THE HIGH COURT

[2022] IEHC 3712 P

[Record No. 2021/3712P]

BETWEEN

AOIFE MOORE

PLAINTIFF

AND

EOGHAN HARRIS AND TWITTER INTERNATIONAL COMPANY

DEFENDANTS

THE HIGH COURT

[Record No. 2021/3711P]

BETWEEN

ALLISON MORRIS

PLAINTIFF

AND

EOGHAN HARRIS AND TWITTER INTERNATIONAL COMPANY

DEFENDANTS

JUDGMENT of Mr Justice Mark Sanfey delivered on the 5th day of December 2022.

Introduction

1. This judgment concerns applications by each of the plaintiffs in their respective proceedings for "Norwich Pharmacal" type orders against both defendants, seeking disclosure of the identity of, or information in connection with, persons allegedly involved with certain Twitter accounts which each of the plaintiffs claims have defamed them in a number of "tweets" which appeared on the platform of the second named defendant ('Twitter') between April 2020 and May 2021 in the case of the plaintiff in the first proceedings mentioned above ('Ms Moore'), and between 5 August 2020 and 26 April 2021 in the case of the plaintiff in the second proceedings above ('Ms Morris').

2. The two sets of proceedings are maintained on the same basis, *i.e.* that each of the plaintiffs has been defamed by tweets for which the first named defendant and/or others are responsible. The plaintiffs were each represented at the hearing of these applications by the same legal team, and the separate applications of the plaintiffs were for the same reliefs – albeit, in the case of Ms Morris, in respect of an additional Twitter account in which she alleges she was defamed – and were made on the same legal basis.

The parties

3. Aoife Moore is a journalist and, when her proceedings were initiated on 14th May, 2021, was a political correspondent with a national newspaper, the Irish Examiner. Allison Morris is also a journalist and is and was at all material times a crime correspondent with the Belfast Telegraph.

4. The first named defendant in both proceedings ('the first defendant' or 'Mr Harris') is a journalist and was a columnist with the Sunday Independent until in or about May 2021. The second named defendant ('the second defendant' or 'Twitter') in both proceedings is a private unlimited company which is involved in the provision of the well-known media platform 'Twitter'.

The proceedings

5. Each of the plaintiffs issued their separate proceedings on 14th May, 2021. Each seeks the same reliefs as against the first named defendant: damages (including aggravated and/or exemplary damages) for defamation, an order pursuant to s.33 of the Defamation Act 2009 restraining further defamatory statements and a correction order pursuant to s.30 of the Defamation Act 2009. Norwich Pharmacal orders were sought against both defendants, with comprehensive and detailed orders being sought against Twitter, although no substantive, as opposed to procedural, relief was sought against Twitter.

6. On 10th November, 2021 and 16th November, 2021, statements of claim were delivered by Ms Moore and Ms Morris respectively. By that stage, the exchange of affidavits in the present applications was all but complete, although those applications were yet to be heard. Counsel for the plaintiffs relied on the statements of claim in support of the plaintiffs' applications, which resulted in criticism on behalf of the defendants at the hearing. Where appropriate, I shall refer to the contents of the respective statements of claim below.

The reliefs sought in the present applications

7. The reliefs sought in each of the notices of motion in the present applications are as follows: -

"(1) A "*Norwich Pharmacal*" type order and or an order pursuant to the inherent jurisdiction of this Honourable Court directing the First Defendant to make disclosure of the identity of the persons who are or were the subscriber(s), user(s), controller(s) and/or registered owner(s) of the Twitter accounts or who are or were in the group or on the panel of 'curators' who oversaw, used or contributed to the Twitter accounts on the Second Defendant's platform at:

- Barbara J Pym- @BarbaraPym2
- Dolly White - @Dollywh72057454

[In the case of Ms Morris' notice of motion, the same relief was sought in respect of

- Northern Whig - @WhigNorthern]

(2) A *"Norwich Pharmacal"* type Order directing the second defendant, whether by itself, its servants or agents and all persons having knowledge of the making of the order to make disclosure of:

(i) The name(s), address(es), telephone number(s), email address(es) or any other contact details together with the internet protocol numbers (IP addresses) associated with all log-ins and log-outs, geographical locators, and/or any other indicia of identification of the person(s) who are or were the subscriber(s), user(s), controller(s) and/or registered owner(s) of the Twitter accounts with the names and Twitter handles:

(a) Barbara J Pym - @BarbaraPym2, and

(b) Dolly White - @Dollywh72057454.

[In the case of Ms Morris' notice of motion, the same relief was sought in respect of

- Northern Whig - @WhigNorthern]

(ii) the names and Twitter handles of the Twitter accounts which re-published (Re-Tweeted) defamatory statements published of and concerning the plaintiff using Barbara J Pym - @BarbaraPym2 and/or Dolly White – @Dollywh72057454 (which said accounts were suspended by the second defendant);

(iii) the name(s), address(es), telephone number(s), email address(es) or any other contact details together with the internet protocol numbers (IP addresses) associated with all log-ins and log-outs, geographical locators, and/or any other indicia of identification of the person(s) who are or were the subscriber(s), user(s), controller(s) and/or registered owner(s) of the Twitter accounts at 1(ii) above;

(iv) copies of all defamatory statement (Tweets) re-published (Re-Tweeted) of and concerning the plaintiff using the Twitter accounts at 1(ii) above".

8. Essentially, Ms Morris sought the same reliefs as Ms Moore at the hearing of the application in respect of the 'Northern Whig' account as well as the 'Barbara J Pym' and 'Dolly White' accounts, notwithstanding that para. 2(ii) of her notice of motion did not refer to the Northern Whig account. This appears simply to have been an oversight.

<u>The background set out in Ms Moore's grounding affidavit</u>

9. In her grounding affidavit sworn on 25th May, 2021, Ms Moore avers that, in or about October 2020, she became aware of a Twitter account with the handle

'@BarbaraPym2' and going by the name 'Barbara J Pym'. She contends that, between 21 April 2020 and 5 May 2021, the account "repeatedly posted defamatory, derogatory and malicious statements concerning me" [para. 9]. It is alleged that approximately 120 such messages were published in what Ms Moore described as a "malicious campaign of defamation against me". She avers that the campaign commenced "soon after I took up a position as political correspondent with the Examiner newspaper in January, 2020".

10. Ms Moore goes on to aver as follows: -

> "12. Many of the tweets are defamatory of me in my professional reputation suggesting that I am a shill for Sinn Fein [sic] that infiltrated the Examiner newspaper from where I have sought to promulgate Sinn Fein [sic] extremist propaganda and peddle Trump type fake news.
>
> 13. Some of the most serious defamatory statements suggest that on the one hand I condone, defend and seek to ignore the most sickening of IRA atrocities and murders while on the other hand I have no empathy for the systematic sectarian murders of Protestants and ethnic cleansing of Protestants in Fermanagh.
>
> 14. All of these defamatory accusations are false and untrue."

11. Ms Moore avers that she has been "repeatedly defamed" in a similar fashion on the Dolly White account:

> "17. I have been described among other derogatory things as a partisan blow-in from Derry, a nordie SF stooge, a mad and whiney Nordie Nat, neo-Provo editorial writer, a Shinner pinup and a Derry troll.
>
> 18. My reputation as a journalist has been systematically torn apart. It is said that my writing exudes sectarian poison, that I support the Provisional IRA. I

am accused of degrading the Examiner to a Provo rag and disgracing the newspaper.

19. It is suggested that I am no fan and no champion of free speech, partisan, driving a Sinn Fein [sic] agenda and not touch [sic] with political affairs or public sentiment or thinking in the Republic.

20. Again, there are grave accusations that I support the murder campaign of the Provisional IRA and seek to protect Sinn Fein [sic] from criticism or challenge by for example Breege Quinn (the mother of Paul Quinn who was brutally murdered and disappeared).

21. All of these defamatory accusations are false and untrue".

The first defendant's interview with "Drivetime"

12. At para. 24 of her affidavit, Ms Moore avers that she became aware that the first defendant admitted to being the author of the Barbara Pym account in an online article published by the Sunday Independent 6th May, 2021 entitled "Eoghan Harris dropped as Sunday Independent columnist over fake Twitter account".

13. Ms Moore then refers to a radio interview on "Drivetime" on RTE Radio 1 given by Mr Harris to Sarah McInerney, one of the presenters of that programme, on 7th May, 2021. Ms Moore gives, at para. 26 of her affidavit, the internet reference at which a copy of the transcript of the interview may be accessed, and at para. 25, sets out an extensive excerpt from that interview. In view of the centrality of what was said during that interview to the arguments made in the applications, I reproduce below the excerpt quoted by Ms Moore in her affidavit: -

"Eoghan Harris: I was one of the founders of the site. In recent times, just simply health, I hadn't the energy for it. I moved to the background and more of an advisor. So, talking to a group of people, five or six people on that site

…

Sarah McInerney: So just to be clear then, the people who are involved – actually I might ask you, who are the people involved in this site?

EH: I can't give if they've insisted they don't want their names mentioned. I'm not going to give their names.

SM: Okay.

EH: But they would be historians and trade unionists and many of them kind of the older generation like of trade unionists and unionists. And businesspeople actually.

SM: Any politicians or other journalists?

EH: No, there's no other journalists. There's quite extraordinary number of, I suppose, businesspeople on it like, who have dealings with Northern Ireland, trade dealings and etc. And they would contribute material from time to time.

SM: Sorry, I just want to know what you mean by extraordinary numbers? Sorry Eoghan, I just want to get this clear. You say an "extraordinary number". I thought you said six people were involved?

EH: About six people yeah.

SM: Okay so when you say "there's an extraordinary number of businesspeople"?

EH: No I'm saying an extraordinary number of businesspeople are interested in the site, I meant. And of the six two of them are businesspeople you know? Who have working relations with the North.

SM: Are any of them politicians?

EH: No, no politicians and no journalists.

SM: Are any of the rest of them public figures like yourself?

EH: They wouldn't be, but they would be people with a lot of experience and knowledge of Northern Ireland. People who have been involved with it one way or another for the past forty years, fifty years maybe.

SM: Okay. And am I understanding you right when I say the reason for being anonymous was that you and the others were concerned about Sinn Féin and the reaction you would get from Sinn Féin. Is that your reason for being anonymous?

EH: Well that's their reason for being anonymous. I was anonymous because they were anonymous. But when asked about it, I had no problem admitting my involvement. I mean, nobody outed me. I outed myself. When I was asked by my colleagues had I access to the people in the site, I said 'I did'. And I had no problem admitting that. But the others in the group they're nervous people, they would be nervous of Sinn Féin. They just didn't want their names mentioned.

…

SM: Okay. So why not set up a Twitter account under the name Eoghan Harris to do that?

EH; Because I needed the assistance of other people. I just wanted other people to help and assist me in it.

SM: Would it not have been possible to do that, set up a Twitter account under the name Eoghan Harris, and anonymously take their help without naming them?

EH: Well that just didn't arise for me at the time. We just as a group, we wanted to operate under a sort of pseudonym. That just didn't arise.

SM: If you don't mind Eoghan, we'll move on from Aoife Grace Moore. How often would you have tweeted from the account personally?

EH: I effectively did most of the tweets recently in relation to the protocol. I do all of the heavy stuff so to speak about protocols. Good Friday Agreements and all that. I do all that stuff.

SM: And would you have oversight in all tweets that are going out from the account?

EH: No, I wouldn't. I'd see some of them and I wouldn't see others. I would see all of them maybe up to a year ago but as my health kind of went, I could only do a fair amount. I couldn't do much.

SM: Were you the person who tweeted from the Barbara Pym account about how an Irish Examiner journalist had liked a tweet that was related to a Sinn Féin TD, and the comment from the Barbara Pym account was: 'There had been an imbecile like from an Irish Examiner hack. No, for once, it was not Aoife Moore'.

EH: I don't remember it, and I don't have any recall of it. And I don't have any recall of it. And I don't remember doing it. I certainly didn't do it myself. I have no knowledge of it.

…

SM: Okay. And the reason you sent them out anonymously is because it didn't occur to you you could use your own name and get advice from other people?

EH: It certainly occurred to me to use my own name, but I just felt, if I was in a group of people, that I just didn't want to be sitting there having to consult with them all the time. It was much simpler to do it like this. But I'm not

afraid. There's nothing sort of problematic about anonymity in my view. Anonymity has been the basis of the confretarian [sic] polemics for centuries.

SM: Okay. The Irish Times is reporting just in the last couple minutes that Twitter has suspended nine accounts that are linked to yourself.

…

EH: No, they're not linked to me. They have suspended nine Twitter accounts which have supported the political line at various times, or retweeted stuff from my thing. They've done it clearly in response to major pressure, and I suspect the pressure is coming from Sinn Féin. I think hundreds of Sinn Féin directed agents have…

SM: Eoghan, would you stop the nonsense?

EH: Let me finish please here. I believe that they suspended nine Twitter accounts. You just make these wild chargers [sic] associated with me. All these accounts ever did was retweet political tweets from Barbara Pym's accounts, supporting my line. Just to support an anti-Sinn Féin line now is enough to get a Twitter account suspended.

…

EH: That's what you say. I would deny that it tweeted abusive tweets. I believe anybody that goes on to that account – let them go onto that account – I believe that any fair-minded person would see that account as a generally benign account that is not tweeting abuse at people. And if it is tweeting criticism at people, they richly deserved it because they're usually Sinn Féin enablers, or stooges, or pawns."

Mr Harris' press statement

14. At para. 27 of her affidavit, Ms Moore refers to a press statement made by or on behalf of Mr Harris on 7 May 2021 which was circulated widely on social media. While Ms Moore quotes extensively from the statement, I set out below a slightly expanded excerpt:

> "…I want to clarify four issues arising from my dismissal as columnist with the Sunday Independent.
>
> First, as its pinned Tweet states, Barbara J Pym is a group account, curated by a rotating panel, who oppose Sinn Fein's [sic] campaign to bully Northern Protestants into an Irish Republic. Given Sinn Fein's [sic] sinister links, the other contributors are loathe to use their names. But I had no problem in admitting to editorial colleagues that I contributed to the site. That's because I am proud of the tweets which are mostly addressed to loyalists, the most recent of them urging restraint on protests against the Protocol and assuring working class unionists that most of us in the Republic have no malign agenda against their heritage and political freedoms.
>
> Second,…I…categorically deny that Aoife Moore was ever called a "terrorist" on Barbara J Pym, as she claims, and I call on her to show a screen grab of any tweet supporting her charge. Certainly there were two public tweets, which I attach, and which the women on the Pym site did not regard as offensive or gendered in any way, as both tweets are clearly political and could equally be applied to a man.
>
> Third, Aoife Moore claims she complained to the gardaí about receiving abusive messages, as if they were all from Barbara J Pym, without making it clear that she receives scores of critical messages about her partisan ultra-

nationalist stances – nor does she tell us why the Gardai [sic] did not approach Twitter, or me, on her behalf.

Finally…Aoife Moore…is trying to gender her political disagreements with me, is playing the victim, and using 'woke' tropes to further her ultra-nationalist agenda against me…"

Remedies sought

15. At para. 35 of her affidavit, Ms Moore avers that Twitter is responsible for controlling the data which is associated with the creation and ongoing operation of the Twitter accounts and "…is likely to be able to provide the information necessary to enable the person(s) unknown as the ultimate co-wrong-doer(s) responsible for the defamation and wrongs to be identified and be joined to the proceedings issued against Mr Harris…this information is within the second defendant's knowledge or control".

16. At para. 37 of her affidavit, Ms Moore avers that

"…It is clear that Mr Harris knows the identity of the other wrongdoers for the following reasons in that he:

(a) admitted to being part of a group or panel who curated and actually drafted the defamatory attacks on me;

(b) suggested that there were six other people in that group or panel of 'curators';

(c) spoke on behalf of the other wrong-doers by stating that they are 'loathe [sic] to give their names';

(d) even knows the professions of the other wrong-doers, including historians, trade unionists, businesspeople and others who had 'a lot of

experience and knowledge of the Northern Ireland', but is sure that they are not politicians, or other journalists or public figures; and

(e) is aware of the participation by the users of the other accounts whom he described as re-tweeting the defamatory statements and likely to have knowledge of their identities".

Ms Morris' affidavit of 25th May, 2021

17. Ms Morris likewise in her grounding affidavit of 25th May, 2021 avers that she became aware of the Twitter account with the handle "@BarbaraPym2" in or about October 2020. She contends at para. 10 of that affidavit that: -

"10. Between 5 August 2020 and 26 April 2021, this account repeatedly posted defamatory derogatory and malicious messages about me, including but not limited to:

- That I am a partisan and biased journalist.
- That I pretended to be passionate about free speech.
- That I am a hypocrite.
- That I was a Sinn Fein [sic] supporter who reflected my support for Sinn Fein [sic] in my biased work as a journalist.
- That I was a supporter of a paramilitary group".

18. Ms Morris states that she became aware of the Dolly White account in or about May 2021, when it was drawn to her attention by other Twitter users, and states that: -

"13. Between 28 July 2019 – 25 April 2021, this account posted at least two defamatory, derogatory and malicious messages about me, including but not limited to:

- That my work as a journalist was biased in favour of the Provisional IRA
- That I supported terrorism
- That I was a mouthpiece for the Provisional IRA
- That I was not fit to write for the Belfast Telegraph
- That my provo bias was diminishing the reputation and/or quality of the Belfast Telegraph as a newspaper"

19. Ms Morris then refers to the Northern Whig account, stating that she became aware of it in or about May 2021. She avers as follows: -

"16. Between 10 April 2021 and 24 April 2021, this account posted at least two defamatory, derogatory and malicious messages about me, including but not limited to:

- That I was a Sinn Fein [sic] supporter and apologist who reflected my support for Sinn Fein [sic] in my biased journalism for the Belfast Telegraph.
- That my journalism lacked fairness.
- That I had infiltrated the *Belfast Telegraph* and changed its political ethos for the worse.
- That because of my biased and partisan contribution to the *Belfast Telegraph* the newspaper was no longer respected".

20. Like Ms Moore, Ms Morris avers as to the effect which she says the offending tweets had on her both personally and professionally, and goes on to refer to the various matters referred to by Ms Moore – Mr Harris' radio interview and subsequent press statement – and to correspondence conducted by her solicitors with Mr Harris

and Twitter. Her affidavit advances broadly the same reasons as those set out by Ms Moore as to why the court should accede to her application.

Mr Harris' response

21. By identical affidavits sworn on 3rd June, 2021 in each of the proceedings, Mr Harris replied to the affidavits of the plaintiffs.

22. At para. 3 of his affidavit, he refers to a letter written by his solicitors to the solicitors for the plaintiffs of 26th May, 2021, which he states was written on his instructions, confirming that he is "the sole operator" of the Twitter account entitled "Barbara J Pym". He avers that he has "not posted tweets from any Twitter account other than the 'Barbara J Pym' account".

23. At para. 5 of his affidavit, Mr Harris avers as follows: -

> "In an interview with Sarah McInerney of RTE, I referred to the @BarbaraPym2 account being 'curated' by a 'panel'. I should make clear that I am the only person who has ever had access to the account and I am the only person who has posted/published on it. The other persons I refer to are persons from whom I drew ideas in casual conversation. They did not have access to the account and they are not responsible for the tweets. I am the sole person responsible for all of the tweets appearing on the @BarbaraPym2 account."

24. Mr Harris goes on to deny what he alleges is the "widespread belief that I have operated a 'network' of Twitter accounts aligned with @BarbaraPym2". He refers to a lengthy letter written by him to the Irish Times, published on 15th May, 2021, and states that, given that he had already confirmed that he was the operator of the @BarbaraPym2 account, he is "at a loss to understand why the plaintiff has sought 'Norwich Pharmacal' orders against me in respect of that account" [para. 8].

25. At para. 9 of his affidavit, he refers to an article published in the Sunday Times Newspaper on 16th May, 2021 in which his wife, Ms Gwen Halley, confirmed that she operated the Dolly White account. Mr Harris avers that he is "not involved in the operation of, or in the publication of material on that account". In the final paragraph of the affidavit, Mr Harris avers that he is "not the person responsible for the operation of the @WHIGNorthern Twitter account".

26. In a supplemental affidavit sworn on 21st July, 2021, Mr Harris referred to a Twitter account which he now recollected using in which he "commented on politics satirically but no mention was ever made of the plaintiff. This account has been dormant since mid 2019". Mr Harris goes on to aver "with one-hundred percent certainty" that since February 2020 his only active Twitter account was the Barbara J Pym account.

Twitter's response

27. The response of Twitter to the plaintiffs' affidavits was an affidavit of Arlen Pereira Cascon, who is described in the affidavit as "manager on the legal policy team of Twitter International Company". This affidavit was originally exhibited to an affidavit of Audrey Byrne, a solicitor acting on behalf of Twitter in the proceedings, without being sworn given the timeframe within which a response was required for the return date of the motion. However, Ms Cascon subsequently regularised the position and swore affidavits in each of the proceedings on 15th September, 2021.

28. At para. 14 of her affidavit, Ms Pereira Cascon avers that "…Twitter cannot consent to the disclosure of private third party user information without a court order identifying the relevant statement and the relevant Twitter account on which it has been published".

29. Ms Cascon avers that "…[t]he objective of Twitter in this application is to assist this Honourable Court as to the formulation of a proportionate Norwich Pharmacal order with which Twitter could comply in the context of the evidence presented by the Plaintiff for seeking that relief and the evidence provided by the First Named Defendant as to those responsible for the publications on the Twitter accounts in question. I say and believe that the formulations of the orders sought by the Plaintiff are unnecessary, burdensome and disproportionate and Twitter objects to same whilst advancing reasonable and proportionate formulations of an order with which Twitter could comply, based on the evidence presented by the Plaintiff and the First Named Defendant" [para. 15].

30. Ms Cascon sets out in some detail in her affidavit the reasons why Twitter alleges that the requests of the plaintiffs are "unduly burdensome and disproportionate". She contends that there is a particular problem with the orders sought in respect of "Retweets". It is suggested that the requested order "…would require Twitter to carry out an exercise identifying whether, in the case of each one of the Tweets exhibited to the Moore affidavit, the Tweet was Retweeted and then to provide not only subscriber information but also log-in information in respect of each Retweet, if such Retweets exist. It is contended that this proposal "…would require Twitter to investigate whether a suspected or alleged wrong was committed (*i.e.* a Retweet of one of the Tweets identified by the Plaintiff): to investigate the circumstances of that suspected or alleged wrong (by which account each tweet was Retweeted) and to provide the Plaintiff with the outcome of those investigations, as well [sic] providing information identifying the person responsible for the Twitter account that Retweeted each of the Tweets identified by the Plaintiff…just as Twitter

does not retain IP data on a "per-Tweet" basis, it does not hold IP data on a "per-Retweet" basis…" [para. 30].

31. Ms Cascon makes reference in her affidavit to correspondence between the parties, in which the solicitors for Twitter initially put forward, in their letter of 16th June, 2021, a draft order in each of the proceedings which it contended would be appropriate. By letter of 14th July, 2021, after correspondence between Twitter's solicitors and the plaintiffs' solicitor, and after considering the affidavits proffered by the plaintiffs in support of their respective motions, Twitter proffered the following draft order which it contended was appropriate:

> "An Order directing the Second Named Defendant within 10 days of service on the Second Named Defendant of the perfected Order to provide to the Plaintiff to the extent known or otherwise available to the Second Named defendant, so far as reasonably practicable, by email to the Plaintiff's solicitors, basic subscriber information that Twitter holds (which may include screen name and/or, email address, and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address at account registration and the internet protocol address(es) of log-ins within the last Sixty days. In respect of the Twitter accounts with the following names and Twitter handles: -
>
> (a) Barbara J Pym - @BarbaraPym2; and
>
> (b) Dolly White - @Dollywh72057454
>
> [and in the case of Ms Morris,
>
> (c) Northern Whig – @WhigNorthern]."

32. These formulations were unacceptable to the plaintiffs, who proffered lengthy written submissions in advance of the hearing as to the orders which it contended

should be made. Likewise, written submissions were made by Mr Harris and Twitter in response to both motions.

Statement of claim

33. As I have set out above, both Ms Moore and Ms Morris delivered statements of claim in advance of the hearing of the present applications. These statements of claim are substantially similar, and proceed on the same legal basis as each other, although obviously they differ in relation to the individual circumstances of each of the plaintiffs and the tweets in respect of which they complain.

34. The plaintiffs had exhibited to their respective affidavits the tweets which referred to them. In Ms Moore's case in particular, the list of tweets was extremely long. Mindful perhaps of the position expressed in correspondence by Twitter's solicitors and in Ms Cascon's affidavit that the requests for Norwich Pharmacal relief were onerous and burdensome, each of the statements of claim narrows the ambit of the plaintiffs' respective claims by specifying a number of offending tweets on each account. Ms Moore makes reference to over 60 tweets between the Barbara Pym and Dolly White accounts; Ms Morris makes reference to seven tweets from the Barbara Pym account, one from the Dolly White account, and two from the Northern Whig Account. The statements of claim go on to outline the manner in which the plaintiffs contend that these tweets are defamatory, and seek Norwich Pharmacal relief in support of those claims.

The plaintiff's submissions

35. In the written submissions on behalf of both plaintiffs, the facts, the law and the respective affidavits are addressed. The plaintiff concludes, in applying the legal principles to the facts, as follows: -

"(a) The information sought by the order is to identify the persons operating the re-publishing Twitter accounts. The plaintiff is entitled to that 'full information' for that purpose.

(b) It is obvious that the information sought by the order is limited to naming and identifying the wrongdoers.

(c) The information sought is necessary because without it the Plaintiff has no other means of identifying the wrongdoers to enable her to issue proceedings against them. The information sought is also proportionate due to pinpointing the 120 tweets from the known accounts and Twitter and Mr Harris already having the knowledge of the linked suspended accounts.

(d) Twitter and Mr Harris have not proven that it is disproportionate to disclose the information.

(e) The form of the proposed order clearly, precisely and unambiguously lists the specific information sought.

(f) In respect of Mr Harris, because he says that he actually knows the identity of the other persons involved with the accounts, this Honourable Court should invoke the inherent jurisdiction and make the order for the following reasons: the Plaintiff requires the information sought to prosecute her claim; she is likely to be prejudiced absent the information; no argument is made that the information is not within the procurement of Mr Harris; no reason had been given to justify a withholding of the information; and the interests of those persons whose names are sought will not be adversely affected, and if they are affected, the prima facie evidence of wrongdoing overrides any confidentiality issues." [Paragraph 29].

36. The point was made on behalf of both defendants that Mr Harris had averred that he was the only person "responsible for all of the tweets appearing on the '@BarbaraPym2' account", and that he was the "sole operator" of that account, and that he had not been cross-examined on this averment. Counsel for the plaintiff however drew attention to the statements made by Mr Harris to Ms McInerney and the subsequent press statement which referred *inter alia* to the Barbara J Pym account being "a group account, curated by a rotating panel", and "the women on the Pym site" [transcript p.35, line 26 to p.36, line 22-23]. Counsel characterised the subsequent affidavits of Mr Harris as "a complete U-turn…" [transcript p.37, line 29].

37. Counsel submitted that Mr Harris could have taken the opportunity to explain in his affidavits why he had made remarks to Ms McInerney or in his press statement which appeared to be at odds with his assertion that he alone was responsible for the Barbara J Pym account. The fact that he did not do so, according to counsel, was "an entirely unsatisfactory way to leave matters" [p.43, lines 16 to 23].

38. Counsel confirmed that, notwithstanding that the statement of claim in each case identified which of the tweets exhibited to the affidavits were defamatory, reliance was placed by the plaintiffs "on all of the tweets ultimately because they give a context and show a pattern of attack against the plaintiffs" [p.46, lines 1 to 6].

39. As regards retweets, which the plaintiffs contend are capable of being defamatory in the same way as an original tweet, the plaintiff relies on Mr Harris' statement to Ms McInerney that Twitter "…have suspended nine Twitter accounts which have supported the political line at various times, or retweeted stuff from my thing". Counsel submitted that it is "…a very simple thing for Twitter to be able to establish, whether a tweet was retweeted. And not retweeted in general but whether it was retweeted by nine specific accounts, which it has already identified and

suspended for what appears to be retweeting from the Barbara Pym and Dolly White accounts". [p.49, lines 19 to 29].

40. In relation to the concerns regarding retweets expressed by Ms Cascon at para. 30 of her affidavit and quoted above at para. 30, counsel suggested that no "investigation" by Twitter was necessary; a retweet of a defamatory statement is itself defamatory, and "…the only inquiry required is to see whether or not those particular tweets that we complain about have been retweeted" [p.69, lines 10 to 13]. This it was suggested is not onerous or burdensome.

41. The court queried whether there was any evidence as to the basis upon which the nine accounts were suspended. Counsel for the plaintiff referred to the evidence of what Mr Harris had said to Ms McInerney in this regard. Counsel for Mr Harris interjected that Mr Harris could not know whether those accounts were suspended for retweeting "his thing", to use Mr Harris' own phrase. Counsel for Twitter then interjected to say that the plaintiffs had only ever suggested the link between retweets and the suspensions in written submissions, as opposed to in their affidavits, with the result that Twitter itself only got to address the matter in its own written submissions. According to counsel, the reason for suspension was "spam and platform manipulation", which counsel asserted was "not the equivalent of suspension for posting a defamatory tweet, or retweet…it is entirely separate…". In response to the court, counsel confirmed that his submission was that the court should proceed on the basis that there was no evidence that Twitter was of the view that re-tweets had taken place, or that they were the reason for the suspensions. Counsel for the plaintiffs maintained that there was evidence from the first defendant himself in his statement to Ms McInerney, and that the court could rely on this evidence to make the order sought [p.81, line 25 to p.86, line 21].

42. Counsel submitted that the plaintiffs' formulation of the order sought adopted the language that Twitter had suggested in correspondence to describe the subscriber information Twitter might hold. He emphasised the requirement for internet protocol ('IP') addresses which are unique identifiers of devices which use the internet and the Twitter platform in particular. While counsel conceded that the IP address would not expressly identify the user of that address, the information could be used to pursue the matter with the internet provider in question [pp. 57 to 59].

43. Counsel deprecated the suggestion by Twitter of a 60 day limit, and submitted that there was no evidence before the court as to how determining the IP addresses of the publishers of the tweets, whether over 60 days or otherwise, would be disproportionate or onerous [pp. 60 to 62].

44. Counsel also clarified that the tweets in respect of which information was sought were as set out in the schedules to draft orders proffered to the court, rather than the extremely lengthy lists of tweets appended to the grounding affidavits. These schedules comprise, in Ms Moore's case, over one hundred tweets between the Barbara Pym and Dolly White accounts, and in Ms Morris' case, twelve tweets over the three accounts including Northern Whig. The terms of the draft order proposed by the plaintiffs (in identical terms as to substance in each case) are as follows: -

> "1. An Order directing the Second Named Defendant within 10 days of service hereof to provide to the Plaintiff by email to the Plaintiff's solicitors, the subscriber information that Twitter holds (which may include screen name and/or, email address, and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address at account registration) in respect of the Twitter accounts with the following names and Twitter handles:

(a) Barbara J Pym - @BarbaraPym2; and

(b) Dolly White – @Dollywh72057454;

[and in the case of Ms Morris:

(c) Northern Whig – @WhigNorthern;]

together with the internet protocol address(es) of each of the log-ins in respect of the 'tweets' set forth in schedule(s) annexed to this order.

2. An order directing the Second Named Defendant within 10 days of service hereof to provide to the Plaintiff by email to the Plaintiff's solicitors, the subscriber information that Twitter holds (which may include screen name and/or, email address, and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address at account registration) in respect of any Twitter account which re-published ('Re-tweeted') any of the 'Tweets' set forth in Schedule(s) annexed to this order together with the internet protocol address(es) of each of the log-ins in respect of the said 'Re-Tweets'".

The first defendant's submissions

45. In the written submissions proffered by Mr Harris, his position is concisely expressed as follows: -

"(i) Firstly, these proceedings on this application are entirely misconceived as against him. Whereas ordinarily Norwich Pharmacal relief is sought in standalone proceedings where the identity of the alleged wrongdoer is not known, in this instance the Plaintiff purports to know the identity of the alleged wrongdoer (Mr Harris), has sued him for defamation, and has appended an ancillary application for Norwich Pharmacal relief to her defamation proceedings.

(ii) Secondly, Mr Harris has already stated on affidavit that he is the only wrongdoer in respect of the Barbara J Pym Twitter account, whose tweets form the basis of the Plaintiff's claim against him. He has no further information to provide to the Plaintiff on this issue. In consequence, it is not clear precisely what relief the Plaintiff now seeks against Mr Harris in respect of that account.

(iii) Thirdly, in respect of the 'Dolly White' Twitter account, the Plaintiff has not provided any evidence on affidavit to suggest that Mr Harris has any knowledge of the identities of the wrongdoers involved, or more importantly, that he was mixed up in or intermeddled in their wrongdoing (other than a vague assertion to the effect that the 'style' of posts appearing on that account are similar to those appearing on the Barbara J Pym account). The Plaintiff has therefore not come up to proof with regard to the Norwich Pharmacal application concerning that account. Without prejudice to that position, Mr Harris has confirmed that the Dolly White account was operated by his wife Gwen Halley – a fact which was in the public domain at the date of the institution of these proceedings." [Paragraph 2].

46. Counsel for the first defendant, in submissions to the court, drew my attention to a passage from the Drivetime interview which had not been included in the otherwise comprehensive excerpt in the statements of claim and quoted at para. 13 above:

"SM: Sorry, I don't understand that answer, are you associated with any other anonymous accounts?

EH: You're accusing me, or you're saying…

SM: I'm asking.

EH: The answer is no…" [on p.6 of 9 of the transcript of the interview].

47. Counsel submitted that the issue as to Mr Harris' alleged complicity with others was referred to in the statement of claim, and Mr Harris having expressed his position on affidavit, could be cross-examined at the hearing of the action on this point. Counsel suggested that it would be "highly prejudicial…were the court to make an order which had as its premise the proposition that Mr Harris had on oath lied in the affidavit that he has sworn in both these actions…" [p.105, lines 6 to 12].

48. Counsel also submitted that, while the court could not delve too deeply into the merits of the plaintiffs' substantive cases – particularly in circumstances where a defence had yet to be filed by Mr Harris – he "should not leave uncontradicted the assertion that the identified tweets are clearly defamatory…" [p.108, lines 1 to 3].

49. It was submitted that if, as Mr Harris suggested in the radio interview, there had been re-tweets of "his thing", there was no evidence before the court that any such re-tweets included the allegedly defamatory tweets. Counsel suggested that the application in respect of re-tweets was in reality a "fishing expedition".

Twitter's submissions

50. In its written submissions, Twitter sets out an "overview" of its position as follows: -

> "2. The real controversy in these proceedings does not implicate *Twitter* in wrongdoing. Each plaintiff has confirmed, on oath, that *Twitter* is innocent of wrongdoing. *Twitter*'s involvement in the proceedings is limited to a pure claim for Norwich Pharmacal disclosure of the identity of perceived other wrongdoers with respect to three Twitter accounts… [the accounts in question are identified].

3. What emerges from the affidavits is a most unusual application for Norwich Pharmacal disclosure. The plaintiff, in *Moore*, already has all she needs to attain justice in her defamation claim. She knows, and has had sight of, the publications and, on the affidavit evidence before the court, she knows the alleged wrongdoers, *viz* Mr Harris and Ms Halley. The same may be said of the plaintiff in Morris, save perhaps in respect of the Northern Whig account; yet the owner/operator/publisher of the statements on that account could be revealed by Mr Harris and/or Ms Halley.

4. Notwithstanding this, and to paraphrase Humphreys J in *Blythe v The Commissioner of An Garda Síochána* [2019] IEHC 854 (para. 29), *Twitter* seeks to help the court to do justice by proposing a form of order to which it would not object (see for instance Pereira Cascon affidavit (Moore), paragraph 14 and paragraph 15; Pereira Cascon affidavit (Morris), paragraph 14 and paragraph 15). *Twitter* has engaged at length in correspondence in an attempt to propose parameters which better reflect the needs of the Plaintiffs.

5. Twitter will not, therefore, object to an order in the form set out in appendix 4 [of the written submissions]. The grant or otherwise of such an order is a matter for the court employing the balancing exercises mandated in the established jurisprudence governing this exceptional jurisdiction. *Twitter* objects to the form of orders proposed by the plaintiff [in the plenary summons, notice of motion and correspondence] as they involve *Twitter* investigating the plaintiffs' claims, rather than identifying wrongdoers."

51. The order proposed by Twitter at appendix 4 to its submissions is as follows: -

"An Order directing the Second Named Defendant within 10 days of service on the Second Named Defendant of the perfected order to provide to the

Plaintiff to the extent known or otherwise available to the second named Defendant, so far as reasonably practicable, by email to the Plaintiff's solicitors, basic subscriber information that Twitter holds (which may include screen name and/or, email address, and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address at account registration and the internet protocol address(es) of log-ins within the last 60 days) in respect of the Twitter accounts with the following names and Twitter handles: -

(a) Barbara J Pym - @Barbara Pym2; and

(b) Dolly White - @Dollywh72057454.

[and, in the case of Ms Morris:

(c) Northern Whig @WhigNorthern].

52. As counsel for the plaintiff at the hearing clarified in his reply that what the plaintiff proffers as appropriate is not the relief sought in the plenary summons or notice of motion, but the draft orders which emerged as a result of the correspondence between the solicitors and which are set out at para. 44 above, it is not necessary to consider points made by Twitter specifically in relation to the reliefs which are no longer sought.

53. Twitter submits that what the plaintiffs seek is information on a "per tweet" basis, and that there is no precedent for a grant of disclosure on this basis. As Twitter states in its submissions "…the circumstances of this case are unusual: the information is sought on this basis so that the Plaintiffs can investigate whether the Tweets were made by persons other than the currently identified wrongdoers. The usual order is to provide information identifying the subscriber to the *Twitter* account". [Paragraph 23 written submissions].

54. In relation to retweets, Twitter makes the same point made by Mr Harris – that there is no evidence that the scheduled tweets were retweeted. It submits further that the evidence indicates that Mr Harris and Ms Halley are the only persons responsible for the Barbara J Pym and Dolly White accounts respectively, and that they are the appropriate persons against whom a disclosure order should be made to identify any other person. As regards the Northern Whig account, Twitter states that the order it proposes may assist Ms Moore in identifying the person responsible for publication, were the court to decide that an order was appropriate [paras. 62 to 63 written submissions].

55. Counsel emphasised that the information Twitter would provide would not necessarily identify the user of the account or the author of a tweet. The IP data provided would probably require a further application by the plaintiffs to the internet service provider in question regarding any further potential identification. Counsel for the plaintiffs accepted that this might be so, but submitted that this did not mean that Twitter was not amenable to a Norwich Pharmacal order. Indeed, this is accepted by Twitter, which as we have seen offers assistance to the court as set out in its proposed order. The parties agree that the jurisdiction to make the order is limited to the identification of a potential wrongdoer, albeit not necessarily for further litigation: see *Board of Management of Salesian Secondary School v Facebook Ireland* [2021] IEHC 287.

56. Counsel for Twitter urged the court not to order disclosure on a "per tweet" basis. He referred to the affidavit of Ms Cascon, and submitted that a "per tweet" approach would require an exercise in "cross-referencing using the IP data and time of a particular tweet…" [transcript p.152, lines 15 to 24]. Twitter made the point that this cross-referencing can be done by the plaintiffs themselves. It was submitted that there

was no authority supporting the plaintiffs' position that Twitter "must go and do that kind of analysis. It is simply giving information tending to identify" [p.155, lines 3 to 8].

Legal principles

57. There is no significant disagreement between the parties as to the legal principles governing Norwich Pharmacal applications, although they differ as to their application.

58. The court was referred to a comprehensive and very helpful article entitled "The Law relating to Norwich Pharmacal Orders", 2021, Vol. 1(5), Irish Judicial Studies Journal 21 by David Culleton, solicitor. The article defines the order and summarises the jurisdiction as follows: -

> "A Norwich Pharmacal Order is a particular type of disclosure order where the only cause of action is discovery. Essentially, the order compels a defendant, who has become mixed up in the alleged wrongdoing of a third party in some manner, either knowingly or innocently, to disclose information that would assist to identify this third-party wrongdoer to the plaintiff. The purpose of the order is therefore to place a plaintiff in a position to identify and seek redress against a previously unknown wrongdoer.
>
> The authority to grant Norwich Pharmacal relief is founded on the court's equitable jurisdiction, derived from a "contemporary incarnation of the equitable bill of discovery". Therefore, it is a versatile remedy, granted at the discretion of the court, when deemed to be a proportionate and necessary response in all of the circumstances of a matter". [Footnotes omitted].

59. In *Rugby Football Union v Consolidated Information Services Limited (Formerly Viagogo Limited) (in liquidation)* [2012] 1 WLR 3333, the UK Supreme

Court (Lord Kerr JSC) identified the following matters as relevant to the exercise of the court's jurisdiction: -

(i) the strength of the possible cause of action contemplated by the applicant for the order;

(ii) the strong public interest in allowing an applicant to vindicate his legal rights;

(iii) whether the making of the order will deter similar wrongdoing in the future;

(iv) whether the information could be obtained from another source;

(v) whether the respondent to the application knew or ought to have known that he was facilitating arguable wrongdoing;

(vi) whether the order might reveal the names of innocent persons as well as wrongdoers, and if so whether such innocent persons will suffer any harm as a result;

(vii) the degree of confidentiality of the information sought;

(viii) the privacy rights under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of the individuals whose identity is to be disclosed;

(ix) the rights and freedoms under the EU data protection regime of the individuals whose identity is to be disclosed;

(x) the public interest in maintaining the confidentiality of journalistic sources.

[set out with supporting case law at para. 17 of the judgement]

60. In *Board of Management of Salesian Secondary School v Facebook Ireland* [2021] IEHC 287, Simons J, having approved and adopted the passage from Mr Culleton's article quoted at para. 58 above, summarised at paras. 27 to 38 of his

judgment the general principles emerging from the Irish case law with admirable clarity and concision. I gratefully adopt this summary as an accurate and perceptive analysis of the law to date.

61. The following general principles relating to Norwich Pharmacal orders are of particular note: -

- The remedy is limited to cases where the names and identity of the wrongdoers are sought, rather than factual information regarding the commission of the alleged wrongdoing (Finlay CJ in *Megaleasing UK Limited v Barrett & Ors. (No. 2)* [1993] ILRM 497);
- the remedy is confined to cases where "a very clear proof of a wrongdoing exists" (Finlay CJ in *Megaleasing*). However, in *Grace v Hendrick* [2021] IEHC 320, Hyland J was prepared, in the particular circumstances of that case, to make a disclosure order pursuant to the inherent jurisdiction of the court in circumstances where no clear evidence of wrongdoing had been established;
- the procedure "requires a balancing of the requirements of justice and the requirements of privacy" (Finlay CJ in *Megaleasing*);
- "where the court is satisfied that the applicant's right to disclosure of the information is outweighed by some countervailing right or interest of the person sought to be identified, it may refuse to make the order sought. In such cases the court must carry out a careful balancing exercise to see where the balance of justice lies. Each case will be considered on its own facts and circumstances" (judgment of the Court of Appeal, *Muwema v Facebook Ireland Limited* [2018] IECA 104 at para. 3).

62. Recent decisions in this jurisdiction addressed the circumstances in which disclosure orders may be made against providers of social media platforms or internet providers: see in particular *EMI Records (Ireland) Limited v Eircom Limited* [2005] 4 IR 148 (Kelly J, as he then was), *Parcel Connect v Twitter International Company* [2020] IEHC 279 (Allen J), and *Portakabin Limited v Google Ireland Limited* [2021] IEHC 446 (Allen J). In *Parcel Connect*, Twitter was directed to disclose details of persons who had created or controlled a specific user account, the name of which resembled the name of an unrelated company which provides logistic and parcel delivering services. The user account parodied the company, and the operators of the user account responded to genuine messages from the company's customers with silly, vulgar and crass replies.

63. The court was satisfied that there was a *prima facie* case made out by the plaintiff in defamation, and that a *prima facie* case had also been made out of damage to the goodwill in the name and registered trademark of the company. Twitter, as in the present case, submitted that the information it possessed would be insufficient on its own to identify the true identity of the owner or operator of the account.

64. The court made an order expressly conditional on an undertaking by the plaintiff's solicitors "that the information disclosed by the defendant would not be used for any purpose other than seeking redress in respect of the wrongs complained of". On that basis, the court ordered the defendant, within seven days of service on the defendant of the perfected order "…to provide to the plaintiffs, by email to the plaintiffs' solicitors, any details which it holds relating to the identity of the person or persons who created or control [the allegedly offending account]…including but not limited to the name or names, email address or addresses, telephone number(s) and all IP addresses associated with all log-ins and log-outs relating to the account".

“Very clear proof of a wrongdoing”?

65. The phrase “very clear proof of a wrongdoing” used by the Supreme Court in *Megaleasing* is perhaps somewhat misleading and must be seen in context. No defence has yet been delivered by Mr Harris, and indeed, as we have seen, the statements of claim were delivered only shortly before the hearing of the present applications. Even if it were appropriate to do so – which it is not – the court is in no position to delve into the merits of the plaintiffs’ respective cases, much less express any opinion as to their strength or otherwise.

66. As Kelly J made clear in *EMI v Eircom*, what is required is that the court be satisfied that there is “*prima facie* demonstration of a wrongful activity…” [para. 7 of judgment]. While the plaintiffs’ present applications are based on their respective grounding affidavits, we now have the statements of claim which identify the tweets alleged to be defamatory. In Ms Moore’s case, those tweets are set out at para. 4 and schedule A of the statement of claim (in relation to the Barbara J Pym account) and at para. 8 and schedule B of the statement of claim (in relation to the Dolly White account). The meanings which Ms Moore contends that those tweets conveyed are set out at paras. 7 and 11 respectively of the statement of claim. Ms Morris, in her statement of claim, refers to tweets from the Barbara J Pym, Dolly White and Northern Whig accounts at paras. 4, 7 and 10 respectively, which tweets are alleged to convey the meanings set out at paras. 6, 9 and 12 respectively.

67. There is no doubt that the tweets in question are highly critical of both plaintiffs as journalists in national newspapers, and that many of the tweets attack the competence and impartiality to be expected of persons acting in such a capacity. The plaintiffs each contend that the tweets have “gravely damaged” their professional reputations, and that they have “been brought into public scandal, odium and

contempt, and [have] suffered considerable hurt, distress, embarrassment and loss". In addition, Ms Moore claims that "…the publication of the words complained of above constitutes and was part of a malicious, orchestrated and sustained campaign of defamation and vilification" against her.

68. One anticipates that, if and when these matters are defended, the plaintiffs' allegations will be strenuously contested. Even if it is established that the tweets are attributable to Mr Harris or any other parties who may be joined as defendants, it may be contended that any or all of the tweets are true, or that, however robustly expressed, they are fair comments on matters of public interest, or that they simply do not bear the meanings inferred by the plaintiffs. Determinations in this regard will be made at the trial of these actions. I reiterate that the court cannot express even the most tentative view as to the strength of the plaintiffs' cases.

69. What the court must do however is satisfy itself that there is a "*prima facie* demonstration of a wrongful activity". On the basis of what is contained in the respective statements of claim, I am satisfied that each of the plaintiffs satisfies that criterion and is entitled on that basis to apply for a disclosure order.

Inconsistencies in Mr Harris' position

70. Each of the plaintiffs alleges in their respective statements of claim that Mr Harris "wrote and published or caused to be written and published" the allegedly offending tweets in the relevant accounts. They each plead at para. 15 of each statement of claim that Mr Harris

> "…knows but has refused to disclose the identity of the other wrongdoers who participated in the publication or republication of the words complained of despite publicly confirming the following matters:

(a) admitting to being part of a group or panel who curated and wrote the words complained of;

(b) suggesting that there was six other people in that group or panel of 'curators';

(c) [speaking] on behalf of the other wrong-doers by stating that they are 'loathe [sic] to give their names';

(d) identifying the professions of the other wrong-doers, including historians, trade unionists, businesspeople and others who had a 'a lot of experience and knowledge of the Northern Ireland', and confirmed that they are not politicians, or other journalists or public figures; and,

(e) being aware of the participation by the users of the other accounts whom he described as re-tweeting the defamatory statements and likely to have knowledge of their identities".

71. These allegations are made notwithstanding the averments made by Mr Harris in his affidavits, summarised at paras. 21 to 26 above, to the effect that he is "the sole operator of the Barbara J Pym account" and that he has not posted tweets from any other twitter account, and in particular that he was not involved in the Dolly White account, and was "not the person responsible for the operation of" the Northern Whig account. In those circumstances, it is submitted on his behalf that a disclosure order is inappropriate, particularly in circumstances where Mr Harris has not been cross-examined on his affidavit.

72. It cannot be gainsaid that the averments in Mr Harris' affidavit do not sit easily with some of his statements to Ms McInerney in connection with the Barbara J Pym account and in his press statement. While the entire interview should be read in context, Mr Harris

- intimated that he was “one of the founders of the site”;
- stated that “in recent times”, he “moved to the background and [became] more of an advisor”; when asked “who are the people involved in this site?”, he said that he “was not going to give their names”;
- stated that there was “about six people” involved;
- the reason for those people being anonymous was that “…they’re nervous people, they would be nervous of Sinn Féin. They just didn’t want their names mentioned…”;
- stated that “we just as a group, we wanted to operate under a sort of pseudonym…”
- when asked “how often would you have tweeted from the account personally?”, he replied “I effectively did most of the tweets recently in relation to the protocol. I do all the heavy stuff so to speak about protocols, Good Friday Agreements and all that. I do all that stuff”;
- when asked if he had “oversight in all tweets that are going out from the account”, he replied “…no I wouldn’t. I’d see some of them and I wouldn’t see others. I would see all of them maybe up to a year ago but as my health kind of went, I could only do a fair amount. I couldn’t do much”;
- When asked about a specific tweet referring to Ms Moore in a disparaging way, he replied “… I certainly didn’t do it myself. I have no knowledge of it”;
- when queried as to why he did not use his own name “and get advice from other people”, he said “…I just felt, if I was in a group of people,

> that I just didn't want to be sitting there having to consult with them all the time. It was much simpler to do it like this. But I'm not afraid. There is nothing sort of problematic about anonymity in my view…".

73. Mr Harris, in his press statement:

- states that the Barbara J Pym account "is a group account, curated by a rotating pool…";
- refers to "the other contributors", and that he "contributed to the site…";
- refers to "the women on the Pym site" not regarding two tweets as political or gendered.

74. It is difficult to square these public statements with the averments by Mr Harris in his affidavit regarding the Barbara J Pym account. The press statement in particular, which referred to the Barbara J Pym account as "a group account, curated by a rotating panel", was not made in the heat of the moment while being pressed by an interviewer on national radio – it was a prepared statement which was generated to represent Mr Harris' considered position.

75. In his affidavit, Mr Harris could have addressed the apparent inconsistency of the statements in the interview and press statement with his position as expressed in the affidavit. As was his right, he chose not to do so. However, this has the effect that the plaintiffs are given no satisfactory explanation for the inference which could reasonably be drawn from the interview and statement: that Mr Harris was not in fact the sole author of tweets on the Barbara J Pym account, and that there may be other persons who created the tweets of which complaint is made.

The Dolly White account

76. As regards the Dolly White account, it seems to me that the grounding affidavits of the plaintiffs and the statement of claim proceed on the basis of an assumption that Mr Harris is responsible for authorship of the tweets from that account. Undoubtedly, the subject matter and tenor of the allegedly offending tweets are similar to the tweets from the Barbara J Pym account. However, it seems to me that the submissions made by the first named defendant and quoted at para. 45 above (para. iii) are justified. While there may, in the view of the plaintiffs, be grounds for suspicion of Mr Harris' involvement in the Dolly White account, there is no evidence in this regard. Although the first defendant is incorrect in stating that Ms Halley's public statement in an interview with the Sunday Times Newspaper on 16th May, 2021 predated the institution of proceedings – the plenary summonses were issued on 14th May – it did precede the swearing of the grounding affidavits of each of the plaintiffs in the present applications and the delivery several months later of the statements of claim.

77. In those circumstances, I do not consider it appropriate to order disclosure against Mr Harris in respect of the Dolly White account. In respect of the Barbara J Pym account, I will set out below the course of action I consider appropriate in respect of Mr Harris after consideration of the claim for relief against Twitter.

Disclosure in relation to re-tweets?

78. The second paragraph of the draft order suggested by the plaintiffs and quoted at para. 44 above seeks information in relation to "re-tweets" of the tweets in the schedules to the proposed draft order. Likewise, the notice of motion seeks disclosure from Mr Harris in respect of re-tweets. It is not contested by the defendants – for the purpose of the applications at any rate – that, if a tweet were defamatory, a re-tweet of that tweet would also be defamatory.

79. However, no evidence was presented by the plaintiff which would suggest that any of the tweets alleged to be defamatory were in fact retweeted. The only evidence in relation to retweeting was the statement to Ms McInerney in response to her intimation of the breaking news that "Twitter has suspended nine accounts that are linked to yourself" and the response of Mr Harris that "…they are not linked to me. They have suspended nine Twitter accounts which have supported the political line at various times, or retweeted stuff from my thing". As the defendants have pointed out, there is no evidence that this is anything other than speculation on Mr Harris' part, and as I indicated at para. 41 above, it appears that the reason for the suspensions was "spam and platform manipulation" – whatever that means.

80. In any event, even if it were the case that the nine suspected accounts contain retweets from Mr Harris' "thing", there is no evidence, other than speculation on the plaintiffs' part, that any such retweets include the tweets now alleged to be defamatory.

81. I do not consider that Mr Harris' statement to Ms McInerney is a sufficient evidential basis on which to grant disclosure orders against Mr Harris or Twitter in respect of retweets in the absence of any evidence from the plaintiffs that any of the offending tweets were in fact retweeted. Accordingly, I do not propose to make disclosure orders against either party in respect of retweets.

Disclosure order against Twitter

82. Ms Cascon, at para. 24 of her affidavit, sets out the particular difficulties which she maintains the order sought in correspondence, which corresponds to the "draft order" now sought against Twitter by each of the plaintiffs, would cause for the second defendant: -

> "Twitter does not retain IP data on a "per-tweet" basis. Instead, Twitter records IP sessions such that it retrieves the user's IP address at very frequent automated intervals, down to the millisecond. To identify IP addresses on a per-tweet basis, would require Twitter to attempt to manually compare the time of the tweet's creation and the IP session data in order to work out which tweet matches which IP address. For Twitter to even attempt such an exercise would be unduly burdensome and disproportionate".

83. As we have seen, by its letter of 14th July, 2021, Twitter offered a form of order by way of assistance to the court. This is set out at para. 31 above, although Ms Cascon points out at para. 26 of her affidavit that this formulation was offered prior to sight of Mr Harris' affidavits, and suggested that it was now "not necessary" to grant relief against Twitter "in circumstances where the First Named Defendant has confirmed the identities of persons responsible for the accounts in question, and certainly not the oppressive and disproportionate relief that has been sought".

84. By way of comment on the plaintiffs' applications, Twitter makes the comments set out at para. 23 of its written submissions, quoted at para. 53 above. It is certainly the case that Norwich Pharmacal relief against a social media company such as Twitter generally seeks information relating to the identity of the person who created or controlled the account. This is what was granted by Allen J in *Parcel Connect*.

85. However, the circumstances of the present case are unusual. Normally, a court would not look behind an averment in an affidavit as to the identity of the controller of an account where the deponent had not been cross-examined. In the present case, the plaintiffs have presented evidence of public statements by the first defendant which, on the face of them, might reasonably be interpreted as conflicting with the

subsequent averments of the deponent. Mr Harris has not chosen to explain this apparent conflict, notwithstanding being aware that the plaintiffs were basing their present applications on his statements in the RTÉ interview and his subsequent press statement.

86. The plaintiffs therefore have a stateable basis, notwithstanding Mr Harris' averment, on which to contend that persons other than Mr Harris are responsible for the publication of tweets which they deem to be defamatory. Twitter has quite properly offered its assistance to the court to resolve the issues in these applications. It submits however that it should not be asked to cross-reference the IP session data with particular tweets, on the basis that, if the IP data is provided, this cross-referencing can be done by the plaintiffs: see para. 56 above. It offers IP information to include the IP addresses of log-ins "within the last 60 days".

87. On the basis that Twitter is correct in submitting that, if it supplies the information which it identifies in its own draft order, the plaintiffs can use that information to match IP addresses with specific tweets, it seems to me that an order in such terms would be sufficient and appropriate. I consider that, if it is the case that persons other than Mr Harris have published tweets from the Barbara J Pym account which are defamatory – and I express no view as to whether the tweets identified by the plaintiffs are indeed defamatory – the interests of justice which require disclosure of the identity of the author or publisher of a defamatory statement outweigh the interests of privacy of such a person in availing of anonymity. I will of course insist on the undertaking in writing on the part of the plaintiffs' solicitors as to use of the disclosure information on which Allen J insisted in *Parcel Connect*. I will make similar orders in Ms Morris' case as regards the Northern Whig account, but as I have indicated, not in respect of the Dolly White account.

Orders as regards Mr Harris

88. Mr Harris has averred that he is "the only person who has ever had access to the [Barbara J Pym] account and I am the only person who has posted/published on it…". This Court has no view as to the veracity of this averment, other than to note that there are public statements by the deponent which could reasonably be viewed as contradicting it. Counsel for both defendants suggest that, in the absence of cross-examination, it would not be appropriate to make a disclosure order against Mr Harris. Indeed, one assumes that it is not likely that any response by Mr Harris to a disclosure order would be materially different to what he has averred already in his affidavit.

89. It occurs to me that, if I make a disclosure order against Twitter, the information which results may entirely vindicate Mr Harris' position as expressed in his affidavit that he is solely responsible for posting or publishing on the Barbara J Pym account. It seems to me therefore that the appropriate course is to make an order as regards Twitter and await the outcome of that process before deciding whether or not to make a disclosure order against Mr Harris. If that process does indeed indicate definitively that Mr Harris' avowed position is correct, no further disclosure by Mr Harris in respect of the Barbara J Pym account will be necessary.

Conclusions and orders

90. My conclusions in respect of the plaintiffs' applications may be summarised as follows: -

(i) I am satisfied that both plaintiffs have established, on a *prima facie* basis, clear evidence of wrongdoing such as provides a basis for making disclosure applications to determine the identity of the alleged wrongdoers;

(ii) I am satisfied that the balance of justice requires the disclosure of the identity of the alleged wrongdoers, and outweighs any requirements of privacy of alleged wrongdoers who seek to avail of anonymity;

(iii) I do not consider that there is sufficient evidence to warrant disclosure orders against either defendant in respect of tweets posted on the "Dolly White" account;

(iv) I do not consider that there is any evidential basis on which to order disclosure in relation to "retweets" from any of the named accounts;

(v) I will make an order of disclosure in respect of the Barbara J Pym account against the second named defendant in the terms set out below. In case there are any practical or unforeseen difficulties with implementation of the order, I will give the plaintiffs and the second named defendant liberty to re-enter the motions;

(vi) subject to my findings in respect of the Dolly White account and the retweets, I will adjourn the balance of the plaintiffs' application as against the first defendant with liberty to re-enter, so that the parties may consider their respective positions on completion of the disclosure process concerning the second defendant;

(vii) In Ms Morris' case, Mr Harris has averred that he is "…not the person responsible for the operation of the @WhigNorthern Twitter account" [para. 12]. Accordingly, as with the Barbara J Pym account, a disclosure order will be made against Twitter in respect of this account, and the balance of Ms Morris' application against Mr Harris will be adjourned to await the outcome of that process.

91. The following order will be made in Ms Moore's proceedings directed to Twitter as follows: -

> "An order directing the second named defendant within ten days of service hereof to provide to the plaintiff by email to the plaintiffs' solicitors the subscriber information that Twitter holds (which may include screen name and/or email address and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address and account registration), and the internet protocol addresses of log-ins from 10th March, 2020 to 21st April, 2021 in respect of the Twitter account with the following name and Twitter handle:
>
> Barbara J Pym – @ BarbaraPym2."

The following order will be made in Ms Morris' proceedings in respect of Twitter:

> "An order directing the second named defendant within ten days of service hereof to provide to the plaintiff by email to the plaintiff's solicitors the subscriber information that Twitter holds (which may include screen name and/or email address and/or telephone number provided by the user at the time of registration, and may also include the date and time of account registration, internet protocol address and account registration), and the internet protocol addresses of log-ins from 5th August, 2020 until 26th April, 2021 in respect of the Twitter account with the name and Twitter handle:
>
> Barbara J Pym - @BarbaraPym2
>
> And from 10th April, 2021 to 24th April, 2021 in respect of the Twitter account with the name and Twitter handle
>
> Northern Whig - @WhigNorthern."

92. I consider the "60 day" limitation proposed by the second named defendant as unrealistic and arbitrary. In fairness, it was proposed at a time when Twitter was being asked to match tweets and retweets with IP addresses. In view of the more limited scope of my order, I consider a limitation of information from the earliest to the latest date of the tweets identified at schedule A [and schedule C in Ms Morris' case] to the respective draft orders proffered by the plaintiffs is appropriate. There is no evidence before me which would suggest that the provision of this range of information would be unduly onerous or burdensome for Twitter.

93. I am also making the order on the basis of Twitter's assurance that the information it provides can be readily cross-referenced by the plaintiffs by means of the information on the face of the tweets themselves, particularly the date and exact time of publishing the tweet, so IP addresses may be matched to individual tweets. If there are practical difficulties in this regard, the form of the orders may need to be revisited. Hopefully this will not be necessary.

94. As I have indicated, I will require a written undertaking from the plaintiffs' solicitors on behalf of themselves and their clients that the information furnished will not be used for any purpose other than seeking redress in respect of the wrongs of which complaint is made.

95. There will be orders that each of the plaintiffs pay Twitter its costs of the respective applications and the costs of complying with the orders, such costs to be adjudicated in default of agreement.

96. Finally, in the event that the particular orders I have outlined above give rise to unanticipated difficulties, I will allow the parties ten days from delivery of this judgment to make written submissions of not more than one thousand words as to the format of the perfected order. Any such submissions should address practical aspects

of implementation of the orders only. Under no circumstances will any re-argument of the substantive issues be entertained.