil Procedure Rules, and of re-amended particulars of claim.
53. The case was reviewed again by Nicklin J on 5<sup>th</sup> October 2022, at an oral hearing at which the claimants were represented by Counsel. The defendants did not appear and were not represented. Nicklin J made further provision in relation to the contempt proceedings, gave permission for the re-amendment of the particulars of claim, and gave directions for the hearing of an application from the claimants for an ‘unless’ order against the defendants. By that application, the claimants sought to make progress in relation to the disclosure process, with which they said the defendants were failing to comply, including by failing to respond to the Part 18 request, either to timetable or at all. The order was intended to make their compliance a condition of their being permitted to continue to defend the claim.
54. The application for an ‘unless’ order came before me at a hearing on 20<sup>th</sup> October 2022, at which the claimants and Mr Masum Ahmed were represented by Counsel and the other defendants, apart from Mr Mohammed Masood Ahmed, appeared in person. By this time, a trial date had been set for 1<sup>st</sup>-5<sup>th</sup> February 2023, with a pre-trial review listed for 18<sup>th</sup> January 2023, both still on the basis of a truncated and expedited timetable as requested by the claimants. I made an ‘unless’ order and made provision for a disclosure timetable with a view to preserving the trial date. The defendants filed disclosure lists on 4<sup>th</sup> November 2022.
55. Witness evidence was exchanged on 13<sup>th</sup> December 2022. The claimants at this stage replaced all of the witness statements they had supplied in support of their applications at the without-notice hearing in March 2022, and did not seek to rely on them at trial. Instead, the claimants filed a fresh set of substantive statements from each of them, sworn in December 2022, together with statements from Mr Hussain’s wife and younger daughter, from his brother, and from business colleagues of his and friends of Ms Hussain, all prepared around the same time. Some of the claimants’ accounts differed in some respects from their earlier statements. The following were notable adjustments.
56. Mr Hussain said that the events in the mosque car park happened on 12<sup>th</sup> October 2018 (a Friday), not 14<sup>th</sup>. He said that, having now reviewed contemporaneous records and thought more about conversations he had had at the time, Mr Rahman did not show him photographs in the car park. He saw them for the first time when Mr Rahman sent them on by WhatsApp. It was the 14<sup>th</sup>, two days later, that he had gone to the police. He accepted that contemporary records showed he had thanked Mr Rahman at the time for alerting him to the photos, but said he had experienced the events as a threat.

57. Ms Hussain confirmed it was much earlier than ‘a month later’ that she and her mother and sister ‘pieced together’ that Ms Rahman had obtained the photographs by infiltrating her sister’s account. She also confirmed that her father had not, after all, cut her off financially.
58. On 12<sup>th</sup> January 2023, Nicklin J reviewed the case again. He vacated the trial and PTR listings. This was in part in view of the general state of unreadiness of the case, and in part in response to a request from the claimants for the trial to be listed for two weeks rather than one.
59. The relisted PTR on 31<sup>st</sup> March 2023 came before Johnson J. Johnson J had before him applications from (a) the claimants dated 7<sup>th</sup> December 2022 to vary the costs budgets and increase the value of their claim, (b) Mr Rahman and his daughter Ms Rahman dated 10<sup>th</sup> January 2022 for, among other things, specific disclosure and permission to rely on further evidence, (c) the claimants dated 12<sup>th</sup> January for, among other things, permission to re-re-amend their particulars of claim, (d) Mr Masum Ahmed and his firm Eco Foods Services Ltd dated 14<sup>th</sup> March for specific disclosure, (e) the claimants dated 23<sup>rd</sup> March for specific disclosure and permission for evidence to be given by interpreter and (f) Mr Rahman and Ms Rahman dated 27<sup>th</sup> March for permission for evidence via interpreter.
60. The run-up to the PTR hearing was later described to me by one of the parties’ Counsel, without contradiction, as ‘chaos’. A set of chatlogs between Mr Hussain and his daughter Ms Hussain had been disclosed by the claimants only the day before. It was inconsistent with the claimants’ claim of estrangement between them for 8 months following the car park incident. Mr Hussain filed a further witness statement saying that the estrangement had been for 3 months rather than 8 months. Ms Hussain’s university and medical records were also disclosed at this time.
61. Johnson J’s directions to trial included permission for the claimants to re-re-amend their claim. By a further order, Johnson J approved discontinuation of the proceedings in relation to two further original defendants. The remaining five named defendants were represented at the PTR, as they continued to be at trial. The contempt proceedings stood adjourned.

### **The re-re-amended particulars of claim**

62. The claimants’ re-re-amended particulars of claim dated 4<sup>th</sup> April 2023 – on the basis of which they then proceeded to trial – set out an account of the alleged ‘activities giving rise to the claims’. They included the following (I rehearse this in full because it is the core pleading of the claim as it came to trial, and had been prepared on the basis of all the disclosure then to date):
  - a) On a date prior to 12<sup>th</sup> October 2018, Ms Rahman obtained access to Ms Hussain’s private Instagram account by impersonating her sister and making a follower request. She disclosed photographs obtained from that account to her father, Mr Rahman.
  - b) On 12<sup>th</sup> October 2018, Mr Rahman approached Mr Hussain in a carpark, showed him a set of those photographs and made allegations about the propriety of his daughter’s conduct. He said Mr Rahman should not be

fighting court cases against the defendants or having solicitors' letters sent, but should concentrate on his family, since his daughter had 'gone astray'. He sent those photographs to Mr Rahman by WhatsApp later that day.

- c) Ms Hussain's private account was deleted then or shortly after. The immediate family all deleted the pictures. Except as particularised, the photographs were never referred to again. Mr Rahman told the police he had deleted them from his own account. But Mr Rahman and/or Ms Rahman must have kept and later shared the photographs, in view of ensuing events.
- d) Mr Hussain received silent telephone calls 'on various dates throughout 2019' for which cousins Mr Rahman, Mr Masum Ahmed and/or Mr Mohammed Masood Ahmed were probably responsible.
- e) On 27<sup>th</sup> February 2020, Mr Hussain's brother received an anonymous text message saying he was not his claimed father's son, and demanding money. Mr Masum Ahmed was the probable author.
- f) On 22<sup>nd</sup> March 2020 Mr Hussain received an anonymous phone call demanding the 'charges be dropped' and threatening to publish the photographs on social media. Mr Rahman and/or Mr Masum Ahmed were probably responsible. Mr Hussain acted on this threat by setting in train the withdrawal of the claim the next day.
- g) Mr Mohammed Masood Ahmed posted an Instagram story on 22<sup>nd</sup> August 2020, threatening Mr Hussain over a derogatory comment the latter's nephew was alleged to have made. Mr Hussain stated, in the presence of a number of individuals who knew the defendants, that he intended to sue Mr Mohammed Masood Ahmed over it. On 24<sup>th</sup> August 2020 Mr Hussain received an anonymous WhatsApp message containing '*exactly the same photographs*' as Mr Rahman had shown and sent him in October 2018 and threatening their publication on social media. Mr Mohammed Masood Ahmed was probably responsible, having obtained the photographs from Mr Rahman or Ms Rahman.
- h) On 10<sup>th</sup> October 2020 Mr Hussain's brother received an anonymous WhatsApp message threatening both brothers with physical assault. On the same day, Mr Hussain and his family were harassed by cars which followed him, parked outside his home, and undertook video surveillance. This was probably arranged by Mr Mohammed Masood Ahmed.
- i) On 24<sup>th</sup> December 2021, Mr Hussain's brother received a telephone call from Mr Masum Ahmed and his mother, threatening physical assault and 'shame' if the continuing commercial dispute between the parties was not resolved.

- j) On 21<sup>st</sup> January 2021, Mr Hussain's brother received a telephone call from an unknown person and Mr Masum Ahmed, stating that his life was in danger.
- k) On 22<sup>nd</sup> January 2021, Mr Hussain received a telephone call from Mr Masum Ahmed and someone else saying his life was in danger and he needed to clear a debt or the photographs would be published.
- l) On 24<sup>th</sup> January 2022, Mr Hussain's brother received another anonymous WhatsApp message questioning his parentage and demanding money. Mr Masum Ahmed was probably responsible.

### **The claimants' late disclosure**

- 63. The two-week trial of the claim was listed to open on 22<sup>nd</sup> May 2023. According to a witness statement by Ms Hussain dated 18<sup>th</sup> May 2023, she had 'recently' disclosed a WhatsApp native chatlog, voice notes, tracing reports and photographs sent via WhatsApp between herself and her mother between October 2018 and 2020. It appears she did so the day before, 17<sup>th</sup> May 2023. She had previously testified that 'the photographs' sent by Mr Rahman to her father on 12<sup>th</sup> October 2018 were forwarded by her father to her mother on receipt, and then by her mother to her. She had believed this information was no longer available. *'However, on a further review of the information stored in WhatsApp on the afternoon of 15 May 2023, I discovered that this information was accessible along with other media files.'*
- 64. This material was accordingly disclosed. The claimants made an application for relief from sanctions. On 19<sup>th</sup> May 2023, three days before the opening of the trial, the claimants' Counsel filed a note at court as follows:
  - 1. Until 18 May 2023, it was believed that all copies of the photographs sent by [Mr Rahman] to [Mr Hussain] had been deleted, and that the photographs received from 'sergey from Moscow' were the same as the ones which had been deleted. It was on that basis that the claim was brought.
  - 2. The recent disclosure of the WhatsApp chat between [Ms Hussain] and her mother shows that this is not correct. Although there is no electronic record of the transmission of the photograph from [Mr Rahman] to [Mr Hussain] (which is admitted by both men) or from [Mr Hussain] to his wife, the WhatsApp chat log between [Ms Hussain] and her mother records [Ms Hussain's] mother sending those photographs to [Ms Hussain].
  - 3. [Photographs listed and referenced]
  - 4. Although the photographs above are not the same photographs set out [in the 'sergey' post], there is clearly some overlap, and the same matters continue to be relied upon in support of the claim in misuse of private information [in the re-re-amended particulars of claim].

5. The photograph identified as [reference indicated] is not a photograph of [Ms Hussain], but of her younger sister. No claim in respect of that photograph is advanced.

### **Procedural developments at trial**

65. At the opening of the trial, Mr McCormick KC, for the claimants, clarified that the 'late disclosure' photographs were all different from the 'sergey' set of 24<sup>th</sup> August 2020. One image appeared in both sets but in a different capture format. There was no overlap.
66. He also confirmed that the claimants were no longer relying on the 'surveillance' episode of 20<sup>th</sup> October 2020 and would no longer be calling the witness to it whose evidence had been filed in December 2022.
67. The trial lasted for two weeks, with the Whitsun recess in between. At the beginning of the second week, after the completion of the evidence from the claimants themselves and most of their witnesses, I received opposed applications from (a) the claimants to re-re-re-amend their particulars of claim, to deal with the evolution of their evidence and (b) Counsel for Mr Mohammed Masood Ahmed, on the basis that the evolution of the evidence now meant that there was no case for him to answer (withdrawn when put to election).
68. The changes proposed for introduction into the re-re-re-amended particulars of claim included the following:
  - a) Mr Rahman sent Mr Hussain 9 photographs on 12<sup>th</sup> October 2018, these being 'some of' the photographs Ms Rahman had obtained on or before that date from Ms Hussain's private Instagram account.
  - b) The 'sergey' photos disclosed in August 2020 were *other* photos so obtained, and forwarded to other(s) of the defendants.
  - c) Ms Hussain's Instagram account had been deleted 'by January 2019' rather than on or shortly after 12<sup>th</sup>/14<sup>th</sup> October 2018.
  - d) The surveillance episode is deleted.
  - e) It is no longer claimed that Ms Hussain had to take a year out of her studies to recover from the impact on her mental health, but instead that she had to take time out, and had to repeat her final year.

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## SECTION C

### PRELIMINARY CONSIDERATIONS

### **The parties' list of issues**

69. The parties had prepared a list of issues ahead of the trial, as follows:

#### **The Incidents**

1. In respect of the incidents as set out at paragraph 13 of the re-amended particulars of claim [and listed at paragraph 61 above]:
  - a. Did each incident (where not admitted) take place; and (if so)
  - b. Which defendants, if any, (where not admitted) were involved in those incidents;
  - c. What was the nature and extent of that involvement?

#### **Misuse of private information**

2. How and why did Ms Rahman obtain the Photographs?
3. Did Mr / Ms Rahman cause the Photographs to be disseminated further and if so to whom and for what purpose(s)?
4. Did Mr Hussain and/or Ms Hussain have a reasonable expectation of privacy in respect of the Photographs?
5. Did any defendant misuse the Photographs, and if so in what ways?

#### **Harassment**

6. Did such of the Incidents as proven amount to a course of conduct which amounted to harassment of Mr Hussain and/or Ms Hussain and if so which defendants knew or ought to have known that the said course of conduct amounted to harassment and are liable for that course of conduct?
7. If any defendant is liable for that course of conduct, does any matter relied upon by such defendant amount to a defence pursuant to s.1(3) of the Protection from Harassment Act 1997?

#### **Undue Influence and Duress**

8. Why did Mr Hussain cause his company to discontinue the Withdrawn Claim?
9. Was the discontinuance due to any matter amounting to undue influence or duress?

10. If so which (if any) of the defendants is liable for those matters?

70. I pause there to note the open-ended character – of a ‘who did what to whom?’ nature – of some of these questions. To some extent, as discussed below, that is because of the challenge any claimant faces in seeking to attribute anonymous conduct to named suspects. But that is a challenge which must in turn be gripped at all stages by a claimant – including by way of pleadings and evidence. If I am to answer these questions, then I have to be satisfied that there is sufficient clarity from the start about the case being put, and that *each* defendant has a fair chance to deal with it if and in so far as it applies to them individually.
71. The list of issues also set out matters going to damages and remedies, but, as the trial developed, it was not controversial that the potential permutations of possible outcomes on liability were so many and complex that a separate remedies disposal would be inevitable, to the extent that the claimants succeeded on liability.

### **Procedural issues**

72. I have set out the litigation history of this case at length for the following reasons. It is a claimant’s task, consistently with rules of court designed to ensure fairness as between parties, to plead their case clearly as to the facts, setting out precisely what it is they say happened, so far as is material to establishing their claim. That then constitutes what the claimant has to persuade the court of, and the target at which a defendant can take aim in response. A claim in misuse of private information has to specify the information in question. A claim in harassment has to particularise a course of conduct and *each* individual’s alleged participation in it. A claim involving multiple claimants and multiple defendants has to focus with real clarity on who is claiming what against whom. Moving targets have an inherent potential for unfairness to defendants, and raise issues about actual unfairness in the event. And a changing story, particularly one that evolves in response to the disclosure of documentary evidence, inevitably raises issues about the credibility of a claimant and the reliability of their memory and the evidence they give from it.
73. That is why it is both parties’ task is to undertake disciplined efforts to think about, and check carefully, all the information they have which may be relevant to the claim as pleaded, to account for it all to each other, and exchange their evidence about it, *in good time*. That was a point I emphasised at the hearing of the claimants’ application for an ‘unless’ order against the defendants. Civil litigation is conducted on a cards-on-the-table basis. Surprises are distracting from everyone’s task, and potentially unfair.
74. The litigation history of this case is an object lesson in the importance of these rules. I can see the defendants’ persistent failure to engage fully before the original PTR listing – including precipitating an ‘unless’ order against them in relation to their disclosure obligations, and indeed contempt proceedings in the case of Mr Mohammed Masood Ahmed – is associated with their not (all) having obtained legal representation before then. That is ultimately their choice, but failures of engagement contribute to unwarranted uncertainty, delay and expense in parties’ preparations for trial.



75. However, the fact that the claimants' pleading, disclosure and evidence also continued to evolve in key respects up to *and during* the trial itself is the striking procedural feature of the case. All of that was playing out against a background of an ultimately failed attempt to manage this litigation to an *expedited* timetable at the claimants' request, surely spotlighting the problems with that proposition – and indeed its potential unfairness – in the first place.
76. By their claim, the claimants ask the Court to undertake a complex and substantially inferential fact-finding exercise. The challenges of doing so were multiplied by these procedural irregularities. A trial like this has to be conducted on the basis of clarity about *what* alleged facts are relied on, ensuring *each* defendant understands what it is they are said to have done and has a fair opportunity to respond. The degree of late mobility in these claimants' pleading and disclosure created real unclarity and real difficulty in both evaluating their case and ensuring fairness to the defendants.
77. I was not given any clear explanation for the claimants' late disclosure, other than that the due diligence which produced it had not previously occurred to them. I had no explanation for the discarding of a part of the alleged course of conduct. It may have had something to do with the fact that the claimants say they had recently been subjected to an arson attack; but that incident forms no part of the current claim, and it would be wrong to speculate further. Mr Van Heck, Counsel for Mr Rahman and his daughter Ms Rahman, asked me in all the circumstances to reject the claimants' oral application, mid-way through the trial, to permit amendment of their pleadings to tailor them to the new material. In the event, as I explained at trial, I was left with little practical choice but to consider all the procedural matters raised before me on a rolled-up basis along with any issues of fairness, merits and credibility to which they might be relevant. Where I have thought them relevant, I have indicated how I have dealt with them in the fact-finding exercise below.

### Evidential issues

78. A burden of proof lies on a claimant to persuade a court of the disputed facts on which they rely, on the balance of probabilities. That means they have to persuade me, with the assistance of their evidence and their submissions on inherent probabilities, that it is more likely than not that what they say happened, happened. It is no part of a defendant's task in response to prove anything at all; their job is to challenge and test what a claimant chooses to put forward – and highlight what a claimant has *not* put forward. The defendants' position in the present case is largely a combination of denial of their involvement as alleged (including in anonymous incidents), attack on the strength and relevance of the claimants' evidence, and the submission of what they say are more probable inferences from the undisputed facts than those urged by the claimants. The defendants, in other words, put the claimants to proof, as they are entitled to do. For that reason, the analysis below is inevitably more preoccupied with assessing the claimants' evidence than the defendants'.
79. The 'best' evidence in a forensic context is usually to be found in contemporaneous documentary records. There is a limited amount of that in this case, and a significant proportion it – phone logs and so on – is incomplete and has been disclosed piecemeal and late. The claimants invite me to fill in the gaps with their own recollections and by inference.

80. Their case is that they have been subjected to anonymous and underhand conduct. That is a class of behaviour distinguished by disguise and evasion, in which deniability is of the essence. So where the factual basis the claimants rely on is contextual rather than direct, I do bear in mind, in fairness, that an indirect or inferential basis for identifying those responsible for anonymous conduct is almost inevitable. That does not, however, affect the burden and standard of proof. I can infer and extrapolate in reaching conclusions about probability, but I cannot speculate and I cannot make findings of fact based on mere suspicion, mistrust and innuendo.
81. The family context of this dispute also raises evidential issues from the outset. I saw and heard much about the importance of family, and of extended family, as a force within the community, and indeed the workplace, that most of the parties shared at one stage or another. I was told about different individuals' expectations of conduct, loyalty, accountability, and intervention as between different family members, and I saw some of that play out during the oral evidence stages. I also saw play out some of the profound hostilities that now disfigure this extended family: both sides are deeply angry and aggrieved at each other (Mr Hussain's reference to coming to 'hate' his cousins is memorable). And I saw and heard something about the generational shift in expectations as children born in the UK grow up and make their way in a different cultural context from that of their parents' generation. All of these factors can and do inflect recollection, judgment and inference as witnesses give evidence, and have to be allowed for in an exercise depending on *objectivity*.
82. Then there is the passage of time. For one reason or another more than four years have elapsed since some of the events alleged, and I heard – repeatedly, and from all the witnesses – that their memories of what may in some cases have seemed inconsequential details at the time were not sharp at such a distance. The claimants and their close family witnesses also made repeated reference to the heightened emotions evoked by trying to remember unpleasant events as being a reason for finding it difficult to do so clearly. In any event, without contemporary records, recollections naturally evolve and superimpose over time. Human beings naturally infer patterns and make explanatory narratives of events for themselves. That is especially likely where explanations have evolved with hindsight in the shared and mutually reinforcing context of a family or close group.
83. It is only natural, for example, that Mr Hussain, his wife and their daughters, will have gone over and over the subject-matter of this claim within their close family circle in the course of time and of the litigation. The evidence suggests Mr Hussain is a powerful presence in his own home, no less than in his own business, a man accustomed to being respected and deferred to; he says so himself. And where a wider family context also includes intense loyalties and personally hostile factionalism, then the risk increases that the larger truth of a deeply-felt grievance can overwhelm the smaller truths on which litigation relies, and that witnesses can become profoundly convinced of their own shared narrative and that their worst fears have been realised. Mr Hussain told me himself, on more than one occasion, that he gave his evidence '*from the heart*' – that is to say by reference to the strength of his feelings and convictions. Being at the centre of their own story, reinforced by factionalism, and with clearly defined opponents and counter-narratives, it is easy for witnesses to assume that the wider world is more conformed to their personal world view than is the objective case.

84. My task is not to agree with one narrative or another. It is not to align myself with one factional view or set of sympathies or suspicions as against another. It is to determine, within the limits of litigation procedure – and they are real limits – what happened, more probably than not, in *objective* reality. Where I am to decide factual matters on the balance of probabilities, I have to look at whether the evidence I have, and the inherent likelihoods, are sufficient to discharge the claimants’ burden of proving their allegations. I have to look at the claims they make and consider whether the supporting evidence is proportionate to and probative of it. And if and to the extent I find a claimant not to have discharged their burden, that does *not* mean I am satisfied what they alleged did *not* happen. It just means I am *not sufficiently* satisfied it *did*.

### **Making findings of fact**

85. It is not every factual dispute between the parties that I need to resolve. And I certainly do not approach fact-finding on an all-or-nothing basis. The only facts relevant to my task are those which affect determining the causes of action on which the claimants base their claim. Some of those are not in dispute, and form an obvious starting point. As to the rest, the parties’ list of issues is a helpful guide, but it is no more than that.
86. For the misuse of private information claims, I will have to identify what information it is we are now talking about. I will ultimately have to bear in mind the *Murray* factors in working out whether (a) Ms Hussain and (b) Mr Hussain has a reasonable expectation of privacy in it. So I will have to take into account their situation, who they are and what the information is about, what steps they took to keep it private, how and why it was obtained by third parties and what they did with it, and what the effect of that was on them. Then I will have to look at whether, if a reasonable expectation of privacy is established, it has been breached, and if so why and whether there is proper justification for that. I will have to look in particular at the nature, provenance and distribution of the photographs material to the claim.
87. For the harassment claim, I will have to look at the incidents alleged, consider whether they happened and what sort of incidents they were, decide whether they are connected and if so by what, and, crucially, consider how far if at all each defendant was responsible for them, by action, complicity or active approval. I will have to consider the reason for them, and the effects of them on the claimants, and I will have to consider the context in which they took place.
88. For the duress/undue influence claim, my focus must be on determining the most likely explanation of why, at the time, Mr Hussain compromised his claim. That in turn will require consideration of the events of mid-March 2020, and those leading up to them.
89. I am about to turn to the principal fact-finding exercise, before applying the law to the facts as I have found them. I have said that the claimants’ pleaded case on any basis presents a complex exercise in fact-finding. That is because of the high degree of inference relied on – inevitably, as I have said, where the conduct complained of is said to involve subterfuge and disguise. The inferences invited depend, in turn, on making connections between incidents and discerning patterns of behaviour, imputing motive and responsibility. And – again, inevitably – the exercise is heavily dependent on the evaluation of the claimants’ evidence in particular.

90. The challenges for fact-finding in these circumstances are multiple. Where the probability of the detail is to be inferred at least in part from its consistency with an alleged pattern, and the pattern relies on connections made between the detail, the dangers of ‘bootstraps’ logic have to be identified and avoided. Justice requires that *if* defendants, individually or together, have committed civil wrongs and aggravated that behaviour by subterfuge then they should be held to account, but the *probability* of subterfuge must be established by a claimant and cannot be my starting point. Indeed, as a very general starting point, the more serious the misconduct alleged, the more evidential work has to be done to establish it.
91. The claimants’ evidence presents some further challenges for the reasons I have already set out. In their oral evidence, the close family all said that it was difficult to remember detail at a remove of time – and it is. They attributed further problems of recall to the trauma associated with the events of which they complain. Their evidence has undoubtedly evolved in some significant respects over the course of this litigation, and I have to think about whether that suggests improved recollection under the discipline of litigation or whether the changes are retro-fitting and self-serving. The claimants’ evidence – close family, some of Mr Hussain’s loyal employees and two of Ms Hussain’s schoolfriends – was mutually reinforcing and (having listened to many days of oral testimony) I considered it in some respects noticeably aligned, including verbally, and rehearsed; I have to reflect on whether that enhances or diminishes the weight I can give to it. Mr Hussain at one point commented ruefully on the strain of giving evidence under ‘forensic’ circumstances, and I have to, and do, allow for that; although he was properly reminded by his cross-examiner that the fact-finding exercise he has asked me to engage with is a *quintessentially* forensic exercise, not least in relation to his own evidence. It is not perfect, but it is the best approach to fairness that litigation has been able to come up with so far.
92. I am also acutely conscious that the claimants, by their claim, put some of the intimate dynamics of their family life in issue. They also rely on inferences to be drawn from the cultural norms and practices of a minority community, to an extent which is to some degree contested. All the principal witnesses originate in that community, and indeed in the same extended family. The witnesses have variously invited me to take care to make proper allowance for that context of cultural difference, but at the same time to be sceptical of invitations to make assumptions based on cultural stereotyping. I have kept all of this in mind.
93. The approach I take to the exercise is to begin by considering the detail of the case as put, focusing particularly on such contemporary documented evidence, and such undisputed matters, as are put before me. So I start by setting out what seems to me to be the principal relevant evidence. That is inevitably a selective exercise. I heard many days of cross-examined evidence canvassing a range of contextual issues, including those intended to be illustrative of credibility more generally. What follows concentrates on the matters going most directly to establishing the core facts material to liability. Where I consider it helpful to do so, I make some comment on this material as I go along. But I reserve my fact-finding *decisions* until I am able to consider all the detail in the round, and can engage with any emerging patterns at the same time.
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## SECTION D

### THE EVIDENCE

**(a) Which photographs?**

94. Photographs are at the heart of this claim. They are said to constitute the ‘private information’ which was improperly obtained and improperly used, and their misuse is also said to form part of a harassing course of conduct and to have precipitated Mr Hussain settlement decision. But which photographs?
95. For most of the history of this claim, the narrative on which it relied was as follows. Mr Rahman had got some photographs of Ms Hussain from his daughter Ms Rahman, and he showed them to Mr Hussain in October 2018. That much is not in dispute. The claimants say Ms Rahman in turn *must* have got them by subterfuge, because they came from Ms Hussain’s Instagram account which was set to ‘private’ and Ms Rahman had not been accepted as a follower. The family went to the police with the photos shortly afterwards, they then deleted them, and Mr Rahman accepts he gave an assurance he and his daughter had done the same. Ms Hussain deleted her entire Instagram account very soon after. They assumed the photos no longer existed. Then in March 2020 an anonymous caller to Mr Hussain demanded ‘the charges be dropped’ under threat of disclosure of ‘the photographs’ on social media – a demand with which he complied after a sleepless night. And in August 2020 the very same set Mr Rahman had shown him turned up in the anonymous ‘sergey’ message with a further veiled threat. So Mr Rahman could not have deleted the pictures after all – or at any rate not before sending them on to other people, as he must have done, since there was *no other possible* source for them. The ‘sergey’ threat was linked to Mr Mohammed Masood Ahmed because of the recent row during which Mr Hussain had publicly threatened to sue him, because he was close to Mr Masum Ahmed, and because it was just the sort of thing Mr Mohammed Masood Ahmed would do (he, they said, cultivated a brash, entitled and moneyed public persona, had even been to Moscow at some point, and had a reputation for violence). And Mr Rahman must have been the ultimate source of the photos in the ‘sergey’ message. Then in January 2022 Mr Masum Ahmed and one of his henchmen telephoned Mr Hussain anonymously and said his life was in danger and he needed to clear his debts or the photographs would be disclosed; if Mr Masum Ahmed had the photos or could make a credible threat that he did then again Mr Rahman must have been their source. That was the basis on which the claim was brought.
96. Pausing there, that narrative posits a gap of nearly two years between the only two occasions in the last five years on which photos have been produced to the claimants. They say, and continue to say, that they themselves all deleted the photos long ago and have no clear recollection of the detail of exactly what it was they saw in October 2018; Mr Rahman and Ms Rahman say the same. The claimants had ‘assumed’ the ‘sergey’ photos were exactly the same as the ones they saw before, because they were similarly themed – and where else could they have come from? But then, on the eve of the trial, Ms Hussain finds some archived photographs. These are the photos her mother sent her electronically on 12<sup>th</sup> October 2018; that is confirmed from the contemporary chatlog. The claimants now say *these* must be the identical images Mr Rahman sent her father that same day, and that her father then sent her mother. But they are all different from the ‘sergey’ photos – although there is one common image contained in both sets.

97. Two sets of photos are therefore now exhibited, and the claimants want to say they are *examples* of private information improperly obtained and used in the way they have described. The claimants wished to amend their pleadings, at trial, to invite me to infer that Mr Rahman had accessed a cache of photos in October 2018, all obtained from Ms Hussain's private Instagram account by his daughter's subterfuge at some point before that account was deleted. He sent some but not all of them to Mr Hussain that day but he did not delete (all of) them. Instead, he made (some) photographs available to Mr Masum Ahmed and/or Mr Mohammed Masood Ahmed, who used them variously to threaten and bully Mr Hussain.
98. So 'the photographs' would accordingly be defined in two ways. First, by reference to their origin: they are all said to have been obtained from Ms Hussain's *private* Instagram account. And second, by reference to their 'objectionable' – or rather *private* – subject matter themes. I consider their subject matter first.
99. Ten images were sent to Ms Hussain by her mother in October 2018 (I shall call them 'the chatlog images') and nine were contained in the 'sergey' message of August 2020 ('the 'sergey' images').
100. The 'sergey' images have two themes. The first theme (a total of six images) is Ms Hussain and her boyfriend (or references to him) in everyday social or romantic situations, including two of them kissing. The other theme (three images) might be filed under 'dress code' – Ms Hussain in a lowish-cut top, ordinary swimwear or bare legs.
101. The ten chatlog images consist of six screenshots and four images which are photographs of a phone screen. Of the six screenshots, one is of Mr Hussain's *younger* daughter (and might also be filed under 'dress code'). The other five consist of one image of Ms Hussain with her boyfriend (but none of them kissing), three 'dress code' pictures and one indistinct image of a hand (Ms Hussain says it is hers) holding a cup into which a drink is being poured from what might be a bottle of beer (no label is visible).
102. The remaining four images are of a phone screen showing Ms Hussain's Instagram profile page. The four photographs are taken in sequence, scrolling through the set of small, tiled pictures that appear on the profile page, about a dozen at a time. Their sequential nature is clear, because of the degree of visible overlap. They are undated, but two of them also show sequential times: 15.49 and 15.50. The resolution is poor, but a total of about 42 small pictures can be made out. Of these, perhaps around eight include Ms Hussain's boyfriend, one or two show hands (in one case definitely not Ms Hussain's) with what might or might not be alcoholic drinks, and three belong to the 'dress code' theme. One of those latter appears again as one of the screenshot images, and one may be a partial view of the image that appears in both the chatlog and the 'sergey' sets – a 'mirror selfie' picture of Ms Hussain with bare legs. The rest of the images are of everyday life and of no present interest.
103. Each set of photos includes at least one image which is anomalous in the claimants' narrative. First, the selfie of Ms Hussain's sister in the chatlog set was not on, or taken from, Ms Hussain's Instagram account at all. It had been on a public Instagram account of her sister's, said to have been deleted some time before. The contemporaneous evidence (the police log, discussed below), and Mr Hussain's evidence before me, was

that he regarded this as the worst example of all at the time, because it is perhaps the most sexualised (if mildly and naively so, and well within the spectrum likely to be encountered among the self-images of a young teenage girl copying many a global influencer's style) and because the sister had been only in her mid-teens at the time – not an adult. But no complaint is made of that image in the present proceedings, apparently because it was on an account accepted to have been on a public setting. In the circumstances, it is perhaps surprising that – although Mr Hussain mentioned such a picture in the statement he made for the without-notice application in March 2022 – none of the claimants' witnesses had confirmed an unaided memory, until the chatlog set was disclosed, that they had seen this image in October 2018, and none of them appeared to have noticed it was missing from the 'sergey' set. Mr Hussain told me from the witness-box that he now thinks 'sergey' would not have dared include that picture of a girl in her mid-teens in the anonymous message, and would have known he would inevitably have gone to the police about it.

104. Second, Ms Hussain appears to have exhibited only eight of the nine 'sergey' pictures to her witness statement of March 2022. The picture she omitted showed her eyes looking over the top of a bunch of red roses, with a card with a red heart made out of rose petals and a red heart-shaped balloon; over it had been inserted a 'filter' message indicating that the occasion was the '2 years' anniversary of her relationship with her university boyfriend. She accepted in oral evidence that that must have been taken in late 2018, that is to say *after* the events of 12<sup>th</sup> October 2018: Ms Hussain had met her boyfriend at university in 2016 and they had become intimate a few weeks or months into the term (they were together by Christmas 2016). It *could not* therefore have been obtained by Mr Rahman before that date. The date would also have conflicted with her evidence in December 2022 that she had deleted her account 'shortly after' the events of October 2018. The proposed re-re-re-amended particulars state simply that her account would have been deleted 'by January 2019'. Mr McCormick KC told me the claimants have 'no explanation' for this image appearing in the 'sergey' set. It appears however to remain within the ambit of their claim.
105. Defined by subject matter, therefore, 'the photographs' are images of Ms Hussain in the company of her boyfriend; Ms Hussain bare-legged or wearing lowish cut tops or regular swimwear; and (but I do hesitate over this one) images *possibly capable* of associating Ms Hussain with alcoholic drinks.

**(b) Where did the photographs come from?**

106. The nature and identity of Ms Hussain's Instagram account assumes considerable prominence in the narrative of the claim, because the photographs are identified in relation to their *origin* in a specific (private) Instagram account she had had at the time.
107. Her written evidence of December 2022 was that she had created an Instagram account while she was still at school and continued using it while at university. It had had different names over the years. She had mentioned two names in her March 2022 witness statement, and added a third in her December 2022 witness statement (they all contain variants of her personal name). Her sister mentioned one of these names in her own December statement, as well as a fourth name comprising a string of numbers followed by 'fin' – she said, '*as I recall*', that is to say that there was no other source or explanation offered for citing this name. Ms Hussain called two schoolfriends, Naomi Madge and Katie Treharne, to give evidence about her Instagram account. Ms

Madge mentioned two of the ‘personal name’ names and the ‘numbers’ name; again no further explanation for recalling the latter is given.

108. The ‘sergey’ images contain nothing on their face to identify their origin. Of the nine images, six contain no signifier to connect them with Instagram at all. Of the remaining three, one has an Instagram button on it, one – the ‘anniversary’ photo – has the text overlay in an Instagram font, and the third is clearly taken from an Instagram ‘reel’, but no account name is identified on any of them. So the *only* evidence directly linking these with any Instagram account of Ms Hussain is her own recollection. Until a few days before the trial, that was a recollection, shared with her father and others in her family, based on identifying these images as the same as those they saw in October 2018. But they are not. So now the only evidence I have that they were captured from a deleted private account of Ms Hussain’s is her recollection that these images were, and were only, on an Instagram account she had not looked at for well over four years.
109. But the chatlog images are different. These are all certainly Instagram images. Leaving aside the picture of her sister (which shows a distinctive account name of its own), of the remaining nine images, eight (that is, excluding the ‘drink’ image which is captured from an Instagram ‘story’) are clearly identified with an Instagram account name. It is another version of Ms Hussain’s own personal name. It corresponds to none of the names appearing in the evidence Ms Hussain and her witnesses led about her Instagram account.
110. The chatlog images, with this account name, of course formed part of the claimants’ late disclosure immediately before trial. Ms Hussain’s brief witness statement of 18<sup>th</sup> May 2023 accompanying the disclosure does not mention or explain this new name.
111. A witness statement of 19<sup>th</sup> May 2023, filed by Mr Masum Ahmed’s solicitor, set out that he had established, by researching the list of Instagram accounts Ms Katie Treharne’s account was following, that Ms Hussain’s *current* Instagram account (having deleted the one she had started at school, so she said, sooner or later after the events of October 2018) went by yet another different name. The recorded account information for *this* account confirms that it started up in April 2018. In other words it was in existence already some months before the car park incident. It appears that this account too has had half a dozen different names.
112. When all of this was put to Ms Hussain, her oral evidence was that she had indeed had two Instagram accounts at the time; she had forgotten about that or thought it irrelevant because her current account, although in existence by then, had started out as a ‘finsta’ (a largely inactive or dormant account, secondary to a principal Instagram account, and sometimes used for passive following or for the deposit of images not desired to be displayed on a principal account). She said all the photos complained of in these proceedings had been taken from her *other*, deleted, account. She had forgotten about the account name now appearing on the chatlog images. It must have been another name for her deleted account.
113. That is the *only* direct evidence I have that the chatlog images came from Ms Hussain’s former, deleted, Instagram account. Had that been her only account at the time, then of course they must have done. But now there is another possibility. This matters, because *all* of the evidence put forward in support of the privacy setting of Ms Hussain’s Instagram account *before* October 2018 does so by reference to account names – and



to specific and listed account names including the rather hard to memorise ‘numbers’ name – *other* than that appearing on the chatlog images themselves. (Ms Hussain’s sister and friend seem to have forgotten that name also, although it is perhaps the clearest of all the variants of her own name. It is conceivable that the ‘numbers’ name, which ends in the letters ‘fin’, was the second ‘finsta’ account – but none of the witnesses said so; they were adamant that the deleted account was the only, or only relevant, one, and was private.) I have no other evidence of the privacy settings of Ms Hussain’s second Instagram account at the time.

114. I shall have to consider, in all these circumstances, whether it is more probable than not that ‘the photographs’ in this case came from a deleted and private Instagram account of Ms Hussain’s, rather than (a) anywhere else at all (six of the ‘sergey’ images), (b) someone else’s Instagram account (the other ‘sergey’ images) or (c) Ms Hussain’s *second* Instagram account (the chatlog images and/or any of the others). I have only Ms Hussain’s recollections from the witness box to go on for that. But she had forgotten she even had a second account, and she (and her witnesses) had forgotten that she had any account with the name appearing on the chatlog photos.
115. ‘The photographs’ in this case – the case the defendants are being asked to respond to – are *defined* by their alleged origin in a specified private account. The claimants have a theory about how that could nevertheless have been accessed, and I will turn to that shortly. But in any event it is not a theory which is now capable of linking both the ‘sergey’ images and the chatlog images to the deleted account on the basis that it is a *necessary* connection: the two sets of images are different and do not *necessarily* have a common origin, and there was anyway a second Instagram account.

**(c) How did Ms Rahman come across the photographs?**

116. Ms Rahman’s own account of how she came across (at least some of) the photographs relies on Ms Hussain’s (relevant) Instagram account being on a public setting at the time. It goes like this. A little while before the events of 12<sup>th</sup> October 2018, she was sitting on a sofa at home next to her father, and she was on Instagram on her phone when she came across Ms Hussain’s profile page. That might have been because the ‘explore’ page took her there. The explore page is based on a sophisticated algorithm which recommends content – photos and reels, including from accounts you do not follow – that it calculates matches your interests based on content you have previously interacted with. All content suggested on the explore page is taken from public accounts. It is not now disputed (the matter having been researched in real time during the trial) that *if* Ms Hussain’s account was public then a link *might* have been made in this way – the two young women were not personally close but they were geographically close, and certainly had a number of common or overlapping characteristics and interests.
117. Ms Rahman may have said something to her father, or his eye may have been caught by what was on her phone anyway. Her evidence is that, having once noticed the ‘objectionable’ themes, he asked her to save (ie screenshot) what he had seen, and on a subsequent occasion he asked to take photos of the saved profile page with his own phone and he did so. She was not particularly interested in or curious about why he wanted to do that. Her evidence was that she did not screenshot and send her father images from Ms Hussain’s account – she said he was not ‘Instagram literate’ or adept

at social media, but knew how to use his phone camera and how to send images from it. Mr Rahman does not dissent from any of that.

118. The claimants invite me to reject this account. Their case is that ‘the photographs’ existed *only* on a *private* Instagram account of Ms Hussain’s. A private account is one to which no-one has access other than those followers whose request to follow has been accepted. There is no contemporary or retrievable technical confirmation of the privacy settings of Ms Hussain’s account (or accounts).
119. Her own evidence is that her account was private, and her schoolfriend witnesses say the same. One remembered having to make a follower request, (although even that would not have established that the account - if it was the same account - was *always* set to ‘private’ thereafter). Ms Hussain’s evidence was that, around the time the photos were taken (while she was a university student) she had around 200 personally approved followers, all of which she knew (and which did not include Ms Rahman). She did accept that she could not control what *they* did with her images. She did accept that her – in due course estranged – boyfriend would have had access to all the images (but, for perhaps understandable reasons, he was not called as a witness and I reject any promptings to speculate on this matter). But otherwise she said the only people who had access to her account were people she wholly trusted to respect her privacy.
120. She went further than that. She said she took positive steps to brief her followers and her friends of her especial need for and expectations of privacy. One of her schoolfriend witnesses said the same (although the explanation she gave for her understanding of that seemed to reference events *after* October 2018).
121. The context and overarching theme of all the images is Ms Hussain’s university life. They contain nothing you might not expect to see on any other young woman student’s Instagram account. They are the very stuff of ordinary student life – parties, friends and fun – and are characterised by, if anything, a certain naivety and, as these things go, unselfconsciousness. Of their genre they are unremarkable unless perhaps for their very unexceptionality, by common standards.
122. But Ms Hussain and her family say that is the important point. They say that by anything that might be called a UK average, their local home community is socially conservative. It is culturally Muslim. ‘Modest’ dress for women is held out as desirable, as is premarital chastity. Families may expect to play a part in influencing or approving romantic relationships and marriage between young people. Exclusively gendered roles within families may be apparent. Drinking alcohol is utterly unacceptable. The ‘common standards’ of UK university students are not the standards of their own family and community.
123. These are generalisations, of course. The claimants accepted that all cultures contain within themselves a spectrum of identity – from the more conservative and observant to the more liberal and individualistic – and that communities evolve. One witness suggested that the mere fact that Ms Hussain had been ‘allowed’ to live away from home at university – albeit not very far away – was itself an indicator of a more liberal attitude. And Mr Hussain himself said a few things about his own attitude that I thought relevant and interesting, read together.

124. Mr Hussain is by common consent a religiously observant man, and it appears from their evidence that his side of the family tended to be more conservative in outlook than his wife's. He was at the same time a high achiever with a profile, and a milieu, far beyond the community from which he came. He was clearly ambitious for all their children; they were highly educated and he has, since the events complained of, brought his elder daughter into the family firm where, still only in her mid-twenties, she already has a responsible role.
125. Mr Hussain told me he was an emotional man. He said that seeing the (chatlog) photographs at the time made him absolutely distraught. He explained that his general attitude might have been *'you can have your private life, whatever you want, so long as it doesn't come back to me'*. And his reaction at the time had been *'why did this have to happen to me? Anyone else's child can live as they like but when it happens to me it gets highlighted and I get blackmailed'*. He said that at the time he had *'lashed out and nearly destroyed my family'* – by which he meant he acknowledged that his reactive behaviour in relation to his daughters had been highly wrought. It was only slowly, over time, he said, that he had come to be persuaded by his mainly white, English, friends and particularly the parents among them, that the photographs were not the end of the world, and he had been convinced to change and become *'a better person'*. He had a better understanding of his elder daughter, and they were reconciled, but his relationship with her would never be quite what it had been.
126. In any event, perhaps in more than the average way, Ms Hussain's university life was different from her home life. She clearly did all the usual things: making new kinds of friends, exploring who she was and wanted to be, and trying out – as she put it, *'experimenting with'* – different lifestyles. That is all part of a common experience of growing up and becoming an autonomous adult, and doing so away from parental supervision may well in general be of the essence. But more than that, there were undoubtedly aspects of her university life that Ms Hussain did not wish her parents, and in particular her father, to know about.
127. Her (non-Muslim) boyfriend was one of them. She told me their long relationship was kept secret from her family. She even told me the whole relationship was conducted on the basis they never showed mutual affection in public, even at university and away from home. That last may be an overstatement; it would have surely been extraordinarily difficult (and unpleasant) to conduct a long-term relationship in a wholly clandestine manner in a university environment. And in any event, as the Instagram pictures and her own chatlogs bear out, Ms Hussain was clearly looking to fit in with a version of university life and with a friendship group in which parties and partners, personal freedom and autonomy, and developing, curating and projecting a chosen self-image without reference to others beyond the peer group, including on social media, were accepted norms. She became president of a university society, so clearly had something of a social profile beyond her closest friends. She seems to have mixed in a distinctively international set (her father supported her with a generous allowance).
128. But the uncontroversial evidence is that Ms Hussain was conducting a romance in circumstances in which she felt acutely, and not without reason, that her parents would not approve *and* might be in a position to interrupt. They would not approve of her drinking either. And it hardly need be said that parents, particularly fathers, and adolescent or young-adult daughters often find *'dress code'* territory difficult to

negotiate, even where norms around such matters are considerably more relaxed than those Ms Hussain's parents had grown up with.

129. Ms Hussain said she was careful only to depart from her parents' expectations while 'away' on holiday, but she accepted in due course that 'away' for these purposes included social events in London and elsewhere. She called no witnesses from her university days. But it is not difficult to infer in these circumstances that Ms Hussain was 'careful' to keep her home and university life at a distance from each other, without necessarily being obsessively meticulous in a burdensome way which is hard to reconcile with the realities of any sort of regular student life. Perhaps the risk of her parents 'finding out' was in any event relatively low – away from home she said she did not mix with anyone likely to come into contact with them. And perhaps the same applied to her use of social media. After all, her sister's Instagram account, complete with 'most objectionable' selfie, had been on an admittedly public setting; *her* oral evidence was it had not been necessary to do otherwise because her parents were not on Instagram anyway. Her father, Mr Hussain, described Instagram as '*all science fiction to me*'. The probability of Ms Hussain's parents or others of their generation and community coming across this material unaided may have been intrinsically very low.
130. As may be imagined, a certain amount of due diligence has been done in the course of this litigation in searching for Ms Hussain's residual presence online. None of 'the photographs' appears to be available online (any longer). But Ms Hussain did not confine herself to Instagram. She had had a Tumblr account. She had various Twitter accounts, sometimes public, sometimes private. She said the same about her use of TikTok. She was on Facebook. She was as fluent as anyone else her age in a range of social media. I was shown the fruits of the defendants' labours. It is not rich pickings, but there I can see Ms Hussain's face reflected in a glass of something, and there she is at an event in a lowish cut evening dress with what looks like a glass of wine. I see her with her boyfriend, and at parties. I see her wearing lowish-cut tops, going bare-legged, etc. All of this is consistent with 'careful but not obsessive' use of social media.
131. And sometimes accidents happened. The chatlog between Ms Hussain and her mother shows an incident on 9<sup>th</sup> November 2018 – only a few weeks after the car park day – when she sent some Facebook pictures (including of a trip she had made to Prague with her boyfriend) to her mother by mistake. It prompted a reaction: '*my phone was in the kitchen ur dad could have seen this it was by the tv? I was shocked my brain froze didn't understand who's it from, I was so close even to go up to ur dad and ask him what's this about now!!! Why do u even take these kinds of pics why have it saved bloody delete it, u created this and accidentally added me to the group it could have been anyone else! These bloody photos got u in trouble, why make the same mistake just delete everything start life with a clean slate!*'. Ms Hussain's own response was calm, good humoured (plenty of 'lol') and explanatory; she liked to take photos for personal reasons; she was sorry about the accident but suggested they could just move on.
132. All of this has some bearing on how likely it was that Ms Hussain kept all her social media at all times under strict control. Certainly, some of her other social media accounts were, on her own evidence, sometimes private and sometimes not, and like many of her generation she moved fluently across platforms and across accounts. But

of course the other side of the coin is that if Mr Rahman and Ms Rahman did not come across pictures like this on a public account, how else could they have done so?

133. And so I turn to the claimants' theory in answer to that. They accept it is a theory, and one that the family 'worked out' (or, the defendants say, 'made up') in the aftermath of the events of 12<sup>th</sup> October 2018. The theory goes that Ms Hussain's younger sister had had an Instagram account (the one identified on the chatlog selfie) which she had deleted some time previously. In her witness statement of December 2022, she said this had been in 2018; from the witness box, she said it had been in October 2017. Ms Rahman then later opened an account in the same name, made a follower request to Ms Hussain (Ms Hussain says she remembers her sister going through a phase of repeatedly changing her account name at the time, and that she accepted a follower request she assumed was from her sister at the relevant time) and got access to her private account that way. She had, in other words, accessed Ms Hussain's private Instagram pictures by way of a deceptive 'sockpuppet' following account.
134. There are two scraps of contemporaneous evidence they say are at least consistent with this theory. Both were disclosed at a late stage. The first is an Instagram account record for this account showing it was opened in November 2017 (consistent with the sister's subsequently revised date for a preceding closure). The second is a screengrab retrieved from the claimants' late chatlog disclosure. That shows an image being sent from Ms Hussain to her mother at 6.27pm on 13<sup>th</sup> October 2018 without visible explanation. The image itself is of an Instagram profile page in this account name. It shows 0 posts, 5 followers and 1 following. It is undated. The claimants say that points to it being a passive and atypical account.
135. The defendants say of this material that it is consistent with the account having been set up in the normal way by Ms Hussain's sister and scrubbed clean after the event. There is no other evidence to support the claimants' 'sockpuppet account' theory. *If* Ms Hussain's account was private, and *if* the photographs were to be found there and there alone, then it is one of the very few explanations that could possibly be given as to how Ms Rahman could have accessed them. But it is not a theory which could show that the account was in fact private in the first place. And it is a theory which proceeds from a certain viewpoint.
136. The defendants say of this theory that it bears two distinct hallmarks. The first is that it provides victim rather than agency status for Ms Hussain (and her sister) in relation to the photographs, and thus could be deployed to deflect their father's ire. And the second is that it capitalised on Mr Rahman's accepted part in the story by making him and his daughter the substitute target for that ire, including by exploiting Mr Hussain's predisposition to think ill of Mr Rahman (a) as the bearer of unwanted bad news about his daughter and (b) on account of their business history.
137. For the claimants, the theory admittedly rests on there having been a degree of deep seated, sustained and strategic malevolence on the part of Mr Rahman and his daughter, or Mr Rahman at least, towards them. The theory posits that Ms Rahman had known or discovered what the account was called (the cousins were not close and did not follow each other). Then she came to know or discover that the account had been discontinued (that could in principle have been discovered by trying to register it – the attempt would have been rejected if the account had still been live). Then she would have taken over the account (including by giving a phone number) as long ago as

November 2017 (there is nothing in her own phone records to make any link). Then she and her family would either have done nothing with it, or done nothing with Ms Hussain's pictures, for nearly a year. On this basis, the events of 12<sup>th</sup> October 2018 were a deliberate step by Mr Rahman to deploy this long-held secret against Mr Hussain to further his own business purposes and resist Mr Hussain's attempts to restrain them.

138. The probability of all of this therefore rests to a considerable degree on the claimants' locating the events of 12<sup>th</sup> October 2018 as part of a calculated and hostile course of conduct by Mr Rahman. Before turning to that, I note again in this context that (a) Ms Hussain receiving the photo of her younger sister from her mother is not attributed to subterfuge, and *could* not have been obtained from her Instagram account since it was never there and (b) the 'anniversary photo' in the 'sergey' set *could* not have been obtained by Mr Rahman or his daughter *before* 12<sup>th</sup> October 2018. Both of these factors challenge the theory as a wholly comprehensive account of the origin of the photos.

**(d) What did Mr Rahman do with the photographs, and with what result?**

139. I begin with the undisputed evidence, and with the contemporaneous records. The latter are materially incomplete. The claimants' late disclosure includes detailed chatlogs as between Ms Hussain and her mother. Chatlogs of her father's communications are much more sparse. Chatlogs record text messages and the filenames of images sent (but not necessarily the images themselves). They do not indicate whether or not any associated phone conversations took place.
140. To recapitulate: Mr Hussain and his cousins had grown up together. They had been in business together for many years. Mr Rahman had left Mr Hussain's company in October 2017, a year before the events with which I am now concerned. By the end of November 2017, he had signed the 6-month non-compete undertakings at Mr Hussain's insistence. Those undertakings expired in May 2018. In the summer of 2018, Mr Rahman and Mr Masum Ahmed were evidently trying to make a go of their breakaway company, an enterprise with which Mr Hussain was wholly out of sympathy. He indeed considered them to have breached their undertakings and was pursuing the idea of constraining them to a ten-year non-compete undertaking. He caused solicitors' letters to be sent on 27<sup>th</sup> July 2018. So business issues stood between them (although the matters giving rise to the subsequently withdrawn claim do not appear to have been discovered by Mr Hussain until November 2018). But the family tie between the two men had also been very long and close. There is disputed evidence about the mood of the encounter in the mosque car park on 12<sup>th</sup> October 2018.
141. It is now clear at any rate from the undisputed evidence that Mr Rahman approached Mr Hussain in the car park after Friday prayers, in the early afternoon, around 2pm. He mentioned photographs of his daughter, but did not show him any there and then. On Mr Hussain's account, Mr Rahman mentioned the business disagreement and said he should concentrate on his wayward family instead; on Mr Rahman's there had been a long understanding between them that they would look out for each other in family matters. Mr Hussain accepts now that he himself asked Mr Rahman to send the photographs if he had proof of any issue with his daughter, and that it was only because he asked for them that Mr Rahman sent them.
142. It is common ground, and consistent with the chatlog evidence, that Mr Hussain then returned to his office and tried to find photographs of his daughter on Instagram. His

failure to do so may be attributable to their lack of public availability at the time or to his own unfamiliarity with Instagram (*'science fiction'*). He then telephoned his younger daughter and asked *her* to check Ms Hussain's (and to check or delete her own) account. Ms Hussain's sister's vivid oral evidence was that her father had by this time seen the pictures, but on what is now his own account that cannot have been so.

143. Looking at the contemporaneous records, we then have Mr Hussain messaging Mr Rahman at 3.42pm: *'Salaam, went to both of their Instagram, but could not find nothing, if you have any proof please give me I'll be grateful'* and Mr Rahman replying at 4.02pm: *'I did not want to send you. it was on public before and now its changed to private'*. (If the 15.49 and 15.50 timings on the late-disclosed photos of Ms Hussain's Instagram profile page are referable to the same day, it would fit exactly with Mr Rahman having taken them in response to Mr Hussain's message and then sending them with or before his reply.)
144. Chatlog records show that Mr Hussain messaged his wife at 4.24pm with *'he just sent me this'* and his wife immediately replying *'what hell'*. His wife sent her daughter Ms Hussain ten images at 4.25pm; no explanation or communication about them appears on the chatlog.
145. Starting at 8.17pm, the records show an exchange between Mr Hussain and his wife in which the former noted Mr Rahman was with him at the mosque. His wife advised him to *'be normal'* and not show any weakness; that if Mr Rahman tried to make anything of the situation then *'tell him to see his own kids'*. Mr Hussain noted Mr Rahman never went to the mosque apart from Fridays, but now seemed to feel he could. He asked his wife to send him the video she had of Ms Rahman – *'need this'*. His wife said she was *'looking'*. There is some speculation about what this reference to a video might have been, and about whether it could have been connected to an incident in which Mr Hussain and his wife had seen Ms Rahman out in mixed company; Mr Hussain told me that he had at the time felt Mr Rahman *'had got one over on me. If I had had a video I would have shown it to him'*.
146. A little after 10pm that evening, Ms Hussain messaged her mother to say she was all right, but *'did not feel safe'* to come home. A message conversation between mother and daughter took place lasting about ten minutes. It included the following

Daughter: I wasn't sure my safety was guaranteed, nor the possibility of me continuing my studies, which is funded mainly by my loans

Mother: Okay ur dads calm and told him to let u stay and we will speak

Daughter: Thanks, I would prefer over message or in public place. It's just I know you understand my trauma, and I know my whole life as I know it at home will not be the same. I don't know if I want to continue living under others' shadow, I'm sick of this society and honestly I just want to live the life I have before I get married and have all that life. I don't think it's possible at home and I know what dad has always threatened me

with. I've done him wrong by [pursuing] my desires I know, and I'm sorry, but it's my life and I've focused on my studies. I'm making something of myself and people only focus on the 'negatives'

Mother: ... he's ur dad he's not going to do anything to u he's very upset, seeing the picture u have to except what he had to go through

Daughter: I would like to continue this life, and I do understand, don't get me wrong I do. But it's sick mum, it's my private life I kept away from these disgusting people who snake their way into my life only to throw it upside down because they know my father will

Mother: ... u dating [non-Muslim] boy and wearing stuff like that and then putting pics is that right

Daughter: Dad told me before if I even took a job opportunity that he didn't agree with he'd disown me

...

Mother: those pictures

Daughter: I grow and change but I'm young. I make mistakes, and I should be able to have this normal part of life without fearing for my own. I know exactly what dad will say, and I know what I'll have to give up. So, I'm happy to give up his monetary support now and continue my life without his financial aid. ... Mum, I'm sorry, I understand people threw me under the bus and I guess I fucked up for trying to fit in.

147. Chatlog evidence from the following days begins with a memorable message from Mr Hussain to his daughter at 7.16am on 13<sup>th</sup> October 2018 - the morning after. It reads *'I'm now doing Salah and praying to Allah for your death, I wish you die today'*. Mr Hussain tells me he was distraught at the time and now regrets that message.
148. Ms Hussain had spent the night at a friend's house. At 6.27pm on 13<sup>th</sup> October she sent her mother the screengrab referred to above of her sister's (former) Instagram account profile page. She sent another image at 7.08pm with *'So you know'*. Her mother replied *'He's upset and hurt and humiliated by shamin u have to understand'*. Ms Hussain responded *'I do, I still love my dad through all this. You don't need to defend him mummy, it's not your responsibility. It's dad's. I still will always love both my parents'*
149. It is common ground that Mr Hussain had confiscated his younger daughter's car keys and phone on seeing her selfie. The chatlogs indicate that his wife and daughters were in touch with each other and that his wife had had a conversation with her husband on the morning of 14<sup>th</sup> October. She had told him his elder daughter was 'feeling scared



for her life'. She told Ms Hussain her father was calm; he had spoken to his younger daughter and given her her car keys and phone back. Her mother said at 4.46pm that her 'enemies' were trying to break her marriage and that her father's side of the family were jealous and trying to destroy the whole family, and that was 'why they are doing all this'. *'I won't let them succeed in their vicious plan my Allah is with me and I need u guys to stick with me, we not going to sit back and let them do this and get away they will have to pay for their action'*.

150. At 5.04pm on 14<sup>th</sup> October, this exchange between Mr Hussain and Mr Rahman is recorded:

17.04 Mr Hussain: Salaam Shamim bhai, Saimah [the younger daughter] insists it's always been Private, both of their profile has been private, never been open as you can easily find this out now if it's been open or private as I have controls of their account now, some one not telling you truth I'm sorry. I have to protect my family

...

17.48 Mr Hussain: Shamim bhai can you delete all pictures you have and ask Fariha to do the same, please confirm when done.

17.48 Mr Rahman: Done already Don't worry

18.04 Mr Hussain: Thank you, and again, I'm eternally grateful to you for this, you've done truly what a well wisher of mine would have done, I'll always be there in time of your family's need inshallah. But as you said, in Business we continue, you are being silly and continue to be silly despite me reaching out to you few times. I'll have to do what ever I can to protect EFG, please forgive me, Shelim.

151. At 8.08pm that evening, Mr Hussain, his wife and their younger daughter went to the police station. The police log is redacted (to exclude the personal data of third parties) but some of the references can be inferred. Edited to that extent, it reads as follows:

Attended Newport station and spoke to the caller [Mr Hussain]. The caller was concerned that a photos taken from social media Instagram of [his younger daughter] may have been altered to show [her] chest and above may be spread to others in the community that would undermine his family. The caller [Mr Hussain] showed me the photos from the Instagram account were NOT nude and not indecent however they can be perceived that way in the callers culture and community.

The caller was informed that these photos were on Instagram [xxx] and the caller [Mr Hussain] suspected that [Mr/Ms

Rahman] may have created a false account and taken some old face photographs of [his younger daughter] and altered the photos to show more of the chest area to undermine the family as both family are having business legal battle which is being dealt with in court (civil matter)

The photos have now been removed from any social media sites and the caller [Mr Hussain] merely wanted [Mr Rahman] and [Ms Rahman] to stop passing on the photos to anyone else in the community as the caller has a big reputation as he is the CEO of [Eurofoods Group Ltd] and these issues could be a defamation of his character and his business interests.

There were no formal complaints being made by the caller [Mr Hussain] and they understand that the photos [of his younger daughter] were not indecent images according to the showing of [her] face and the top part of [her] chest (no private parts showing). They were happy for suitable words of advice to be given to [Mr Rahman] and [Ms Rahman].

...

All parties were suitably advised about each other conduct and the log number was provided to the caller for any future issues.

152. The police log subsequently records:

I attended [Mr Rahman's] address and he was suitably advised about the issues being raised [by Mr Hussain]. [Mr Rahman] was hurt about this and denied sending the photos to any other person. [Mr Rahman] showed me text messages which showed [Mr Hussain] being appreciative of his actions to tell him that there were some unwanted photos [of his daughters] and he was not being malicious or deceitful.

All parties were suitably advised about each other conduct and the log number was provided to the caller for any future issues.

153. The chatlogs record that shortly after 2pm on the afternoon of 16<sup>th</sup> October 2023, her mother sent Ms Hussain two images, Ms Rahman's address, and a message to call her before her younger daughter came home.
154. On the afternoon of 18<sup>th</sup> October, Ms Hussain sent her mother a draft of a long letter composed to be sent to her father. It is profoundly apologetic in tone. It says he will be aware of why she is not coming home. It says that the images were old and private, and from a time past when she had fallen into temptation. She had struggled with her self-image, she had experimented with relationships, she had made mistakes. She had

learned her lesson. *‘But once again I’m sorry for putting you in such a dire situation, and am willing to remedy it, but yet I do hope you can also understand why I’m so fearful, I wasn’t raised the best way under your hands when I made mistakes, and I’ve learnt to fear and survive and I feel this is what I’ve fallen into now.’* The letter continues that she had worked it out that *‘that cobra’s daughter made a fake account to follow her private one, posing as a friend by stealing a close friends photos in order to ‘expose’ me’*. She would understand if he cut her off and disowned her. But *‘regardless of the rough part of our relationship dad I’ll always love you and be that little girl that truly looks up to her father’*. Her mother asked her to send the note. Perhaps surprisingly, no-one can seem to remember whether or not it was in fact sent. It is also notable that in the draft Ms Rahman was accused of stealing a ‘close friend’s’ account rather than her sister’s.

**(e) Did Mr Rahman retain and/or share photographs?**

155. The next reference to photographs in the claimants’ account comes 18 months later. In the meantime, Mr Hussain had, in February 2019, issued his legal claim against Mr Rahman, Mr Masum Ahmed and others alleging breach of their non-compete obligations. This litigation was under way over the course of the following year. Mr Hussain obtained a default judgment against the cousins’ firm Eco Foods Services Ltd in February 2020 (they explained the firm did not have the resource to hire legal help, and had not engaged with the process). Then on the evening of 22<sup>nd</sup> March 2020, while he was working in the office, Mr Hussain says he received an anonymous phone call telling him to ‘drop the charges and send them proof’ or else the photographs would be published on social media.
156. Mr Hussain’s evidence is that he did not recognise the voice. This is noteworthy, as in relation to other phone calls he relies on, he is clear about recognising his cousins’ voices. It is also noteworthy that he records the caller asking to be sent proof, but not identifying himself, which is perhaps something of a conundrum. Mr Hussain says he immediately understood ‘the photographs’ as being the ones Mr Rahman had sent him, and ‘the charges’ as being his legal case against his cousins. He said *‘no-one else had ever mentioned the photographs to me’* apart from Mr Rahman, and Mr Rahman knew how upsetting the photographs were to him. He thought Mr Masum Ahmed must have been responsible for the call, because Mr Rahman *‘was more subtle when he made the threat in the car park’* but Mr Masum Ahmed *‘is heavier handed in his approach to things’*.
157. There is no contemporary evidence of this phone call. I cannot find any mention of it or reference to it dating from earlier than 10<sup>th</sup> February 2022, around the time these proceedings were commenced. Mr Hussain says he took a deliberate decision at the time to mention it to *no-one* then or subsequently– not even Ms Hussain herself or his close family. To them and to his work colleagues he gave an entirely different account of his decision, and I deal below with the course of events Mr Hussain says was precipitated by this call. He did not report the call to the police, confront any defendant over it at the time or reach for legal restraint. There was and is no contemporaneous evidence at the time that any defendant did have any photos, and this time Mr Hussain does not say he asked for proof. But Mr Hussain’s evidence is that he experienced it as a credible threat. And he did withdraw his claim against his cousins shortly afterwards.

158. The next appearance of the photographs in the claimants' narrative comes five months later, in the 'sergey from moscow' WhatsApp message. The immediately antecedent history is this. On 22<sup>nd</sup> August 2020, Mr Mohammed Masood Ahmed posted the Instagram story set out in paragraph [36] above. It is an angry riposte to Mr Hussain's nephew who had apparently said something online suggesting he, Mr Mohammed Masood Ahmed, was a paedophile. The story is addressed to Mr Hussain. Its import was '*Don't forget Instagram is a small world and I'm coming after you guys. Last time Mr Shelim rang my number begged for forgiveness when I was about to take him out! I'm not making the same mistake twice!*' What that might refer to is hard to know: Mr Hussain ties it back to something he was supposed to have said in October 2017 and Mr Mohammed Masood Ahmed explained it (rather startlingly) from the witness box as connected to a threat he himself had previously made to expose alleged tax malpractice in Mr Hussain's firm. In any event, by all accounts, the affair was smoothed over quickly between Mr Mohammed Masood Ahmed and Mr Hussain's brother with telephone calls and an apology.
159. On Mr Hussain's account, however, the office was buzzing the following day with comment about the story, and he said in front of everyone that he was going to sue Mr Mohammed Masood Ahmed for defamation.
160. The 'sergey' message to Mr Hussain came the day after, that is on 24<sup>th</sup> August 2020. Its import was '*I have something to share with you curtesy of a mutual friend [the pictures] these will be published online and all social media soon. All depends on how you handle our mutual friends situation*'. This is a key event in the claimants' narrative – the only other occasion after October 2018 on which Mr Hussain was sent this sort of image, and the only document corroborating the association of the photos with a threat to Mr Hussain. Mr Hussain connected it to Mr Mohammed Masood Ahmed's angry message of two days before because of his public threat to sue and '*because there was no-one else who had an interest in threatening me at this time*'. He thought the pictures must have come to Mr Mohammed Masood Ahmed from Mr Rahman, because there was no other possible source for them. In the witness box, Mr Hussain accepted that, while he might have had his suspicions about the identity of 'sergey', he could offer nothing else in the way of evidence of his identity, and he confirmed that '*I still don't*' know, or have any means of knowing, who 'sergey' was.
161. The 'sergey' message itself raises more questions than Mr Hussain's account fully answers. It suggests the author got the pictures from a 'mutual friend'; was this intended to be understood as a veiled reference to Mr Mohammed Masood Ahmed himself or to a third party they both knew? Was 'how you handle our mutual friend's situation' supposed to be identifiable as Mr Mohammed Masood Ahmed telling Mr Hussain not to sue him as he had threatened to do? It is all rather oblique, in contrast to the distinctly direct message Mr Mohammed Masood Ahmed accepts he posted to Mr Hussain two days previously. But there is little doubt that *that* message was indeed angry and venomous towards Mr Hussain, if apparently reactive to a perceived insult from another family member and unrelated to either the business dispute or any photographs. In any event, Mr Hussain did not sue Mr Mohammed Masood Ahmed over it. Nor, it would appear, did he confront Mr Mohammed Masood Ahmed (or anyone else) at the time with his suspicions, or take any other action over the message or the photographs. Unlike the events of October 2018, I have no contemporaneous

evidence of how this episode is said to have affected Ms Hussain and the family dynamic – if it did.

162. The next explicit reference to photographs in the claimants’ narrative comes in January 2022, a year and a half later on. It is alleged that an anonymous call was made to Mr Hussain’s brother on 21<sup>st</sup> January. Mr Hussain’s brother’s witness statement of December 2022 records that he was told on the call to him that his life was in danger and that he owed debts. He does not mention any reference to photographs. The brother started recording the call towards the end of it, and the claimants have produced a transcript of that section. It records the caller telling the brother to ‘clear debts’ and the brother asking ‘what debts?’. There are a few seconds at the end of the call – the claimants say of this section that the caller had forgotten to switch off the call – where it is recorded that there is an exchange between two voices at the caller’s end. One is recorded as saying ‘good, JK’ and ‘are you free tomorrow?’ It appears the brother sent Mr Hussain a recording of this material the same day. The brothers both say they recognised Mr Masum Ahmed’s as being the second voice on the call.
163. Mr Masum Ahmed broadly accepts responsibility for this call. On his account he was simply pursuing a legitimate debt which he said Mr Hussain’s brother owed him. He denies there was any threat to life in the (unrecorded part of the) call, or any other threat of violence, or any threat associated with photographs.
164. However it is Mr Hussain’s evidence that the following day, 22<sup>nd</sup> January 2022, he too received a telephone call from someone he recognised as being the same individual on the previous day’s recording, and whom he had identified as ‘JK’, a man who had previously worked in Mr Hussain’s firm and then became a driver for Mr Masum Ahmed at *his* firm. The identity of this ‘JK’ is a matter of some ambiguity and controversy. Mr Masum Ahmed denies any responsibility for making *this* call and puts Mr Hussain to proof that it happened at all. Mr Hussain’s witness statement of December 2022 says ‘*JK stated that my life is in danger and that I needed to clear my debts otherwise the Photographs will be leaked. I replied, ‘I know who you are JK’ and he promptly hung up. The call only lasted 38 seconds.*’. The brothers both say they do not know what debts might be being referred to.
165. The brothers went to the police over these calls and made statements. In his statement of 24<sup>th</sup> January 2022, Mr Hussain gave this account of the call he says he received two days previously:

On Saturday 22<sup>nd</sup> of January at 12.27 hrs, I received a phone call from an unknown number. During the phonecall, the person said to me “YOU OWE DEBT, YOU’RE LIFE IS IN DANGER”. I recognised this voice straight away, I believe this was [JK] as his voice sounded the same as the one in the recording [my brother] sent in the group chat. I said to him “HELLO [JK] I KNOW WHO YOU ARE, I KNOW WHERE YOU WORK, YOU’RE MESSING WITH THE WRONG GUY”. As soon as I said this he put the phone down.

Notably, there is no reference to photographs in this account. Mr Hussain had not hesitated to mention photographs when he went to the police in October 2018. Mr Hussain’s police statement does say he took the threat of violence seriously. It also gives

an account of the historical events of October 2018 as being ‘hacking’ and ‘blackmail’ with private pictures, and makes reference to those pictures again being used to blackmail him by a ‘*Russian mobile number claiming to be Russian Mafia*’. He says (the police log is redacted) that [xxx] made degrading comments about him in 2020 on Instagram, ‘*and the same pictures were used as the ones shown to me by [xxx] for me not to press charges against [xxx]. I am afraid that this may happen again.*’

**(f) What are the connections between the alleged ‘photograph’ incidents?**

166. Drawing this together, the alleged incidents said by the claimants to involve photographs are therefore as follows:

- (i) 12<sup>th</sup> October 2018 – Mr Rahman mentions photographs his daughter had found not long before. At Mr Hussain’s request, Mr Rahman sends some images of Ms Hussain to him. Mr Hussain sends them to his wife, and she sends them to Ms Hussain. There is a traumatic row within the close family; they go to the police shortly afterwards.
- (ii) 22<sup>nd</sup> March 2020 – Mr Hussain says he received a call from someone whose voice he did not recognise telling him to ‘drop the charges’ or the photographs would be posted on social media. He attributes responsibility for this to Mr Masum Ahmed, but did not recognise the caller’s voice.
- (iii) 24<sup>th</sup> August 2020 – Mr Hussain receives a WhatsApp message from ‘sergey’ containing photos and a threat to put them on social media depending on how Mr Hussain handled an unspecified ‘situation’. He attributes responsibility for the message to Mr Mohammed Masood Ahmed and the origin of the photos to Mr Rahman via Mr Masum Ahmed.
- (iv) 22<sup>nd</sup> January 2022 – Mr Hussain receives a phone call saying his life was in danger and he needed to clear debts or the photographs would be leaked. He attributes this to Mr Masum Ahmed.

167. These add up to four incidents over a period of more than three years. The timespan is further expanded if it is understood to run from November 2017, when it is suggested Ms Rahman set up a sockpuppet account for the purpose of obtaining photographs. Two involve sight of (different) photos and two do not.

168. Mr Hussain says all these events are linked by blackmail and by the defendants. The ‘sergey’ message certainly contains an overt threat to publish specified images, although the nature of the demand being made has to be inferred; Mr Hussain connects it to dropping a threat of litigation. The two phone calls are narrated by Mr Hussain from memory as constituting blackmail: demands, respectively, to ‘drop the charges’ and to clear a debt, with a threat to publish (unspecified) photos if he did not comply. The threat in the second case is coupled with a threat to his life. He complied with the first demand but not the second.

169. Mr Hussain says he experienced the original events of October 2018 as ‘subtle’ blackmail from Mr Rahman. There is no contemporaneous evidence of any explicit *demand*; the closest the evidence comes is Mr Hussain’s recollection, disputed by Mr Rahman, that the latter advised him to concentrate on his family rather than his business

dispute. There is no contemporaneous evidence of an explicit *threat* either. The record of Mr Hussain's conduct is that he outwardly treated it at the time as a well-intentioned act of family kindness, albeit the news it brought was thoroughly unwelcome. That was the impression Mr Rahman also left on the police officer who came to visit him. Recollecting the event subsequently in October 2020, Mr Hussain referred to it as 'emotional blackmail' and did so again in oral evidence. From that I understood him to be describing its impact on how he felt – his subjective emotional state at the time when, on his own account, he 'lashed out'.

170. As regards linkage by personnel, there is no direct evidence of any part played by Mr Rahman or his daughter Ms Rahman after October 2018. There is no identification for the voice on the call Mr Hussain says happened in March 2020, but the evidence is that he recognised his cousins' voices when they phoned. The linkage between 'sergey' and Mr Mohammed Masood Ahmed relies on the affair of the 'little kids' row and what Mr Hussain says was a public threat to sue in the couple of days before; the linkage further back to Mr Rahman and Mr Masum Ahmed as suppliers of the images relied on them being the same set Mr Rahman had originally forwarded, but as is now clear they are not. The recording of the call of 21<sup>st</sup> January 2022 to Mr Hussain's brother, for which Mr Masum Ahmed accepts responsibility, makes no reference to photographs. Mr Hussain relies on the recording's reference to 'tomorrow' to support his account of a call the next day, and on his recognition of the caller as the same 'JK', involved, along with Mr Masum Ahmed, the previous day. The brothers' police report does not mention photographs in this context.
171. The *consequences* in each case were various. Mr Hussain went to the police in 2018 and did *not* divert from his business litigation; letters before action were sent to the defendants in November 2018. He says he took steps to settle his litigation within hours of a phone call in March 2020; he did not go to the police, resort to legal action or confront any suspect. He did not sue Mr Mohammed Masood Ahmed in August 2020, but he does not say in terms this was because of the 'sergey' threat rather than the 'smoothing over' within the family. On the contrary, although he does not appear to have gone to the police at the time, Mr Hussain went to the police in November 2020 in response to the 'surveillance' incident which no longer forms part of this claim (he suspected Mr Mohammed Masood Ahmed was responsible). He made a statement dated 18<sup>th</sup> November 2020. In this statement, he gives an account of the 'sergey' incident. He says he took legal advice and was going to issue proceedings against Mr Mohammed Masood Ahmed over the 'sergey' message, but his extended family persuaded him not to because Mr Mohammed Masood Ahmed was '*a local distributor of big powerful people in the underworld and if I did they would bring harm to my family*'. As noted, the brothers both made statements to the police in January 2022 about the alleged calls. Mr Hussain says the January calls were proximate to his decision to issue the present proceedings in March 2022.

**(g) Is there a wider course of conduct of which the claimed photograph incidents are a part?**

160. To recapitulate, the course of conduct now alleged by the claimants comprehends the following:
- (i) the events surrounding Mr Rahman sending photos to Mr Hussain on the 12<sup>th</sup> October 2018;

- (ii) silent calls to Mr Hussain in 2019, after he issued proceedings against his cousins in January of that year;
  - (iii) an anonymous text message to Mr Hussain's brother in February 2020 asking for the payment of money and threatening to publish information about his paternity;
  - (iv) the 'drop the charges' call Mr Hussain says he received in March 2020;
  - (v) the 'sergey' incident of August 2020;
  - (vi) the anonymous message of 10<sup>th</sup> October 2020 to Mr Hussain's brother saying the two of them '*need a good beating*';
  - (vii) a phone call of 24<sup>th</sup> December 2021 to Mr Hussain's brother from Mr Masum Ahmed's mother (considered further below);
  - (viii) the phone calls of January 2022; and
  - (ix) an anonymous text message of 24<sup>th</sup> January 2022 to Mr Hussain's brother (similar to that of February 2020) asking for payment of money and threatening to publish information about his paternity.
172. Mr Hussain's brother is not a party to these proceedings. But Mr Hussain considers this to be a course of conduct against *himself* because the slurs on his brother's paternity are by extension slurs on their mother which comprehend the whole family, and the other messages sent to his brother also contained clear references to himself (with perhaps the exception of the call Mr Masum Ahmed accepts he made to Mr Hussain's brother in January 2022).
173. In his witness statement of 24<sup>th</sup> February 2022, Mr Hussain had noted that, on 23<sup>rd</sup> December 2021, his solicitors had sent the defendants in the previously withdrawn claim some letters before action relating back to the non-compete issues. He said this about a phone call received the following day: '*On 24<sup>th</sup> December 2021, my brother, Shah, received a call from Masum Ahmed and his mother, Shahana Begum, during which I was repeatedly threatened with physical assault and 'shame' if we did not reach an agreement.*' He exhibited a transcript of that call, translated from the original language. That transcript presents a three-way phone call, the opening passage of which is attributed to Mr Masum Ahmed's mother, but most of the rest of which is attributed to Mr Masum Ahmed. It is now accepted that that was an inaccurate presentation. A subsequent translated transcription, prepared professionally in June 2022, records only two speakers, one male and one female. The male speaker is Mr Hussain's brother. The female speaker is Mr Masum Ahmed's mother, the brothers' aunt. It is essentially a monologue by her. Its tone might be described – so far as can be discerned from a document two stages removed from the event (that is, in both form and language) – as vehement and expostulatory.
174. It opens with a protest that Mr Hussain and his brother are trying to monopolise the market (at the cousins' expense) and a request that the brother try to make Mr Hussain understand the need to '*avoid this type of conflict*'. It expresses a fear that unless the parties come to some agreement Mr Hussain will be insulted and beaten up by others



involved – enemies that Mr Hussain has beyond his cousins – which would bring shame on him. She says Mr Hussain ‘*always lives in high spirits*’ and does not see this risk. She fears humiliation to herself in consequences – a family fighting like this is a matter of ‘*big shame*’. She does not want to put all this to Mr Hussain herself because ‘*he will get mad*’, and she has made fruitless attempts of this sort before. But she repeatedly implores the brother to make him see sense. She protests that she is not taking sides – all her family are ‘*equal in my sight, that’s why I called*’.

175. The alleged connection between the ‘paternity’ emails and the others does not speak for itself, but Mr Hussain suggests a link – the slur is tied back to a conversation said to have taken place some time before with a third party in which Mr Masum Ahmed’s mother had mentioned the same slur, and evidence from that person was put forward. The claimants say it is not a coincidence that Mr Masum Ahmed’s mother is a source of the ‘paternity’ story; relatively few people would have been able to name the alleged ‘father’ and his village, and she is one of the few.
176. The phone call from Mr Masum Ahmed’s mother was on any basis a call about the underlying family business dispute, and evidently made in response to the solicitors’ letter. And Mr Hussain says that is the link tying together all these incidents as a single course of conduct. Mr Rahman obtained and produced the photos in 2018 as part of a protest about the business dispute, and wherever the photos reappeared it was with a view to securing a result beneficial to the cousins in business terms. The silent calls of 2019 were contemporaneous with the original litigation against the cousins. The ‘drop the charges’ call was a clear manoeuvre to force his hand on the withdrawal of the litigation. The ‘good beating’ message was a response to a job advertisement of the same day, evidently seen by the sender as an act of hostile competition in fishing a shared recruitment pool (responsibility for this is attributed in pleadings to Mr Mohammed Masood Ahmed, but Mr Hussain’s brother said he thought Mr Masum Ahmed was to blame). Mr Masum Ahmed’s mother’s hand is to be seen in other incidents, and her call was an attempt to intimidate Mr Hussain in response to his solicitors’ letters.
177. The lynchpin of that narrative – and perhaps of this entire claim – is the proposition that Mr Hussain dropped his original litigation against the cousins in the spring of 2020, having been blackmailed to do so under threat of exposure of the photographs. It is to this last piece of the evidential jigsaw that I now turn.

**(h) Why did Mr Hussain compromise his claim?**

178. The phone call of 22<sup>nd</sup> March 2020 is the only part of the narrative (other than the silent calls) which relies *entirely* on Mr Hussain’s memory and of which there is no other trace. What is not in dispute is that he did settle the claim – it would appear, abruptly and without consulting others in his business – by a course of conduct set in train at 5.30am on 23<sup>rd</sup> March 2020. It is also not in dispute that the reason he gave to *everyone* at the time was the onset of the covid pandemic.
179. His early morning email to his solicitors, copied to colleagues in his business and, it is said, blind copied to Mr Masum Ahmed, reads as follows:

Dear Ben,

I want you to drop all charges for ECO foods and the 4 defendants [Mr Rahman, Mr Masum Ahmed and two others], and close file and give me the final bill.

Please write the below letter to them and their solicitor and close the case.

“Dear .....

These are unprecedented and challenging times, Shelim would like his extended family in this time of need to have as less external stress as much as possible and to spend time with their loved ones, we all now need to pray to Almighty Allah SWT to protect us and our loved ones from this evil virus, shelim and eurofoods is now dropping all charges and writing to court to close the case, Allah is the one who is the ultimate giver of justice and we all will be judged in the day of judgment, Shelim is praying for everyone to get through this difficult times. May Allah forgive us all. Ameen,”

Ben after sending this letter close the case and give me the final bill please.

180. Also by way of documentary evidence from around the same time is an email of 28<sup>th</sup> March from Mr Hussain to Mr Rahman as follows:

Walikum salaam Sam, the true character of a person really comes out in times of extreme difficulty, whatever I may be, I'm human and extremely fearful of Allah SWT, with this virus I'm not sure if we will live or die, all of you have this stress to think about, you don't need the case stress on Top, if Allah accepts any act of goodness from me and forgives me for my sins before I'm dead that is all I can ask for, please forgive me if I have hurt you in anyway, stay safe with your family, Shelim

PS I did copy my email to my cousin Mas [Mr Masum Ahmed], not sure if he got it, may be I have wrong email for him, anyway please ask everyone for forgiveness for me Sam. May Allah protect my family and make my offsprings a good Muslim in this world

May Allah protect us all

Ameen [and a praying hands emoji]

181. The evidence before me is that the explanation Mr Hussain later gave to the firm for his decision was '*we should all be forgiving now in light of the covid pandemic*'. It is said to have been unusual for a decision of this nature to have been taken without internal

consultation. Mr Hussain was reported not to be his usual self, but to have been anxious and worried. The evidence of his immediate family circle is that they do not remember or were uninvolved at the time (the younger daughter said she had been told the claim was settled because of the pandemic).

182. When Mr Hussain went to the police in November 2020 to complain of the surveillance incident on which he no longer relies in these proceedings, his report included an account of his relations with his cousins. He mentioned the affair of the photos in October 2018, and the ‘sergey’ message. About the decision to settle his claim, he said only this:

Through other family and legal channels were still pursuing Masum AHMED and Shamimur RAHMAN for corporate espionage. They tried to settle but we did not accept, however in March 2020 during the Covid pandemic, I was concerned and I decided to drop the case so I instructed my lawyer to drop the case and I did not ask for costs – I was worried that during this difficult times, even they have done act of evil against me, I did not want them to worry about this case during this difficult time, as I was really worried that Covid may take lives from our extended family. So I instructed my Solicitor Harding Evans to drop the case, and did not even ask for costs or damages which they offered to pay previously I left it at that.

183. When Mr Hussain sought to reopen the issues which had been the subject matter of the withdrawn claim at the end of 2021, he cited the pandemic again. His solicitors’ letter of 23<sup>rd</sup> December 2021 (sent the day before Mr Masum Ahmed’s mother’s phone call) included this:

Despite EFG [Euro Foods Group] having very good prospects of success against you, by Order dated 24 March 2020, the previous claim was withdrawn by consent so SA, SC, MA [Masum Ahmed] and SR [Shamimur Rahman] could be with their family during the unprecedented and challenging times brought about by the pandemic.

However, we are instructed that EFG’s goodwill has been severely abused; there have been fresh, incited breaches of contract, breaches of undertaking, breaches of agreement and infringement of the Database by you.

184. The first wave of the covid-19 pandemic was confirmed in the UK in January 2020. The first deaths were confirmed in early March. The furlough scheme was announced on 20<sup>th</sup> March. The first legally-enforceable lockdown was ordered on 23<sup>rd</sup> March, the day after the alleged evening phone call. A business magazine interview Mr Hussain gave afterwards in December 2021 reported: ‘*“By 2020, I was in a good place.” And then Covid happened. Business dropped by 80 per cent during the first two weeks of lockdown as restaurants closed. “I thought ‘this is the end’,” says Mr Shelim Hussain.*’. Mr Hussain’s business rallied when takeaways re-opened, and he said in the

interview that 2020 turned out in the end to be one of the most profitable years for the company. But in those early days, at exactly the time he compromised his litigation, he had good reason to think it ‘the end’ for his business. The cousins’ enterprise, such as it then was, and any value it may have had, was also heavily dependent on the businesses in the same customer sector.

185. There is another reason Mr Hussain had cause to be dismayed by covid. He was, and is, not in good health. He has an underlying kidney condition. At the end of his oral evidence he told me it had now progressed to stage 5, and he understood that he had not many days left to him. The covid pandemic was a particularly acute threat to those made vulnerable to the virus by underlying health conditions. It was also noted at the time (although the reasons were and are debated) that it seemed to hit members of UK ethnic minorities particularly hard.
186. Mr Hussain is a religious man. Among the material before me is a long WhatsApp exchange he had with Mr Rahman in April of 2018 in which he shared with Mr Rahman a text he had come across. This consisted of an intense visualisation of, and meditation on, a deathbed scene, in which the dying man reflects on the vanity of worldly success and the tawdriness of what has to be done to achieve it, and turns away to make his peace with his Maker. The cousins had agreed this should give pause for thought. One of the things I have to think about is how far Mr Hussain’s invocations of Allah to both of his cousins at the time of the withdrawal of his claim were, or were not, part of what he now says was a fictitious purely public account of reasons for withdrawing the claim, given to avoid any reference to the shame he felt about his daughter’s photographs from her student days.
187. It is an interesting feature of this case that none of the parties encouraged me to look at the merits of the case that Mr Hussain compromised. The merits of a case – the prospects of winning or losing – together with the financial consequences of continuing or settling, are the usual principal considerations or motivations uppermost in the mind of the parties in such circumstances. But I received no submissions about this. I do not speculate about it. I cannot of course read into the obtaining of a default judgment against the cousins’ company (largely a procedural matter, related to its failure to make any response to the claim) much which would go to the ultimate and evidenced merits of the claim.

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## SECTION E

### FINDINGS OF FACT

188. In this section, I set out my findings of *relevant* fact (that is, facts potentially bearing on legal liability) by reference to the evidence. I have kept in mind the problem, particularly in a case requiring the simultaneous establishment of a course of conduct and the attribution of anonymous events among multiple defendants, of ‘bootstraps logic’: where the discernment of a course of conduct depends on identifying a pattern in events, and attributing anonymous events depends to some degree on placing them within a context and pattern. I have tackled this by looking first at the individual events

in such context as does *not* rely on locating them within the patterns alleged and disputed in this claim, but then standing back to see whether placing them within those alleged patterns reveals possibilities the step-by-step process may have overlooked or underestimated.

### **The events of October 2018 and before**

189. I begin with Ms Hussain's part in the story. Although on Mr Hussain's account this is a case about *his* immediate family and *his* business (and that viewpoint came across powerfully in his oral evidence), the claim before me starts with a young woman in an embarrassing predicament, and perhaps something rather more than that.
190. As I have set out, there is evidence which is not materially disputed and which I can accept without difficulty, that Ms Hussain wanted to keep her home life and her university life well apart. She had been privately educated before that, she had not been to school with the rest of the community, so she would have been acutely aware as she grew up of the difference between perspectives within the home and community on the one hand, and the lives of her friends who were not from that community on the other (neither of the schoolfriend witnesses she called was of her own heritage). I can see that she may have experienced tension between her parents' expectations and those of her peers to a degree something beyond the usual. Perhaps that is not an unfamiliar experience for second generations from minority communities.
191. I can understand that going up to university, and living away from home, would again have been a major life event to a degree more than the usual. As is commonplace, she experienced her freedom and autonomy and made her own choices; she found friends, romance and a sense of her possible adult selves that came from this new community and not the old. But what set this universal rite of passage apart from others' – and even from other students' from what she called a conservative minority ethnic community – was something more than the common experience of cutting off or cutting away from one's roots.
192. By bringing this claim, Mr Hussain puts his relationship with his daughter – and Ms Hussain hers with her father – in issue in a way I cannot avoid dealing with. I am satisfied Ms Hussain's university experience was undertaken under something more than fear of her father's disappointment and disapproval of her lifestyle choices. Her university lifestyle was significantly financially dependent on him. And she was afraid of his temper, to the point of fear for her personal wellbeing. That appears from the late-disclosed chatlog evidence of her conversations with her mother in the aftermath of the October 2018 events some, but not all, of which are included above. The chatlog over the rest of October indicates Ms Hussain being back at university and reluctant to make a visit home. She explains (2<sup>nd</sup> November) that she is '*scared*', anxious, stressed and panicky at the thought of encountering her father. An exchange a little after midnight on 3<sup>rd</sup> November goes as follows.

Mother: Ur my child and like I said it's not the end of the world we will get over this and Allamdulliah ur dad has changed and his understanding the situation.

Daughter: Mum he is scary. I'm scared.

Mother: Like he said yes my child did wrong and insha Allah she will learn from this mistake and carry on with her life

Daughter: I just don't want to stay the night. I'm so scared if I do. I'll come for a few hours but I didn't realise til I had a panic attack today how scared I am

Mother: Why ru feeling so scared he's ur dad and I'm here

Daughter: To my bones. Because it's the same dad that didn't treat me or you too well not that long ago

Mother: If I thought u will be in danger would I tell u to come home?

Daughter: Yes people can change, but I'll never forget that mum, I've tried and it doesn't go away, it's mentally scar[r]ed me. No and I know but I'm just scared. I can't explain why or how I am well enough, I just know I'm scared to my core. I upset him badly mum, dad cut me off completely. This is why I'm scared. What else can and will he do

193. What exactly she had been afraid of in relation to her personal 'safety' is not spelled out, in what was after all a private interaction between mother and daughter talking about a shared experience in intense circumstances. She told the university authorities a year later that '*I had my life threatened by my father*', although she told me that was a product of her mental and emotional state at that time. Her father's evidence was not only that he was an emotional man (and I saw some of that myself) and that he had '*lashed out*' at the time (the '*I pray you die*' message is hard to forget, however rhetorical). It was also that when he lost his temper he would '*scream and shout and throw things*'. The family was understandably hesitant to expand on this in the witness box (all of the claimants' immediate family were present in court for most of the trial). I invited Mr Hussain to do so, and he sought to qualify his earlier acknowledgment by saying that it had been a long time ago when he was a young man. His wife also sought to play this issue down, without entirely disavowing it. But I am satisfied, including with the support of the contemporary chatlog evidence, that Ms Hussain was afraid of her father, and had some good reason to be so.
194. Indeed, on their own case, the claimants say the consequences of the October 2018 events was a period of estrangement between father and daughter (albeit diminishing in claimed scale as disclosure progressed and their evidence evolved in response) – but not between mother and daughter. When Ms Hussain accidentally sent more 'boyfriend' pictures to her mother a few weeks later, there was indeed a reaction, but it was short lived and focused on the risk of her father seeing them. The initial exaggeration in the scale and duration of the estrangement which is revealed in the claimants' evolutionary pleadings and witness statements, perhaps does still say something truthful about their memory of the bombshell effect of the photos on the family dynamic and the relationship between Ms Hussain and her father.
195. The claimants' case was also that what followed for Ms Hussain was damage to her mental health to the point of suicidal ideation, the destruction of her romance and the

derailing of her academic studies. There is wholly insufficient evidence that that was produced by her disappointed hopes of a parentally-approved marriage or that she had (or has) any such hopes. The claimants' evidence on that topic was unparticularised and slight. I accept on the parents' part real disappointment and perhaps grief that the traditional sort of family matrimonial arrangements for their elder daughter might have been jeopardised in any way. But I cannot attribute Ms Hussain's breezier dismissal of future marriage plans to the actual or potential wider audience for her Instagram history. At the relevant time, the photos had not been disclosed and, it appears, the claimants' family were proceeding on the basis that they had been comprehensively destroyed and the threat of further disclosure averted. There is no evidence that the photos, or knowledge of their existence, or knowledge of Ms Hussain's university lifestyle, had spread any wider in the community. The absence of any sign of fear around the community or marital response to the 'sergey' event is also notable. Nor can I give real weight to the claimants' vague citation of honour killings as lending credibility to the power of community opinion, general or specific, in response to possible wider knowledge of the photos. The rather faint attempt to enlist this dramatic context was entirely unconvincing. I can see no sign in the contemporaneous evidence that Ms Hussain's troubles in and after October 2018 had anything to do with *her* feared perspective of the wider community. On the contrary, it seems to have had everything to do with her father's reaction to seeing her pictures, her fear of what (else) he might do to her and her preoccupation with assuaging his condemnation.

196. In these circumstances, I accept that Ms Hussain had more than usually good reason to keep her conduct, and her pictures, of university life away from her father. Her relationship with her boyfriend continued for some time after the events of October 2018, and she accepts she did not tell her parents the truth about that at the time. I am persuaded that she was relatively careful to maintain that separation of her two lives. But I am not persuaded she was obsessive about doing so to a degree hard to reconcile with living the university life she clearly did. She did not need to go to elaborate lengths, because on her own account the prospects of her parents' finding out about her lifestyle choices – whether from third party reports or via social media – were low; the two circles did not meaningfully intersect. Nevertheless, maintaining any sort of double life is effortful and relies on some lack of candour and the sustaining of more than one everyday narrative, giving different people different accounts of your life. If, at a distance of time, her creative narratives, memories, the instinct for self-preservation, and verifiable history become blurred and intermingled, that would be no surprise. I inferred a measure of this in Ms Hussain's evidence and, indeed in her conduct of this litigation in which her own narrative was distinctly ancillary to her father's purposes.
197. An Instagram followership of 200 is modest, but not risk-free, as Ms Hussain acknowledged, in terms of maintaining tight control over content. Not all of her Instagram followers, however well-briefed, would have a highly developed instinct for her unusual position, sufficient to modify their everyday social media use at all times. She had a range of social media accounts, and accepted not all were on a private setting all of the time. She had good reason to undertake a thorough scrub of her online presence in the heat and aftermath of the October 2018 events, but there still remained examples found publicly in the context of this litigation which she might well have preferred her father not to see. The image of her in lowish-cut evening wear at a dinner with what any objective observer would recognise as a glass of white wine sticks in the mind – a far closer association with alcohol than *any* of the images complained of in

these proceedings. Then the author of the ‘sergey’ message obtained that late 2018 ‘anniversary’ picture from *somewhere*. And accidents do happen, as we have seen. Ms Hussain was active across a range of other social media platforms, and it is not easy even with maximum assiduity to control absolutely the migration of material onto the searchable internet. She accepted that sometimes her (other) accounts were set to private but not always.

198. This context, and the problems already noted over accuracy and detail of Ms Hussain’s recollections of her Instagram account – or rather accounts – and their privacy settings substantially limit the weight I can place on her evidence in this regard. The late revelation of the existence of a second Instagram account is deeply problematic for a case pleaded and evidenced on the basis of a single (private) account. It is not only the logic of the pleading which is affected by this revelation, but the weight-bearing capability of the evidence of the privacy settings. It is one thing to accept that Ms Hussain was motivated to, and did, keep her university life and social media activity meaningfully away from parental eyes. It is altogether another to find as a fact it was more probable than not that all, or indeed any, of the photographs featuring in this case were posted by Ms Hussain only on an Instagram account which at all relevant times was set to ‘private’. As set out above, I have, in the end, only her evidence from the witness box that that is so. Notwithstanding the disciplines and motivations of civil litigation, she had forgotten too much of what her late disclosure subsequently revealed for her unaided memories to bear significant evidential weight: she said herself that time and emotion were to blame for lack of clarity and accuracy in this respect.
199. And the inherent probabilities are against the photographs having been held at all times in conditions of maximum security on a single Instagram account. By far the most inherently likely explanation for a third party finding Instagram images on an account not followed is that they were publicly accessible. Ms Rahman need not have gone looking for them; the ‘explore’ function could have done that for her. Of all the witnesses whose oral evidence I received, Ms Rahman struck me as having the least interest or investment of anyone in the wider narrative of the family and business dispute – and, it might be added, the least investment in maintaining a collective account. She is a young woman making her way in the early stages of a professional career. She appeared to me to have been credibly bewildered by being caught up in this litigation. She gave a simple account of coming across the photos and her father taking pictures of her phone with his. The chatlog photos certainly include a set of indistinct photos by one phone of another, which fits better with that sort of narrative than with the cunning invasion of a private account by a false follower.
200. The sockpuppet theory – the only other proffered, or indeed easily conceivable, explanation than the pictures being publicly accessible – is a far less persuasive alternative. It is intrinsically self-serving and hostile, and in any event has limited explanatory power; it raises more questions than it answers. It does not sufficiently make sense of events to posit an act of infiltration so long before October 2018, so risky and so ultimately ineffectual. It is inherently improbable in the first place that Ms Rahman had enough of the necessary information about the name and vacancy of the account (and there is no evidence she did) for that to be a better explanation of the start of the account in November 2017 than Ms Hussain’s sister’s acknowledged fluidity with her own accounts, attested to further by Ms Hussain. Her sister’s amendment of her evidence *after* late disclosure of the relevant screengrab information showing her



allegedly vacated (and infiltrated) account, to provide a date in 2017 rather than 2018 for the infiltration, is also self-serving and constitutes evidence on which I cannot place real weight. The sister's oral evidence in my view owed more to the internalised family narrative than to clear and reliable recollection in any event; I repeat my observations above that this is a natural phenomenon and not a point of criticism, but it means I am not able to advance the claim significantly on the basis of her evidence.

201. The likelihood in any case that the sisters would not have done or said to each other anything inconsistent with, or otherwise failed to notice, a fake account over the course of nearly a whole year is far too low for it to have been a good strategy to start with. It relied on Ms Hussain thinking her sister was following her (or following her from two simultaneous accounts) when she was not, and it would have been extraordinarily risky to have planned on the basis that that would not have come to light. Then the deployment of the photos in October 2018 brought no benefit or advantage to Mr Rahman at the time – it had no obvious quality of being the climax to a carefully nurtured plan. It did not clearly articulate a demand for Mr Hussain to change his pre-litigation stance and it did not achieve that. It may have precipitated something of a family crisis at least some of which may have been predictable (and the predictable repercussions were in my view an obvious disincentive to any *casual* deployment or mention of the pictures by Mr Rahman in the first place if there had been a more serious, structured and productive plan afoot), but he was undeterred; he went right ahead with his litigation and he reported the matter to the police.
202. If the most objectively likely reason for someone to access Instagram photos is that the account on which they are published is a public one, it is incumbent on a claimant to demonstrate, preferably with contemporary and independent evidence, how the objectively less probable explanation was, after all, the more probable one. The claimants in the present case rely heavily on the calculating ill-will of Mr Rahman and Ms Rahman to tip the balance in this matter, but that is something they have to prove; I cannot be expected to assume it. I am not satisfied they have otherwise discharged their burden in this respect. It seems to me that much the more likely explanation for the events of October 2018 is that Instagram brought to Ms Rahman's attention some material that was in the public domain.
203. Then, at a time in her life when she was trying to spread her wings a little, Ms Hussain's father's discovery of the photographs crashed her to earth. Within a day or two she was composing a long letter of apology to him, abjuring her 'experiments' in university life and seeking once again to be re-accepted as 'Daddy's little girl', an expression she has used with no sense of irony. Small wonder if she struggled to get back on her feet immediately after these events. None the less, the account she was giving to her mother at the same time was, in my view, poignant, mature and self-aware in the circumstances: she had only been trying to 'fit in' with her friends, and now family disaster had been brought down upon her by her father's knowledge. She was also, apparently, a seasoned survivor.
204. Mr Hussain's evidence was that he experienced sight of the photos as a personal disaster *for himself* and by extension his family. There is no sign in the chatlogs of concern or sympathy for Ms Hussain's personal impact – present or future – or her subjective wellbeing at the time. He was outraged, embarrassed and offended on his own account, and angry with and ashamed of his daughter for being the occasion of his predicament. In fairness, I allow for a genuine degree of moral shock, and the anguish

of a religious man sincerely believing in the value of religious observance for all those close to him. But his own evidence was that he felt, subjectively, furious at his daughter for posting the pictures, humiliated by his cousin's provision of the proof of her 'wrongdoing', resentful at the damage inflicted on his self-esteem and fearful of where events might lead for them all reputationally. His principal practical preoccupation at the time was, on the contemporary documentary evidence, with gaining control over the images, including by enlisting his family and the police in that cause.

205. I am not persuaded there is sufficient evidence he was at the same time the object of any threat from Mr Rahman of further publication, subtle or otherwise, or even that, at the time, he considered himself so to be. He felt humiliated by his cousin's having '*got one over*' on him, and vulnerable to the extent that he needed to bring the pictures under his control. The claimants sought to impress on me that it was culturally unusual and inappropriate for issues about a daughter's social life to be raised between men; such matters could be expected to be dealt with discreetly between mothers, without bringing them to the men's attention. I cannot, however, easily perceive a *threat* from this circumstance, nor from the inference I am invited to make that Mr Rahman must have realised the whole trouble that would ensue from his actions (which I consider more fully below). On the contrary, the contemporary documentary evidence gives an ostensibly simple account of cousins looking out for each other in family matters, rather than suggesting any sort of threat.
206. Certainly, matters of business stood between them. I accept that Mr Hussain was, and has remained ever since, highly preoccupied by that. But Mr Hussain's grievance in this respect had been at a *relatively* low level before October 2018. I do not for a moment underestimate what it might have meant to both men with their long and close family history to have sent and received a solicitor's letter between them. I can see that Mr Rahman was in a relatively disadvantaged position in this matter – trying to help get the breakaway business going (and a living for himself and his family) faced with the six-month non-competition period and the threat of litigation. But it is now accepted that he produced the photos only at Mr Hussain's insistence, and it was a move both always likely to be, and in fact, counterproductive to Mr Rahman in terms of progressing the business disagreement in his favour.
207. Mr Hussain's reaction was evidently a sense of personal humiliation and an instinct to retaliate (had he had an equivalently compromising video of Ms Rahman he said he might have done so). I accept that Mr Hussain may have (subjectively) 'felt threatened by' the existence of the images, their being beyond his direct control, and the open demonstration – by a close family member turned business rival too – that there were aspects of his own family life of which he had been ignorant and was ashamed. Indeed, I accept that all the immediate family 'felt threatened by' the existence of the images – in the immediate aftermath, the daughters articulated fears for their autonomy and the mother for her marriage. The family was distressed and preoccupied to a real degree (indeed, if I have to be careful about the weight I am fairly and objectively able to give to some of their recollections of this time, it is precisely for that reason). I can see that Mr Hussain may have blamed the messenger and (subjectively) projected the source of that feeling of threat on to Mr Rahman. But I am not persuaded that, in objective reality, it is more likely than not that Mr Rahman threatened him. There is no contemporary trace of a threat. Mr Hussain did not behave at the time as if he had been issued with a threat to which he attached significance. He articulated no threat from Mr Rahman to

the police. He was entirely undeterred from issuing proceedings against his cousins in due course.

208. In these circumstances I see no reason not to take the contemporary recorded exchange between the two men at face value: Mr Rahman may have had his own mixed feelings about events (*schadenfreude* possibly included) but among them was, I accept, a sense he was doing his duty and Mr Hussain a family kindness by equipping him with some significant, if doubtless unwelcome, information. And notwithstanding his own mixed feelings (anger and humiliation evidently among them) Mr Hussain acknowledged that and thanked him.
209. Since the last-minute revelation that the chatlog photos and the ‘sergey’ photos were different, there is no longer any compelling logic that all the photos must have had a common origin in Mr Rahman and Ms Rahman. So there is now a question about what exactly Mr Rahman did send to Mr Hussain. No-one can remember that. I do not think there can be any real doubt that he did send the four profile-page snapshots (and it may be that the timings on them add to the picture that this was an event in real time rather than the product of long-planned artifice). Whether he also sent the remaining screenshots (including of the younger sister) that Ms Hussain’s mother sent her later that day can only be a matter of inference. There is a period of about an hour and three-quarters that afternoon during which on any basis there was something like a frantic search – both an attempt by Mr Hussain himself, and a direction that others in his family did the same – to scope the problem by seeing what (else) there might be publicly available out there and to deal with it. The police records note the removal of photos from ‘*any social media sites*’ (plural). Whether the screenshotted images, including the selfie of the younger daughter that did not come from any of Ms Hussain’s Instagram accounts, were produced by that exercise or came directly from Mr Rahman is a matter of conjecture. Ms Rahman denies sending them to Mr Rahman, and he denies receiving or forwarding them. These memories may or may not be accurate (Mr Rahman’s oral evidence was characterised by repeated protestations of poor memory), but, as discussed below, it may not in the end be important. I am in any event satisfied that Mr Hussain’s preoccupation at the time, including in his police report, was the fear that Mr Rahman (and others) *could* obtain this sort of material and that that *had* been proved to him, and anger that his daughters had furnished the wherewithal in the first place.
210. I am also satisfied it is more likely than not that the family’s activities then and in the ensuing days included something of a damage limitation exercise, including the daughters’ protestations over their privacy settings, the taking of steps to lock down and/or delete material and accounts, and the ‘piecing together’ of the sockpuppet account theory. I do not need to impute undue artifice or hostility towards Mr Rahman and his daughter in that exercise. I bear in mind it was conducted in circumstances of high reactive emotion, for which panic and fear may not be too strong terms. For Mr Hussain this was focused on reputational concerns. For Ms Hussain I have noted why her emotions were complex and rooted in the family dynamic. Any narrative to hand capable of relieving the pressure was no doubt welcome at the time, and may quickly have become genuinely embedded, aided by the elimination of contemporary evidence of the pictures (or so it had been thought up to the eve of trial) and the ‘resurfacing’ of what the family convinced itself were the same pictures later in the ‘sergey’ message – ‘proof’ that Mr Rahman had ‘lied’ when he said in October 2018 he had got rid of them.

211. There is no direct evidence of any further part played by Mr Rahman in the events complained of, and the ‘sergey’ pictures cannot now *necessarily* be attributed to him so as to enable inferences to be drawn on that basis. The remaining case against the defendants therefore turns on the imputation of responsibility for the ensuing pleaded incidents, and that in turn relies on their connectedness.

### The post-2018 events

212. It is obvious that Mr Hussain became highly aggrieved at his cousins’ departure from his firm Euro Foods Group Ltd, and their attempts to set up in competition with him – so aggrieved that he constrained them to a formal non-compete commitment, attempted to constrain them to abandon their enterprise altogether (surely what he had in mind with his proposed ten-year commitment), threatened legal proceedings against them, and then instituted legal proceedings. The cousins, in turn, no doubt felt considerably aggrieved at this course of conduct. Their own response is the question raised by this claim.
213. The two sides continue to dispute the extent to which the cousins persisted in their own business enterprise during the non-compete agreement, but it is apparent at any rate that they did try to do so afterwards, covid permitting. Mr Rahman and Mr Masum Ahmed both came across to me from the witness box as giving distinctly wary evidence. I make allowance for the family and business history, and indeed for the strain of giving evidence in High Court proceedings, as I do for all the witnesses in this case, and for the genuine difficulty of long-term recollection. But I got the distinct impression from the cousins’ oral evidence, and it comes across clearly from the record of Mr Masum Ahmed’s mother’s phone call, that they considered Mr Hussain to be a man presuming on his business success to the extent of overreaching his entitlement to direct and limit his wider family; and that they considered themselves to be entitled to do what he had done so successfully but was trying to prevent them doing – make a fortune on their own account. I did get an impression of a degree of dogged persistence from them in spite of Mr Hussain’s personal conduct and his deployment of police and lawyers against them, and in spite of the independently difficult business context into which they launched their enterprise.
214. But I did not get any impression of either concerted planning or sophisticated execution of a strategy in response for controlling Mr Hussain or forcing his hand. (Perhaps it is not entirely due to externalities that Mr Hussain succeeded spectacularly in business on his own account and they did not.) I could see that they did not willingly acknowledge any obligation to be open with Mr Hussain or to account to him for their business activities. But what I learned from and about them was more in the way of passive resistance than active subterfuge. That indeed would be of a piece with their own conduct of the initial stages of the present litigation.
215. I say this merely by way of preliminary generalities. Mr Hussain himself certainly links a series of incidents adverse to him, and connects them with the defendants, from his own subjective perspective. He pursues them vigorously (and latterly, on his own account, with considerable animosity) as his rivals and I accept genuinely believes them to have done the same in return *over and above* any legitimate business rivalry (as to which he appears to make little or no concession). But I have to consider the objective probabilities that these incidents are connected to the defendants or any of them, and

*additionally* linked to each other as a course of conduct, and Mr Hussain bears the burden of persuading me of that.

216. No-one ascends to the heights of success Mr Hussain achieved in business, and in public business life, on a friction-free basis. Along the way, over a period of decades, may be expected to lie disappointed competitors, disgruntled employees or ex-employees, resentful debtors at the sharp end of active litigation strategies, and the simply envious. I have evidence Mr Hussain had accumulated all of these, within his family and beyond, abusive and threatening debtors not the least among the latter. His was also a large, extended, and latterly divided, family. I cannot in the circumstances *start* by assuming the named defendants to this claim are the only possible or likely perpetrators of any anonymous incidents complained of.
217. Looking at each *individual* component of the alleged course of conduct after October 2018, I take a broadly chronological approach, but there are suggested evidential links between some of these incidents which makes overly rigid adherence to time sequence unhelpful. Instead, I have started with the period immediately following the events of October 2018, and continued by considering what might be described as the more minor incidents, before turning to the two major incidents on the claimed axis from October 2018 to the present: the ‘drop the charges’ call of March 2020 and the ‘sergey’ message of August 2020. Doing so in that order also helps set the scene for the final exercise in standing back to consider the patterning of the episodes all together.

(a) *The ‘minor incidents’*

218. I start with the memory Mr Hussain asserts of silent phone calls contemporaneous with his active prosecution of the subsequently withdrawn claim. (His brother mentions receiving silent calls as late as early 2022, but Mr Hussain does not; the brother was not cross-examined on this point.) There is no other evidence for the existence of these calls, or, if they did happen, for their connection with either the business dispute or any defendant. Any relevance this alleged activity has to the present claim would be by way of bridging what would otherwise be a substantial temporal gap in the alleged course of conduct between the events of October 2018 and the ‘drop the charges’ phone call said to have taken place in March 2020. I have no real basis outside the alleged overall pattern of incidents, the alleged motivations and conduct of the defendants, and Mr Hussain’s own recollection and perceptions, for being satisfied to the civil standard of proof that the ‘silent calls’ of 2019 happened at all or, if they did, that they can be linked to any *individual* defendant. I return to the alleged silent calls therefore at the stage where I am standing back to consider their potential place in any overall pattern, but otherwise, taken on their own, all I have is wholly unparticularised memories, and suspicion and speculation, which is not sufficient to discharge a claimant’s burden of proof, or even to raise a case to answer.
219. The next incident in time relied on by the claimants is the first of the ‘paternity’ messages sent to Mr Hussain’s brother in February 2020. The two ‘paternity’ messages are evidently linked to each other. The latter references the earlier, citing a gap of over two years. That gap is unexplained, and the express reference to it in the second message is itself rather odd. On their face, these messages are targeted primarily at Mr Hussain’s brother rather than Mr Hussain directly – it is the *brother’s* paternity – and, in express terms, his brotherhood with Mr Hussain – which is impugned, and it is to

him the request for money is addressed. The messages ask for money for a named individual who is still, it would appear, resident overseas.

220. I am able to give no real weight to the evidence of Mr Hussain or his brother that they recognised Mr Masum Ahmed's 'style' in the drafting of these short messages; they gave me no graspable explanation for that recognition and no comparative examples to help make the connection. There is no other objective contextual link to either the defendants or the underlying business dispute. It appears that his brother at the time of the original message did not even mention it to Mr Hussain. I have no evidence from either individual that they considered the paternity allegations to have any plausibility; while I can see that the wide dissemination of allegations of this sort – true or not – would have been unpleasant, it seems that no action was taken by either sender or receiver in response to the February 2020 message. The brother did not act on any suspicions he may have had about the authorship of the message, and suffered no consequences other than the repetition of the message two years later, at a time when the present proceedings were evidently in contemplation.
221. Nor am I persuaded of the suggested linkage of the 'paternity' messages to Mr Masum Ahmed via his mother. The witness who gave evidence of a long-ago conversation in which she was said to have mentioned this paternity story to him was unpersuasive that this was a memory retrieved without, and without inflection by, subsequent suggestion. I had no evidence from the mother herself. Her phone call in December 2021 makes no mention of the story. If this paternity story had any significance and heft at all – and, as I say, I have no weight-bearing evidence that it did – I think it more probable it was, at its highest, one of those family myths that persist, and may be disoblising, but are ultimately accommodated inconsequentially within families.
222. I consider Mr Masum Ahmed's mother's call in December 2021 in any event to have been overclaimed to the point of misrepresentation by the claimants. Mr Masum Ahmed was not, as originally stated (complete with misleading transcript), a voice on that call at all. It was not a threat of violence or shame at the hands of the caller or the defendants. It is entirely recognisable as the expostulation of a family matriarch exasperated by the cousins' quarrel and particularly by Mr Hussain's assertive business conduct, and foreseeing no good coming from it to anyone. I am satisfied that the probable explanation of it was an attempt to get Mr Hussain's brother to, as she saw it, get Mr Hussain to back off and see sense. It failed in that objective, of course.
223. The 'good beating' message of October 2020 – another message to Mr Hussain's brother – is certainly an angry outburst with some connection on its face to the brothers' business activities. That connection is not with Mr Hussain's otherwise-evidenced preoccupation with competition for customers, but this time with competition for recruitment. I am not persuaded it was, was intended to be, or was considered to be, a credible threat of real-life violence rather than an overstated outburst of frustration. It does have a ring of authentic emotion to it, but of an insulting and expostulatory, rather than a threatening, nature. It contains no clear demand. It is again a response to Mr Hussain's brother's activity rather than being to Mr Hussain directly. It is not obviously connected to any of the defendants in and of itself; as between parties in a protracted business disagreement, a job advertisement is perhaps not a particularly salient provocation. The episode is pleaded as being attributable to Mr Mohammed Masood Ahmed (although he was not cross examined on it), but Mr Hussain's brother attributed

it to Mr Masum Ahmed; even if it could be linked to the defendants in any way, I have no clear basis for attributing it to one or another of these proposed candidates.

224. The first of the two short calls in January 2022, to Mr Hussain's brother, is the only pleaded incident, apart from Mr Rahman sending photographs to Mr Hussain in October 2018, with which any defendant admits involvement. Mr Masum Ahmed acknowledges the call and that it was a demand to settle a financial debt. Mr Hussain's brother's recollection is the only direct evidence for a threat of violence on this call. Mr Hussain's own recollection is the only direct evidence for the second call and that it entailed threats.
225. The existence of the first call is both acknowledged, and evidenced by a (partial) recording. The defendants denied any second call and submitted there were reasons to doubt it took place, not least the 'convenient' reference to '*tomorrow*' in the recording which his brother sent to Mr Hussain the day before. I am on balance inclined to be persuaded in view of the contemporaneous police reporting that, more probably than not, two calls took place. If so, the linkage of the second call with Mr Masum Ahmed relies on Mr Hussain's recognition of the caller in each case being the same, and on the identification of the caller with the mention of 'JK' (and that entirely unspecific mention of '*tomorrow*' at the end of the first call), in turn recognised as an associate of Mr Masum Ahmed. As with some others of the alleged incidents, this incident has the puzzling quality of appearing to be a demand to do something the nature of which is not self-evident; both brothers deny recognising the alleged indebtedness. The identification of 'JK' is elusive. But notwithstanding all of this, if Mr Masum Ahmed was responsible for the first call, and a second call took place as reported, then I have more reasons than not to infer Mr Masum Ahmed's connection with it.
226. The brothers reported to the police identical threats that '*your life is in danger*'. Neither reports any specificity about that. I am proceeding on the basis that each brother was aware of the link to Mr Masum Ahmed at the time of the call. I have been given *no* reason to find it probable that Mr Masum Ahmed was, or was understood by the brothers at the time to be, making a literal and credible death threat. I have noted already the overclaiming of threats of violence in Mr Masum Ahmed's mother's call, and in the interpretation of the 'good beating' message. If danger to life was mentioned on either of these calls I am unpersuaded to do other than place it in the same rhetorical register.
227. And I am not persuaded it is more probable than not that photographs were mentioned in either call. I give weight in this context to the absence of any contemporaneous record of such a mention. Mr Hussain's statement to the police refers to 'blackmail' by photos in 2018 and later 'blackmail' by a '*Russian number claiming to be Russian Mafia*'. It records that Mr Hussain is '*afraid this may happen again*'. But there is *no* suggestion of a mention of photos in the call of which he is complaining, which is hard to understand if there had been such a mention. I think it more likely that Mr Hussain's own internal narrative of grievance against the defendants in both the business context and in relation to the original affair of the photographs caused a measure of superimposition in his memory on this account.

**(b) August 2020: 'sergey'**

228. And so I turn finally to the two key events of March and August 2020 – the alleged ‘drop the charges’ call and the ‘sergey’ message. These are the two most striking events in the claimants’ post-2018 narrative, the latter because of the visible deployment of photographs of Ms Hussain in the context of a direct threat to Mr Hussain (the only corroborated example of that) and the former because of the dramatic action Mr Hussain says he took in response to it.
229. Taking the ‘sergey’ message first, I can see that it is expressed as a direct threat to publish photographs, albeit the demand it makes is, as I have set out, rather oblique. Mr Hussain connects it to Mr Mohammed Masood Ahmed and before that to Mr Rahman. The link of logic to the chatlog images has, however, now been broken and there is nothing else offered to connect this incident with Mr Rahman other than Mr Hussain’s suspicions and his own narrative of connectedness. Aside from the proximity of the social media row in the preceding days and the threat to sue, the same can be said of his suspicions of Mr Mohammed Masood Ahmed. On all these suspicions I am unable to place much weight in their own right. There is no immediately contemporaneous evidence that Mr Hussain suspected Mr Mohammed Masood Ahmed – on the contrary there seems to have been a certain amount of ‘piecing together’ involved in the subsequent attribution. And Mr Hussain’s subsequent development of the narrative around this event, including to the police, is both highly coloured (‘*claiming to be Russian Mafia*’) and based on an apprehended propensity for violence and gangsterism by Mr Mohammed Masood Ahmed which is wholly unevicenced in these proceedings (and which I am not able to assume from an admiration for fast cars, expensive watches and theatrical clothing).
230. As regards the proposed connectedness with the unpleasant message Mr Mohammed Masood Ahmed accepts he sent Mr Hussain in the previous couple of days, I have thought hard about the timing proximity and the directly expressed rage and enmity of that message, and about the public threat to sue for defamation which Mr Hussain says he made. But even if that threat to sue was made, there are reasons to hold back from acknowledging it to have real explanatory power for the subsequent course of events. Threats to sue his cousins were hardly startling in their own right, bearing in mind Mr Hussain’s history of recourse to solicitors’ letters to (and police complaints about) them, nor, I infer (and note in relation to the present litigation), as dramatic and incentivising to action as Mr Hussain might have liked to think. And this threat to sue was both informal and made in the heat of the moment. Then there is the contrast between the very direct threat to Mr Hussain which Mr Mohammed Masood Ahmed was content to make in the first message by way of exerting pressure on him, and the distinctly oblique quality of the ‘sergey’ message.
231. And at this point I do have to take into account, in fairness to the defendants, the jolt that the claimants’ late disclosure gave to the place of this incident in their claim. This incident is, as I have said, the *only* corroborated example of a demand (of some sort) clearly associated with the threatened publication of photographs. I have found no such threat associated with the events of October 2018, and no such threat associated with the calls of January 2022 (I consider the ‘drop the charges’ call below). The claimants’ shared and sustained assumption had been that the ‘sergey’ episode *had* to be linked to the defendants because those very photos *must* have been provided by Mr Rahman. But that is no longer a deduction with any sustainable logic, and the claimants are not entitled to rely on any lingering association between Mr Rahman and ‘sergey’ in the



prehistory of this litigation. Ms Hussain's memory is the only evidence linking the 'sergey' photos to *any* (private) Instagram account of hers, and I have explained why I cannot accept that that could discharge the claimants' burden of proving it more likely than not that Mr Rahman was involved in any way or that Mr Mohammed Masood Ahmed was responsible for 'sergey' via him.

232. Mr Mohammed Masood Ahmed was not a party to the withdrawn business litigation, and I was not told he had any direct interest of his own in the underlying business dispute. So I am left with Mr Hussain's evidence that he suspected Mr Mohammed Masood Ahmed on account of the obvious bad feeling between them in the previous day or so, and on account of his dark reputation. This is hard to place real probative weight on. I can of course see the unpleasant nature of this message, albeit it is of a rather different kind from the unpleasant message Mr Mohammed Masood Ahmed accepts he did send. I can see that, notwithstanding the (unexecuted) threat, and whether or not the pictures were publicly accessible at the time or previously, the 'sergey' message is a hostile act which may be described as intended to distress and alarm even if not to procure any specified result.
233. But I am not in the end satisfied that it is not only possible, but *more probable than not* that this message was sent by Mr Mohammed Masood Ahmed, or indeed by Mr Rahman or Mr Masum Ahmed. I allow for the difficulty for claimants in attributing anonymous messages. I hear the claimants' persistent *suspicious*, notwithstanding the broken link of logic resulting from their late disclosure, very clearly. But the totality of the (remaining) case for attributing this message to the defendants, or any of them, in my view does not reach the necessary standard for civil liability. The class of possible sources of the 'sergey' pictures is not a closed one. The class of possible senders of the 'sergey' message is not a closed one either. The antecedent bad-tempered message and his subsequent threat to sue each had, on Mr Hussain's own account, a wide audience. In a partisan and emotionally heightened context there is too great a range of possible actors and authors for me to attribute legal liability for this message by process of elimination. I rather think that Mr Masum Ahmed's mother was right when she said that Mr Hussain could expect to have had ill-wishers well beyond two or three members of his extended family, whatever he himself may have thought about *them*.

**(c) *March 2020 – the withdrawal decision***

234. And so I turn finally to the alleged 'drop the charges' call of March 2020. It is clear to me that this is the epicentre of this claim. Mr Hussain wishes more than anything else not only to restrain his cousins' conduct towards him – their business conduct in particular – but to be permitted to reopen his business litigation against them. And that turns on his ability to establish their wrongful part in his decision to settle it.
235. I start by saying I do not doubt that Mr Hussain passed something of a dark night of the soul on 22<sup>nd</sup>/23<sup>rd</sup> March 2020. His decision to settle his claim was communicated in the early hours, and it appears he discussed it with no-one before taking it. It came as a surprise to others, at work and at home. It was clearly an emotionally freighted decision.
236. The contemporary objective evidence, however, gives on its face an entirely sufficient explanation for his decision, and its emotional quality. It is that Mr Hussain in that

moment foresaw the collapse of his business because of the pandemic – his proudest achievement and his life’s work. And he foresaw danger to his own health and his own life. He was a religious man. He felt called to make peace with his wider family, and did so in the name of Allah. And his decision made business sense also. At a time of existential threat to his firm, spending time and money on litigation was not a priority. Covid might well dispose of his cousins’ business efforts for him anyway. And at any rate it would make them much less likely to have any financial resources worth pursuing. All of this makes it straightforward to take the contemporary evidence entirely at face value.

237. Then there is the evidence of what did *not* happen. There is no sign this time, unlike in 2018, that Mr Hussain asked for evidence of the photos. That is noteworthy: on his own account he had assumed for the past 18 months that the photo episode was over and all traces deleted, so a reference to photos in an anonymous call out of the blue might have been thought especially surprising. His instinct on the last occasion had been, as he saw it, to call his cousin’s bluff – he tried to verify the claim himself, and then demanded proof.
238. But this time he did not reach for solicitors or the police, as he did not hesitate to do on other occasions when he perceived himself to be threatened. If he had suspected his cousins of making the call, he did nothing to confront or restrain them. The messages he sent to Mr Rahman and Mr Masum Ahmed to confirm the withdrawal went out of their way to express religious and family warm-heartedness; they are hard to reconcile with the actions of a man towards his suspected blackmailers after they had just forced him to make an unwanted and disadvantageous business decision. And there is no obvious explanation for the cousins making an anonymous move of this sort just at a time when, considered objectively, covid had given them more reason than at any stage before to think that the litigation might, after all, be the least of their worries. There is no sign this time either that Mr Hussain challenged his daughters on their subsequent social media use after October 2018 (where accidents had indeed happened, as we have seen), or that he alerted Ms Hussain that her own troubles might not be over; it is not easy to understand a deliberate decision not to warn her of or confront her with the possibility that her pictures continued in circulation. And, in the whole of the pleaded course of conduct, this is the *only* example of Mr Hussain capitulating to a threat.
239. I have *only* Mr Hussain’s much later evidence for what he now says happened that night. I do not consider it sufficient to establish another’s liability for the decision he took, for the foregoing and the following reasons.
240. When he brought this case to the High Court in early 2022, the fixed points in Mr Hussain’s claim, memory and emotions were the affair with the photos in October 2018 (when he had ‘*lashed out and nearly destroyed my family*’), the decision to abandon litigation against his cousins in March 2020 which came out of a dark place, and the threatening ‘sergey’ message of August 2020. He had drawn a direct axis between the first and last of these, and it passed through the central decision. He has now put forward a context of other incidents he says can be plotted along or close to that line. And the line ends with the present suit for legal and financial compulsion against his cousins, with the resumption of non-competition litigation included.
241. I have no reason to doubt the sincerity of Mr Hussain’s conviction that what has gone wrong in a life otherwise blessed with conspicuous success should be attributed to his

cousins' jealousy, temerity and spite. But I do think the balance of probabilities comes down on the side of a conclusion that this conviction is the explanation for his evidence, rather than the other way around. The axis between the only two corroborated events featuring photos – October 2018 and 'sergey' – turns out not to be one of inexorable logic after all, because there is no longer any necessary common source for the photos. I am not satisfied to the civil standard that there was ever any threat from the cousins' role in relation to the former, and I am not satisfied to that standard that the threat in the latter points to a role for the cousins. So the probability of an event, occurring in time between the two, involving the cousins, the photographs and a threat – for which there is otherwise no evidence outside Mr Hussain's memory – is not objectively enhanced by the axis he seeks to draw.

242. I think it more probable that the grievance Mr Hussain has against his cousins' commercial behaviour, the personalisation of that grievance in an extended family context, and the reinforcement of that grievance within his own close circle, has overlaid the narratives of business competition and family photographs – both sources of intense emotion in their own right – and superimposed that over the dark emotional night of March 2020. That sort of superimposition is in my view also the more probable explanation for Mr Hussain's association of the January 2022 phone call with photographs, bearing in mind the absence of such a link in his contemporaneous account to the police.
243. Mr Hussain's associative narrative became deeply embedded, and it developed over time. In the succession of police reports and statements he made, his original subjective sense of threat in October 2018 became 'hacking' and 'blackmail', and the 'sergey' incident a mirror-image repeat event, inexorably connected. But *nowhere* in the police reports, notwithstanding the repeated rehearsal of this dramatic narrative, is there any sign of a central event of blackmail with photos in March 2020. I cannot attribute that to memory loss, to its insignificance at any stage, or to reticence in mentioning a traumatic incident and a delicate subject matter. Mr Hussain had no hesitation whatever in going over the trauma of October 2018 and the 'sergey' incident in the developing backstory he kept giving the police.
244. The 'drop the charges' call is a very late addition to the narrative, not surfacing anywhere until nearly two years after the event. As I have already explained, I have been minded to attribute the difference between Mr Hussain's factual accounts and my conclusions, where I have not placed determinative weight on his evidence, to the passage of time, the factional and partisan context, and the natural human propensity to externalise subjective emotion to objective causes. Mr Hussain has demonstrated some insight into a degree of initial exaggeration in the accounts with which he launched these proceedings in acknowledging the need to modify some of his evidence and pleading over time. As to the matter of the 'drop the charges' call, in so far as my conclusion signals anything other than simple failure to discharge the burden of proof, I am comfortably able to attribute Mr Hussain's evidence to mistaken recollection and the dominance of emotional thinking – it is evidence '*from the heart*' but it is subjective rather than objective.
245. In all these circumstances, I cannot accept the claimants' contention that their late disclosure of evidence makes for a seamless shift from the 'sergey' photos being the *same* as those originally sent by Mr Rahman to Mr Hussain, to both being simply *examples* of the use of material obtained by subterfuge. It is a shift which, in fairness

to defendants faced with a last-minute change of position in the claim they have to meet, needs to be thoroughly investigated for its impact on the other evidence before me. In my view, that exercise leads to a significant diminution in the weight I am able to give to the relationship between Mr Hussain's memory, his narrative account of linked events, and the findings I am able to make of objective fact, particularly in relation to the night of 22<sup>nd</sup>/23<sup>rd</sup> March 2020.

**(d) *The pattern of events***

246. In this section, as forecast, I revisit, and test, the fact-finding exercise from the separate perspective that standing back to look at possible overall patterning might persuade me to come to some different conclusions.
247. I start by noting there is no very obvious pattern to the alleged incidents themselves, considered objectively. They are scattered sporadically and irregularly across several years. They present in different formats (calls silent, anonymous or threatening; texts of different kinds). They involve different subject matters – photographs of Ms Hussain, Mr Hussain's brother's paternity, alleged debts, and so on. The consequences said to have been threatened are various – publication of photos, publication of information about Mr Hussain's brother's paternity, physical danger. And only two distinct results are said to have been obtained by all of this, aside from a degree of (general rather than particular) anxiety and concern to Mr Hussain and his family: damage to Ms Hussain's personal health and wellbeing (not contended before me to have been a deliberately sought, or even foreseen, outcome on anyone's part) and Mr Hussain's withdrawal of his claim against Mr Rahman and Mr Masum Ahmed (Mr Mohammed Masood Ahmed was not a party to that litigation).
248. They are not all even hostile acts targeting Mr Hussain (or either of the other claimants). I have explained why I do not consider the events of October 2018 to fall properly in any such category. The 'paternity' and 'good beating' messages were directed to his brother, as was the first of the January 2022 calls. Mr Hussain takes them (and indeed the photographs) personally, and considers their implications for himself to be dominant, but that is not a necessary *objective* reading of them.
249. The claimants suggest it is possible to superimpose on the alleged incidents the course of the business dispute between the parties and find a correspondence. But I am not persuaded of that. Mr Hussain's business litigation – up to the withdrawal decision, and thereafter when he sought to resume matters – may well have been constantly in his own mind, but the events complained of do not very obviously coincide with key events in it. Some of the incidents have no recognisable proximate trigger at all (including the two 'brother's paternity' messages, some two years apart), and some are expressly attributed to proximate triggers only tangentially relatable, if at all, to the business dispute (the 'sergey' message in relation to the 'little kids' incident, and the 'good beating' message in relation to a job advertisement). Mr Hussain may see a correspondence between his conduct of his business dispute and the incidents alleged. But in my view the business dispute was omnipresent in Mr Hussain's mind and he was, subjectively, highly attuned to making connections between it and adverse events in the outside world. Those connections are not *objectively* obvious or persuasive.
250. Looking overall at the events since October 2018, the following features stand out. First, if the defendants had in fact kept hold of surreptitiously obtained photographs of

Ms Hussain for use against Mr Hussain, their failure to give any clear evidence they had done so before the ‘sergey’ incident more than a year and a half later – and then to do that in the context of a relatively trivial social media row with no immediate bearing on the underlying business dispute – is hard to make much sense of. It is also very hard indeed, looking overall at Mr Hussain’s history, evidence, practice and interests, to make sense of his silent capitulation to what he now says he thought was Mr Masum Ahmed’s blackmail in March 2020, or his instrumental deployment of religious and fraternal duty – matters he otherwise took most seriously and sincerely – as a mere cover story (*including* to the cousins themselves in private messages), or the absolute tracelessness of that phone call at any time before the run-up to these proceedings.

251. In relation to the alleged actors, I consider that in this, as in other respects, the recollection of the claimants and their principal witnesses has been strongly inflected by their narrative of the complete identity of the two sets of images, and the logic of that narrative that it thereby inculpates *Mr Rahman*, or lends credibility to the theory that he was involved from the start *and thereafter* in the events of which complaint is made, or that the events of October 2018 must be regarded as setting all the subsequent incidents in motion – or as even being relevant to them.
252. I note further that, in relation to *Mr Masum Ahmed*, the claimants’ suspicions speak volumes but their inculpatory evidence (beyond the January 2022 calls) is vestigial – his ‘style’ in relation to the ‘paternity’ messages, his ‘interest’ in the ‘good beating’ message, his ‘agency’ via his mother, his asserted propensity to heavy-handedness in relation to the alleged call of March 2020.
253. And I note that, in relation to *Mr Mohammed Masood Ahmed*, he sent Mr Hussain an ugly message in the context of a social media slight by a third party, and, while not an invested protagonist in the business dispute, seems otherwise to have attracted his vehement antipathy. But he acknowledges no involvement at all in Mr Hussain’s narrative of anonymous events, and none has been established against him to the civil standard.
254. Bearing all this in mind, and for all the reasons set out individually and cumulatively above, my conclusion is that it is more probable than not that the following is the better account of the factual course of the events I need to determine in order to adjudicate on this claim.

### **Conclusions on the facts**

255. In or shortly before October 2018, Ms Rahman came by chance across Ms Hussain’s Instagram profile page, showing Ms Hussain living her student life. Her father, Mr Rahman, mentioned the implications of that to Mr Hussain in a predominantly family context. After trying to find pictures online himself, both directly and indirectly, Mr Hussain asked Mr Rahman to send them to him. Mr Rahman did so, his daughter having allowed her father to take pictures of them on her phone with his phone. This precipitated a strong reaction by Mr Hussain directed towards his daughter, Ms Hussain, the immediate effects of which on her were exacerbated by her fear of what more he might do. As it turned out, and perhaps thanks largely to the efforts of her mother, the family dynamic did settle back relatively soon and relatively unscathed.

256. Mr Hussain commenced non-compete litigation against his cousins not long afterwards. But he abandoned that litigation in March 2020 at the height of the onset of the covid pandemic, fearing collapse of his business and his own mortality.
257. Not long after, in August 2020, photographs of Ms Hussain came back into his life in the form of an anonymous and threatening message. He assumed a direct connection back to Mr Rahman. It was not the last anonymous and threatening message he was to come across, albeit indirectly. A couple of months later, in October 2020, his brother received a piece of hate mail complaining about Euro Foods Group Ltd's business practices.
258. Then in January 2022, Mr Masum Ahmed organised an ill-judged call to Mr Hussain's brother demanding the settling of 'debts', and another to Mr Hussain which was peremptorily terminated within seconds. Soon after, his brother received an anonymous message asking for money for a claimed relative with a threat to expose the falsity of his claimed paternity. He recalled he had received something similar a couple of years before.
259. By this time, Mr Hussain's business was back on course, and the cousins were showing no sign of conceding his claim to be entitled to exclude them from the marketplace; on the contrary, he had been the object of an impassioned lecture from Mr Masum Ahmed's mother to his brother a week or so before about the unreasonableness of that claim.
260. At that point, and affected by some other incidents he no longer relies on, he brought this claim, holding firmly in his mind the connection he had made between the 'sergey' message and Mr Rahman, attributing to his cousins some of the active, concerted and persistent grievance that he certainly felt himself about them, and bringing the other anonymous approaches into the picture. In his own mind, the narratives of business competition, tensions in the wider family, anonymous threats, and photographs of his daughter, coalesced into a firm recollection that he had been blackmailed and cheated by his cousins out of his lawsuit. And, once more fearing his own mortality, he now seeks by this claim to protect his business legacy and his family from further encroachment by the defendants.
261. The evidence put forward in this claim does not, however, sufficiently support either a connection between 'sergey' and Mr Rahman and/or Mr Mohammed Masood Ahmed, or a blackmail call in March 2020, so as to establish to the civil standard either that any of the present defendants sent the 'sergey' message or that the call took place. I repeat and emphasise, that does not mean I am satisfied that there was no such connection or no such call. It means that Mr Hussain has not discharged his burden of establishing that there was, sufficient to found my finding of such facts. And I reach that conclusion not least because of the claimants' late disclosure. It materially affected the coherence of their previous narrative and the weight I was able to place on some of their evidence. And it demanded an enhanced level of interrogation of its relationship with their previous pleading and evidence in order to ensure that the defendants were not faced with a moving target without having as fair an opportunity to address it as could be provided at an excessively late stage in the litigation.
262. Successful people in the public eye, whether locally or nationally, can expect to divide opinion, particularly where their success is capable of being even imagined – as it often

is – to have been at others’ expense. Not everyone will admire or like them, however many do. It is easy, and common, in the world of modern communications for criticism to be expressed in strong, unreasonable and anonymised form. I have very little evidence about how difficult it might or might not have been for third parties to message the social media accounts of Mr Hussain and his brother, or to obtain a phone number for him.

263. Mr Hussain and his brother on the one hand, and Mr Rahman and Mr Masum Ahmed on the other, became business rivals. Mr Hussain considered their competition unfair and unlawful, and from time to time threatened to, or did, pursue that formally in law. They thought much the same about him. I express no view about the rights and wrongs of the parties’ standpoints; I am not asked in these proceedings to do so. Mr Rahman provided Mr Hussain with unwelcome pictures of his daughter in October 2018 and Mr Masum Ahmed was behind unpleasant calls in January 2022. I am not persuaded from this set of facts to make any wider inferences that it is more probable than not that the cousins or any of them, rather than anyone else, were behind any other anonymous incidents Mr Hussain may have experienced.

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## SECTION F

### CONCLUSIONS ON LIABILITY

#### **Duress and undue influence**

264. On the facts as I have found them, Mr Hussain did not withdraw his claim in March 2020 because of any threats, coercion or undue influence attributable to the defendants or any of them. I have identified no threat from Mr Rahman, direct or indirect, in the events of October 2018. If any silent calls happened in 2019 at all, there is nothing to persuade me to connect them either to any defendant or to Mr Hussain’s decision. He does not go so far as to say they affected his decision, and it is inherently improbable that they did. It appears he was not made aware of the ‘paternity’ message to his brother the previous month until long after he made the withdrawal decision, and there is an any event no credible connection, asserted or apparent, between the two. No other antecedent incidents are pleaded in relation to the withdrawal decision.
265. I have not been able to conclude it objectively more probable than not that Mr Hussain received a phone call in March 2020 telling him to abandon the litigation under threat of having photographs of his daughter published, or that such a call caused or contributed to his decision. I have instead taken the contemporary evidence, and the inherent probabilities, at face value, and consider it correspondingly probable that the explanation for his decision was as he stated, and as it appeared, to everyone at the time.
266. In these circumstances, this head of claim must fail on the facts without further consideration.

#### **Misuse of private information**

267. The first questions I have to address here are whether (a) Ms Hussain and (b) Mr Hussain had a reasonable expectation of privacy in any of the photographs on which

the present claim is founded. This is a highly fact-sensitive question in both cases. I consider Ms Hussain's position first.

268. I have found as probable fact that Ms Hussain made efforts to keep her university life and her home life separate, and that she was strongly motivated to do so. I have accepted she may have considered the probability of her parents finding out about her lifestyle choices relatively low, since the two circles had little day to day intersection. I have accepted she was careful and circumspect about her use of social media, but not to a degree which would have interfered with the social life and norms in which she intended to fit in. I have accepted that she took some risks on social media, including as to her privacy settings, her followership and her own precautions against 'accidents'. I have accepted that at least some pictures of the kind of subject matter with which the present proceedings are concerned have been established to have been publicly accessible from time to time. And I have not been able to conclude, on the balance of probabilities, that either the chatlog images or the 'sergey' images were obtained by the subterfuge of Ms Rahman and Mr Rahman from a private Instagram account. I do not regard these findings as to the public availability of some of her images from time to time as conclusive of her reasonable expectations, but they are not irrelevant either.
269. A reasonable expectation of privacy is not an absolute expectation. I take into account that for a young woman in Ms Hussain's position, the protections afforded by Art.8 ECHR are capable of including material the subject-matter of which relates to the development of personal, relationship and social autonomy in a university environment. They are capable of protecting the freedoms of a young adult woman to develop that autonomy within a circle of her own choosing and without being overborne by necessary reference to the opinions and constraints of others whose limitations on her autonomy she does not necessarily recognise. They do not necessarily impose unrealistic standards of secrecy, to a degree which themselves undermine her freedom and autonomy, as a condition for the protections afforded.
270. I bear in mind, as confirmed by the Court of Appeal in *Stoute & Stoute v News Group Newspapers* [2023] EWCA Civ 523 at [35], that '*the case law recognises that photographs require special consideration*' because they are uniquely 'private' in the sense that misuse may be uniquely intrusive and voyeuristic. I also bear in mind what I consider to be Ms Hussain's vulnerability in her relationship with her father. I do in these circumstances accept that Ms Hussain had a *reasonable* expectation of privacy in – that is to say, a *reasonable* expectation of being able to assert autonomy over the sharing and use by third parties of – any photo images created by her of her social life at odds with the cultural expectations with which her parents grew up.
271. I do not consider any of the images complained of in these proceedings to make any persuasive suggestion of the consumption of alcohol by Ms Hussain. But I do accept that the viewing of images of her more revealing clothing choices and her conduct of a romance with someone of her own choosing and not of her own ethnicity and faith, by a known and collective audience minded to judge these as profoundly transgressing social and moral norms and capable of visiting adverse consequences on her as a result, would be uniquely intrusive and voyeuristic. I consider the 'chatlog' screenshots (aside from the picture of her sister, and the 'drink' picture), the 'sergey' pictures, and some of the images in the 'chatlog' profile-page photos, to fall into this category.



272. I am therefore satisfied in all the circumstances that Ms Hussain had to that extent a reasonable expectation of privacy in these images. I find it harder to recognise such a right independently in her father. The autonomous control Ms Hussain expected to be able to assert over her images was precisely to control access from her family in general and her father in particular. To the extent that that autonomy was lost in the two episodes of disclosure to him, I am satisfied that that did not wholly exhaust and extinguish her expectation of privacy. And to that extent, then no doubt there was some identity of interest between Ms Hussain and Mr Hussain in preventing *further* disclosure and limiting the damage. But I do not consider Mr Hussain's expectation of privacy in these images as being otherwise than parasitic on, and subordinate to, his daughter's.
273. As to the existence of a breach of privacy, then I am not persuaded that Ms Rahman's discovery of the profile page pictures, and Mr Rahman's dependent discovery at the same time, could itself have amounted to a breach by them. There, the public accessibility, whether or not aided by the Instagram algorithm, must largely speak for itself. I do consider the disclosure by Mr Rahman to Mr Hussain – the very last person Ms Hussain wished to see them – as at least *prima facie* to amount to a breach of her privacy, particularly as it took place at the latter's request. I can infer that Mr Rahman was aware that he did not have, and would not have been given, Ms Hussain's consent to that disclosure, and indeed the same might be inferred into Mr Hussain's request. To that extent I am persuaded of a breach of privacy on the facts. But how far Mr Rahman was aware of the circumstances of the relationship between Ms Hussain and her father, and the particular facts of and reasons for her fear of his reaction to the photos, I have no evidence and cannot speculate about.
274. I have not objectively discerned any threat or other misconduct from Mr Rahman in acceding to Mr Hussain's request to be sent the photos. Art.10 ECHR does provide protections for Mr Rahman's own freedom of communication – his freedom to receive and impart information and ideas without the law's interference – not least within a family setting. I have accepted at face value the contemporaneous exchange between the two men as expressing something of a sense of family duties of care as between them. At some level at least, that includes making allowance for the fact that Mr Rahman and Mr Hussain may have considered themselves to be acting in Ms Hussain's ultimate best interests in transacting these images between themselves. I am not persuaded in all these factual circumstances that the balance contemplated in law should fairly and properly come down in favour of finding that Mr Rahman had acted *unlawfully* in showing the pictures to Mr Hussain. I cannot, in other words, conclude that this conduct within a family setting was such as to make it proportionate for the law to interfere.
275. The disclosure of the images within Ms Hussain's family circle, while constituting a *prima facie* breach of privacy, does not, as I say, extinguish their private quality. I have not found as a fact that Mr Rahman retained or otherwise made subsequent use of the photographs. The only other third-party use of the photographs I have considered to be established as fact to the requisite standard is in the 'sergey' message. The author of that message plainly had no legal right capable of being asserted against the claimants' protected expectations of privacy, to make demands, however veiled and/or unexecuted, on the threat of general publication of these photographs. I accept that the message was some form of attempt at blackmail, and therefore a species of expression

which does not enjoy the protection of Art.10. I have not been able sufficiently to identify any of the named defendants with ‘sergey’. But I am persuaded to accept that, on the materials available to me, the first two claimants have succeeded in establishing the liability of the unknown author(s) in misuse of their private information.

### **Harassment**

276. Despite the looseness of the parties’ agreed ‘list of issues’, and the looseness of some of the pleading, I cannot see that *conspiracy* is pleaded or evidenced in this claim. The liability of any defendant in harassment therefore depends on establishing their individual responsibility for a *course of conduct* – at least two events for which they are responsible, either directly by their own action, or indirectly by aiding, abetting, counselling or procuring another’s. Indirect, or accessory, liability requires more than knowledge, acquiescence or sympathy: it requires help and encouragement or some other form of ‘*active approval*’. It is not, for example, sufficient to envelop the defendants in a cloud of general suspicion, as being well-known and/or sympathetic to each other, as belonging in one camp or faction together, or even as being predisposed to satisfaction at the outcome of any alleged incident. Direct *or* indirect liability for harassment must – even in the case of imputing inferred responsibility for anonymous events, and whether or not in the alternative – be clearly identified, pleaded and evidenced against each defendant, in order to advance a claim beyond question, suspicion and innuendo.
277. Then the course of conduct must be constituted by events between which there is some discernible link. It must be targeted at a claimant, it must be deliberate, persistent and oppressive, and serious to a degree with which the criminal law could be expected to engage. In considering that, I am directed by the authorities to have regard to the appropriate degree of robustness to be expected of someone with a chosen public profile, including a business profile.
278. In relation to the pleaded course(s) of conduct in this case, I have not established that either Ms Rahman or Mr Rahman played any part in events subsequent to October 2018. So far as Ms Rahman is concerned, I do not consider her role in coming across the photos and allowing her father to record them on his own phone to be a course of conduct – two or more events – targeted at either individual claimant, which is persistent, oppressive and grave. The facts come nowhere near that definition. So far as Mr Rahman is concerned, his role in capturing the photos, mentioning them, and then providing them at Mr Hussain’s request comes nowhere near the statutory definition either, bearing in mind the context in which I have found it to have occurred.
279. The only other components of the alleged course of conduct to which I have attached responsibility to an identified defendant are the two calls arranged by Mr Masum Ahmed in January 2022. The first call was not *targeted at* Mr Hussain at all, so far as I can see. I reject Mr Hussain’s proposal that any and all targeting of a close family member must be regarded as targeted at him; his status as a victim of events not obviously targeted at him has to be established rather than assumed from any family or business connection. I am not prepared to regard, without more, the importuning of his brother to settle an alleged debt as an act targeted at him. The second call, to Mr Hussain, evidently was targeted at him. But there is no apparent reason to translate two calls related to each other – but targeting different individuals – into a course of conduct targeted at *him*. Even if there were, they would be essentially reduplicative rather than

amounting to distinct and serial episodes. And harassment requires persistence – Mr Hussain’s caller is said to have hung up after a matter of seconds once challenged, and not to have importuned him further.

280. I have not been able to attribute any of the other components of the pleaded course of conduct to any defendant. Reprising those components individually, and considering them in relation to a potential ‘person or persons unknown’:
- (a) I have not been able to connect any silent calls with any defendant or other individual(s) or with any other event complained of.
  - (b) The ‘sergey’ message I have also concluded to be unattributable, but I do consider it an unwarranted breach of privacy and a relatively grave incident. It appears, however, to stand apart from the business context.
  - (c) I attribute Mr Masum Ahmed’s mother’s call in December 2021 to no-one but herself, and do not consider it, alone or in context, to have any quality of harassment in any event. It is emotional and challenging, but it is not threatening or oppressive in any degree with which the law is concerned.
  - (d) The two ‘paternity’ messages I consider relatively grave; they are blackmailing in nature. They are also clearly linked to each other. They are, however, ostensibly targeted not at Mr Hussain, but at his brother and *his* privacy. They occurred two years apart, and are essentially repetitious, the first message having apparently been unexecuted and ignored without consequence. That hardly indicates persistence. I can see no link between these messages and any others of the events complained of. So I do not consider them a qualifying (anonymous) ‘course of conduct’ capable of founding liability to Mr Hussain in their own right, or in connection with any other events.
  - (e) I have not been able to attribute the October 2020 ‘good beating’ message to any defendant or to connect it with any other event complained of. It is certainly rude, offensive and expostulatory, but I do not consider it reasonably capable of being read as a literal threat of violence, or as approaching the level of gravity with which the criminal law might be concerned. It was in any event sent to Mr Hussain’s brother.
281. For completeness, I should add that, with the *possible* exception of the ‘sergey’ message, none of these incidents appears to *target* or indeed to have any other relevance to Ms Hussain. And although Euro Foods Group Ltd is a claimant in this action, and clearly interested in the duress/undue influence claim, any case it may be thought to have had in harassment additional to Mr Hussain’s interests is not clearly pleaded, was wholly undeveloped before me and is unapparent.
282. The result of this analysis would be that no liability in harassment by any defendant to any claimant had been established. Mr Hussain and his brother, however, have evidently been subjected to some unpleasant communications over the years. I have stood back from the individual events to consider whether on any basis it is possible to discern over all a course of harassing conduct here, with any kind of directing mind(s) or instrumentality, including by a person or persons unknown. But the principal difficulty with doing so remains the sheer heterogeneity of the matters complained of.

The most grave examples are the two ‘paternity’ messages to Mr Hussain’s brother and the ‘sergey’ message to Mr Hussain; in addition, although I have not gone as far as considering them a credible threat to life, Mr Masum Ahmed’s two ‘debt’ calls in January 2022, not least because of their quality of attempted anonymity and the deployment of a third party, do have an oppressive quality. There is something intimidatory in all of these episodes but the subject matter, the demands, and the targeting (as between Mr Hussain and his brother) are entirely different. They are also scattered irregularly over a period of two years, and none appears to have had any predictable or identifiable consequence or connection to previous or subsequent events. The ‘good beating’ message remains hard to connect to anything else, and antecedent bouts of silent calls do nothing to supply a missing link.

283. My conclusion therefore is that Mr Hussain and his brother have suffered some of the unpleasant side-effects of their business success and the profile that comes with it – being importuned by nasty begging letters, having angry and offensive criticism directed at them, and being subjected to some different threats of varying levels of explicitness and/or credibility. But I cannot connect them up to something amounting to harassment in law – as opposed to in the vernacular – either as Mr Hussain suggests or at all. Mr Hussain sees the relentless and systemic hostility of his cousins in all these works. I have not been sufficiently persuaded to discern a relevantly linked course of conduct in the first place, nor to place responsibility for it, or its proposed constituent elements, on the shoulders of the defendants or any of them, or any other controlling mind, otherwise than as admitted.

### Conclusions

284. Ms Hussain and Mr Hussain succeed to the limited extent of establishing a misuse of their private information by the person or persons unknown who authored the ‘sergey’ message. As to remedy, they are prima facie entitled to injunctive relief to the extent of their success. But for the reasons given this claim is otherwise dismissed.