Neutral Citation Number: [2024] EWHC 2718 (KB)

Case No: KB-2024-000960

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/10/2024

Before :

MRS JUSTICE HILL

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Between :

(1) TITAN WEALTH HOLDINGS LIMITED **(2) TITAN SETTLEMENT & CUSTODY LIMITED (formerly known as GLOBAL PRIME PARTNERS LIMITED)** **(3) GRETCHEN ROBERTS** **(4) TIFFANY ROBERTS**	**Claimant**
- and -	
MARIAN OKUNOLA	**Defendant**

- -
- -

Robin Lööf and Marcus Field (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Claimant**
The **Defendant** appeared in person

Hearing dates: 9, 10 and 11 October 2024
Further written submissions: 12, 14 and 16 October 2024

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 25 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HILL

Mrs Justice Hill:

Introduction

1. This is a claim for breach of confidence, breach of contract and harassment contrary to the Protection from Harassment Act 1997 ("the PHA").

2. The claims relate, in summary, to the allegedly unlawful use by the Defendant of confidential information belonging to or in the custody of the First and Second Claimants and her alleged harassment of the Third and Fourth Claimants, in the early part of 2024. The Claimants seek final injunctive relief to prevent any recurrence of this or similar conduct, damages and other ancillary orders.

3. The Defendant denies all the claims.

4. This is my judgment on the claims and certain outstanding interlocutory applications after a three day trial from 9-11 October 2024.

The parties

5. The First Claimant is a limited company incorporated in Jersey and registered in the United Kingdom as an overseas company on or around 10 October 2022. The First Claimant, the Jersey incorporated holding company, provides certain central services to all its subsidiaries, including compliance and human resources.

6. The Second Claimant is a limited company registered in England and Wales. It is a wholly owned subsidiary of the First Claimant, having been acquired by the First Claimant in July 2021. It was, until 30 September 2024, named Global Prime Partners Limited ("GPP"). At all material times it operated a business in the financial services sector, providing clearing, settlement and custody services to clients. The Second Claimant's clients provided financial and advisory services to individuals, trusts and businesses seeking investment management and wealth services ("the secondary clients"). The Second Claimant was and is regulated by the Financial Conduct Authority ("the FCA").

7. The Second Claimant is part of the Titan Wealth Group. This comprises a number of affiliated companies registered in Jersey and the United Kingdom which specialise in the provision of fund management, wealth management and asset management services.

8. The Third Claimant was and continues to be employed by the First Claimant as Group Human Resources Director. The Fourth Claimant was and continues to be employed by the First Claimant as Group Compliance Director. Although they have the same last name, the Third and Fourth Claimants are not related.

9. The Defendant has legal qualifications up to and including the Legal Practice Course. She also has several business qualifications including a Masters degree in Business Administration. She has been a specialist in Client Money and Assets ("CASS") since 2011. CASS is a regulatory requirement placed on investment firms by the FCA to

ensure that those firms maintain systems and controls adequate to safeguard client money and assets. She had worked in many compliance and risk roles prior to 2019.

The factual background

10. On 2 August 2022 the Defendant began providing services to the First Claimant as an independent contractor. Her work was carried out under a consultancy agreement using her personal service company Marian Atinuke Okunola Limited ("MAOL"). She was the sole officer and staff member of MAOL and provided services to the First Claimant in the capacity of MAOL's "representative" under the consultancy agreement.

11. On 14 November 2022 the Defendant began work for the First Claimant as a CASS CF10a and Senior Risk Manager. The Claimants' case is that she was, from this date, an employee of the First Claimant, pursuant to an employment contract dated 21 October 2022. The Defendant disputes the validity of her employment contract and contends that if she was employed at all it was by the Second Claimant.

12. The Defendant had a position of significant responsibility. Her base salary was £120,000 per annum, in addition to which she was entitled to a discretionary bonus and, potentially a sign-on bonus. She performed an oversight role, aimed at ensuring the procedures were in place to protect client assets in accordance with the FCA's handbook.

13. On the first day, the Defendant made a complaint about the timing of the payment of her sign-on bonus, saying that if she did not achieve recourse internally within the organisation, she would have to "go externally". She submitted a formal grievance that evening, in which she complained about the timing of the payment of the sign-on bonus and four other issues.

14. On 16 November 2022, the Defendant was asked to take part in a meeting with one of the Second Claimant's major clients. The Fourth Claimant's evidence was that a representative of the client made a complaint about the Defendant's conduct during the meeting to a senior member of staff; and that other members of staff made complaints about the Defendant's conduct. As a result, the First Claimant suspended the Defendant from work that day. It was then decided to terminate the Defendant's employment. Her employment ended on 25 November 2022, eleven days into the probation period.

15. The Defendant contended that her dismissal was unlawful on a variety of grounds, including race discrimination. She issued six claims in the Employment Tribunal against the First and Second Claimants and others. On 25 October 2023 Employment Judge Woodhead found that she had been employed by the First Claimant not by the Second Claimant as she had alleged. All her claims were dismissed. On 20 December 2023, Employment Judge Glennie struck out the last of the Defendant's claims.

16. The Defendant reported the ten judges who had heard the proceedings to the Metropolitan Police, asserting that the failure of her claims was because of the judges' corruption or dishonesty. She pursued various appeals to the Employment Appeals Tribunal.

17. In January 2024, after the conclusion of the Employment Tribunal litigation, the Defendant began what she described in her first witness statement as a "plan for vengeance" against the Claimants. She explained at trial that she wanted to "avenge" herself. This involved, she accepts, sending hundreds of messages to a large number of recipients.

18. On the Claimants' case this has involved two types of unlawful activity.

19. *First*, the Defendant sent a large number of emails and made certain social media posts, using what the First and Second Claimants assert to be confidential information, ostensibly intended to seek to damage their reputation in the market.

20. *Second*, she sent messages said to constitute harassment of the Third and Fourth Claimants.

21. The Defendant broadly accepts sending the messages in question but contends that the information in question was not confidential and/or that she was entitled to use it. She denies that her conduct constituted harassment of the Third and Fourth Claimants.

The procedural history and the trial

Pre-trial

22. On 5 April 2024 Freedman J granted the First, Third and Fourth Claimants an interim pre-action injunction which sought to (i) restrain the Defendant from harassing the Third and Fourth Claimants; and (ii) require the Defendant to cease disseminating confidential information and to take certain steps including delivery up in respect of the confidential information in her possession. On 23 May 2024 Chamberlain J continued the injunction.

23. On 21 June 2024 Chamberlain J found that the Defendant had committed numerous breaches of the injunction and held her in contempt. He imposed a penalty of six months' custody, suspended on condition of compliance with the injunction. On the same date he dismissed the Defendant's counterclaim based on alleged violations by the Claimants of her rights under Article 6 of the European Convention on Human Rights ("ECHR"), set out in Schedule 1 to the Human Rights Act 1998, as well as those under Article 3 (the right to protection from inhumane and degrading treatment), Article 8 (the right to privacy) and Article 10 (the right to freedom of expression).

24. On 10 July 2024 the Defendant made an application for an order that the court strike out the claims and/or grant summary judgment in her favour. On 15 May 2024, Collins Rice J ordered that this application should be listed at the outset of the trial.

25. It is the Claimants' case that the Defendant has continued to breach the injunction.

26. On 9 September 2024 the Claimants applied for an Extended Civil Restraint Order ("ECRO") against the Defendant. This is addressed under Issue (6) below. On the same date the Claimants applied for an order activating the suspended sentence ("the activation application").

27. On 18 September 2024 the Claimants applied for a protective injunction in relation to the Defendant's communications with the Claimants' lawyers.

The trial

28. The trial bundle ran to around 3,500 pages.

29. At the outset of the trial I granted the application for special measures for the Third and Fourth Claimants; and gave the Claimants permission on rely on the fourth witness statement of Michael Fullalove, Chief Executive Officer of the Second Claimant, dated 7 October 2024 ("Fullalove 4"): see [2024] EWHC 2586 (KB).

30. The Claimants called evidence at trial from four witnesses in person: Mr Fullalove, the Third and Fourth Claimants and Yasseen Gailani, the Claimants' solicitor. Save for Mr Gailani, the Claimants' witnesses were cross-examined by the Defendant.

31. The Claimants also sought to rely on a witness statement from Katherine Vernon, dated 18 September 2024 ("Vernon 1"). The admissibility of this statement is considered under Issue (2) below.

32. The Defendant gave evidence in person. In addition to her witness statements several of the sets of written submissions she had filed in advance of the trial contained assertions of fact. She adopted those in her evidence and was cross-examined.

33. The Claimants sought an expedited judgment on their protective injunction application. This was handed down on 18 October 2024. I dismissed the application, but granted permission to appeal, given the novelty of the legal issue it raised: see [2024] EWHC 2641 (KB).

After the trial

34. There was insufficient time during the trial to hear the Claimants' application to activate the suspended sentence. Further directions have been given in relation to that application and it will be heard on or after 8 November 2024.

35. After the trial the Defendant emailed the court on several occasions, primarily to provide information and submission relating to extant criminal proceedings against her. She made a series of further requests of the court. The Claimants responded to the *res judicata* issues raised therein by way of further written submissions filed on 16 October 2024. These matters are addressed under Issue (7) below.

The issues

36. The following issues fall to be determined:

(1) Should the Defendant's application to strike out the Claimants' claims or for summary judgment on them be granted?

If not:

(2) Should the Claimants' application to rely on Vernon 1 at trial be granted and if so, what weight should be attached to it?

(3) Have the First and Second Claimants proved their claims of breach of contract and breach of confidence?

(4) Have the Third and Fourth Claimants proved their claim of harassment?

If any or all of the Claimants' claims have succeeded:

(5) What remedy or remedies should be ordered?

In any event:

(6) Should the Claimant's application for an ECRO against the Defendant be granted?

(7) What is the relevance of the Defendant's communications with the court after the conclusion of the trial to the determination of the issues above?

(8) What orders with respect to costs, if any, should be made?

Issue (1): Should the Defendant's application to strike out the Claimants' claims or for summary judgment on them be granted?

The legal framework

37. Under CPR 3.4(2), the court may strike out a statement of case if it appears to the court that: (a) the statement of case discloses no reasonable grounds for bringing or defending the claim; or (b) the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings.

38. PD3A at paragraph 1.2 provides that a court may conclude that Particulars of Claim fall within CPR 3.4(2)(a) if they "contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant".

39. Under CPR 24.3, the court may give summary judgment against a Claimant or Defendant on the whole of a claim or on an issue if (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

40. In *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 (Ch) at [15], Lewison J (as he then was) reiterated the principle that the court must be careful before giving summary judgment on a claim. He summarised the pertinent principles as follows

> "i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 1 All ER 91;
>
> ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725".

Analysis and decision

41. The Defendant's application for strike out/summary judgment was advanced in a skeleton argument dated 19 July 2024, over some 30 pages. She invited me to determine the application at the outset of the trial. I declined to do so for the reasons given in my judgment at [2024] EWHC 2585 (KB).

42. Having now heard all the evidence at the trial, it is clear to me that even if the strike out/summary judgment application had been determined ahead of the trial, I would have dismissed it. I say this for the following reasons.

43. *First*, as I noted in [2024] EWHC 2585 (KB) at [3], the Defendant's skeleton argument for the application was where she effectively advanced her submissions on the merits of the claims. She repeatedly set out her case on a particular issue and contended that her position was so clear that her application should be granted. However, she did not fairly acknowledge that there was evidence contrary to her case nor properly address the thresholds for a strike out or summary judgment. To this extent, the application was fundamentally flawed.

44. *Second*, the Claimants' pleaded case could not conceivably be described as one that disclosed no reasonable grounds for bringing or defending the claim under CPR 3.4(2)(a): all the elements of the various heads of claim were clearly pleaded; and none of the points the Defendant advanced indicated that any of the claims were such that they did not disclose legally recognisable claims against the Defendant. She placed no reliance on CPR 3.4(2)(b).

45. *Third*, determination of the summary judgment application (and to some extent the strike out application) would have inevitably involved the court being drawn into precisely the sort of "mini-trial" that the authorities indicate is inappropriate at this stage. That was because the application turned on highly factual issues such as, for example, the nature of the circumstances in which the Defendant came into possession of the information said to be confidential, to whom she owed any duty of confidence, whether the communications she had sent the Third and Fourth Claimants met the necessary standard for harassment and whether her conduct was reasonable.

46. *Fourth*, the Defendant was not able to show that the Claimants had no realistic prospect of succeeding on their claims under CPR 24.3(a). My conclusions to this effect mirrored those of Chamberlain J, who concluded that the breach of confidence claims were "seriously arguable" and the harassment claims were "likely to succeed": see, respectively, his first ruling on 23 May 2024 at [22]-[25] and his second ruling of the same date at [9]-[14]. Further, when Chamberlain J found the Defendant in contempt, he found to the criminal standard of proof that she was liable for harassing the Third and Fourth Claimants in the period post-dating the issuing of Freedman J's order on 10 April 2024, by means of messages which were very similar to the ones at issue at this trial: see his judgment on 20 June 2024 at [17].

47. *Fifth*, the Defendant made a series of assertions that the Claimants had not "come to court with clean hands" because they had breached her employment contract. She asserted that the Claimants' legal representatives did not have authority to act on behalf of the First and Second Claimants and that they had sought to abuse the court's process and breach her rights to a fair trial under Article 6. For example, the Third and Fourth Claimants had sought to bring a harassment claim because they could not satisfy the

elements of a defamation claim. For these reasons, she argued that the claim should be struck out as an abuse of process.

48. Having considered all the evidence at trial, I conclude that none of these points are sustainable.

49. I have concluded that her employment contract was valid, as explained under Issue (3) below. I accept Mr Fullalove's evidence in his second witness statement, paragraph 20, to the effect that the Claimants' legal team was properly instructed. It is primarily for the court to ensure protection for the parties' Article 6 rights. My overall impression was that the Claimants' legal team had been scrupulously fair in their dealings with the Defendant, especially given that she was representing herself. The Claimants were entitled to pursue the claims that they considered appropriate. While in some cases, such as *Khan v Khan* [2018] EWHC 241 (QB) at [76i)], the court can refuse relief where a defamation claim is advanced "under the guise" of a harassment claim, that did not apply here: while some of the acts of harassment involved the Defendant seeking to damage the reputation of the Third and Fourth Claimants by publications to other people (such as might ground a defamation claim), she also contacted the Third and Fourth Claimants directly: the "nub" of their complaints was the totality of the Defendant's actions, and that made out an arguable, not abusive, harassment claim.

50. For those reasons, the Defendant's application for strike out/summary judgment would have been dismissed it if had been determined at the outset of the trial; and is now dismissed after trial. It was totally without merit and I certify it as such.

Issue (2): Should the Claimants' application to rely on Vernon 1 at trial be granted and if so, what weight should be attached to it?

51. Vernon 1 was a witness statement from Katherine Vernon, dated 18 September 2024. Ms Vernon is a partner in the Claimants' solicitors' firm and their Compliance Officer for Legal Practice.

52. In Vernon 1 she explained how the firm had put in place measures to limit the Defendant's ability to email members of the firm other than Mr Gailani; detailed the extensive number and abusive content of the emails that Mr Gailani had received from the Defendant; set out the various complaints the Defendant had made about the conduct of members of the firm; and explained how they had been investigated, including by the Solicitors Regulation Authority, and found to be without merit.

53. Ms Vernon was not called to give oral evidence. The Claimants applied to admit her evidence as hearsay evidence under CPR 32.5(1)(b).

54. The Defendant did not object to the statement being admitted but argued that it was of limited relevance to the issues in the trial. Indeed, Mr Lööf agreed as much, saying it did not go to a "central issue" in the claim. The Defendant submitted that if Vernon 1 was admitted, it should be afforded limited weight.

Admissibility

55. CPR 32.5 provides as follows:

> "**Use at trial of witness statements which have been served**
> **32.5**
> (1) If –
> (a) a party has served a witness statement; and
> (b) he wishes to rely at trial on the evidence of the witness who made the statement,
> he must call the witness to give oral evidence unless the court orders otherwise or he puts the statement in as hearsay evidence.

56. Hearsay evidence is defined under CPR 33.1(a) as "a statement made, otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated". This accurately described Ms Vernon's evidence: she was not called to give evidence and the Claimants sought to rely on it as evidence of the matters she set out. For the avoidance of doubt Mr Lööf made clear that where Ms Vernon had given evidence at paragraphs 8, 10, and 11 of her statement about what Mr Gailani had told her, she was merely giving evidence of what she had been told. The Claimants were not relying on those paragraphs for the truth of their content.

57. There was legal argument about whether the Claimants should have served a hearsay notice in relation to Ms Vernon's evidence. I am persuaded that they were not required to do so because of the rather unusual provision in CPR 33.3(aa), which makes clear that the duty to give notice of an intention to rely on hearsay evidence does not apply "to an affidavit or witness statement which is to be used at trial but which does not contain hearsay evidence". Ms Vernon's statement did not, on its face, contain hearsay evidence: rather, her evidence became hearsay due to her absence from trial.

58. I therefore admit Vernon 1 as hearsay evidence under CPR 32.5(1)(b).

59. If that analysis is wrong, I admit it under the general power created by the words "unless the court orders otherwise" in CPR 32.5(1)(b). I do so primarily because the Defendant did not object to Vernon 1 being admitted.

Weight

60. The Civil Evidence Act 1995, section 4 provides that in estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence, and that regard may be had in particular, to **(a)** whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness; **(b)** whether the original statement was made contemporaneously with the occurrence or existence of the matters stated; **(c)** whether the evidence involves multiple hearsay; **(d)** whether any person involved had any motive to conceal or misrepresent matters; **(e)** whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose; and **(f)** whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight.

61. As to **(a)**, Mr Lööf accepted that it may have been a mistake for the Claimants not to arrange for Ms Vernon to attend court, as Mr Gailani had done. I do not criticise them

for this. Their pre-trial checklist and trial timetable made clear to the Defendant on 13 August that they did not intend to call Ms Vernon at trial and at no time had she queried the position. This was in the context of the Defendant not being shy about requesting the attendance at trial of various people from whom the Claimants had not served witness statements.

62. As to **(b)**, the statement was made on 18 September 2024 and dealt with events up to 14 September 2024. It was therefore contemporaneous.

63. It did not involve multiple hearsay under **(c)**.

64. In my judgment there was no basis for the oral submissions the Defendant made to the effect that Ms Vernon did have a "motive to conceal or misrepresent matters" under **(d)** in that she was only making the statement to unfairly contend that the Defendant was a "troublemaker" and to "influence the court in siding with [the Claimants]". Rather, I accept that Ms Vernon was simply describing the process the law firm had gone through to protect its staff and investigate the complaints the Defendant had made to them. She did so in a neutral, independent manner.

65. Similarly, I cannot accept the Defendant's submissions to the effect that although Ms Vernon had signed the statement, it was doubtful the words in it were hers, under **(e**). Ms Vernon is an officer of the court and well aware of the significance of signing a statement of truth on a witness statement of this kind.

66. Pausing there, these unjustified aspersions on Ms Vernon's conduct were of a piece with the complaints the Defendant had made about Mr Gailani to the firm and to the police, as noted in my judgment on the protective injunction application: [2024] EWHC 2641 (KB) at [10].

67. There was no basis for any suggestion under **(f)** that the circumstances in which the application to adduce Vernon 1 as hearsay were such as to suggest an attempt to prevent proper evaluation of its weight: rather, it appears that the failure to arrange for her to attend trial or otherwise address how her evidence would be admitted was an oversight, in the context of very complex litigation.

68. For all these reasons I consider that Vernon 1 is to be afforded significant weight. I accept it as an entirely accurate account of the matters described within it. That said, its relevance to the issues for trial remains relatively limited.

Issue (3): Have the First and Second Claimants proved their claims of breach of contract and breach of confidence?

The parties' cases in overview

69. The claims of breach of contract and breach of confidence arise out of a series of communications from the Defendant. These involved posts on the LinkedIn social media platform and "mass" emails to many hundreds, if not more, people. The Defendant's communications criticised the First and Second Claimants in robust terms and many attached documents belonging to them.

70. The confidential Schedule 1 to the Particulars of Claim summarises in tabular form the 23 such messages relied on by the First and Second Claimant. They refer to the use by the Defendant of confidential information between 28 March 2024 and 11 April 2024, and some on unknown dates, but believed to be before 28 March 2024. Each of the entries in the table was supported by the contemporaneous evidence in the trial bundle. There were at least three posts on LinkedIn and thirteen mass emails, before and after Freedman J's injunction.

71. The First Claimant contended that by these actions, the Defendant was in breach of the express and implied terms of confidentiality in her employment contract. Both the First and Second Claimants argued that she was in breach of the equitable duty of confidence she owed them.

72. The Defendant challenged the validity of her employment contract. She also argued, in summary, that the information in question was not confidential; that she had not stolen, abstracted or misappropriated it; and she had not used it in any unlawful way.

The contract

73. The Defendant argued that her employment contract was void because it was not signed by an authorised signatory and was a forgery.

74. However, as a matter of law, the Defendant is estopped from taking this point in this claim because it was conclusively determined against her in the employment litigation, specifically in the judgment of Employment Judge Woodhead dated 25 October 2023 at paragraphs 46.9-46.10.

75. There, the Judge dismissed the Defendant's argument that her employment contract, naming the First Claimant as her employer, was a forgery or in some way fraudulent; and rejected her contention that employment with that entity was a sham. Further, the Judge held that even if there was no evidence that Damian Sharp, who had signed the contract, was an authorised signatory, this did not mean that her employer was the Second Claimant as the Defendant had contended. On 5 February 2024, the Employment Appeal Tribunal found that there were no reasonable grounds for appealing Judge Woodhead's ruling.

76. That the decisions of Employment Tribunals are binding for the purposes of the issue estoppel principle is clear from *Green and another v Hampshire County Council* [1979] ICR 861 and *Watt (formerly Carter) and others v Ahsan* [2008] 1 AC 696 at [33]. It is correct that the House of Lords reiterated in *Watt* at [34] that there is a discretion to re-open an issue in subsequent proceedings where there are special circumstances in which it would cause injustice not to do so (citing *Arnold v National Westminster Bank plc* [1991] 1 AC 93). However, the Defendant pointed to no such special circumstances here, nor can I identify any.

77. Even if the issue was re-opened, there is clear evidence before me that addresses the point, in the form of Mr Fullalove's evidence to the effect that Mr Sharp had the requisite authority to sign the contract. This was set out in Fullalove 4: see [2024] EWHC 2586 (KB) at [5]. The Defendant advanced no credible basis for her allegation of forgery.

78. Finally, even if Mr Sharp did not have formal authority to bind the First Claimant by signing the contract, their reliance on the contract in this claim has ratified the ostensible authority to bind them that he displayed.

79. For these reasons I find that the Defendant was an employee of the First Claimant from 14-25 November 2022.

The Defendant's duties of confidence under the contract

80. The Defendant's employment contract with the First Claimant contained an express obligation to preserve the confidentiality of their information in clause 14.1, to this effect:

> "You will not, during your Employment or after it ends, use or disclose, directly or indirectly, to anyone other than in the proper course of your duties any information of a confidential nature/Confidential Information…relating to the Company or its businesses or trade secrets."

81. "Company" was defined for the purposes of this clause to mean the First Claimant.

82. "Confidential Information" was defined for the purposes of this clause in paragraph 7 of Schedule 1 to the contract to include:

> "…any confidential information relating to actual or potential clients, employees, officers, shareholders or agents of the Company, prices, pricing structures or policies, marketing information, intellectual property, business plans or dealings, technical data, financial information and plans, designs, formulae, product lines, research activities, advisors' reports, lists of actual or potential clients of the Company any document marked 'Confidential' or 'Secret', or any information which you have been told is confidential or which you might reasonably expect the Company to regard as confidential, or any information which has been given to the Company in confidence by potential clients or other persons."

83. Further, I am satisfied that a duty of confidentiality would be implied into the Defendant's employment contract given the nature of the work she was contracted to undertake and the nature of the information to which she had access. She was a highly paid professional whose role was to ensure compliance with the FCA's rules in relation to the safeguarding of client money and assets. By definition, her employment relationship involved a high degree of trust and confidence between her and the First Claimant. The Defendant's employment contract had emphasised the need for confidentiality, as set out above.

84. Further, the First Claimant operates in a highly competitive global market for provision of the kind of financial services in which it specialises. As Mr Fullalove explained in his evidence, a "critical element" of its position in that market is its reputation for keeping confidential client information and the security of its information and

management systems. Another "key component" of the First Claimant's success is its ability to keep confidential the clients with whom it does business.

85. In *Faccenda Chicken Ltd v Fowler* [1987] Ch 117 at 136B-138H, it was held that the nature of the employment, the nature of the information and whether the employer had impressed on the employee the confidentiality of the information were relevant to whether the employee's implied duty of confidentiality continued after the end of the employment relationship. All those factors applied here.

86. Accordingly, the Defendant owed the First Claimant duties of confidence through the express and implied terms of her employment contract, and these continued to apply after the end of her employment.

The Defendant's duties of confidence in equity

87. In *Coco v A.N. Clark (Engineers) Ltd* [1968] FSR 415 at 419 Megarry J held that the first two elements of a breach of confidence claim are that (i) the information has "the necessary quality of confidence about it"; and (ii) it was imparted "in circumstances importing a duty of confidence".

(i): Coco element (i)

88. The information used by the Defendant after the end of her employment included the following:

(i) Client lists where the names and non-public contact details of the clients were confidential, as was the fact that they were clients, in particular, of the Second Claimant. For example, the Defendant used the "DFM Client List", an Excel spreadsheet that ran to over 50 pages when printed. *JN Dairies Limited v Johal Dairies Limited and another* [2009] EWHC 1331 (Ch) at [112] is specific authority for the proposition that such lists can be confidential, and they were here;

(ii) Contact details of clients, specifically email addresses for them, which were not only used by the Defendant but visible to others who received her mass emails;

(iii) Contact details of secondary clients, to which the same considerations applied;

(iv) Contracts of employment of employees of the First or Second Claimants: for example, a copy of the employment contract of the Third Claimant which the Defendant circulated in an email on 11 April 2024;

(v) Information regarding assets held by clients of the First and Second Claimants. One example of this was an Excel spreadsheet entitled "HR Assets to Be Transferred", which set out thousands of rows of data about the asset holdings of secondary clients. It ran to almost 80 pages when printed;

(vi) Information regarding assets held by secondary clients;

(vii) Information on the internal affairs of the First and Second Claimants derived from confidential sources, such as the fact that the Second Claimant has received a negative CASS audit report;

(viii) Documents recording interactions with the FCA, such as communications with a member of the FCA's supervision team dated 17 August 2022 and 16 September 2022. Such communications are not only "business sensitive" but are considered as such by the FCA: see the FCA Handbook (August 2024 edition) Chapter 2, paragraph 2.2.4;

(ix) Internal correspondence regarding interactions with the FCA, such as an email from the First Claimant's Head of Risk dated 14 September 2022; and

(x) Internal documents concerned with the CASS compliance and remediation requirements of Platform 1, a competitor and supplier to the Second Claimant, which may have been created by the Defendant herself but based on information provided in trust to the First and Second Claimant by Platform 1.

89. All of this information was plainly highly sensitive and confidential in terms of its content. It clearly had the "necessary quality of confidence" about it. This much was underscored by the fact that several of the First and Second Claimants' clients and secondary clients who came to know of the Defendant's actions expressed their grave concerns about her use of their confidential information; and from the fact that the Defendant's disclosures have had a very significant adverse effect on the Titan Wealth Group and their client relationships, as Mr Fullalove explained.

90. In light of these matters the Defendant's case that the information did not consist of confidential information or trade secrets, or was somehow in the public domain (by analogy with *Cray Valley Ltd v Deltech Europe Ltd* [2003] EWHC 728 (Ch) at [54]) is not, in my judgment, credible. Neither is her argument that the information was merely material that illustrated her know how, expertise or skill set, albeit that she may have used some of those skills to create the document at [88](x) above.

91. The Defendant is a very experienced financial services professional: indeed when asked at trial whether she was "one of the best" in her field, she responded "If not the best". Given her level of experience in the field, she would have been well aware of the true status of this information as confidential.

92. Indeed, she accepted that the material was confidential as the hearing before Freedman J, specifically accepting that disclosure of it "does and can end in reputational, financial and regulatory damage". She also accepted in cross-examination at trial that much of the information was such that Titan "wanted to keep secret"; and that some of the material was explicitly marked as "confidential".

(ii): Coco element (ii)

93. The confidence that was placed in the Defendant as part of her work and the nature of her role strongly suggests that the information was imparted to her "in circumstances importing a duty of confidence".

94. This had always been the case in terms of her relationship with the First Claimant: the agreement under which the Claimant provided consultancy services before she was employed contained a confidentiality clause very similar to clause 14.1 of the employment contract.

95. Although employed by the First Claimant, the Defendant worked for, and for the benefit of, the Second Claimant. Some of the information in question belonged to the Second Claimant. However given the wording in her contract, and the circumstances, the First Claimant would have expected her to keep it confidential when they provided it to her, or when she obtained it from the Second Claimant.

96. In addition to the points made above about the alleged lack of confidentiality of the documents, the Defendant relied on two further matters relating to the "circumstances" of how she had come into possession of the information.

97. *First*, she pointed to the fact that at least some of the information had been downloaded on to her personal laptop by an employee of the First/Second Claimants on 2 November 2022, before the start of her employment. She argued that she had not, for example, stolen it, or misappropriated it in any underhand or unlawful way. Even if this description of the means by which the Defendant came by the information is correct, it does not change the confidential nature of the information or mean that thecircumstances did not import a duty of confidence. Similarly, her argument that the First and Second Claimants may have seen some of the documents in the bundles for the Employment Tribunal proceedings but did not take action at that point did not change the nature of the material. Moreover it is obvious that they did take swift action once the Defendant had actually used and published the information externally, after the conclusion of the Employment Tribunal proceedings.

98. *Second*, the Defendant also drew support from the fact that some of the information, for example the Third Claimant's contract referred to under [88](iv) above, had been disclosed to her in the Employment Tribunal litigation. However none of the exceptions to the prohibition on further use of documents disclosed in litigation set out in CPR 31.22 (which applies by analogy to Employment Tribunal litigation: see *IG Index Ltd v Cloete* [2015] ICR 254) applied. Moreover even if, for example, the documents had been referred to in open court or in judgments, this would not necessarily have resulted in them losing their confidential nature: see *Payone GmBH v Jerry Kofi Logo* [2024] EWHC 981 (KB) at [57], citing *Mohammed v Ministry of Defence* [2013] EWHC 4478 (QB). This document was also rendered confidential by the Commissioners for Revenue and Customs Act 2005, section 18, given that it related to income and thus tax liabilities for income tax.

99. For all these reasons, *Coco* elements (i) and (ii) are both satisfied.

100. Accordingly the Defendant owed both the First and Second Claimant an equitable duty of confidence on terms equivalent to those set out in her employment contract.

The Defendant's use of the confidential information

101. The Claimants' evidence shows that on many occasions the Defendant used the ten categories of the First and Second Claimants' information set out at [88] above without

their consent. For example (i) at least four times the Defendant circulated the "HR Assets to be Transferred" spreadsheet; (ii) at least six times, she circulated a spreadsheet containing over 1,000 names and email addresses of secondary clients; and (iii) on the same number of occasions she circulated the first page of a letter from the Second Claimant to the FCA which addressed an adverse CASS audit opinion.

102. In my judgment all of these actions involved breaches of contract and breaches of her duties in equity. Specifically, action (ii) above involved the Defendant using "confidential information relating to actual or potential clients" and/or "financial information" and/or "lists of actual or potential clients of the Company", within the definition of confidential information in her employment contract (set out at [82] above). Action (ii) above involved her using information which she had been "told [was] confidential" and which she "might reasonably expect the Company to regard as confidential" within the same definition.

103. The Defendant did not dispute sending the messages in question, but argued that she was "permitted to own and use data as she pleased". Indeed she made this clear at the time. For example, one recipient of her mass emails responded saying "Please stop e-mailing me, I don't want your daily hate in my e-mail" to which the Defendant replied, "No. GPP gave me your data therefore I can do with it what I want".

104. In her Defence, she suggested that there was an implied course of dealing between herself and the First and Second Claimants supporting her ongoing use of the information. She gave evidence that this had been the case in past business relationships where she was a contractor.

105. In the general context of this sector, namely financial services, it is inherently improbable that an employee would be able to use confidential data as they pleased. Moreover, there was extensive evidence that this was not the case in the specific context of her relationship with the First and Second Claimants, namely (i) the express terms of the consultancy agreement and employment contract which limited onward use of the information; (ii) the fact that, as Mr Fullalove explained, the First Claimant disabled the Defendant's access to their systems upon her suspension on 16 November 2022; and (iii) the fact that, as the Third Claimant explained, leaving employees are expected to return confidential information in accordance with their contract.

106. She contended that the Second Claimant had "never been CASS compliant" and that they had been "CASS-adverse since they entered into the CASS space". She suggested that her disclosures were justified because the clients and secondary clients were entitled to know what was happening within the Second Claimant organisation. That argument was evidentially flawed because (i) the Defendant waited over a year until the end of the employment litigation before sharing information that was already out of date; (ii) the Defendant was aware that the FCA was already involved; and (iii) contemporaneous documentation from mid-November 2022 suggested that she thought that the Second Claimant was moving rapidly towards CASS compliance at that time. Indeed at trial she accepted this and said it was "because of me" (ie. her efforts).

107. Moreover, as a matter of law a motive of this kind does not provide a defence to the First and Second Claimants' claims of breach of contract and confidence.

Conclusion on Issue (3)

108. For these reasons I conclude that the Defendant (i) breached her contract with the First Claimant; and (ii) breached the equitable duties of confidence she owed the First and Second Claimant. The First and Second Claimant's claims of breach of contract and breach of confidence therefore succeed.

Issue (4): Have the Third and Fourth Claimants proved their claim of harassment?

The legal framework

109. Under the PHA 1997 section (1)(a), a person must not "pursue a course of conduct (a) which amounts to harassment of another, and (b) which [they] know…or ought to know amounts to harassment of the other".

110. A "course of conduct" must involve, in the case of conduct in relation to a single person, "conduct on at least two occasions in relation to that person": section 7(3)(a).

111. By virtue of section 1(2), the person whose course of conduct is in question ought to know that it amounts to harassment of another if "a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other".

112. By section 1(3)(c), section 1(1) does not apply to a course of conduct if the person who pursued it shows "that in the particular circumstances the pursuit of the course of conduct was reasonable".

113. In *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224 at 234D, Lord Nicholls held that in order to constitute harassment, a course of conduct needs to cross the line "between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable [and] of an order which would sustain criminal liability under section 2 [of the PHA]".

The parties' cases in overview

114. The parties agreed that from 17 January 2024 the Defendant sent a large number of messages to and targeting the Third and Fourth Claimants.

115. The Third and Fourth Claimants claimed that the content of these messages was grossly offensive and abusive; and that this was intended to and had the effect of humiliating them in front of their colleagues and contacts in the industry. They contended that the messages amounted to harassment contrary to the PHA, sections 1(a) and 7(3).

116. The Defendant disputed that there was a "course of conduct" and argued that the *Majrowski* threshold was not met: rather, her emails were a "roast", namely "a form of comedy, originating in American humour in which a specific individual, a guest of honour, is subjected to jokes at their expense, intended to amuse the event's wider audience". She also argued that the reputation of the Third and Fourth Claimants was "fair game" because they had, in fact, behaved as she alleged, principally by securing promotion through the provision of sexual favours. Moreover, they had in fact defamed

her, victimised her and harassed her on grounds of her race and sex. The substance of her submissions therefore invoked the statutory defence in the PHA, section 1(3)(c).

Analysis and decision

(i): The course of conduct element

117. The messages relied on by the Third and Fourth Claimants were summarised in a table at Schedule 2 to the Particulars of Claim. They were sent between 17 January 2024 and 11 April 2024. There are some 17 messages on the table. It is not known how many people the Defendant sent the messages to because of her use of the "bcc" email function.

118. These messages were sent directly to the Third and Fourth Claimants and/or they related to them in that they were mentioned in the content of the messages. I am satisfied that the Third and Fourth Claimants were the victims of all the messages in that they were "foreseeably, and directly, harmed by" them: *Levi v Bates* [2016] QB 91 at [34], per Briggs LJ, even if they were not directly addressed to them.

119. The Defendant sent messages on at least two occasions in relation to each of the Third and Fourth Claimant, thus satisfying the "course of conduct" requirement in the PHA, section 7(3)(a) in relation to each of them.

(ii): The Majrowski threshold

120. In my judgment, the messages taken together comfortably met the *Majrowski* threshold for the following reasons.

121. *First*, objectively viewed, the messages contained highly sexualised, offensive, misogynistic threatening and abusive material to, or about, both the Third and Fourth Claimants. This was in the form of the words used by the Defendant. These included suggestions that the Third Claimant was linked with Adolf Hitler, references to the Fourth Claimant's genitals and personal hygiene and the suggestion that they had secured promotion through sexual favours. It was also in the form of images of the Third and Fourth Claimants which had been indecently doctored.

122. *Second*, the content of the messages went far beyond humour or a "roast". Applying "reasonably enlightened, but not perfectionist, contemporary standards" to the messages, they were "couched in terms liable to cause gross offence to those to whom [they related]": *DPP v Collins* [2006] 1 WLR 2223 at 2228B. They would quite likely constitute messages of a "grossly offensive or of an indecent, obscene or menacing character" for the purposes of the offence of improper use of a public electronic communications network in the Communications Act 2003, section 127(1).

123. *Third*, the "social or working context" in which the messages were sent can be relevant to finding the *Majrowski* threshold met: *Dowson and ors v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB), at [142(5)], per Simon J. The context here was a professional working environment. The Third and Fourth Claimants were senior and highly respected individuals in the field. The Defendant's conduct in sending these messages was intended to and did embarrass and demean the Third and Fourth

Claimants in the eyes of their professional colleagues, clients, others who knew them in the industry and their regulator.

124. *Fourth*, the Defendant made her intention in sending the messages clear: on 21 March 2024 she stated that her "goal in life" would be to "destroy" the Third Claimant, along with the First and Second Claimants; and on 29 March 2024 she emailed a group of Titan staff, including the Third and Fourth Claimants, stating in capital letters that her "employment" from then on would be "ruin" them. At trial she accepted that her intention had been to cause "maximum harm…reputationally" to the Third and Fourth Claimants because she held them "totally responsible" for her "having been sent to the Employment Tribunal to be tortured psychologically". The fact that the Defendant engaged in this conduct with this kind of "malign intent" is a further reason for finding the *Majrowski* threshold met: *Hourani v Thomson* [2017] EWHC 432 (QB), at [149], per Warby J.

125. In closing submissions the Defendant relied on *Khan v Khan* [2018] EWHC 241 (QB). She correctly identified that on the facts of that case the Claimant could not show that he would be likely to succeed at trial in showing harassment through emails sent to him: see, for example, [75i)]. However decisions of this kind are inevitably fact-specific. *Khan* did not establish any rule, nor could it, to the effect that emails alone cannot amount to harassment.

(iii): The impact on the Third and Fourth Claimants

126. The Third and Fourth Claimants gave entirely credible and persuasive evidence about the impact of these messages on them. They both gave evidence, which I accept, that they have been caused distress, anxiety, and fear.

127. The Third Claimant explained that she had worked in Human Resources for over 20 years but had never been subjected to the kind of abusive behaviour in which the Defendant had engaged nor seen others behave in this fashion. She said she was particularly concerned by the threatening and openly aggressive content of some of the messages and had a level of "constant concern" about "what the Defendant will do next to attack me". She was fearful that her high levels of anxiety and fear would affect her work and home life. She had been contacted by clients about the message; had tried unsuccessfully to block the Defendant's messages; and had reported the matter to the police.

128. The Fourth Claimant described how she had also worked in her specialist field (Compliance) for almost 20 years and had never received or witnessed this kind of "unpredictable intense abuse" before. She had a high level of anxiety about what the Defendant would do next. She said that her role required her to be a professional person on "day-to-day basis"; and she had found having to discuss the Defendant's messages with clients, colleagues and the FCA "utterly humiliating".

129. The Defendant's stated intention and the widespread circulation of the messages show that, objectively, the impacts the Third and Fourth Claimants describe were understandable.

(iv): The knowledge requirement

130. The knowledge requirement in the PHA, section 1(2) is wholly objective: see, the cases cited in *Hayden v Dickenson* [2020] EWHC 3291 (QB), at [44iv)]. Here, any reasonable person would consider that this course of conduct amounted to harassment. In fact, it is clear that not only did the Defendant know that her conduct would cause anxiety, alarm, and distress, but that is what she intended.

(v): The section 1(3)(c) defence

131. The statutory defence in the PHA, section 1(3)(c) could only avail the Defendant if her conduct was "reasonable" by a "wholly objective" standard: *Hayes v Willoughby* [2013] UKSC 17, at [11], per Lord Sumption (albeit obiter).

132. She contended that the messages constituting the alleged course of conduct the subject of the main claim represent "the truth" and "her truth" about the behaviour of the Third and Fourth Claimants. Truth itself is not necessarily a defence to conduct which would otherwise amount to harassment, albeit that the truth of any communication alleged to amount to harassment can, in principle, be relevant to whether it was "reasonable": *Law Society v Kordowski* [2011] EWHC 3185 (QB) at [164] and *Hourani* at [188].

133. However, in the context of determining the special measures application I have already accepted the Third and Fourth Claimants' submission that the truth or otherwise of the factual assertions made by the Defendant in the messages is not, in this case, relevant, for two reasons: (i) the messages in question fall into the category of conduct which could never be justified with reference to the content of the message sought to be conveyed such that proof of falsity is not required (see *Kordowski* at [133]); and (ii) those messages are offensive and demeaning even if reasonable people are unlikely to be believe them (see *Pattinson v Winsor* [2024] EWHC 230 (KB) at [24]): see [2024] EWHC 2586 (KB) at [21]-[23].

134. There was no support in the material before me for the Defendant's assertions that the Third and Fourth Claimants had defamed her, discriminated against her on grounds of her race and sex, or harassed and victimised her. There was simply no evidential basis for the Defendant's suggestion that the Claimants had somehow tarnished her reputation: the Third Claimant confirmed at trial that the Claimants had made no public statement about the Defendant's dismissal, nor was she able to point to any such statement herself. To the extent that she raised complaints of discrimination in the employment litigation, they have been conclusively determined there in any event. Even if the Defendant had made out any of these allegations, that would not of itself, make out the section 1(3)(c) defence.

135. Given that the complaint against the Defendant was of harassment by publication, it is necessary to consider the Defendant's right to freedom of expression under Article 10(1) of the ECHR: *Hayden* at [44vi)]. However, I accept Mr Lööf's submission that given the content of the messages, their intent and their impact, the Defendant's Article 10(1) rights weigh lightly in the balance compared to the "rights of others", namely the Third and Fourth Claimants, under Article 10(2).

136. For these reasons, the Defendant cannot make out a defence to the Third and Fourth Claimants' claims of harassment.

Conclusion on Issue (4)

137. Accordingly the claims of harassment brought by the Third and Fourth Claimants succeed.

138. To the extent necessary, I conclude that a finding of harassment against the Defendant is a necessary and proportionate interference with her Article 10 rights.

Issue (5): What remedy or remedies should be ordered?

Remedies for breach of contract and breach of confidence

(i): Injunctive relief

139. The First and Second Claimants seek a final injunction to prevent the Defendant engaging in further misuse of their confidential information.

140. An injunction of this kind is the ordinary remedy where an employer seeks to enforce obligations against an employee: *D v P* [2016] EWCA Civ 87; [2016] ICR 688 at [21]. A similar approach applies to a breach of confidence claim of this kind: *prima facie* an injunction will be granted to restrain a future breach, even if the defendant would be able to pay damages for the breach: *Ocular Science Ltd v Aspect Vision Care Ltd* [1997] RPC 289 at 404.

141. I am satisfied that it is more likely than not that the conduct by the Defendant which the draft injunction seeks to restrain would otherwise breach her employment contract for the reasons given under Issue (3) above. Accordingly the case-law dictates that the burden shifts to the Defendant to show that there are exceptional circumstances such that an injunction should not be granted: *D v P* at [21]-[23]. The Defendant has pointed to no such circumstances.

142. In addition to these general principles, there are two specific reasons why an injunction of this kind would be appropriate on the facts of this case. *First*, the losses which would be sustained by the First and Second Claimants if there was further misuse of their confidential information are likely to be extensive, including claims brought against them by their clients or secondary clients, a reduction in their goodwill and the loss of the further management time required to deal with the negative consequences of the Defendant's actions. Such losses are unlikely to be easy to quantify. *Second*, the Defendant has indicated many times that she is impecunious. Accordingly, any damages awarded to the First and Second may be irrecoverable.

143. For all these reasons I am satisfied that it is appropriate to grant the injunction sought by the First and Second Claimants, to restrain the Defendant from further breaches of contract and confidence in respect of their confidential information.

(ii): Damages

144. The First and Second Claimants also seek damages for the Defendant's breaches of contract and confidence. In part because of the Defendant's likely impecuniosity, the First and Second Claimants took the pragmatic decision not to incur the costs of providing detailed evidence as to the quantum of their losses from her

conduct. However, I accept that they are entitled to an award of general damages to reflect, in a "broad brush" way, the losses they have undoubtedly suffered.

145. One way of quantifying so called "negotiating damages" is to assess how much a willing buyer would hypothetically have agreed to pay to make use of the confidential information used by the Defendant, even if the Claimant would never have actually agreed to such an arrangement. In *Celebrity Speakers Ltd v Daniel* [2023] EWHC 2158 (KB) at [73]-[82], £50,000 was awarded on this basis for the use in breach of confidence of a database including the names and contact details of the claimant's clients.

146. Here, a willing buyer, such as a competitor of the Titan Wealth Group, would have been willing to pay a substantial sum to be able to make use of confidential information used by the Defendant. I say this particularly because the information included lists of the names and contact details of clients; and because this was a business with revenues of £51.2m in the year to 31 March 2023.

147. Another method is to seek to compensate the First and Second Claimants for the additional costs they have incurred as a result of the Defendant's conduct. This was the method used in *Aerospace Publishing Ltd v Thames Water Utilities Ltd* [2007] EWCA Civ 3; [2007] Bus LR 726 at [86]-[87], where an award of £31,520 in respect of lost staff time was upheld on appeal. It was held that the extent of the diversion of staff time and the disruption to the business has to be properly established. Unless the defendant establishes to the contrary, it is reasonable for the court to infer from the disruption that had the staff members' time not been thus diverted, they would have applied it to activities which would otherwise have generated revenue for the business in an amount at least equal to the cost of employing them during that time.

148. Mr Fullalove provided clear evidence of the cost of wasted staff time spent on the investigation and/or mitigation of the Defendant's wrongdoing, which has now been going on for over nine months. Simply by way of example, as at 1 May 2024 when he signed his second witness statement, Mr Fullalove was himself still fielding "daily enquiries from multiple clients about [the Defendant's] conduct and the status of this litigation". He explained that this was causing significant stress to the management team and causing resources (both financial and in terms of employee time) to be diverted away from other areas of the business. Mr Lööf submitted that a conservative estimate based on Mr Fullalove's evidence would be that 100 such hours had been diverted, to which a nominal hourly rate of say £100 per hour could be applied, giving a total of £10,000.

149. Doing the best I can to assess the level of damages in this case, and bearing in mind the rather hypothetical nature of this exercise, I consider that the figure should be **£50,000**. I consider that the approach taken in *Celebrity Speakers Ltd* is the more appropriate method here and more accurately reflects the scale of the First and Second Claimants' losses, insofar as the same is possible. This notional figure also effectively provides compensation for the lost staff time.

(iii): Other remedies

150. It is appropriate to order that the confidential information held by the Defendant to be deleted and that her computer equipment is inspected and imaged to ensure deletion has

taken place. An independent barrister will make the final determination as to whether certain documents fall to be deleted as confidential to the First and Second Claimant. This provides safeguards for the Defendant. Such an order is common in cases of this nature: see, for example, *Arthur Gallagher Services (UK) Ltd and ors v Skirptchenko and ors* [2016] EWHC 603 (QB) at [63]-[67].

151. It is particularly necessary here, given the evidence that the Defendant has not complied with the requests for deletion of some 250 documents already made to her, pursuant to Chamberlain J's injunction: see the second affidavit of Mr Gailani dated 9 September 2024, provided in support of the activation application ("Gailani 2"). This has been the case even though the request has been that she delete material using a methodology she had identified herself.

152. I also accept Mr Lööf's submission that the Defendant should be ordered to provide an indemnity to the First and Second Claimants against future losses which may be suffered as a result of claims against them by clients or secondary clients and any future fines or regulatory penalties imposed on them, which can be shown to be due to her breaches of contract and confidence.

Remedies for harassment

(i): Injunctive relief

153. A final injunction under the PHA, section 3(3), to injunct the Defendant from further harassing the Third and Fourth Claimants is appropriate. Damages alone would not be an adequate remedy for them. A final injunction is especially necessary given that the issuing of this claim and the grant of the interim injunction have not, according to Gailani 2, stopped the Defendant from harassing the Third and Fourth Claimants.

(ii): Damages

154. The PHA, section 3(2) gives the court the power to award damages for "(among other things) any anxiety caused by the harassment". Such awards of damages can compensate for the impact of harassment even if it has not caused any psychiatric or medical condition; and the court can take into account all the evidence, including that from the victim of the harassment, "those around him or her" and the likely effect of the harassment in question: *S & D Property Investments Ltd v Nisbet* [2009] EWHC 1726 (Ch), at [72]-[74].

155. The level of damages for anxiety caused by harassment is calculated by analogy with the "*Vento* scale" used for assessing awards for injury to feelings from discrimination (namely that derived from *Vento v The Chief Constable of West Yorkshire Police* [2003] ICR 318 at [65], per Mummery LJ). The *Vento* scale provides for three bands of decreasing severity. Allowing for inflation they would now justify awards of (i) £27,000-£45,000; (ii) £9,000-£27,000; and (iii) up to £9,000.

156. The Third and Fourth Claimants accepted that the Defendant's harassment of them did not merit an award in the highest of the three *Vento* bands. Such awards are reserved for "the most serious cases, such as where there has been a lengthy campaign of

discriminatory harassment on the ground of sex or race". In my judgment the Third and Fourth Claimants' concession in this regard was fair.

157. The Third and Fourth Claimants contended that the middle *Vento* band was appropriate. This applies to "serious cases, which do not merit an award in the highest band", as compared to the lowest band which is "appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence". I agree with this analysis: the Defendant's harassment of the Third and Fourth Claimants was not isolated, or a one off incident, but involved repeated acts over several months, and involved communications to a large number of people in the professional circles of the Third and Fourth Claimants.

158. Although the assessment of damages for harassment is inevitably fact-sensitive, some assistance can be obtained from other broadly comparable cases. One such case that is of assistance here is *Hills v Tabe* [2022] EWHC 316 (QB). There, the harassment involved online publications by which the claimant "was accused, entirely without foundation, of being a prostitute, unclean and unhygienic": [35]. Such publications resonate very closely with the content of the Defendant's publications about the Third and Fourth Claimants. The middle *Vento* band was adopted in *Hills*. The similarities between *Hills* and this case provide further reassurance that the middle *Vento* band is appropriate here.

159. In my judgment an award of **£15,000** to each of the Third and Fourth Claimants, rather than the £25,000 each for which they contended, is appropriate. In my judgment this sum properly reflects the impact of the harassment on each of them as described in their evidence. It also makes allowance for the aggravating features of the Defendant's "serious, repeated, targeted and spiteful" conduct (aggravating features that were found in *Hills* at [35]). It recognises the fact that they have both had to be involved in the commercial and regulatory management of the consequences of the Defendant's actions. To the extent that comparisons with other cases provide some assistance, an award at this level is not unduly out of kilter with the £10,000 award made in *Hills*.

Issue (6): Should the Claimant's application for an ECRO against the Defendant be granted?

(i): The pre-condition for the making of an ECRO

160. An ECRO may only be made where a party has "persistently" (on at least three occasions) issued claims or made applications that are totally without merit.

161. The pre-condition for the making of an ECRO is satisfied in this case. The Defendant has advanced multiple claims in the Employment Tribunal against five defendants and two appeals to the Employment Appeals Tribunal which have been dismissed and certified as totally without merit. In these proceedings she has made one claim and two applications which have been so certified, namely her counterclaim and two successive applications to amend her counterclaim to introduce new claims. I have also dismissed her application for strike out/summary judgment as totally without merit: see [50] above.

(ii): The court's discretion

162. Even where the pre-condition is met, the court retains a discretion as to whether to make an ECRO. The court should assess whether there is an objectively demonstrated risk that the person in question will, if unrestrained, issue further claims or make further applications which are an abuse of the court's process: *Re Ludlam* [2009] EWHC 2067 (Ch) at [12] and *Nowak v Nursing and Midwifery Council* [2013] EWHC 1932 (QB) at [68].

163. It is recognised that the following factors tend to show a heightened risk of further wholly unmeritorious claims, which can be relevant to the exercise of the court's discretion as to whether to make an ECRO: **(i)** statements of an intention to issue further claims or applications; **(ii)** the fact that the person believes passionately that the conclusions reached by the court are wrong; **(iii)** the fact that they have a history of other forms of abuse of the court system, such as perverting the course of justice or perjury; and **(iv)** the fact that they have limited or no means of paying any adverse costs order, such that the threat of costs sanctions would be little deterrent: *Re Ludlam* at [26] and [43] and *Nowak* at [58], [69], [80].

164. All four factors plainly apply here.

165. As to **(i)**, the evidence suggests that the Defendant is likely, unless restrained, to continue to advance baseless claims against the Claimants and perhaps others connected with the termination of her employment. Indeed she has said as much: in responding to the Claimants' application for the ECRO, the Defendant has indicated that she intends to commence contempt proceedings against the Third and Fourth Claimants and Mr Gailani, and a claim against His Majesty's Courts and Tribunals Service ("HMCTS") alleging breaches of her Article 6 rights. During the trial she intimated a suggestion that she would initiate contempt proceedings against Ms Vernon. The nature of her communications with the court after the trial also indicates a desire to pursue such further applications or claims: see Issue (7) below.

166. As to **(ii)**, the Defendant is plainly convinced that the judicial decisions made in the employment litigation were wrong. In her first witness statement she described each of the Employment Tribunal judgments as "wrongful" and an "attack on [her] senses". Her feelings in this regard are evidenced by her allegations of corruption against the Employment Tribunal judges (see [16] above). She has also made clear in correspondence that she does not accept Chamberlain J's judgment in these proceedings that she was guilty of three separate counts of contempt. The Claimants' evidence in support of the activation application suggests the Defendant has continued to ignore the terms of the injunction currently in place. This provides further evidence that she does not accept the validity of the decisions made in these proceedings.

167. Factor **(iii)** is applicable to the extent that the Defendant has evidenced a willingness to take vexatious recourse to other legal processes, and thus abuse other court systems. This is illustrated by the separate criminal complaints she has made against the Employment Tribunal judges, the Second, Third and Fourth Claimants and Mr Gailani; and by the disciplinary complaint against the police constable investigating the criminal complaint of harassment made against her by the Third and Fourth Claimants.

168. As to **(iv)**, she has repeatedly said that she is impecunious. She has already failed to pay an interim costs order of £15,000 made against her and has maintained that she has no

means to satisfy it. Accordingly, the risk of adverse costs orders being made against her is unlikely to be a significant deterrent from bringing further unmeritorious claims.

169. Accordingly all these factors point in favour of making a restraint order and I will do so.

(iii): The level and duration of any restrain order

170. If the court concludes that a civil restraint order is necessary, it must make the least restrictive form of order shown to be required: *Nowak* at [70].

171. I accept Mr Field's submission that a limited civil restraint order would not provide sufficient protection for the Claimants or the court as it would only apply to further claims and applications in these proceedings, which are, subject to any appeals, coming to a close. Moreover, such an order would not provide any protection to further prospective respondents/defendants to applications/claims brought by the Defendant, such as HMCTS or Mr Gailani.

172. An ECRO is therefore the least restrictive form of order required. In accordance with PD 3C, paragraphs 3.2(1)(b) and (c), it will prevent the Defendant from making further applications or claims in the High Court or the County Court "concerning any matter involving or relating to or touching upon or leading to" these proceedings, without the permission of the court. It will not, therefore, prevent the Defendant bringing claims that genuinely have merit.

173. The Defendant's pursuit of unmeritorious claims and recourse to other legal processes have not diminished in the almost two years since her dismissal. For these reasons I conclude that the ECRO should be for the maximum permissible period of 3 years.

Issue (7): What is the relevance of the Defendant's communications with the court after the conclusion of the trial to the determination of the issues above?

174. The key points the Defendant made in her post-trial correspondence, and my responses to them, are as follows.

175. *First*, the Defendant informed the court that on 12 October 2024, the day after the trial, she had received a Notice of Criminal Charge from PC Shane de Souza of the Metropolitan Police Service. This requires her to attend a hearing at the Uxbridge Magistrates' Court on 12 November 2024 in respect of her alleged harassment of the Third and Fourth Claimants between 16 January 2024 and 12 April 2024. The Defendant sought an order from this court that it would not be appropriate to prosecute her for this allegation as this court had determined the issue of harassment, such that the principle of *res judicata* applied.

176. The civil cause of action for harassment and the criminal offence of harassment are distinct, not least as they involve different courts, different parties and different burdens and standards of proof. It does not necessarily follow that the outcome of one prevents the other being pursued.

177. As the Claimants rightly highlighted in their post-trial submissions, a civil court has jurisdiction to stay proceedings before it, pending the conclusion of criminal proceedings if the Defendant can show real prejudice: see the cases discussed in the White Book (2024 edition), Volume 2 at paragraph 9A-184. However, that position does not apply here: no criminal proceedings were extant against the Defendant at the time of the trial before me and even though she has now been charged, no application to stay the determination of these claims has been made, nor could I see a proper basis for one.

178. Beyond that narrow inter-relationship, his court has no jurisdiction over the Magistrates Court. If the Defendant wishes to contend that the proceedings before the Magistrates Court should be discontinued in light of the outcome of this claim, that is an argument she will need to make to that court. Indeed, on 14 October 2024 she provided the court with e-mail communication between herself and a support worker at the Magistrates Court which made clear she had already raised the issue in substance. The support worker advised her to make this point at the upcoming Magistrates Court hearing. That is the correct way for the Defendant to seek to argue this point.

179. That said, *res judicata* is a civil law concept. In criminal proceedings the broadly comparable principle to issue estoppel is provided by what is generally referred to as the rule against double jeopardy, comprising *autrefois acquit* (reliance on an earlier acquittal for the same conduct) and *autrefois convict* (reliance on prior punishment for the same offence).

180. The judgment of this court upholding the Third and Fourth Claimants' harassment claims has determined that the Defendant is liable for the tort of harassment pursuant to the PHA, s. 3. It has not convicted her of any offence of harassment contrary to the PHA, s.2, nor could it do so. It is only a conviction or acquittal that can provide the basis for an argument that criminal proceedings contravene the rule against double jeopardy.

181. Finally, I note that the e-mail from the support worker referred to above stated that the criminal case had not yet been entered onto the court system. The Defendant described this as indicating that the criminal proceedings against her were both "fake" and "unlawful" and involved PC de Souza creating "an opportunity to arrest and detain her overnight unlawfully". This seems to me a deliberate misinterpretation of the e-mail from the support worker which indicated no such thing. It simply stated that by 7.56 am on Monday 14 October 2024 a Notice of Criminal Charge that had been delivered to the Defendant on Saturday 12 October 2024 had not yet been entered onto the court system. That is far from surprising.

182. *Second*, in a further email sent on 16 October 2024 the Defendant relied on what she contended was an American law principle to the effect that where a course of conduct can generate both criminal and civil liability, the Defendant must be convicted in the criminal proceedings before any claim for civil compensation can be made. Whatever be the position in the United States, no such principle applies here.

183. She argued that as the Crown Prosecution Service had not charged her with an offence of harassment, this supported her defence in these proceedings because "the criminal standard has not been met". This submission is entirely without foundation. The Notice

of Criminal Charge makes clear that she has been charged, by post, with an offence of harassment.

184. The Defendant also referred to the ability of the victims of violent crime in England and Wales to seek compensation from the Criminal Injuries Compensation Authority. There is no evidence to suggest that the Third or Fourth Claimants have made any such application. Accordingly this issue is irrelevant to the issues before me.

185. *Third*, the Defendant provided a copy of a letter from the Metropolitan Police to her dated 29 August 2024 in which they informed her that the crime report she had filed on 26 July 2024 regarding alleged perjury in court was not going to be progressed by the police for investigation. The reason given was that this fell outside the police's remit given that it involved an incident in court. The letter indicated that the Duty Sergeant had been consulted and agreed the outcome such that the crime report would be closed. If the Defendant wishes to challenge this decision through the appropriate police complaints mechanisms that is a matter for her, but this court in this claim has no jurisdiction over the decision of the police.

186. *Fourth*, in part because the police are not going to progress her allegations of perjury, the Defendant sought an order committing the five witnesses for the Claimants, their leading and junior counsel and PC de Souza to court for contempt of court (the latter as an "accomplice" to the Third and Fourth Claimants). Any such application cannot be made by simply emailing the court, but would need to be made in accordance with the specific requirements of CPR 81. However, on the basis of the information before me, I can see no grounds for any such order.

187. *Fifth*, the Defendant sought an order under the court's inherent jurisdiction and by reference to the One Judiciary initiative to stop what she described as the "systematic breaches of the rule of law" being committed against "the citizens of this country" resulting in their "denial of justice". The focus of the Defendant's contention appeared to be the judges of the Employment Tribunal who she contended had subjected her to "psychological torture" as a result of numerous judgements that were *mala fides* or incorrect in law. She sought a review of the "JCIO and JACO [by which I assume she means the JAC]" which have "assisted the employment tribunals in breaching the rule of law".

188. This court has no inherent jurisdiction to interfere with the judgments of other courts or tribunals outside the recognised routes of appeal or judicial review. The Defendant has exercised her rights of appeal in relation to the Employment Tribunal proceedings. The outcome may not to be to her satisfaction but there is no power in this court to intervene. The One Judiciary initiative which aims to bring the courts and tribunals closer together by, for example, providing greater opportunities for cross-deployment between jurisdictions does not change that position.

189. The JCIO, namely the Judicial Conduct Investigations Office, supports the Lord Chancellor and the Lady Chief Justice in their joint responsibility for judicial discipline. The JAC, namely the Judicial Appointments Commission, selects candidates for judicial office in England and Wales, and for some tribunals with UK-wide powers. I know nothing about any complaints the Defendant has made to the JCIO or about the appointment of the Employment Tribunal judges about whom the Defendant complains.

Accordingly, even if there was a legal or factual basis for this court to intervene in either of these areas, which I doubt, neither issue is before me.

190. For these reasons there is nothing in the Defendant's correspondence with the court after the trial that leads me to change my conclusions on the issues above, save that, in my judgment it underscores the warnings I gave to the Defendant in my judgment on the Claimants' protective injunction application about the tone of her correspondence with and about the Claimants' lawyers; and provides further evidence of the need for an ECRO: see [2024] EWHC 2641 (KB) at [54] and Issue (6) above.

Issue (8): What orders with respect to costs, if any, should be made?

The appropriate costs order

191. The Claimants are plainly the successful party in these proceedings: the Defendant's strike out/summary judgment application has been dismissed and certified to be totally without merit; the Claimants' claims have succeeded in full; and the Claimants have succeeded in ensuring that an ECRO will be made against the Defendant for 3 years.

192. I cannot see that there is any basis to depart from the general rule CPR 44.2(2)(a) that the unsuccessful party will be ordered to pay the costs of the successful party. The only points the Defendant made in costs submissions related to the level of the Claimants' costs and her inability to pay any costs orders. Neither of these provides a reason to depart from the general rule in CPR 44.2(2)(a).

193. Accordingly the Defendant will be ordered to pay the Claimants' costs of the claim.

194. Further, in my judgment the Claimants are entitled to their costs on an indemnity basis for three reasons.

195. *First*, the Defendant's conduct has been such as to take this case "out of the norm": *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hammer Aspden & Johnson* [2002] EWCA Civ 879 at [19] and [39].

196. I accept the Claimants' submission that underlying conduct by the Defendant which obliged them to bring their claims was "extraordinary". In addition to the nature of her conduct which I address further at [198] below, her substantive defences were plainly lacking unmeritorious. Her defences to the breach of contract and confidence claims – primarily her assertions over a lack of authority, the assertion of the forgery of her employment contract and the suggestion that the material in question was not confidential and/or she was permitted to use it as she did - were not only lacking in substantive merit but had in part already been determined by the Employment Tribunal. I have roundly rejected her defence of "humour" to the harassment claim.

197. Moreover, the Defendant has repeatedly shown a disregard for the overriding objective and the authority of the court by breaching numerous court orders and making unmeritorious applications. She has deluged the Claimants' legal team with abusive and threatening communications which has affected the Claimants' ability to conduct these proceedings properly and in accordance with the overriding objective and let to them

incurring potentially irrecoverable costs: see, further, [2024] EWHC 2641 (KB) dated 18 October 2024 at [24]-[25].

198. *Second*, the Defendant's admitted campaign of "vengeance" against the Claimants was intended to cause, and has caused, significant loss to the First and Second Claimants and considerable suffering to the Third and Fourth Claimants. This is conduct deserving of moral condemnation. Such conduct is a good indicator that indemnity costs are appropriate: *Three Rivers District Council v Bank of England* [2006] EWHC 816 (Comm); [2006] 5 Costs LR 714 at [25(3)].

199. *Third*, the Defendant aggressively pursued serious allegations of dishonesty and misconduct against the Claimants and their legal representatives over a lengthy period, and maintained them, without apology to the "bitter end" of the litigation. These included her entirely unjustified suggestions that the First Claimant had forged her employment contract and that the Claimants' legal representatives had breached their duties to the court by appearing without proper instructions to do so. This sort of conduct militates in favour of indemnity costs: *Excelsior* at [25(8)(a)-(b)].

200. In responding to the application for costs on an indemnity basis the Defendant repeated the two points I have noted at [192] above. Her means are not relevant to this issue. Even on an indemnity basis, the Defendant would be able to argue that certain costs incurred by the Claimants were not reasonably incurred or reasonable in amount.

A payment on account of costs

201. The Claimants' costs will be subject to detailed assessment. There is no good reason not to make an order that the Defendant pay a reasonable sum on account of costs, under CPR 44.2(8). Again, the Defendant's means and the level of the Claimants' costs do no provide such a reason.

202. A "reasonable sum" will typically be an estimate of the likely level of recovery subject to an appropriate margin to allow for error in the estimation: *Excalibur Ventures LLC v Texas Keystone Inc* [2015] EWHC 566 (Comm) at [23].

203. The combined figure of the Claimants' costs for the trial, the strike out/summary judgment and the ECOR application is in the region of £609,409. This figure does not include the costs of the *ex parte* hearing at which interim injunctive relief was originally obtained and certain interim matters the costs of which have been reserved. The total figure for the Claimants' costs of the claim is therefore likely to be potentially substantially higher.

204. A payment on account of approximately 50% of the claimed costs where costs are to be assessed on the standard basis is often made: see, for example, *German Property 50 Sarl v Summers-Inman Construction & Property Consultants LLP* [2010] BLR 179 at [12]. Here, the total costs figure will be higher than the figure given at [203] above and the costs will be assessed on the indemnity basis. For these reasons, the amount sought by the Claimants for a payment on account of £288,344.50 (that being 50% of the trial costs element of the figure at [203] above) is entirely reasonable.

205. The Defendant relied on the fact that Chamberlain J had made an order for a payment on account of costs of £15,000 after a two day hearing. She therefore argued that the payment on account after the three day trial should bear a reasonable relationship to the amount ordered by Chamberlain J. I respectfully disagree. It is clear from the transcript of the discussion on costs that the Claimants' costs schedule for the hearing before Chamberlain J reflected costs at a very much higher level and that they simply made a pragmatic decision to limit their application for a payment on account to £15,000.

206. I therefore order the Defendant to pay the Claimants a payment on account of costs in the sum of £288,344.50 within the usual period of 14 days.

Conclusion

207. Accordingly, for all these reasons:

(i) The Defendant's application to strike out the Claimants' claims or for summary judgment on them is dismissed and certified as totally without merit;

(ii) The Claimants' application to rely on Vernon 1 at trial is granted;

(iii) The First and Second Claimants' claims of breach of contract and breach of confidence and the Third and Fourth Claimant's claims of harassment succeed;

(iv) I will make injunctions, awards of damages and the other orders set out under Issue (5) above;

(v) An ECRO will be made against the Defendant for a period of 3 years;

(vi) The Defendant is ordered to pay the Claimants costs of the claim, to be the subject of detailed assessment if not agreed, on the indemnity basis; and

(vii) The Defendant is ordered to make a payment on account of costs of £288,344.50 within 14 days.

208. I reiterate my thanks to all the legal representatives for their considerable assistance with this complex case.