



Neutral Citation Number: [2019] EWHC 2950 (QB)

Case No: HQ18M03248

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/11/2019

Before :

**THE HONOURABLE MRS JUSTICE STEYN DBE**

Between :

**Esther Ruth Baker** **Claimant**  
**- and -**  
**John Alexander Melvin Hemming** **Defendant**

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The **Claimant** appeared in person  
**Richard Owen-Thomas** (instructed directly) for the **Defendant**

Hearing date: 17 October 2019  
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**Approved Judgment**

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

.....  
THE HONOURABLE MRS JUSTICE STEYN DBE

**Mrs Justice Steyn :**

**A. Introduction**

1. This case concerns a claim and a counterclaim for defamation. The parties each apply to strike out the other party's statement of case and for summary judgment in their favour.
2. The Claimant represented herself at the hearing. The Defendant also litigates this case in person, but he instructed Mr Owen-Thomas of Counsel to represent him at the hearing.

**B. The claim**

3. The Claimant, Ms Baker, brings a claim for defamation in respect of three publications.
4. The first publication, entitled "*Statement Re False Allegations from Esther Baker*", was first published, online, by the Defendant, Mr Hemmings, on 5 September 2017 on his blog ("the first publication"). The passages relied upon by the Claimant read:

"I am pleased that the police have now made it clear that there has been a concerted effort to promote false criminal allegations against me and that the allegations had no substance whatsoever."

"It is bad enough to have false allegations made about yourself to the police, but to have a concerted campaign involving your political opponents and many others in public creates an environment in which it is reasonable to be concerned about ill-founded vigilante attacks on your family and yourself. Luckily there was a more substantial lobby to the contrary as well, which included many people who were themselves real survivors of abuse."

"Sky should recognise that not only was their broadcast of the original allegations in May 2015 a complete nonsense, but also had it been based upon truthful allegations that it would have undermined a criminal investigation. The attempts to drum up false complainants through the use of publicity highlights a difficulty with publicising cases whilst a police investigation is going on."

5. The Defendant admits that the natural and ordinary meanings of the words are that the Claimant:
  - i) "*Was a liar who had maliciously made up false allegations of rape about the Defendant*" (Amended Particulars of Claimant, "AmPOC", para 6.1); and
  - ii) "*There are reasonable grounds to suspect that by making such false allegations, the Claimant is guilty of perverting the course of justice*" (AmPOC, para 6.3).

There is a dispute in respect of one further meaning pleaded by the Claimant. She contends the meaning is that she was “*instrumental in a vigilante campaign*” against the Defendant whereas he avers that the words mean that “*the Claimant’s lies had made him concerned he would be the subject of vigilante attack and encouraged vigilantism*”.

6. The second publication is an article published via the Mail Online website and in print in the Daily Mail newspaper, on 22 June 2018, under the headline: “*Former MP blasts ‘politically correct’ police as woman who made false child rape allegations against him is to face no charge*” (“the second publication”). The passage relied on by the Claimant reads:

“John Hemming said their refusal to seek charges against his accuser Esther Baker undermined the criminal justice system and would encourage ‘other fantasists’ to make bogus paedophile claims.”

7. The Defendant admits that the natural and ordinary meaning of the words complained of is, as pleaded by the Claimant, that:

- i) “*The Claimant is a fantasist who had made false allegations about the sexual abuse of children.*” (AmPOC, para 20.1)
- ii) “*The Claimant is in fact guilty of perverting the course of justice and should have been prosecuted accordingly.*” (AmPOC, para 20.2)

8. The third publication is an article published via the Daily Mail’s website on 19 January 2018 with the headline: “*Abuse probe farce: ‘Fantasist’ who claimed she was raped by an MP she had ‘never met’ is named as special witness for the child sex inquiry*” (“the third publication”).

9. The Defendant admits that the natural and ordinary meaning of the words complained of is, as pleaded by the Claimant, that:

- i) “*The Claimant is untrustworthy*” (AmPOC, para 24.1); and
- ii) “*The Claimant is not a suitable person to receive public funding for the Independent Inquiry into Childhood Sexual Abuse (“IICSA”)*” (AmPOC, para 24.2).

10. The Defendant relies on the following defences:

- i) Limitation: the Defendant has raised a limitation defence on the basis that the claim was brought more than one year after the date of the first publication and he contends the single publication rule in s.8 of the Defamation Act 2013 applies to the second and third publications.
- ii) Truth: the Defendant has pleaded detailed particulars of truth at paragraphs 28-45, 80 and 87 of the Amended Defence and Counterclaim (“AmDef”).
- iii) Qualified privilege of responding to attack is pleaded as a defence to each of the three publications (AmDef, paras 46-50, 81-82 and 89).

- iv) Honest opinion is relied on in the alternative to truth in respect of the third publication (AmDef, para 88).
- v) Set-off: the Defendant relies on his counterclaim as a defence by way of set-off of Ms Baker's claim (AmDef, paras 24, 77 and 85).

11. I address the terms of the Claimant's reply to these defences below.

**C. The counterclaim**

12. In response to the claim, the Defendant has counterclaimed for defamation. The publication on which the Defendant relies in his counterclaim is a tweet published by the Claimant on 11 November 2017 ("the Tweet") which read:

"I accused an (then) MP of rape and sexual assault nearly 3 years ago. Since then I've been called every name under the sun & stalked relentlessly. With the news coming out of Westminster daily I'm reappealing for other victims of this "man" to come forward."

13. The Tweet did not expressly name the Defendant, but the Claimant admits that a proportion of her Twitter followers "*understood based on their extrinsic knowledge that the Tweet referred to the Defendant as the subject of rape allegations by the Claimant*". In her (amended) "Reply to Defence and Defence of Counterclaim" served on 6 June 2019 ("the Claimant's Amended Reply") the Claimant contends a "*small proportion*" would have understood the reference to Mr Hemming (para 50), having previously averred a "*proportion*" would have done so, without the qualifier "*small*" (original "Reply to Defence & Counterclaim", para 74). Irrespective of the size of the group, it is clear that reference to the Defendant is not in dispute.

14. The Defendant has pleaded both the natural and ordinary meaning of the Tweet and an innuendo meaning by reference to extrinsic facts in these terms:

"The meaning of the paragraph in its natural and ordinary sense is that the Defendant raped and sexually assaulted the Claimant, then stalked and defamed her to cover it up. The reference to "other victims" means he committed other rapes and is a serial rapist." (AmDef, para 107)

"The words ... also bear an innuendo meaning that the Defendant abused the Claimant as part of a ritual cult involving Cabinet Ministers, MPs, Lords and Judges" (AmDef, para 109).

15. In her defence to the counterclaim, the Claimant has pleaded a bare denial that the words complained of bore the natural and ordinary meaning contended for by the Defendant (Claimant's Amended Reply, para 51). In respect of the innuendo meaning, the Claimant admits that she "has made claims of rape by a group", but denies references to "ritual abuse" or "Dolphin Square"; and she denies that the extrinsic facts pleaded by the Defendant support the innuendo meaning complained of. Although the Claimant has denied the words of her Tweet bear the meanings pleaded

by the Defendant, she has not pleaded what meaning(s) she contends the words complained of bear.

16. The Claimant denies that the Tweet caused or was likely to cause serious harm to the Defendant's reputation (Claimant's Amended Reply, para 57). The Claimant has not pleaded any defences to the counterclaim. Most notably, in amending her defence to the counterclaim, the Claimant has removed her previous averment (albeit in a bare form, unsupported by particulars) of "*defences of truth, honest opinion, set off of the original claim and the privilege of responding to attack*" (original "Reply to Defence & Counterclaim", para 86). No defence of truth is pleaded and the Claimant has expressly chosen not to plead to para 110 of the Defendant's counterclaim in which he "*denies the allegations and avers the Claimant deliberately made them up or in the alternative is mistaken and they are in any event false*", and repeats paragraphs 28-45 of his defence (AmDef, para 110).

**D. Factual and procedural background**

17. The Claim Form was issued by Ms Baker on 13 September 2018.
18. There then followed an exchange of pleadings as follows:
  - i) The Claimant served Particulars of Claim on 24 September 2018.
  - ii) The Defendant served his Defence and Counterclaim on 8 October 2018.
  - iii) Two days later, on 10 October 2018, the Defendant served a request for further information from the Claimant pursuant to CPR Part 18.
  - iv) The Claimant served a Reply to Defence and Defence to Counterclaim on 22 October 2018.
  - v) Also on 22 October 2018, the Claimant served a response to the Part 18 request. The vast majority of the Claimant's responses consisted of refusals to provide the information requested.
  - vi) On 6 November 2018, the Defendant served a Reply to the Defence to Counterclaim.
19. On 16 November 2018, the Defendant issued an application seeking to strike out the Defence to the Counterclaim and for summary judgment on the counterclaim and dismissal of the claim. The application was supported by a witness statement made by Mr Hemming, dated 16 November 2018 ("Mr Hemming's first statement").
20. The Defendant's application of 16 November 2018 was listed for hearing on 15 April 2019 before Anthony Metzer QC, sitting as a High Court Judge. I have read the transcript of that hearing.
21. The Claimant applied for an adjournment of the hearing on the basis that she intended to amend her pleadings and going forward she was going to have *pro bono* legal representation.
22. The Judge made an order dated 15 April 2019 ("the Order") in these terms:

- “1. The hearing of the Defendant’s application for summary judgment be adjourned generally and dismissed with no order as to costs, unless an application to restore is made by 17<sup>th</sup> June [2019].
2. The Claimant do file and serve amended Particulars of Claim, by 29<sup>th</sup> April 2019.
3. The Defendant do, if so advised, file and serve an amended Defence and Counterclaim by 13<sup>th</sup> May 2019.
4. The Claimant ... do file and serve a Reply to Defence and defence to counterclaim if any, if so advised by 27<sup>th</sup> May 2019.
5. The Defendant, if so advised, do have permission to file and serve a Reply to Defence to Counterclaim by 10<sup>th</sup> June 2019.
6. The Defendant has leave to make an amended Part 18 Request to the Claimant no later than 17<sup>th</sup> June 2019.
7. The Amended Particulars of Claim and/or Reply and Defence to Counterclaim, where appropriate, must include the following –
  - a. pleadings of the psychiatric diagnosis relied upon and specifics of alleged incapacity
  - b. all four of the publications complained of must be annexed in full
  - c. in respect of each publication:
    - i. properly pleaded innuendo meaning, or omitting innuendo meaning.
    - ii. proper pleading of malice
    - iii. proper pleading of serious harm
    - iv. proper particulars of truth, in respect of any meaning the Claimant contends to be true.
8. The Claimant do file and serve a consultant psychiatric report, compliant with Part 35 of the Civil Procedure Rules, by 4pm on 27<sup>th</sup> June 2019.
9. The Defendant do have liberty to apply for his own expert, or a single joint expert, if so advised, by 4pm on 1<sup>st</sup> July 2019.
10. The Claimant do pay the Defendant’s costs of and arising from the adjourned hearing and amended pleadings to be subject to detailed assessment if not agreed.

11. The Defendant do have permission to commence detailed assessment forthwith.”

(The Defendant applied to correct a clear and unambiguous error in paragraph 1 of the Order, which gave the year as “1019” rather than “2019”, and I have done so.)

23. Subsequently, following a request by the Claimant for an extension of time to serve her Amended Particulars of Claim, the parties agreed to extend time by two weeks, and consequently to push back all the other dates for service of amended pleadings by two weeks.
24. There was then a further exchange of pleadings as follows:
  - i) The Claimant served Amended Particulars of Claim on 13 May 2019.
  - ii) The Defendant served his Amended Defence and Counterclaim on 22 May 2019.
  - iii) The Claimant served an Amended Reply to Defence and Defence to Counterclaim on 4 June 2019.
  - iv) The Defendant served an Amended Reply to Defence to Counterclaim on 12 June 2019.
25. By her Amended Particulars of Claim the Claimant seeks to add a new cause of action alleging breaches of the Data Protection Act 1998 (“the DPA 1998”). The Defendant has refused consent to the addition of this new claim. No application for permission has been made.
26. In accordance with paragraph 1 of the Order the Defendant filed an application dated 11 June 2019 seeking to restore his application of 16 November 2018 and applying to strike out the claim and defence to counterclaim or for summary judgment for the Defendant on the claim and counterclaim. The Defendant also applied, in the alternative, for an interim injunction. The Defendant’s application was supported by his further witness statement dated 11 June 2019 (“Mr Hemming’s 2<sup>nd</sup> statement”).
27. At the outset of the hearing before me on 17 October 2019, which had been listed to determine the Defendant’s application, I was informed that the Claimant had made an application on 24 September 2019 to strike out the Defendant’s defence and counterclaim or obtain summary judgment in her favour. The Claimant’s application was supported by her own statement dated 23 September 2019 (“Ms Baker’s statement”) to which she exhibited 168 pages of documents. The Claimant asked me to hear her application and indicated that, in any event, she wished to rely on her statement in response to the Defendant’s application. The Defendant accepted that it would be better for the Claimant’s application to be heard at the same time as his application, if it did not prejudice the ability of the court to deal with his application. The Defendant helpfully provided me with a copy of the Claimant’s application and evidence, as well as two statements in response, namely Mr Hemming’s 3<sup>rd</sup> statement and a statement made by Samuel Collingwood Smith.

28. I decided that hearing the Claimant's application at the same time as the Defendant's application would be in accordance with the overriding objective. It would ensure that the Claimant's application was dealt with expeditiously and fairly, without the need for a further hearing, and without prejudicing the hearing of the Defendant's application. Hearing the Claimant's application also ensured that I understood fully the Claimant's response to the Defendant's application. As I only received the Claimant's application and evidence during the hearing, I indicated that I would read those documents carefully after the hearing, and I have done so.
29. At the hearing before me, the Claimant did not make any application for relief from sanction or to adjourn or for any further opportunity to remedy any inadequacies in her pleadings.

**E. The legal framework**

30. Rule 3.4(2) of the Civil Procedure Rules ("CPR") provides:

"(2) The court may strike out a statement of case if it appears to the court—

- (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
- (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
- (c) that there has been a failure to comply with a rule, practice direction or court order."

31. CPR 24.2 provides:

"The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –

- (a) it considers that -
  - (i) that claimant has no real prospect of succeeding on the claim or issue; or
  - (ii) that defendant has no real prospect of successfully defending the claim or issue; and
- (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

32. Practice Direction 53, which applies to defamation claims issued before 1 October 2019 (and so to this claim), provides:

"2.1 Statements of case should be confined to the information necessary to inform the other party of the nature of the case he



has to meet. Such information should be set out concisely and in a manner proportionate to the subject matter of the claim.”

“2.5 Where a defendant alleges that the words complained of are true he must –

Specify the defamatory meanings he seeks to justify; and

Give details of the matters on which he relies in support of that allegation.”

“2.8 Where a defendant alleges that the words complained of are true, or are honest opinion, the claimant must serve a reply specifically admitting or denying the allegation and giving the facts on which he relies.”

“2.9 If the defendant contends that any of the words or matters are honest opinion, or were published on a privileged occasion, and the claimant intends to allege that the defendant acted with malice, the claimant must serve a reply giving details of the facts or matters relied on.”

33. CPR 17.1(2) provides:

“If his statement of case has been served, a party may amend it only –

(a) with the written consent of all the other parties; or

(b) with the permission of the court.”

34. Section 4A of the Limitation Act 1980 provides:

“The time limit under section 2 of this Act shall not apply to an action for—

(a) libel or slander, or

(b) slander of title, slander of goods or other malicious falsehood,

but no such action shall be brought after the expiration of one year from the date on which the cause of action accrued.”

35. Section 28 of the Limitation Act 1980 provides:

“(1) Subject to the following provisions of this section, if on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first

occurred) notwithstanding that the period of limitation has expired.

...

(4A) If the action is one to which section 4A of this Act applies, subsection (1) above shall have effect—

(a) in the case of an action for libel or slander, as if for the words from “at any time” to “occurred)” there were substituted the words “by him at any time before the expiration of one year from the date on which he ceased to be under a disability”; and

(b) in the case of an action for slander of title, slander of goods or other malicious falsehood, as if for the words “six years” there were substituted the words “one year”.

...”

36. Section 38(2) of the Limitation Act 1980 provides:

“For the purposes of this Act a person shall be treated as under a disability while he is an infant or lacks capacity (within the meaning of the Mental Capacity Act 2005) to conduct legal proceedings.”

37. Section 32A of the Limitation Act provides:

“(1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which –

(a) the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and

(b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.

(2) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

(a) the length of, and the reasons for, the delay on the part of the plaintiff;

(b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A—

(i) the date on which any such facts did become known to him, and

(ii) the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and

(c) the extent to which, having regard to the delay, relevant evidence is likely—

(i) to be unavailable, or

(ii) to be less cogent than if the action had been brought within the period mentioned in section 4A.”

38. Section 2(1) of the Mental Capacity Act 2005 provides:

“For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.”

39. Section 3(1) of the Mental Capacity Act 2005 provides:

“For the purposes of section 2, a person is unable to make a decision for himself if he is unable—

(a) to understand the information relevant to the decision,

(b) to retain that information,

(c) to use or weigh that information as part of the process of making the decision, or

(d) to communicate his decision (whether by talking, using sign language or any other means).”

**F. CPR 3.4(2)(c): the Claimant’s non-compliance**

***(a) Limitation***

40. The Claimant was required by the Order:

i) to plead the psychiatric diagnosis on which she relies for the purpose of contending that she was under a disability when the first publication was published on 5 September 2017;

ii) to plead the specifics of her alleged incapacity; and

- iii) to file and serve a consultant psychiatric report, compliant with Part 35 of the Civil Procedure Rules, by 4pm on 27 June 2019.
41. These orders were made because, as the Judge made clear at the earlier hearing, the Claimant's pleadings in respect of limitation were inadequate. In her original particulars of claim, the Claimant pleaded that s.32 of the Limitation Act 1980 did not apply because she was unable to act until 20 December 2017 due to "long standing mental health difficulties"; and any delay was attributable to "the fact that she is disabled" (paras (3) and (4)).
42. In her original Reply, the Claimant pleaded:
- "7. As to paragraph 8 the Defendant denies that the Claimant was unable due to disability to conduct these proceedings from 5<sup>th</sup> September to 20<sup>th</sup> December [2017]. Evidence of this will be fully provided in disclosure. As an interim reply the Claimant can state that she was in residential Mental Health Care from 05/09/17 through to 29/09/17. ...
8. ... The Claimant has been diagnosed with Major Depressive Disorder, psycho-sexual trauma disorder and complex PTSD ..."
43. The Defendant had asked the Claimant, in his Part 18 request, to
- i) "Please set out the specific disabilities you rely on in regards to limitation including the diagnosis and any medication", to which she responded that this had been specified in the reply; and
- ii) "Please identify the medication changes you rely on in respect of limitation", to which she responded that this would be supplied on disclosure.
44. The Judge explained to the Claimant at the earlier hearing, referring to paragraph 3 of the Part 18 request:
- "you do need to plead that because the Limitation Act is going to be argued against you, it is going to be argued you are out of time and if you're arguing disability then it is, the obligation is on you to show the disability by means of psychiatric evidence and I have already said to you what has been given so far is inadequate ..."
45. In her Amended Particulars of Claim, which were settled by Counsel, the Claimant does not rely on s.28 of the Limitation Act 1980 or otherwise plead that she was under a disability. Rather, the Claimant accepts that the claim in respect of the first publication is outside the limitation period of one year and avers that there are good reasons to disapply s.4A pursuant to s.32A of the Limitation Act 1980.
46. If the Claimant had maintained this position, then the need to plead the psychiatric diagnosis on which she relies for the purpose of contending that she lacked capacity to

litigate, and the need to give particulars regarding her alleged lack of capacity to litigate, would have fallen away. But that is not the position she has taken in her reply.

47. The Claimant resurrected her reliance on s.28 of the Limitation Act 1980 in her Amended Reply (which was not settled by any legal representatives). In paragraph 5 the Claimant avers that she was under a disability at the time of the first matter complained of and so the limitation period did not commence until December 2017 when she had recovered sufficiently to consider action. Paragraphs 8 and 9 of the Amended Reply are in precisely the same terms as paragraphs 7 and 8 of her original reply, save for minor amendments to reflect changes to the paragraph numbers of the Amended Defence and Counterclaim.
48. I appreciate the difficulties the Claimant has in representing herself. Nevertheless, it is obvious that merely repeating what she had already been informed was inadequate could not, on any view, comply with paragraph 7a of the Order. Although the Claimant has referred to some diagnoses that she says she has been given, her pleading does not specify the diagnosis she relies on for the purpose of contending she lacked the capacity to litigate between 5 September 2017 and December 2017. Nor has she given any particulars of her alleged inability to litigate. A statement that she was in residential mental health care from 5 to 29 September 2017 does not address the question whether she lacked capacity to litigate within the meaning of ss.2 and 3 of the Mental Capacity Act 2005.
49. The Claimant has also failed to comply with paragraph 8 of the Order. The Claimant has served a letter dated 9 April 2019 from Dr John Stevens, a Consultant Psychiatrist. This letter is not a report that complies with CPR Part 35. Nor does it address the question whether the Claimant had capacity to litigate in the period from 5 September to December 2017. That should not be taken as a criticism of Dr Stevens: it is not. The Claimant has served a letter that Dr Stevens sent prior to the previous hearing. He has not been asked to provide a report which complies with CPR Part 35. Nor has he been asked to address the question whether the Claimant lacked the capacity to litigate.
50. In response to this point the Claimant submitted that the Judge had agreed that she could use a psychiatrist she had recently seen as her expert. That is correct and no objection is taken by the Defendant to the identity of the expert on whom the Claimant wishes to rely. But the Judge made clear in the terms of the Order, as well as during the hearing, that what was required was a medico-legal report which complied with CPR Part 35 and addressed the disability issue; and he set the timetable so as to give the Claimant sufficient time to get such a report: see transcript pp.21, 28, 29, 46, 49.
51. In my judgment, insofar as the Claimant pleads reliance on s.28 of the Limitation Act 1980 in her Amended Reply, her statement of case should be struck out pursuant to CPR 3.4(2)(c). The Claimant was given a further opportunity when the case was adjourned to plead her alleged lack of capacity to litigate properly, and to provide expert evidence on that issue which complies with the rules. She has failed to do so, for no good reason.
52. The Claimant submitted that she thought that limitation had been pleaded properly by her *pro bono* representatives. The answer is that the decision was clearly and quite

properly taken to drop reliance on s.28 and to rely only on s.32A of the Limitation Act 1980. The Claimant herself then sought to resurrect reliance on s.28.

53. In deciding whether to strike out this aspect of the case for non-compliance with the Order I have had regard to all the circumstances of the case. Most notably, I have had regard to the importance of enforcing compliance with court orders, particularly in circumstances where the order was made to give the Claimant an opportunity to remedy a prior failure; the importance of ensuring that litigation is conducted efficiently and at proportionate cost, particularly in a context where the Defendant's application had already been adjourned once at the Claimant's request and the Defendant has no realistic prospect of being reimbursed for his legal costs, even when (as at the previous hearing) costs orders are made in his favour; and the merits of the Claimant's reliance on s.28 of the Limitation Act 1980 appear to be weak.
54. As to the latter point, the Claimant seeks to rely on long-standing mental health issues (which do not currently or generally have the effect that she lacks capacity to litigate), to establish that during a brief period beginning with the date of the first publication she lacked such capacity. There is no evidence that she suffered from any inability to make decisions in respect of litigation at the material time and, as I have said, reliance on s.28 had been dropped in the Amended Particulars of Claim.

**(b) Meaning**

55. One of the matters the Claimant relied on in applying successfully to adjourn the earlier hearing was her intention, with legal assistance, to amend her pleading of meanings. In respect of the first, second and third publications that has been done and there is no complaint about the Claimant's pleading of meaning, in the Amended Particulars of Claim, with respect to those publications.
56. However, in relation to the Tweet, the Claimant has pleaded a bare denial that the words complained of bear the meanings alleged by the Defendant (Claimant's Amended Reply, paras 51 and 54).
57. In her application to adjourn, the Claimant had raised the possibility that she might amend to plead a lower *Chase* level meaning i.e. to contend that the Tweet meant that there were grounds to investigate whether the Defendant committed the act (*Chase* level 3) or reasonable grounds to suspect that he was guilty of the act (*Chase* level 2), rather than meaning he was guilty of the act (*Chase* level 1): see *Chase v News Group Newspapers Ltd* [2003] EMLR 11, per Brooke LJ at [45]. At the hearing before me the Claimant said, "I thought I had said somewhere I wanted to look for a different level of meaning." She said, "I wasn't saying he was guilty or anything", rather the aim of the Tweet was to encourage people to feel safe in coming forward.
58. Nevertheless, having obtained the adjournment she sought, the Claimant has made no attempt in her Amended Reply to plead the meaning(s) she contends the words bear, whilst denying the meanings pleaded by the Defendant.
59. It may be said that this is not a breach of paragraph 2.5 of PD53 because the Claimant (to whom this paragraph would apply as the defendant to the counterclaim) does not plead that the words complained of (i.e. the Tweet) are true. The same may be said of paragraph 7(c)(iv) of the Order which required the Claimant to plead proper

particulars of truth in respect of any meaning the Claimant contends to be true, and so required the Claimant to plead any meaning she contends to be true.

60. However, the Claimant relies on her denial of the meanings pleaded by the Defendant in the context of her denial that it “has caused or is likely to cause serious harm to the reputation” of the Defendant and consequent contention that the Tweet is not defamatory within the meaning of s.1(1) of the Defamation Act 2013.
61. In my judgment, the Amended Reply clearly fails to meet the requirement in para 2.1 of PD53 to inform the Defendant of the nature of the case he has to meet on the meaning of the words complained of in his counterclaim.
62. I consider that it is just and proportionate to strike out, pursuant to CPR3.4(2)(c), the Claimant’s denial that the words complained of in the counterclaim bear the natural and ordinary meaning pleaded by the Defendant in paragraph 107 of the Amended Defence and Counterclaim.
63. It is significant that the Claimant’s failure to plead the meaning she contends the words of the Tweet bear arises in the context of an earlier hearing in which the Judge adjourned to allow the Claimant to rectify the inadequacies in her pleadings and told her:

“There are a number of things about your particulars of claim and your absence of a proper, or any, response actually to the Part 18 that need addressing. The Defendant is entitled to know the case that he is meeting and he does not at the moment, not in full. And ... if I allow this application for an adjournment ..., I will have some observations to make in relation to aspects of the way the particulars of claim has been pleaded and aspects in terms of the absence of a response to the Part 18 and ... your response to the counterclaim.” (transcript, p.9)

“... you have not responded to the Part 18 at all and much of it you do need to respond to, maybe not every single question and legal advice will be able to advise you on that ... I am not here to advise you but a lot of the questions that have been asked of you are perfectly proper questions and you cannot simply say, I am not responding to that, you just cannot do it and you are sailing close to the wind in relation to being struck out.” (transcript, pp.16-17)

“...if I give you this one opportunity and I qualify it in that way you should be under no misapprehension that if things are not progressed further or in a better way I, or whichever judge hears this matter next, will have a lot less sympathy than we have in relation to today.” (transcript, p.40)

64. I have considered whether the Defendant ought to have amended the Part 18 request, as the Claimant submitted, rather than pursuing his application. In my judgment, this is not a case where an unrepresented party has unwittingly omitted to provide sufficient particulars. A key reason for the Claimant’s application to adjourn was to enable her

to plead the meaning she contends the Tweet bears. It is readily apparent that the Claimant has chosen, deliberately, to plead a bare denial.

65. I also take into account that if the Claimant were to seek to plead that the words mean something less than that the Defendant raped and sexually assaulted her, and committed other rapes, such a pleading would be very weak.
66. As regards the innuendo meaning, the Claimant has specifically denied making claims of ‘ritual abuse’ or linking any abuse she suffered to ‘Dolphin Square’. In addition, she has put in issue whether the extrinsic facts pleaded support the innuendo meaning. In the circumstances, I would not strike out para 54 of the Amended Reply solely on grounds of failure to plead any meaning(s) relied on.

*(c) Malice*

67. The Defendant has pleaded that the first, second and third publications were published on a privilege occasion, namely in response to attack. PD53, para 2.9 requires that in such circumstances a claimant who intends to allege the defendant acted with malice “must serve a reply giving details of the facts or matters relied on”. The importance of pleading proper particulars of malice, if that is alleged, was firmly underlined by para 7(c)(ii) of the Order.
68. The Claimant’s Amended Reply states at para 32:
- “If the Court find that the defamation falls within the defence of qualified privilege then the Claimant will aver malice.”
69. The Claimant’s Amended Reply does not contain any details of the facts and matters relied on to support this plea of malice. The Claimant merely asserts that the first publication was “untrue” and that it was “not in defense of himself but was for the purpose of publicly attacking and defaming the Claimant”.
70. The Claimant’s bare plea of malice, without any supporting particulars, fails to comply with both the Order and para 2.9 of PD53.
71. At the hearing before me, the Claimant’s position was that she was not seeking to establish malice. She said, “I accept he has qualified privilege in calling me a liar”, but that he has “exceeded the qualified privilege” in claiming that she was guilty of perverting the course of justice and instrumental in a vigilante campaign against him.
72. I consider that the only just course is to strike out the Claimant’s plea of malice pursuant to CPR 3.4(2)(c). In the context of this case, and the circumstances which I have described, the failure to provide any particulars of malice is a serious deficiency. The Defendant still does not know what case he has to meet despite the opportunity given to the Claimant to amend her pleadings and the specific order that the Claimant, if she seeks to defeat the defence of qualified privilege by pleading malice, provide particulars of malice in respect of each publication.

*(d) Truth – the counterclaim*

73. In his counterclaim, the Defendant has pleaded that the meaning of the words published by the Claimant includes the allegation that he raped the Claimant and other



victims. He has denied the allegations and averred that the Claimant deliberately made them up or alternatively she is mistaken and, in any event, the allegations are false. The Defendant has pleaded the facts he relies on in support of the denial.

74. If the Claimant (as the defendant to the counterclaim) wished to contend that the words of her Tweet are true, she was obliged to specify the meaning she claimed was true and to give details of the matters on which she relies in support of her allegation. This obligation flowed from both PD53, para 2.5. It was reinforced by para 7(c)(iv) of the Order which specifically required the Claimant to plead “proper particulars of truth, in respect of any meaning the Claimant contends to be true”.
75. The importance of the obligation to plead proper particulars of truth was underlined by the Judge at the earlier hearing. He told the Claimant, as I have said, that she was sailing close to the wind in terms of being struck out by refusing, as she had done, to respond to proper questions designed to identify the case the Defendant has to meet. In answer to the Claimant’s question about the degree of detail she needed to plead, given that she said she had given over 100 hours of video evidence to the police, the Judge explained that she would need to plead: what she was alleging against the Defendant; when (e.g., he explained, “I was between the ages of this and this, the occasions were too numerous but included such a date”); where it occurred; and to identify the other people she alleged abused her (transcript, pp.15-16 and 26-28). He told her “you have alleged other people abused you, I cannot see any reason why you cannot disclose that” (transcript, p.28); “if you are saying it is a ... specified small number of people, including the Defendant, which is I think your case, then you need to make that clear” because the Defendant “might want to call witnesses to disprove named persons” (transcript p.30).
76. The Claimant has not pleaded truth as a defence to the counterclaim. This is a deliberate choice: she has deleted the bare pleading of truth contained in her original reply. The lack of any defence of truth sits uncomfortably with passages of the Claimant’s Amended Reply in which she maintains her allegations against the Defendant: see Amended Reply, para 20. Nevertheless, I approach the case on the basis that, in defending the counterclaim, the Claimant does not contest the Defendant’s plea that the words complained of (i.e. her Tweet) were untrue. That is her pleaded position on the counterclaim and, in respect of both the claim and the counterclaim, she has provided no particulars to support a plea that her allegations of rape and sexual assault made against the Defendant are true.
77. If her position is that she does not seek to defend the truth of the Tweet, then the lack of any pleading of particulars of truth in respect of the counterclaim is not a further instance of non-compliance with the Order or the practice direction. But the lack of any defence of truth is important in considering whether the Claimant’s defence to the counterclaim has a real prospect of success and it is necessary to consider the consequences for the claim.

*(e) Truth – the claim*

78. As I have said, there is little dispute about the meanings of the first, second and third publications. The Defendant has pleaded that the words complained of by the Claimant are true (or alternatively, in respect of the third publication, are honest

opinion) and given details of the matters on which he relies to justify the defamatory meanings (PD53 para 2.5) or defend the meaning as honest opinion (PD53 para 2.6).

79. In the Amended Defence he has pleaded that the “defamatory sting of all of the allegations complained of is that the Claimant was wrong and further, lied deliberately” (para 28). Amongst other matters, he has pleaded that the Claimant alleged to the police that the perpetrator had two distinguishing features which he does not (and did not) have, and that he does (and did) have a prominent feature that the Claimant did not describe. He pleads that the Claimant’s allegations against him are untrue and relies on her maintenance of her allegations in the face of evidence that he lacks the features she had described as evidence that her allegations are deliberate and malicious (AmDef, para 37).
80. Consequently, the Claimant was required by PD53 para 2.8 to serve a reply admitting or denying the allegations and giving the facts on which she relies. In other words, the Claimant was required to admit or deny, and provide particulars in support of any denial, that:
- i) The Claimant maliciously made up false allegations of rape about the Defendant;
  - ii) The Claimant is a fantasist who made false allegations about the sexual abuse of children;
  - iii) The Claimant is guilty of perverting the course of justice and should have been prosecuted accordingly.
  - iv) There are reasonable grounds to suspect the Claimant is guilty of perverting the course of justice by making false allegations.
  - v) The Claimant is a liar and untrustworthy.
  - vi) The Claimant is not a suitable person to receive public funding for IICSA.
  - vii) The Claimant’s lies had made the Defendant concerned he would be the subject of vigilante attack and encouraged vigilantism.
81. In respect of the claim, the Claimant addresses the particulars of truth at paragraphs 15-31 of her Amended Reply:
- i) In respect of the key allegation at para 37 of the Amended Defence, the Claimant admits that she alleged to the police that the perpetrator had the two specified distinguishing features, suggests that as far as she<sup>1</sup> is aware these identification issues have never been resolved, and denies the remainder of the paragraph.
  - ii) At paragraph 24 of the Amended Reply, the Claimant admits that she has alleged that she was raped by other public figures, including a named, well-

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<sup>1</sup> The reference to “the Defendant”, rather than the Claimant, in the third sentence of para 23 of the Claimant’s Amended Reply appears to be a typographical error.

known (now deceased) politician, who she has claimed were the Defendant's accomplices and part of the same purported group as the Defendant.

- iii) Paragraph 26 of the Amended Reply states that the Claimant "maintains the truth of her allegations". The pleading does not specify what allegations the Claimant maintains are true. Paragraph 26 of the Amended Reply responds to paragraph 40 of the Amended Defence, which concerns allegations the Claimant has made (but not pleaded) against the deceased politician referred to above. So it may be a reference to those allegations or, as the reference in the same paragraph to seeking "transcripts of all material relating to the Defendant" suggests, it may refer to the allegations the Claimant has made (but not pleaded) against the Defendant.
  - iv) At paragraph 28 of the Amended Reply the Claimant has denied that her allegations are implausible and stated that she intends to show that the Defendant "had connections to Staffordshire at the time in question". Similarly, at paragraph 31 she has pleaded that "there are various references and connections between the Defendant and the Staffordshire area".
  - v) At paragraph 31 of the Amended Reply, in response to the Defendant's pleading that the Claimant's allegations against him are false and that she knows they are false and lied, the Claimant has pleaded a denial and put the Defendant to proof.
82. In short, the Claimant has denied the allegation that her allegations against the Defendant were false and that she knew them to be false and lied, but she has failed to plead any of the matters she relies on to support that plea. Wholly absent from the Claimant's pleadings is any account of the allegations that she makes against the Defendant. Nor, if she does not maintain the truth of the allegations, has she put forward any alternative case that even if her allegations were untrue, she did not maliciously make up false allegations and is not guilty of perverting the course of justice.
83. As I have already said in relation to the counterclaim, it was made clear to the Claimant that if she contends that the allegations of rape she made against the Defendant are true, she was required to provide details of what she alleges occurred, when, where and if she alleges the Defendant was part of a group who abused her, to plead that allegation, identifying those who she alleges were part of the same group. Having failed to do so in her claim, in breach of PD53 para 2.8 – and having chosen not to do so in her defence to the counterclaim – I consider that the Claimant should be precluded from denying that her allegations were false. In my judgment, the Claimant's denials that her allegations of rape and sexual abuse by the Defendant were untrue should be struck out pursuant to CPR 3.4(2)(c).
84. The Claimant's non-compliance with the requirements of PD53 para 2.8 is more extensive than the failure to provide particulars to support her denial that her allegations against the Defendant were false. I have summarised the allegations which she was required to address in paragraph 80 above. Nevertheless, I consider that the failure to provide proper particulars to support any denial that she acted maliciously in deliberately making up false allegations, that she is guilty of perverting the course of justice, that she is a liar and a fantasist, and not a suitable person to receive public

funding for IICSA, would not justify her denial of these aspects of the Defendant's defence of truth being struck out pursuant to CPR3.4(2)(c).

85. I consider that strike out of these parts of the Amended Reply would not be justified because:
- i) The obligation flowed from the practice direction. Nevertheless, it is understandable in a complex case like this that the Claimant, who has no legal training, may have had difficulty understanding fully what the reference in PD53, para 2.8 to admitting or denying "the allegation" encompassed in the context of this case. The allegations were the meanings of the first, second and third publications which the Defendant pleaded were true.
  - ii) The Claimant has responded in some detail to the particulars of truth pleaded by the Defendant, and she may have understood those matters to be the allegations to which she was required to respond.
  - iii) The Order specified a number of matters that the Claimant needed to properly particularise, but it did not specifically alert her to the need to give particulars in support of her denial of the truth of any meaning the Defendant contends is true. Paragraph 7(c)(iv) of the Order required the Claimant to provide proper particulars of truth in respect of any meaning the Claimant contends to be true. That clearly encompassed any assertion by the Claimant that her allegation that the Defendant had raped her was true because that was the subject of the counterclaim, but it did not encompass giving particulars of her denials of the truth of the first, second and third publications (in the meanings alleged to be true by the Defendant) insofar as those went beyond asserting that the Claimant's allegations of rape were false.
  - iv) The discussion at the earlier hearing was such that it should have been clear to the Claimant that if she intended to contend her allegations that she was raped by the Defendant were true, she had to plead that in her Amended Particulars of Claim or in her Amended Reply. But there was no discussion of the need for her to give particulars of any denial of each of the meanings which the Defendant contended were true.
86. Nevertheless, the Claimant must understand that the further opportunity I am prepared to give her to remedy the inadequacy of her pleading of her claim is her final opportunity, and so I will make it in the form of an unless order, making clear that the claim will be struck out unless proper particulars are provided. Specifically, the Claimant must respond to the Defendant's defence of truth in respect of each of the meanings of the first, second and third publication he contends are true, admitting or denying the truth of his allegation, and giving the facts on which she relies in support of any denial. This is subject to the caveat, for the reasons I have explained, that the Claimant is precluded from denying that her allegations that the Defendant raped or sexually assaulted her or any other person were untrue.

**G. The Defendant's application pursuant to CPR 3.4(2)(a) and CPR 24.2**

***(a) The counterclaim***

87. I turn then to consider the Defendant's broader application that the whole of the Claimant's defence to the counterclaim should be struck out and he should be given summary judgment on his counterclaim.
88. I conclude that the Claimant's (amended) defence to the counterclaim, save in respect of the innuendo meaning pleaded at paragraph 109 of the Amended Defence, should be struck out pursuant to CPR 3.4(2)(a) on the grounds that it discloses no reasonable grounds for defending the claim. I also consider that the Defendant is entitled to summary judgment on the counterclaim, pursuant to CPR 24.2, again save in respect of the innuendo meaning, because the Claimant has no real prospect of successfully defending the counterclaim and there is no other compelling reason why the counterclaim should be disposed of at trial.
89. My reasons for reaching this conclusion are:
- i) It is not disputed that the Claimant published the Tweet.
  - ii) Nor is it disputed that the Tweet referred to the Defendant and would have been understood by some members of the public who read it as referring to the Defendant.
  - iii) I have struck out the Claimant's denial of the natural and ordinary meaning of the Tweet pleaded by the Defendant at paragraph 107 of the Amended Defence (see paragraphs 55 to 66 above).
  - iv) At common law, a statement is defamatory of a claimant if, but only if (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation substantially affects in an adverse manner the attitude of other people towards him, or has a tendency to do so: see *Lachaux v Independent Print Ltd* [2019] UKSC 27, [2019] 3 WLR 18 at [6]-[9], citing *Sim v Stretch* [1936] 2 All ER 1237, per Lord Atkin at 1240 and *Thornton v Telegraph Media Group Ltd* [2011] 1 WLR 1985, per Tugendhat J at [96]. A statement which bears the meaning that the Defendant raped and sexually assaulted the Claimant, then stalked and defamed her to cover it up, and that he is a serial rapist who has committed other rapes, obviously meets the test of being defamatory at common law of the Defendant.
  - v) The Claimant has not raised any defences to the counterclaim. In her original reply and defence to counterclaim she had averred, in a bare form unsupported by particulars, the defences of truth, honest opinion, set off of the original claim and the privilege of responding to attack. All those defences have been removed from the Amended Reply.
  - vi) The only contention that the Claimant seeks to raise in opposition to the counterclaim, insofar as it is based on the natural and ordinary meaning of the words, is a denial that the words complained of have caused or are likely to cause serious harm to the reputation of the Defendant. For the reasons I explain below, this contention is hopeless.
90. Section 1(1) of the Defamation Act 2013 provides: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of

the claimant”. The effect of s.1 of the Defamation Act 2013 is that “the defamatory character of the statement no longer depends only on the meaning of the words and their inherent tendency to damage the claimant’s reputation”: *Lachaux*, per Lord Sumption at [17].

91. Lord Sumption (giving the sole judgment) explained in *Lachaux* at [14]:

“...section 1 necessarily means that a statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it “has caused or is likely to cause” harm which is “serious”. The reference to a situation where the statement “has caused” serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is “likely” to be caused. In this context, the phrase naturally refers to probable future harm.”

92. In support of his pleading that the Claimant’s defamatory statement has caused and is likely to cause him serious reputational harm, as well as serious distress and embarrassment, the Defendant relies on (i) the seriousness of the allegations made; (ii) his standing as a former MP; (iii) the interference with his ability as an entrepreneur to start up new businesses given the profound disruption to his time arising from the harassment caused by the allegations; (iv) his standing as a former director of an entity regulated by UK financial standards regulators, and the damage caused by the allegations to his ability to return to that career; (v) the threats to murder the Defendant, for which Mr Canning was convicted; and (vi) the Claimant’s maintenance of the allegations after the CPS decision not to charge the Defendant and after discovering he lacked the distinguishing characteristics of her attacker.

93. In the Amended Reply, the Claimant has denied that the Tweet caused or was likely to cause serious harm to the Defendant’s reputation (para 57). In support of her denial of serious harm, she denies that the words complained of bore the natural and ordinary or innuendo meanings pleaded by the Defendant. However, I have already determined that the Claimant’s bare denial of the natural and ordinary meaning of the Tweet should be struck out.

94. Aside from taking issue with the relevance, or not admitting, some of the specific matters the Defendant has relied on in support of his claim of serious harm, the Claimant’s essential contention is that to the extent that the Defendant was identified in the Tweet, the cause was that the Defendant had identified himself publicly (in the first, second and third publications) as the subject of the allegations of rape against him which the Claimant had made to the police.

95. It was this latter point which the Claimant sought to maintain at the hearing before me. The Claimant said, “I accept that allegations of child rape do cause serious harm”.

However, she submitted: “The Defendant named himself. He made it public. I have never mentioned his name in connection [with the allegation]. I have not mentioned his name. I would say the serious harm has been caused by him waiving his anonymity.”

96. It is correct that the Defendant had not been named to the public at large as the subject of the allegations the Claimant had made to the police before the Defendant published the first publication. He has pleaded (AmDef, para 47) that he did so because there had been jigsaw identification of him, for example, by a journalist describing the anonymous accused as a Liberal Democrat MP, aged 55, a Birmingham politician and musician, and a television piece identifying the accused as a Birmingham politician.
97. In any event, thereafter the Claimant published a Tweet which she acknowledges would have been understood by at least some of those who read it as referring to the Defendant, the natural and ordinary meaning of which is as pleaded in paragraph 107 of the Amended Defence (quoted in paragraph 14 above). The fact that the extrinsic knowledge which some readers of the Tweet would have had, enabling them to understand that her Tweet was referring to the Defendant, had previously originated from him is irrelevant. The Claimant acknowledged that such a grave allegation was bound to cause serious reputational harm. It does not assist her case to say that she did not name him expressly given that, as she has accepted, her Tweet would have been understood by a proportion of her followers as referring him.
98. I have not struck out or given summary judgment in respect of the Claimant’s (amended) defence to the innuendo meaning. The Claimant has denied that she has made claims of “ritual abuse” and she has denied that she has made allegations regarding “Dolphin Square abuse”, which form part of the extrinsic facts on which the Defendant has based the innuendo meaning he has pleaded. She has also put in issue whether the extrinsic facts pleaded support the Defendant’s pleaded innuendo meaning. Those are all matters to be tried.

***(b) The claim***

99. What, then, is left of the Claimant’s defamation claim? To what extent have the Defendant’s defences been established at this preliminary stage, and what is the consequence?
100. On the pleadings, it is accepted that the first, second and third publications were defamatory of the Claimant (including meeting the serious harm test in s.1(1) of the Defamation Act 2013), in the meanings pleaded at paragraphs 6.1, 6.3, 20.1, 20.2, 24.1 and 24.2 of the Amended Particulars of Claim, subject to the pleaded defences of limitation, truth, qualified privilege, honest opinion and set-off. The meaning pleaded at paragraph 6.2 is disputed.
101. In respect of limitation, although I have struck out the Claimant’s reliance on s.28 of the Limitation Act 2018, there remain questions (a) whether time should be extended pursuant to s.32A of the Limitation Act 1980 and (b) in any event, whether the claim in respect of the second and third publications was brought in time.
102. I have not determined those limitation points. In considering the Defendant’s application for strike out/summary judgment of the whole defamation claim I bear in

mind that, on the face of it, the Claimant appears to have good grounds for contending that the claim in respect of the second and third publications was brought in time. This is because (a) it was brought within a year of each of those publications; (b) there appears to be a significant difference between some, at least, of the admitted meanings in respect of the second and third publications compared to the first (e.g. a *Chase* level 1 allegation (AmPOC, para 20.2) compared to a *Chase* level 2 (AmPOC, para 6.3), and reference to the Claimant's suitability to receive public funding for IICSA which was not referred to in the first publication); and (c) it may be said that the manner of publication of the second and third publications (i.e. in the Daily Mail newspaper and on the Daily Mail website) was "materially different" to the manner of publication of the first publication (i.e. on the Defendant's blog).

103. As regards the defence of qualified privilege, although the Claimant can no longer seek to defeat the defence by raising a plea of malice (see paragraphs 67 to 72 above) she is entitled to, and has, put in issue whether the Defendant's publications were proportionate responses to the attacks. I note that in respect of the first publication the attack was in the form of statements to the police, together with the jigsaw identification by parts of the media to which I have referred, whereas in respect of the second and third publications the attack also included the Tweet. The Claimant has raised issues regarding the appropriateness in terms of subject matter, scale, timing and repetition of the publications.
104. As Eady J observed in *Campbell v Safra* [2006] EWHC 819 (QB) at [25]:

"...in general terms, it is not often that it will be satisfactory for a judge to uphold a defence of qualified privilege on a summary basis where it may depend, in part, on facts which are controversial and would ordinarily require to be determined at trial: see e.g. the discussion in *Kearns v General Council of the Bar* [2003] 1 WLR 1357."
105. Mr Owen-Thomas, Counsel for the Defendant, submitted that the gravity of the attack was such that in the absence of a plea of malice there is no real prospect of the court finding that the Defendant's responses to attack did not fit well within the bounds of the privilege. In my judgment, the question whether each of the statements made by the Defendant (having regard to the admitted meanings and the further meaning which is disputed and has not yet been determined) was privileged raises questions of fact and cannot properly be determined on a summary basis.
106. As regards the Defendant's defences of truth and honest opinion, the Defendant has contended that if I give judgment in his favour in respect of the counterclaim, it follows that I should dismiss the claim without trial, too.
107. It follows from the decision I have made in respect of the counterclaim that the Claimant cannot contend that the Defendant raped her or anyone else, or that he sexually assaulted her or stalked and defamed her to cover it up. She is precluded from contending that her Tweet, in the natural and ordinary meaning pleaded by the Defendant, was true. Nevertheless, the Defendant's statements, in the meanings that he has admitted, go beyond stating that the Claimant's allegations were false. For example, an admitted meaning of the second publication is that the "Claimant is in



fact guilty of perverting the course of justice and should have been prosecuted accordingly”.

108. For the reasons that I have given, I consider that the Claimant should be given a further, final opportunity to respond to the Defendant’s defences of truth and honest opinion (see paragraphs 78 to 86 above). The defence of truth has been established insofar as the meaning of the publications is that the Claimant’s allegations against the Defendant were not true, but not (at this stage) in respect of the remaining meanings.
109. The Defendant has also established that he has a defence by way of set-off of the counterclaim, insofar as his counterclaim is based on the natural and ordinary meaning of the Tweet that he has pleaded. However, a defence by way of set-off does not provide a basis for striking out the Claimant’s claim or giving summary judgment against her on the claim.
110. Accordingly, I am not prepared at this stage to strike out the Claimant’s defamation claim in its entirety or to give the Defendant summary judgment in respect of the Claimant’s defamation claim.

#### **H. The Defendant’s application pursuant to CPR 3.4(2)(b): abuse of process**

111. For the reasons I have given, having chosen not to plead a defence of truth to the counterclaim, and having failed to plead any particulars to support her denial of the Defendant’s averral that the allegations she made against him were false, the Claimant is not entitled to plead that the allegations were true. The Amended Reply includes, at paragraph 20, a bare repetition unsupported by particulars of the allegation made by the Claimant against the Defendant. That is an abuse of the court’s process and I strike it out pursuant to CPR 3.4(2)(b).

#### **I. The Claimant’s data protection claim**

112. The Claimant’s Amended Particulars of Claim include, at paragraphs 8-16, a new cause of action in respect of the first publication, namely, a claim for breach of the Data Protection Act 1998.
113. The Order required the Claimant to serve amended particulars of claim by 29 April 2019, but it did not give the Claimant permission to add a new cause of action. In accordance with CPR 17(2), the Defendant having declined to consent to the addition of this cause of action, the Claimant requires the permission of the court to add it.
114. The Claimant has not made an application for permission to amend to add a claim for breach of the Data Protection Act. As there is no application for permission before me, I shall only make very limited observations in respect of any application the Claimant may subsequently choose to make:
  - i) The claim as currently pleaded relies on an Act which has been repealed. The basis on which the Claimant relies on the Data Protection Act 1998 is not apparent. Although the Data Protection Act 2018 contains, in Schedule 20, certain transitional provisions, on the face of it those provisions do not appear to provide a basis for the Claimant’s reliance on the 1998 Act in this case.

ii) I have explained that the Claimant is precluded from denying that her allegations against the Defendant were untrue. That preclusion applies equally to any claim of breach of data protection legislation.

115. I make no order striking out paragraphs 8-16 of the Amended Particulars of Claim because, as matters stand, they do not form part of the Claimant's statement of case as she has not sought or obtained permission to rely on them.

**J. The Claimant's application**

116. The Claimant has applied for an order striking out the Defendant's counterclaim and defence to the claim on the grounds of abuse of process, pursuant to CPR 3.4(2)(b). She submits that striking out his claim would be in accordance with the overriding objective of dealing with cases justly and ensuring that the parties are on an equal footing.

117. I have no hesitation in dismissing the Claimant's application which has no merit. The Claimant's statement and lengthy exhibit raises many matters. I have considered all the matters that she has raised but in order to avoid lengthening this judgment further I address only the principal issues she has raised in support of her application.

118. First, the Claimant alleges the Defendant has used the court's processes to engage in a criminal act of 'revenge porn'. This allegation is based on paragraph 15 of the Defendant's Reply to Defence to Counterclaim dated 6 November 2018 in which he responded to the Claimant's allegation that two individuals (one of whom he understood to be Mr Just) had been arrested for stalking her (although he pleads that charges were then dropped). The Defendant pleaded that he did not consider the Claimant's allegations regarding these two individuals were relevant to the issues in the case, but if they fell for consideration, he claimed the Claimant had been harassing Mr Just. The Defendant alleged that the Claimant uploaded her own nude photographs and then anonymously emailed them to Mr Just, who has supported the Defendant, to try to encourage him to distribute them with a view to getting him into trouble with the police. He included in his pleading particulars of the website and email addresses used.

119. The allegation that this was a criminal act on the part of the Defendant is plainly not made out. I also note that the point to which the Claimant took objection does not appear in the Defendant's amended pleadings.

120. Secondly, the Claimant alleges that the Defendant has made repeated attempts to prevent the Claimant gaining either *pro bono* legal assistance or to raise funds to pay for legal representation. The essential foundation for this allegation appears to be a blog post written by Mr Smith entitled "Esther Baker Crowdfunding Page Taken Down Over False Statements". The Claimant describes Mr Smith as the Defendant's McKenzie friend. In fact, he has not acted in that capacity for the Defendant in these proceedings, although he has done so in other proceedings, and he has assisted the Defendant.

121. One crowdfunding campaign the Claimant ran was closed because the campaign used the name of the solicitor's firm which had provided the Claimant with *pro bono*

advice, Simpson Millar, without the firm's permission. An email from Simpson Millar to Mr Smith stated:

“a. We are not acting in the defamation claim.

b. We did not have any input into the contents of the CrowdJustice page, authorise its contents or authorise the use of our name.

..

d. We have requested that our name be removed from the CrowdJustice page. We understand that the CrowdJustice Page has been removed from the Internet until an alternative lawyer can be found.”

122. The Claimant made two further attempts to set up crowd-funding campaigns, both of which were shut down by the crowd-funding sites. The Claimant states that £4,000 was donated within a few days but this had to be returned to the donors when the fund-raising pages were removed. The decisions to remove the fund-raising pages were made by the fund-raising sites. It appears that these decisions may have been made following representations made on behalf of the Defendant regarding the content of the fundraising pages. However, there is no evidence before me that the Defendant has done anything more than object to what he contends are defamatory allegations. That is not an abuse of process.
123. There is no evidence that the Defendant sought to prevent the Claimant obtaining *pro bono* advice. On the contrary, at the earlier hearing he accepted the adjournment of his application precisely because he could see that it would be in both parties' interests for the Claimant to be represented.
124. Thirdly, the Claimant alleges that the Defendant has made defamatory statements in his pleadings which go beyond what is permitted by qualified privilege. Save to the extent that I have struck out parts of the Claimant's case, that will be a matter for determination at trial. It is not a basis for alleging abuse of process.
125. Fourthly, the Claimant contends that the Defendant has repeatedly attempted to pervert the course of justice by the offers that he has made with a view to settling the claim. The Claimant has exhibited without prejudice correspondence. Although she had not sought his consent, the Defendant consented at the hearing to this correspondence being put before me. There is nothing in this correspondence which provides any support for the Claimant's application. It is understandable that the Claimant may have found threatening the terms in which some of these offers, and warnings of likely costs orders and bankruptcy, were put, but that does not make them improper. Indeed, the Defendant has made clear in his offers that he believes that the Claimant is a vulnerable woman who has been manipulated by others to make false allegations. If the terms of his offers were not acceptable to her, not least because she denies that others manipulated her to make false allegations, she was free to decline the offers (as she has done).

126. Fifthly, the Claimant questions whether the Defendant's opposition to her application, made in separate proceedings, for a third party disclosure order from the Staffordshire police to obtain transcripts of her video interviews concerning the Defendant is an attempt to pervert the course of justice. Again, this obviously provides no foundation for the Claimant's application to strike out the Defendant's defence and his counterclaim for abuse of process.
127. Finally, much of the Claimant's second statement focuses on blog posts regarding this case written by Mr Smith. The evidence is that he has used publicly available materials in his blogs. He is entitled to report on public hearings which he has attended. Although the Claimant may regard his blogs as biased against her, it is notable that Mr Smith has made clear the limits of decisions he has reported. For example, in his blog entitled "Baker v Hemming: Esther Baker Ordered to Pay Costs!", Mr Smith fairly noted: "This case is ongoing and the merits have not been decided. Nothing in this ruling prevents either party prevailing or reaching a settlement. Nothing in the ruling means either party has proved anything on the underlying allegations of sexual abuse. Those matters are still yet to be determined." In any event, the content of Mr Smith's legal blog posts does not begin to establish even a remotely arguable claim that the Defendant's counterclaim and defence to claim should be struck out for abuse of process.

#### **K. Conclusion**

128. For the reasons that I have given, I will make an order that:
- i) The Claimant's application is dismissed.
  - ii) The Defendant's application is allowed to the following extent (and otherwise dismissed):
    - a) The Claimant's reliance on s.28 of the Limitation Act 1980 in her Amended Reply is struck out pursuant to CPR 3.4(2)(c);
    - b) The Claimant's plea of malice in response to the Defendant's reliance on the defence of qualified privilege is struck out pursuant to CPR 3.4(2)(c).
    - c) The Claimant's denial that her allegations of rape and sexual abuse by the Defendant were untrue is struck out pursuant to CPR 3.4(2)(c).
    - d) The allegation made against the Defendant in the fifth sentence of paragraph 20 of the Claimant's Amended Reply is struck out pursuant to CPR 3.4(2)(b).
    - e) The Claimant's denial that the words complained of in the counterclaim bear the natural and ordinary meaning pleaded by the Defendant in paragraph 107 of the Amended Defence and Counterclaim is struck out pursuant to CPR 3.4(2)(c);
    - f) The Claimant's denial that publication of the words complained of in the counterclaim (insofar as they bear the natural and ordinary meaning

pleaded at paragraph 107 of the Amended Defence and Counterclaim) caused or is likely to cause serious harm to the reputation of the Defendant, is struck out pursuant to CPR 3.4(2)(a) and summarily dismissed pursuant to CPR 24.2.

- g) The Claimant's defence to the counterclaim (contained in her Amended Reply), insofar as the counterclaim is based on the natural and ordinary meaning pleaded by the Defendant at paragraph 107 of the Amended Defence and Counterclaim, is struck out pursuant to CPR 3.4(2)(a) and summarily dismissed pursuant to CPR 24.2.
  - h) Judgment for the Defendant on the counterclaim, insofar as the counterclaim is based on the natural and ordinary meaning pleaded by the Defendant at paragraph 107 of the Amended Defence and Counterclaim, with damages to be assessed.
- iii) The Claimant's defamation claim will be struck out unless by 4pm on 17 December 2019 the Claimant serves a Re-Amended Reply to Defence:
- a) Admitting or denying the truth of each allegation contained in the meanings of the first, second and third publications which the Defendant has pleaded are true (save that the Claimant is precluded from denying that her allegations that the Defendant raped or sexually assaulted her or any other person were untrue); and
  - b) Giving the facts on which she relies in support of any denial pursuant to (i) above.
- iv) The parties shall make submissions in writing with respect to any further case management directions sought, and as to the appropriate order for costs, such submissions to be filed and served on the other party by 4pm on 12 November 2019.