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Case No: HQ17M03217

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2018

Before :

MR JUSTICE WARBY

- -

Between :

(1) ARNOLD MBALLE SUBE
(2) JEANNE MBALLE SUBE **Claimants**

- and -

(1) NEWS GROUP NEWSPAPERS LTD
(2) EXPRESS NEWSPAPERS **Defendants**

- -
- -

Mark Engelman & Robert Whittock (instructed by **Debenhams Ottaway**) for the **Claimants**
David Price QC & Robin Hopkins (instructed by **David Price QC**) for the **First Defendant**
Christina Michalos (instructed by **Express Newspapers**) for the **Second Defendant**

Hearing date: 14 May 2018

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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.

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MR JUSTICE WARBY

MR JUSTICE WARBY :

1. This judgment rules on the nature and scope of the claims that can properly be pursued against the publishers of The Sun, the Daily Express and the Daily Star, in respect of a series of articles they published about the claimants in late 2016.

The background

2. The claimants, Arnold and Jeanne Mballe Sube, are a married couple with 8 children. In the late Summer and Autumn of 2016, they were in dispute with Luton Council about the adequacy of the housing which the Council had offered the family. They seem to have approached a local newspaper about the issue, to publicise their case. There was an article about the matter in the MK Citizen for 8 September 2016, which featured a picture of the family apparently posing for the camera in their then home. The consequences were evidently unexpected, and certainly unwelcome. Between 7 September 2016 and 2 November 2016, the family's situation was the subject of extensive national newspaper coverage, in print and online. Articles appeared in at least one of those forms in The Sun, The Mirror, the Daily Express, and the Daily Star. The general flavour of the coverage that is the subject of this action can be gathered from the headlines of two of the articles. One, published in The Sun for 7 September 2016, was headed, "Are they serious? First picture of four-bed house that jobless couple with eight kids slammed council for offering." Another, published on the website of the Daily Express the following day, bore the headline, "Shameless French family-of-10 demand MANSION: benefits dad rejects 5-bed as 'too cramped'".

3. Readers posted responses to these and other similar articles ("Posts"), in the comment sections of the newspaper websites ("Comment Posts") and on third-party websites ("Third-Party Posts"). Many were highly offensive. For example, Comment Posts responding to the "Are they serious?' Sun article included one from "Nick", saying "Ungrateful liberty taking benefit claiming scumbags…" Maureen Ballard wrote of "leaches on society…" (sic) and another commentator said, "spongers are raping the economy…". One Third Party Posts described Mr Sube as a "cunt" from "Bogo-Bogo Land", suggesting that "he and his tribe should fuck off back there". It hardly needs saying that the Subes are black. Some of the Posts were not just abusive but also threatening in content.

The action

4. On 5 September 2017, solicitors for the claimants issued the claim form in this action, claiming damages in respect of a number of articles published in the print and online versions of the newspapers I have mentioned. The claimants also claimed injunctions to restrain the repetition of such publications. The complaint made at that stage was that the articles complained of were libellous and involved harassment of the claimants contrary to the Protection from Harassment Act 1997 ("PHA").

5. The claimants have since settled with the publisher of The Mirror. Their claims in respect of The Sun continue against its publisher, the first defendant ("News Group"). So do the claims in respect of the Daily Express and Daily Star, against the second defendant ("the Express") which is the publisher of both titles. The claimants have also sought to expand their case by adding claims in respect of further articles

published by the Express; by complaining of Comment Posts as harassment; and by claiming that the publications complained of also amounted to malicious falsehoods and/or involved breaches of the Equality Act 2010 ("EA") and/or breaches of duty under the Data Protection Act 1998 ("DPA"). A range of additional remedies is sought, in reliance on these additional claims.

6. The proposed expansions of the claimants' case have come in two phases. First, on 22 December 2017, the claim form was amended and Particulars of Claim were drafted, to add the further claims and causes of action that I have mentioned. The claim form was amended under CPR 17.1, which allows a party to amend his statement of case at any time before it has been served on any other party. But the Court may disallow such an amendment: CPR 17.2(1). A party can apply for an order disallowing an amendment within 14 days after service of the amended statement of case: CPR 17.2(2). Following an agreed extension of time, News Group did that. Phase two was more recent. The claimants applied, by application notice issued in February 2018, to amend various aspects of the pleaded claims. The purpose of that application is, in part at least, to meet some of the criticisms levelled at the claims by the defendants.

This hearing

7. This has been the trial of meaning and related issues as preliminary issues in the libel claims. I also have to resolve applications by the defendants for orders disallowing the amendments by which the malicious falsehood and Equality Act claims were added and/or striking out those claims; applications by the defendants to have the data protection claims disallowed, struck out, or stayed; and the claimants' cross-application for permission to amend their claim form and Particulars of Claim. The claimants also apply for extensions of time in respect of claims which were not pleaded until after the expiry of the applicable primary limitation periods. That is the position in respect of the additional libel claims against the Express, and all of the malicious falsehood and Equality Act claims.

8. There is no attack on the claimants' claims for harassment contrary to the PHA. The case will therefore proceed on that cause of action at least. My decisions on the issues and applications I have mentioned will determine which, if any, of the other pleaded claims need to be addressed in the Defences, and may have an impact on when Defences need to be served. So, time for service of Defences has been extended until after this judgment.

The Parties' positions

9. The main features of the rival positions can be stated broadly in this way. The claimants complain of articles and Comment Posts. Their complaints are that the content of the articles was libellous, and harmful to the employment prospects of Mr Sube, involved harassment, was false or inaccurate, published maliciously, racially discriminatory in various respects, a misuse of their personal data (involving an invasion of their privacy and a breach of confidence), and for all these reasons, distressing. Allegations about the Comment Posts are woven into the complaint. Mr Engelman and Mr Whittock put it more colourfully, submitting that the series of articles published by the defendants "during the period next following the immediate aftermath of the Brexit Referendum … turned [the claimants] and their children into the targets of written and verbal racist abuse … [The defendants] lit the match in a

tinder box." The claimants seek damages for all these matters, including aggravated and exemplary damages, as well as remedies designed to remove the articles and Comment Posts and prevent any repetition. The claimants' children are not parties to the claim.

10. The defendants' position is that the words complained of contain nothing defamatory of the claimants or, if they do, the defamatory meanings are not factual but only comment which the defendants expect to succeed in defending as "honest opinion" in reliance on s 3 of the Defamation Act 2013. The defendants also maintain that the claimants' statements of case and draft amended statements of case present no adequate basis for claiming that any serious reputational harm has been suffered, no clear or sustainable case in respect of the Comment Posts, and no reasonable basis for claiming exemplary damages, or for claims in malicious falsehood, or under the EA. They say the existing DPA claims are manifestly unfounded in fact, and that the proposed amendments to that claim are wholly deficient in the necessary clarity and particularity. They further contend that the law requires a stay of any DPA claim that may survive their attacks.

Approach

11. The claimants have limited resources but are able to bring this action because their lawyers have agreed to act on a conditional fee basis. Mr Engelman has invited me to take this into account. I am not sure he was suggesting that a different approach should be adopted to the application of the rules and principles of pleading, or compliance with the CPR. But that clearly would not be appropriate. As Mr Price submits, on behalf of News Group, the claimants are not litigants in person; they are represented by solicitors and two Counsel. Moreover, as the Supreme Court has recently reminded us, even a lack of representation does not justify a lower standard of compliance with the CPR; the overriding objective requires courts to enforce compliance: *Barton v Wright Hassall LLP* [2018] UKSC 12 [18] (Lord Sumption).

12. I do accept that the need to find lawyers to work on a CFA justifies some delay in commencing the action. I also accept Mr Engelman's point, that the fact that the harassment claims are going to proceed in any event is something to be taken into account, when exercising any discretion I have, in relation to the issues and applications I have outlined. But in the end, I do not consider that this plays a very significant role, because most of my decisions involve the application of clear legal principles rather than discretionary judgments; and where discretion does arise, the overriding objective requires me to manage the case effectively, with an eye to the efficient use of both private and public resources, rather than be indulgent or make any undue allowances. This, of course, works both ways.

Summary of conclusions

13. The conclusions I have reached, for the reasons that follow, are these:

    (1) Defamation. On the trial of the preliminary issues I find that the articles complained of did not convey any defamatory factual imputations about the claimants. They did contain or imply a number of derogatory comments or opinions about them. But none of those comments or opinions was, considered individually, sufficiently harmful to either claimant's reputation to satisfy the

serious harm requirement laid down by s 1 of the Defamation Act 2013. It would seem to follow that the libel claims fail, but that is subject to one issue, explained at [43] below.

(2) Serious harm. I have been able to reach the above conclusions without the need for an amended pleading on this issue. If the case were to continue the pleaded case on serious harm would need amendment, but it is not irremediable as a pleading.

(3) The Comment Posts. I decline to strike out the whole of paragraphs 5 and 8 of the Particulars of Claim, as sought by the defendants. But I strike out the sentence in each of those paragraphs which alleges that the Comment Posts "contained words that are defamatory of the Claimants", under CPR 3.4(2)(b). I also direct that the Particulars of Claim be amended so as to make it explicit that there is no defamation claim in respect of the Comment Posts.

(4) Harassment. I grant the application for permission to amend this claim to encompass the Comment Posts.

(5) Exemplary damages. Paragraph 13 of the Particulars of Claim is struck out as disclosing no reasonable basis for such a claim.

(6) Malicious falsehood. The amendment to the claim form is disallowed pursuant to CPR 17.2 and paragraphs 14 to 19 of the Particulars of Claim and the relevant parts of the prayer for relief are struck out, for failure to disclose any reasonable basis for a claim.

(7) EA. The amendment to the claim form is disallowed pursuant to CPR 17.2, and paragraphs 28 to 35 of the Particulars of Claim and the relevant parts of the prayer for relief are struck out; both measures are taken on the grounds that the statements of case disclose no reasonable basis for a claim. The proposed amendments are refused, for the same reason.

(8) DPA. I decline to disallow the amendment to the claim form, or to strike out the claim as pleaded in the Particulars of Claim, which in my judgment disclose a reasonable basis for a claim. But I stay that claim for the time being. So far as News Group is concerned, I do so pursuant to DPA s 32(4). So far as the Express is concerned, I do so under the inherent jurisdiction and the Court's case management powers. I refuse permission to make the proposed amendments to the DPA claim, on the grounds that these fall a long way short of the applicable pleading standards, and are likely to obstruct the just disposal of the action.

14. These conclusions make it unnecessary for me to resolve, at this stage, the claimants' applications for the disapplication of the limitation period for defamation and malicious falsehood. I do not need to resolve the application under s 118 of the EA, either. The decisions at 13(1), (3) and (7) above are final, subject to any appeal. As to the other decisions I should make these points:

(1) Those at paragraphs 13(2) and (5) above are without prejudice to the claimants' right to reformulate their case and, in particular, to seek permission to proceed with a reformulated claim for exemplary damages. That is because these

decisions are based on pleading deficiencies only. But I should not be taken to invite, let alone encourage, an attempt to refresh allegations for which the claimants have so far failed to identify any reasonable factual basis.

(2) I am striking out the malicious falsehood claim (13(6) above) because the pleading of falsehood and malice is deficient, but also because the damage claim as pleaded is fanciful. No doubt a clear case on falsity could be framed, I am very doubtful that a legitimate plea of malice could be formulated, but cannot rule it out altogether. For the reasons explained later, however, I am unable to see any basis on which a viable case on damage could possibly be advanced. That is regardless of the limitation issue, which would also need to be overcome.

(3) The striking out of the malicious falsehood claim does not embrace paragraph 10 of the Particulars of Claim, which contains "Particulars of Falsehood". In the absence of a claim for malicious falsehood I am not sure what function this paragraph has in the statement of case. It is superfluous to the libel claims, with which its relationship remains unclear to me. But I leave it untouched at this stage because nobody has yet sought to strike it out. It might perhaps form a legitimate part of a reformulated DPA claim (as to which, see below). But if it is to stay on the record for any purpose it will need attention, as I indicated in the course of argument.

(4) The decisions at 13(8) above are made without prejudice to the defendants' right to seek summary judgment on the existing DPA claims; and the right of the claimants to seek permission to amend, to advance reformulated claims for breach of s 4(4) of the DPA. As to the former, the stay that I am imposing does not prohibit a defence application. As to the latter, it is plainly arguable at the least that the offending publications involved the processing by the defendants of personal data relating to the claimants, in respect of which the defendants owed the duty imposed by s 4(4). It seems likely that legitimate claims for breach of that duty can be formulated, in addition to the s 10 claim that I have left on the record. Whether such claims would succeed is another matter, on which I express no view. Nor do I express a view on whether such claims would have to be stayed pursuant to s 32(4). That must be for another day. I do not believe it is possible, nor that DPA s 32(4) obliges me, to stay claims which have yet to be clearly formulated.

15. It will be convenient to explain my conclusions by dealing in turn with each of the causes of action now put forward, beginning with those that have been relied on from the outset.

The libel claims: preliminary issues

16. The claimants sue News Group in respect of articles published in The Sun and on its website www.thesun.co.uk on 7, 9 and 11 September, 30 and 31 October, and 1 and 2 November 2016 ("the Sun Articles"). They sue the Express in respect of articles published on the websites of the Daily Express and Daily Star on 7, 8 and 11 September, 31 October and 1 November 2016 and one published in hardcopy in the Daily Express of 1 November 2016 ("the Express Articles").

17. The words complained of in the Sun Articles and the Express Articles are set out in a series of Annexes to the Particulars of Claim. The meanings which the claimants attribute to the words complained of are set out in separate Annexes so that, for example, Annex 1 contains the first set of words complained of, and Annex 2 contains the meanings attributed to those words.

18. On 14 February 2018, I granted the defendants' applications for orders that there be a trial of three preliminary issues in respect of each of the articles complained of in the Annexes to the Particulars of Claim: (1) whether that article bears the meanings pleaded in the respective Annex to the Particulars of Claim; (2) whether any such meaning is defamatory of either or both of the claimants; (3) whether any such defamatory meaning is fact or comment. The claimants consented to such a trial, so far as News Group was concerned. It was plainly convenient for the Express application to be dealt with at the same time.

Principles

Meaning

19. When a court decides the meaning of words which are said to be defamatory, it is seeking to identify the natural and ordinary meaning that the words would convey to the hypothetical ordinary reasonable reader. The "single meaning rule" applies: although different readers may understand the same words to mean different things, the court must identify a single meaning (or a single set of imputations) which the hypothetical reasonable reader would draw from those words. The process must be undertaken by reference to the words themselves, without regard to evidence of what meaning(s) people actually drew from them, or the truth or falsity of the article, which is immaterial. The court is not bound by the meanings proposed by the parties, and I do not regard the form of the preliminary issue in this case as affecting the application of that rule.

20. The principles to be applied are well-established and uncontroversial. They can now be stated in this way:

> (1) The governing principle is reasonableness.
>
> (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available.
>
> (3) Over elaborate analysis is best avoided.
>
> (4) The intention of the publisher is irrelevant.
>
> (5) The article must be read as a whole, and any 'bane and antidote' taken together.

> (6) The hypothetical reader is taken to be representative of those who would read the publication in question.
>
> (7) … the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation …' ….
>
> (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.
>
> (9) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

21. This summary is drawn from the classic source - the judgment of Eady J in *Jeynes v News Magazines*, cited with approval by Lord Clarke MR on appeal, [2008] EWCA Civ 130 [14] - with an addition based on the elaboration identified by the Court of Appeal in *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529 [2018] EMLR 5 [12]-[15]. Principles (7) and (8) are of greater relevance where the Court is determining the range of meanings which words are *capable* of bearing – an increasingly rare exercise, these days, for reasons explained in *Alsaifi v Amunwa* [2017] EWHC 1443 (QB) [39]-[40]. At this trial, I am concerned with what the words *did* mean.

22. Mr Engelman also relies on the principle that the ordinary reader's understanding of words will be guided by, among other things, the reader's knowledge of "matters of universal notoriety … that is to say matters which any intelligent viewer or reader may be expected to know" (see, eg, *Fox v Boulter* [2013] EWHC 1435 [16]). The principle is clear, but I am not persuaded that it has the relevance for which Mr Engelman contends. The matter of universal notoriety that is relied on here is the Brexit Referendum. That certainly qualifies as common knowledge. How it bears on the issue of meaning is less obvious. It is said that the articles were inflammatory, and tantamount to "falsely shouting fire in a crowded theatre". Mr Engelman says the "crowded theatre" here was the Brexit Referendum, and it is in that context that the articles were read. The reader reactions, or some of them, were certainly extreme, and some were angry, and perhaps alarming. But the link between these responses and Brexit is not fully explained, seems to be speculative, and certainly cannot be assumed. I have not been able to see how any of this could properly affect my conclusions as to the meaning of the words used, anyway. The social or political attitudes of readers cannot affect the natural and ordinary meaning which the words used would convey to the hypothetical reasonable reader (*Monroe v Hopkins* [2017] EWHC 433 (QB) [2017] EMLR 16 [36]). Nor can the nature or degree of any anger which published words provoke in some of their readers determine, or assist in deciding, what they mean.

Defamation

23. The claimants' arguments say relatively little about the test for when a meaning is defamatory of a person. The starting point is the common law principle that a

meaning is defamatory of the claimant if it "[substantially] affects in an adverse manner the attitude of other people towards him, or has a tendency to do so": *Thornton v Telegraph Media Group Ltd* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J). This is the common law "threshold of seriousness", which requires a "tendency" to affect adversely the attitudes of others towards the claimant, to a "substantial" extent.

24. Section 1(1) of the Defamation Act 2013 has raised the bar. It provides that a statement "is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant." The words "is likely to cause", as used in this subsection, "are to be taken as connoting a *tendency* to cause": *Lachaux v Independent Print Ltd* [2017] EWCA Civ 1334 [50] (Davis LJ) (my emphasis). The effect of the subsection is to give "statutory status to *Thornton*, albeit also raising the threshold from one of substantiality to one of seriousness …": [82(1)].

25. The approach to be adopted by the Court is explained in *Lachaux*:

> "69 … If the meaning … established … does not convey a serious defamatory imputation then the claim may, by reason of s.1(1), be vulnerable to being struck out without more ado.
>
> 70. If, on the other hand, the meaning so established conveys a serious defamatory imputation … then an inference of serious reputational harm ordinarily can and should be drawn accordingly.
>
> …
>
> 73. … at a meaning hearing … [t]he seriousness of the reputational harm is … evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog).
>
> …
>
> 79. Whether in any given case the imputation is of sufficient gravity as of itself to connote serious reputational harm … should therefore normally be capable … of being relatively speedily assessed at the meaning hearing."

26. The Court envisaged the possibility of a defendant establishing by evidence that the inference of serious harm should not be drawn, and that the publication of a serious imputation had *not* in fact caused serious reputational harm: see, eg, [79] and [82(5)]. But that aspect of the matter need not concern me in this case, as the defendants have made clear that they do not propose to pursue any such course here. It is on the basis of their express assurances to that effect that I directed this preliminary issue trial.

27. But the claimants have sought to rely on evidence in support of their case on serious harm, suggesting that the Comment Posts and Third Party Posts are relevant and admissible for that purpose. Mr Engelman acknowledges the established principle that evidence of what readers actually took the words complained of to mean is inadmissible for the purposes of assessing meaning. He submits, however, that the

Posts can be relied on to show that the publication complained of caused serious reputational harm. He has taken me through a number of representative examples including, but not limited to, the ones I have quoted at the start of this judgment.

28. This is a problematic line of argument. It seems to circumvent the acknowledged principle as to meaning, and to be contrary to the logic of the common law as well as *Lachaux*. In that case, the court (at [26]-[27]) drew attention to the important distinction between harm to reputation – people thinking the worse of a claimant – and the consequences of such harm, outwardly expressed by some hostile words or acts. As I put to Counsel in argument, if the words convey a seriously harmful defamatory imputation the claimants do not need to rely on evidence; the inference that serious harm was caused will be drawn, because the defendants do not seek to challenge it. If the words fall short of conveying a seriously harmful defamatory imputation, no amount of evidence can make up the deficiency. Cf *Lachaux* at [80].

29. I have considered again in this context the claimants' reliance on the fact that the articles complained of were published in the aftermath of the Brexit Referendum. I believe that their case is, in part, that by publishing in the wake of the Referendum inflammatory articles casting the claimants in the role of ungrateful foreign benefits scroungers the defendants foreseeably provoked their readers into racist and otherwise grossly unpleasant Posts of the kind I have quoted. For the reasons just given, I think this is misconceived as an argument on s 1(1) of the Defamation Act 2013. But I do not rule out reliance on Posts as evidence of the extent of the reputational harm caused. There may be arguments on causation, remoteness, or other issues. A Post which indicates that the reader drew from the words complained of a damaging meaning which the Court has not found them to convey cannot assist. But I can see that a Post that shows that a reader had a strong adverse reaction to a defamatory imputation which the Court has found the words to bear might be relevant when it comes to to the quantum of damages. However, it would only be relevant at that stage, if the claimant had already established that the case crosses the statutory threshold.

30. It is not enough for a statement to be causative of serious harm to reputation. The words must impute some conduct or quality that would seriously harm the claimant's reputation in the eyes of "right-thinking members of society generally or … reasonable people generally": *Skuse v Granada Television Limited* [1996] EMLR 278, 286 (Sir Thomas Bingham MR). Mr Price reminds me of *Rufus v Elliott* [2015] EWHC 807 (QB) where I summarised the position in this way:-

> "41 … a statement which tends to lower a person, or would be likely to affect them adversely, in the esteem or opinion of a section of society only is not a defamatory statement. To put it another way, the standards to be applied in assessing whether the offending statement is damaging to reputation in a way that is legally actionable must be collective standards of society generally, that are shared and agreed upon by society at large, and not just by a part of society.
>
> …
>
> 46. The need for the values that are applied in deciding whether a statement is defamatory to be values shared by society at large – what might be termed the consensus

> requirement - has been emphasised in more recent authorities: see *Ecclestone v Telegraph Media Group Ltd* [2009] EWHC 2779 (QB) [17] (Sharp J), *Thornton v Telegraph Media Group* (above), and *Modi v International Management Group (UK) Ltd* [2011] EWCA Civ 937, [30]-[33] (Thomas LJ). *Thornton* provides a particularly clear example of the application of the consensus requirement. One allegation complained of by the claimant, a writer, was that she had given 'copy approval' to a source. This was a practice of which both she and the defendant strongly disapproved. The allegation was however held not to be defamatory. Tugendhat J held at [98] that 'the fact that the two parties to an action may both be members of a section of society holding particular views does not relieve the court of the obligation to try the case by the standards of society generally.' He concluded that by those standards it was not defamatory to attribute this practice to the claimant."

31. It is therefore necessary to consider carefully the kind of behaviour which the statement imputes to the claimant, and to ask whether such conduct would involve a serious breach of a settled and important societal norm; or, putting it more precisely, whether the attribution of such conduct would tend to harm the claimant's reputation in the eyes of reasonable members of society generally in a way or to an extent that is serious. In a plural society there may be much that some reasonable people condemn but other reasonable people approve, or tolerate without strong disapproval.

Fact or opinion

32. I shall use the terms "comment" and "opinion" interchangeably. Statements of this kind are to be distinguished from statements of fact. The two categories of statement are treated differently when it comes to defences. The principles by which the Court decides which category a given statement complained of falls into are set out in *Yeo v Times Newspapers Ltd* [2014] EWHC 2853 (QB), [2015] 1 WLR 971 [88]-[98]. Of particular relevance to the present case are the principles outlined at [88]:

> "The statement must be recognisable as comment, as distinct from an imputation of fact: *Gatley on Libel and Slander*, para 12.7. Comment is 'something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc': *Branson v Bower* [2001] EMLR 800, 12. The ultimate determinant is how the words would strike the ordinary reasonable reader: *Grech v Odhams Press Ltd* [1958] 2 WB 275, 313. The subject matter and context of the words may be an important indicator of whether they are fact or comment: *Singh's* case, paras 26 and 31."

33. *Singh's case* (*British Chiropractic Association v Singh* [2010] EWCA Civ 350 [2011] 1 WLR 133) also highlights the dangers of drawing too rigorous a distinction between the question of whether words are defamatory and the question of whether they are fact or comment. To ask the questions separately, in that order, "may not always be the best approach, because the answer to the first question may stifle the answer to the second": [32]. Put another way, words that are recognisably a statement of opinion

may not be harmful enough to reputation to cross the threshold of seriousness, and be defamatory.

The pleading

34. The claimants' approach to pleading by way of Annexes, as described above, is unconventional and, as Ms Michalos gently put it, "not very user-friendly". I would warn against this approach in future cases. There is no good reason not to plead the words and meanings complained of in the body of the Particulars of Claim. The approach adopted also involves a highly selective citation of the words complained of, stripped of their context. An example is the pleaded claim in respect of the first Sun article complained of. Paragraph 3 of the Particulars of Claim says that "The respective 7 articles are set out in Annexes 1,4,7,10,12,15 and 18 hereto …" Annex 1 consists of the three words "Are they serious?" Annex 2 is headed "Meaning of the Words of Annex 1 – ARE THEY SERIOUS". It reads as follows:

1. The Claimants are not honest about their claim to housing and state benefits
2. The Claimants are arrogant about their entitlement to housing and benefits
3. The Claimants unreasonably refuse housing
4. The Claimants have abused the benefit system
5. The First Claimant has not paid state tax
6. The First Claimant is unemployed

35. A short response to this pleading might have been that the three words complained of are manifestly incapable, by themselves, of bearing any of the meanings complained of. Plainly, those words could only convey such meanings, if at all, when read in some wider context. Reliance on context needs to be pleaded, and it is not. It is true that the full wording of the article is to be found in a photocopy, which is Annex 21. But this approach is most unhelpful, as it requires a considerable paper-chase before the case can be properly understood and analysed. It is also contrary to established principles:

> "… in a claim for libel it is necessary that the claimant should set out word for word precisely those words which he alleges defame him, whether that is the whole of the text or, as is more commonly the case, an extract from a much larger text."

Wissa v Associated Newspapers Ltd [2014] EWHC 1518 (QB) [29] (Tugendhat J) (cited in the notes to vol 1 of Civil Procedure 2017 at 53PD.10.) "The particular passages complained of should be clearly identified …": Gatley 12th ed para 26.12.

36. The awkwardness resulting from the claimants' method of pleading has been ameliorated by the way the parties have approached this hearing. The claimants' side provided a "Scott Schedule" listing the articles complained of, the meanings attributed to them by the claimants, and inviting me to record my decisions in the final column. Mr Engelman's skeleton argument contained a helpful schedule setting out his arguments in support of the meanings contended for. This relied on parts of the articles other than those complained of in Annex 1. Mr Price and Ms Michalos have provided counter-schedules. That of Mr Price included the full wording of each of the articles complained of against his client.

Application of principles

37. In a judgment on meaning it is conventional to set out all the words of each article complained of. That is not always the case, as some publications can be too long to make it convenient. In this case it is not necessary. The articles are numerous. The parties know what the words are. Setting them all out here would be unwieldy and wasteful of resources, as well as repeating in a privileged public forum the statements of which the claimants have complained. No sufficient advantage would be gained in terms of open justice. What I have done is to set out as an Annex to this judgment the full text of the first Sun article, including the 10 picture captions. This is a sample of the publications complained of, and representative of much of it. When it comes to meaning I have found that the Scott Schedule approach is, in the end, impracticable for the purposes of giving judgment. Instead, I shall set out my conclusions with brief reasons, taking the articles published by each defendant separately but using the numbering system adopted in the Scott Schedule.

The Sun Articles

38. It is convenient, in the case of each Article, to determine whether the meanings complained of were borne by the article, whether any meaning was fact or opinion, and in some instances whether or not they meet the common law requirements for defamation, before deciding whether the imputation or Article satisfies s 1. My conclusions are, Article by Article, as follows.

(1) The headline and meanings complained of are set out at [34] above, and the full text appears in the Annex, where I have emphasised in bold the text which represents expressions of opinion.

(i) Meaning 1 ("the Dishonesty Meaning") is a defamatory meaning of fact, the publication of which I am quite sure would cause serious harm to reputation, as it is an imputation of dishonesty contained in a national newspaper. But the article does not bear that meaning, or anything close to it. I note that no such meaning was complained of in the letter of claim. I see nothing in the article that imputes dishonesty, as opposed to "milking" or abuse of the benefits system: see below.

(ii) Meaning 2 ("the Arrogance Meaning") is plainly opinion. The article does bear something close to this meaning. The article is largely presented as fact, but it contains expressions of opinion. I have emphasised these in the Annex. The headline is one such. It expresses incredulity at the claimants' conduct as described in the article. The tone and presentation of the article as a whole imply disapproval of that conduct. Some third-party comments are reported in the article, which are clearly disapproving. In my judgment the article suggests that the claimants are "milking" the system, taking undue advantage of their welfare entitlements, obtaining sums which – though they are entitled to them – are excessive and undeserved, and behaving unreasonably over their housing. All these implied meanings are plainly opinion.

(iii) Meaning 3 ("the Unreasonable Refusal meaning") is conveyed by the article, but is an opinion.

(iv) Meaning 4 ("the Abuse Meaning"). I uphold this to the extent that it falls within the scope of the meanings I have identified at (ii) above. That is, abuse by taking advantage of the system, but in good faith. This is plainly an opinion.

(v) Meaning 5 ("the Tax Meaning") is a factual meaning, but is not borne by the article and is not defamatory anyway. There is nothing inherently discreditable in not paying tax, and I have not been presented with any argument as to why such an imputation should be considered defamatory at common law. Some might disapprove, under some circumstances. But this is not an imputation that is capable of lowering a person in the estimation of right-thinking people generally.

(vi) Meaning 6 ("the Unemployment Meaning") is also factual. It is conveyed by the article (the headline speaks of a "jobless couple"), but it is non-defamatory. Unemployment is, without more, a matter for sympathy not disapproval. I have not seen or heard any explanation of why I should regard it as a defamatory imputation at common law. It is not capable of lowering a person in the estimation of right-thinking people generally.

(2) ("Benefits dad's defiance"). Two meanings are complained of.

(i) Meaning 1 is "The Claimants over claimed housing benefits from the state". I agree that this is a meaning impliedly borne by this article, provided that it is understood in the sense that they took undue advantage of their entitlement, as opposed to making dishonest claims. This is an opinion.

(ii) Meaning 2 is "The Claimants were greedy when running up a £21,000 restaurant bill". This is a reasonable characterisation of a suggestion which does emerge from the article, that the Claimants had run up an excessive restaurant bill. This flows from the figure, and the impression of extravagance that is conveyed generally. The imputation of greediness is, again, an opinion.

(3) ("It's my right"). The claimants originally attributed to this article the same six meanings as are complained of in relation to article (1). My conclusions on the Dishonesty Meaning are the same as they are in that instance: it is a factual defamatory meaning, but not one borne by this article. There is nothing that suggests dishonesty as opposed to shameless abuse of the welfare system. The word "shameless" appears in the headline and is a fair summary of the gist of the story. This article does however bear the Arrogance Meaning. It is conveyed by the headlines, overall tone and presentation, and statements that Mr Sube "scoffed at" the offer of a 4- bedroom home, that and the "family" were "outraged" at the offer to put them up in a 5-bedroom property, and that they have "claimed they are being neglected". This article also bears the Unreasonable Refusal and Abuse meanings. The contention that it bears the Tax Meaning has been abandoned. The Unemployment Meaning is a factual meaning which the article does convey but which is not defamatory, for the reasons given above.

(4) ("He played the system and won"). The claimants attribute six meanings to this article. The first five are the same as meanings 1-5 complained of in relation to the article (1). As to these:

(i) My conclusions on the Dishonesty Meaning are the same in this instance. "Playing the system" is certainly a disapproving phrase, and the article uses the word "outrage", but this criticism does not in itself convey an imputation of dishonesty. Nor does the remainder of the article convey such a suggestion. The thrust of the article is conveyed by words and phrases such as "unfair" and "you should not expect to be bailed out", "Mr Sube has had a result".

(ii) This article does bear the Arrogance, Unreasonable Refusal, and Abuse meanings, subject to the qualifications I have mentioned already. These are conveyed by the headline, the overall tone, the use of the words "moaned", "whinging", "brazenly claimed … his family was being 'neglected' when their previous four-bedroom home felt too cramped", and from the words quoted at (i) above, and the words attributed to neighbours. As to the Tax Meaning, my conclusions are the same as they are in respect of Article (1).

(iii) The sixth meaning attributed to this article is that "The First Claimant is only employed for 10 hours a week and thereby fails to independently support himself and his family whilst claiming benefits and housing." This is a factual meaning borne by the article but it is not a defamatory meaning at common law. Some may disapprove of a person who behaves in this way, but by no means all will do so. It is not of itself disreputable by the standards of right-thinking people, to claim benefits whilst working for limited hours.

(5) ("Cul-de-spat"). The claimants advance the same meanings as they do in respect of Article (4). My conclusions are the same.

(6) ("Take your pick"). Six meanings are complained of. The first four are the same as meanings 1-4 in respect of Article (1). My conclusions are the same. In short, the Article does not bear the Dishonesty Meaning, which is a defamatory factual meaning. It does bear the Arrogance, Unreasonable Refusal and Abuse meanings, which are opinion. The fifth meaning attributed to the sixth article is "The First Claimant is only employed as a part-time nurse and thereby fails to independently support himself and his family whilst claiming benefits and housing." This is similar to the sixth meaning attributed to articles (4) and (5), and my previous conclusions on that meaning apply equally here.

(7) ("No more. Fed up council funding migrant dad …"). Four meanings are complained of. The first two are the Arrogance and Unreasonable Refusal meanings. I agree that the article bears those meanings, which are opinion. The article describes the claimants as "turning their noses up" at previous properties, and "whingeing". It refers to "officials" saying they "acted like they have 'more rights than anybody else'." The other meanings complained of are

(i) "3. The Claimants were housed for free upon arrival thereby unjustly obtaining housing benefits". The article does mean that the claimants were

housed for free upon arrival, thereby obtaining housing benefits. The word "unjustly" is an opinion. I do not consider it to be implicit in the article. If it is, then it is an opinion about the system, which is not defamatory of the claimants, except to the extent it implies that they were abusing the system, which I consider is an implied meaning of this article. The graphic in particular conveys this.

(ii) "4, The Claimant had wrongly claimed entitlement to a gym/study excessive to their minimum actual needs". The written argument in support of this meaning is "references to gym & study etc". Mr Engelman did not develop this in oral submissions. The article certainly states that Mr Sube "uses one room as a gym/study in his current home". Otherwise, this complaint is baseless. There is no reference to any claim to be entitled to a gym/study, nor any evaluation of the merits of such a claim. The article is not capable of conveying the meaning that the claimants have "wrongly" claimed such an entitlement, which would in any event be an opinion.

(8) ("The Great British Rake Off"). This is a print version of the online article headed "Are they Serious?" The meanings complained of are identical. The only differences between the articles that are of any significance lie in the headlines. But the claimants' arguments on meaning do not rely on the headline as implying dishonesty. Rightly, in my view. Read in context, the imputation is one of abusing the system, not defrauding it. The claimants' argument in support of the Dishonesty Meaning focuses instead on details of the factual account contained in the article. In essence, the claimants' arguments are the same in respect of the print version as they are in relation to the online article. So are my conclusions.

(9) ("A house benefit for a king"). This is the front page headline of of an article which continues on pages 4 and 5, under the further headline "Fury at £238k taxpayer bill – Dun moanin?".

(i) The claimants originally treated these as separate articles, for the purpose of assessing meaning. That is contrary to *Jeynes* principle (5) and it has since been accepted that they must be read together. The relevant Annexes to the Particulars of Claim attributed the Dishonesty Meaning to the front page, but offered no meanings in relation to the inside pages, on the grounds that the claimants did not have a sufficiently legible copy. I agree with Mr Price that this is not an adequate excuse.

(ii) Now, however, the article is available and the claimants' Scott Schedule incorporates four meanings attributable to the inside pages. I treat this as an application for permission to amend. The meanings complained of are the Dishonesty, Arrogance, Unreasonable Refusal and Abuse Meanings. As before, I reject the first of these but accept the others, which remain expressions of opinion.

(iii) The Annex to the claimants' skeleton argument does not match the Scott Schedule. It goes further, and puts forward additional meanings. Try as I might, I have been unable to identify any corresponding draft pleading. I would not be prepared to grant permission to amend without a proper

> draft. I believe, however, that I can identify the gist of the additional meanings. They are "unjustly obtaining housing benefit", "housing excessive to actual needs", and "unemployed." The first does not go materially beyond the ones I have upheld; the second is a non-defamatory comment; and the third is a factual statement that is non-defamatory by common law standards.

39. I turn to the s 1 threshold. The articles contain a wealth of factual statements, in particular about the sums of money that have been paid to the claimants in benefits, the nature of the housing offered to them, and their responses; but most of these are not complained of – no doubt because they are not in themselves defamatory. I have rejected all the factual imputations that are complained of on the basis that they are not conveyed by the articles, or are not defamatory at common law. The claimants are left with complaints about expressions of opinion. The question then is the one posed in *Singh* at [32]: "whether the words are defamatory even if they amount to no more than comment". The answer must take account of the subsequent statutory revision of the threshold of seriousness.

40. The preliminary issue to be determined is whether the *meanings* found are defamatory, by that standard. Mr Price has, accordingly, attacked individual meanings as "not sufficiently serious to be defamatory". If that is the right approach (and it clearly is the right approach to the preliminary issue as framed), then my conclusion is that News Group is right. Considered individually, none of the expressions of opinion which are contained in or implicit in the articles has a tendency to cause harm to reputation of a kind or extent which is "serious".

41. There are three main reasons for that. One is the nature of the behaviour which the comments attribute to the claimants. There is certainly a consensus that behaviour that is arrogant, greedy, abusive, or unreasonable is undesirable. Society as a whole disapproves of such behaviour. But these are not the most important of social norms. And the significance of such an imputation will always depend on context. Some examples of arrogance or abuse would be seriously damaging to a person's reputation; they would lead people to take a seriously adverse attitude towards them. Some would be treated more lightly. Here, the individual meanings are of "arrogance", "greed", "abuse" and "unreasonable" behaviour in relation to claims for welfare benefits, and similar imputations. The imputations appear in the context of articles which do not impute any dishonesty nor, in my judgment, that the claimants have obtained any benefits to which they were not entitled. The impression conveyed is that they have taken the maximum (and, it is suggested, undue and excessive) advantage of their rights. That may be defamatory by the common law standard, but more is needed now.

42. The second reason is that the imputations are very plainly expressions of opinion. If an article consists of a clearly stated non-defamatory account of the claimant's behaviour, coupled with the expression of a derogatory opinion about that behaviour, the fact that the opinion is clearly presented as such must mitigate its defamatory impact. The derogatory statement will be seen for what it is: someone's evaluation of the behaviour laid out for the reader's consideration. And if, as here, the opinion expressed is not particularly harsh, the impact of its publication may fall short of the s 1 threshold. That is the position here, in my judgment. The third and contributory reason is the source of the opinions expressed. Where explicit, the statements that

convey the opinions complained of derive from neighbours, and officials. Where implicit, they are the insinuations of the publisher. None of these are authoritative sources, which the reader would take to be better able to judge the situation. The reality is that readers are likely to form their own assessment of the facts presented to them, perhaps influenced, but not determined, by the opinions expressed or implied by the articles.

43. I am not sure that is necessarily the end of the matter, however. It has occurred to me since the hearing that the preliminary issue may have been too narrowly framed; that the question actually raised by s 1 of the 2013 Act is whether any of the *articles* crosses the s 1 threshold. *Lachaux* discusses the issue in terms of "imputations" (see above). It may be for this reason that the defendants framed the preliminary issues as they did. But I suspect the wording used by the Court in *Lachaux* resulted from the facts and/or the way the arguments were framed. The threshold test of reputational harm laid down by s 1 applies to the "publication" of a "statement". It is this that must be likely (that is, have a tendency) to cause serious harm to reputation. The Act distinguishes between "statements", and "imputations" that are "conveyed" by those statements. For instance, s 2(1) provides that it is a defence to an action for defamation for the defendant to show that "the imputation conveyed by the statement complained of is substantially true". It may therefore be that where the statement complained of (in this case an article) conveys a number of imputations that have a tendency to harm reputation, the s 1 test should be applied to the imputations collectively, rather than individually. This is not a point raised by the claimants, who consented to the trial of the preliminary issues as framed by News Group. I have not heard argument on the point. I have formed no view on whether it would matter in this case. But I may be prepared to hear argument, if the claimants so wish.

The Express Articles

44. The claim form as issued in September 2016 complained of "the articles (as set out in Schedule 1)". So far as the Express is concerned, this Schedule listed 8 articles. It appears that somewhere in the process of preparing the Particulars of Claim, which was under way between early September and late December 2017, someone noticed another four articles, and decided that complaint should also be made of these. This was done by an amendment to the claim form, deleting the words "(as set out in Schedule 1)"; by incorporating the four further articles into the the Annexes to the Particulars of Claim; and by weaving claims in respect of them into the substantive paragraphs of the statement of case. All of that was done on 22 December 2017. However, the 1-year limitation period (Limitation Act 1980, s 4A) had already expired. So, the process of amendment involved the addition of causes of action which, at the date of the amendment, were statute-barred.

45. The court's power to allow amendments of that kind is strictly circumscribed, by s 35 of the Limitation Act 1980 and CPR 17.4(2). The Court may only permit such an amendment if the new claim arises out of the same facts or substantially the same facts as are already in issue on a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings (see *Goode v Martin* [2002] 1 WLR 1840). The reason is that an amendment, once made, relates back to the date of issue of the claim form so that a limitation defence may not succeed. These amendments did not require permission, and the Express made no application under CPR 17.2, but a question might still arise as to whether the

amendments should be disallowed on limitation grounds, if they otherwise set out a case that is fit to proceed. Hence the claimants' application to disapply the limitation period, pursuant to s 32A of the 1980 Act. I shall come back to that.

46. The first Express article now complained of is headed "Shameless family of 10 who refused bigger home must move – or face being dumped on streets", and was published on 8 September 2016. The claimants attribute 8 meanings to this article, as follows:

    1. The Claimants should be the subject of public shame
    2. The Claimants unreasonably refuse housing
    3. The First Claimant is greedy
    4. The First Claimant is unemployed
    5. The First and Second Claimants are bad neighbours
    6. The Claimants are not honest about their claim to housing and state benefits.
    7. The Claimants are arrogant about their entitlement to housing and benefits
    8. The Claimants have abused the benefit system"

47. Thus, the claim encompasses the Dishonesty, Arrogance, Abuse, Unreasonable Refusal, and Unemployment Meanings. But it adds three more. Two of these feature in the claimants' complaints about other articles. I shall call them the Shameless Meaning and the Greed Meaning. The second Express article complained of was published on 11 September 2016, under the heading "REVEALED: Benefits dad-of 8 demanding bigger council house splurged £15k savings". Four meanings are attributed to this article: the Greed Meaning, the Dishonesty Meaning, and two others which also appear in complaints about other articles. These are, "The First Claimant excessively overspent his £15,000 savings" ("the Overspending Meaning") and "The First Claimant had become unemployed upon moving to Luton in order to claim benefits to which he was not entitled" ("the Deliberate Unemployment Meaning").

48. I set out my conclusions on the preliminary issues regarding the Express Articles in the same way as I have when dealing with the Sun articles:

    (11) ("Shameless family of 10 …"). The article does not bear the Dishonesty Meaning. There is nothing in the article that suggests that the claimants, or either of them, have acted dishonestly. But this article does bear the other seven meanings complained of. The first two meanings are hardly disputed, and rightly so: the word "shameless" appears in the title, the article is about the claimants' refusal of housing, and the suggestion that they have unreasonably refused offers is clearly present. The Greed meaning derives from a quote in which Mr Sube denies being greedy. This in context implies the comment that he is. He is described in terms as "jobless". The article quotes a neighbour describing the family as "nightmare neighbours", making serious criticisms of nuisance caused by their inconsiderate behaviour; the article contains no "antidote" to this. The account of the family's approach to considering housing implies an arrogant, "entitled" attitude. The suggestion of abuse is implicit in the summary of their welfare history and allied with the description "shameless". The Unemployment Meaning is factual, but not defamatory. All the other six meanings are opinion.

(12) ("REVEALED …") The focus of this article is on the "splurging" of Mr Sube's £15,000 savings. It does not bear the Greed Meaning. Nor does it bear the Dishonesty Meaning, or the Deliberate Unemployment Meaning. The article expressly states that Mr Sube saved "what he thought would be enough" to enable him to study, and quotes him at length to the effect that he is a hardworking man. These points are not undermined by other text in the article. The Overspending Meaning is repetitious (overspending is by definition "excessive"), and a little unclear. I find that the article portrays Mr Sube has having acted in a foolish, profligate and self-indulgent way by spending savings of £15,000 in a matter of weeks, in an attempt to maintain the family's previous lifestyle. That flows from the evaluative and explanatory language used to describe the spending: "splurged … trying to keep up the lifestyle he had enjoyed in a posh Paris suburb ..." The meanings I have found contain facts, but the derogatory content is comment.

(13) ("Migrant dad-of-eight lands plush four-bed detached house property worth £425,000 – and YOU PAY"). The meanings complained of are the Greed Meaning, the Dishonesty Meaning, the Overspending Meaning and the Deliberate Unemployment Meaning. In my judgment, the article bears none of these meanings. It does bear the meanings that I have upheld in relation to Article (11), which are comment or opinion.

(14) ("I blew 15k in weeks, migrant splashed savings on arrival in UK".) The claimants complain of three meanings: the Overspending Meaning, the Deliberate Unemployment Meaning, and the Dishonesty Meaning. In my judgment the article does bear the meaning that on his arrival in the UK Mr Sube recklessly squandered savings of £15,000 on an unduly lavish lifestyle. This flows from the word "splashed" in the headline, the statement in the sub-headline that this happened "within weeks", and the first sentence, asserting that Mr Sube "blew his savings renting a big house ..." This meaning is opinion. The article does not bear any of the other meanings complained of. So far from suggesting that Mr Sube deliberately became unemployed the article says he "gave up his job as a warehouseman in France to study mental health nursing in the UK". There is no other suggestion of dishonesty.

(15) ("Shameless benefit migrant dad-of-eight wants more kids"). Again, the claimants' case is that the article bore the Overspending Meaning, the Deliberate Unemployment Meaning, and the Dishonesty Meaning. Again, I uphold the Overspending Meaning, to the extent that the article conveyed the opinions that. on his arrival in the UK Mr Sube recklessly squandered savings of £15,000. This flows from the use of wording the same as or similar to that of Article (13). Again, I reject the Deliberate Unemployment and Dishonesty Meanings. The wording used is similar to that of the previous article.

(16) ("Shameless French family-of-10 demand mansion: Benefits dad rejects 5-bed as 'too cramped'"). The claimants attribute two meanings to this article: the Unemployment Meaning, and a further meaning that "The Claimants were provided a previous 5 bedroom house paid for by housing benefit implying that the Claimants' modus operandi is to extract benefits unfairly". The article does bear the factual meaning that Mr Sube is not working; but the suggestion is that he is studying, which is not quite the same thing as "unemployed". In any event,

that is not a defamatory imputation at common law, for reasons already given. The second meaning incorporates reasoning, which is contrary to principle and, as it happens unenlightening. The gist of this meaning seems to lie in its concluding words, referring to an "unfair modus operandi". That is self-evidently a comment. But I cannot uphold it, as I do not detect any such imputation in the article.

(17) ("Jobless migrants do not deserve British handouts"). This is on its face a comment piece. It starts as follows:

> "A JOBLESS Cameroonian couple living in Luton say they have been 'neglected' because they want a bigger Council house
>
> **It is hardly as if Arnold and Jeanne Sube have been left homeless**
>
> In fact the local council has been absurdly generous. They live in a three-bedroom taxpayer-funded house and recently turned down the chance to move into a five bedroom property because, they claimed, it did not have enough storage. …".

Nine meanings are complained of.

(i) The Unemployment Meaning. The article does suggest that both claimants are unemployed, but this is a non-defamatory imputation.

(ii) "The Claimants are undeserving of benefits". A meaning borne by the article, which is (and could only be regarded as) comment.

(iii) "The Claimants were not homeless before receiving assistance." The argument is that this flows from the words I have emphasised in the quotation above. This is a wholly unreasonable interpretation. In context, the words relied on suggest that the claimants are unreasonably complaining, when they have been absurdly generously treated by the provision of publicly-funded housing.

(iv) "The Claimants did not support themselves since 2012." The article does not mean this. In any event such a meaning is not defamatory at common law. A failure to support oneself can be attributable to illness, disability, misfortune or other reasons. It is not, without more, conduct of which right-thinking people generally would disapprove.

(v) "The State has been supporting the Claimants who desist from doing so themselves." This goes beyond what is suggested by the article. But the article does say that the claimants have been supported by the state, and that the couple have "paid next to nothing into a system" which has "lavished them with handouts". It says they "refuse to go out to work". Expressions of disapproval follow. I find that the article bears the factual meaning that "The State has been supporting the claimants who refuse to go out to work." This is factual. But it is not by itself defamatory, because the right-thinking person does not think the worse of someone because they receiving benefits; and the mere fact of refusing to go out to work is not of itself discreditable. More is needed before a right-

thinking person would think the less of someone for these reasons. There can be legitimate reasons for receiving benefits and refusing to work.

(vi) "The Claimants' conduct should not be tolerated by the British public." The article certainly does bear this meaning. It states in terms that the claimants' "appalling sense of entitlement cannot be tolerated", This meaning is (and could only be regarded as) opinion.

(vii)"The Claimants consider the British public responsible for their housing". I uphold a version of this meaning: the article does suggest that the claimants' behaviour with regard to their housing exhibits an "appalling sense of entitlement". This is opinion. Although it includes an imputation about the claimants' state of mind, that is clearly an inference from their behaviour.

(viii) "The Claimants consider the British public responsible for their housing to be heartless." I uphold a version of this meaning: The article says in terms that "if the Subes are so upset at being neglected by the supposedly heartless British Government …" This does mean that the Claimants consider the British Government's attitude to their housing requirements to be heartless. This is a factual meaning but in itself would be a neutral, non-defamatory meaning, so far as the claimants' reputations are concerned. The article further suggests, in my judgment, that the claimants *unreasonably* consider the British Government's attitude to their housing requirements to be heartless. That meaning, if complaint were to be made of it, would clearly qualify as an opinion.

(ix) "The Claimants are disgracefully ungrateful". Upheld. The article refers in terms to their "disgraceful ingratitude". This is a comment or opinion. No other conclusion is possible, in relation to the word "disgraceful". Ingratitude is a state of mind, and thus a fact. But again, the word in its context here is manifestly an inference from the other facts set out in the article.

(18) ("I'm not greedy! Father-of-8 who wanted bigger council house insists he has compromised!") A single meaning is complained of: "that the first claimant is greedy for demanding a bigger property". I find that this meaning is conveyed by this article. It is an opinion.

(19) ("Jobless dad whines about £15k a year council home and turns down five-bedroom house"). The claimants attribute to this article the Arrogance, Unreasonable Refusal, Abuse and Unemployment Meanings. The last of these is clearly conveyed, and is factual but non-defamatory. The other three meanings are also conveyed by the article. They are opinion.

(20) ("Fury as benefits dad-of-eight moved into plush £425,000 house"). Five meanings are complained of. One is the Unemployment Meaning, which is borne by the article but about which I need say no more. The others are the Shameless, Arrogance, Unreasonable Refusal, and Abuse Meanings. The article does not convey the Shameless Meaning. The other three meanings are borne by this article. They are all opinion.

(21)("What a scandal"). The claimants complain of the Shameless, Arrogance, Unreasonable Refusal and Abuse Meanings. I uphold a version of the Shameless

Meaning: the article suggests that the claimants have behaved in a way that is scandalous. This is (and could only be regarded as) opinion. The other meanings complained of are conveyed by this article, which contains words that also appear in one of The Sun articles: "*The father has played the system and won*". Those words suggest abuse of the system, falling short of dishonesty.

(22)("A family of 10 living on British taxpayers' money".) The words bear the Unemployment Meaning, but that is not actionable. The other meanings complained of are the Arrogance, Unreasonable Refusal and Abuse Meanings all of which are conveyed by the article, but all of which are opinion.

(23)("Benefit scroungers we love to hate".) This is not an article as such, but an online slideshow. A single meaning is complained of: the Abuse Meaning. The word on which this depends is "scroungers". I uphold this meaning, subject to the explanation given above: this publication suggests abuse of the system by exploiting it to the maximum, without dishonesty.

49. In summary, I have not found that any of the articles or items complained of against the Express conveyed any defamatory factual meaning. I have found that they conveyed a number of derogatory comments or opinions. Adopting, in relation to these articles, the approach I have already identified when dealing with the Sun, my conclusions are the same. None of the comments or opinions conveyed by the articles complained of against the Express is of itself sufficiently harmful to the reputation of either claimant to cross the s 1 threshold. The reasons are those already given. These conclusions are subject to the same qualification as I have explained at [43] above.

50. Returning to the question of limitation, it seems to me that I should leave this open for the time being. The issues may not need to be addressed and, if they do, that will best be done once it is known which of the libel claims have survived. As things stand, none of them will survive unless the claimants persuade me that the hypothesis at [43] above is right, and that it makes a difference to the outcome in relation to at least one of the articles complained of.

The applications

Principles

51. The relevant provisions of CPR 17.1 and 17.2 have already been outlined. News Group made an application, in time, for an order disallowing the amendments to the claim form. The Express did not. But News Group asked for all the amendments to be disallowed. In any event, the absence of an application would not hamper my powers under rule 17.2(2). There is no indication that those powers are only available upon application, and every reason to think otherwise. The notes to that rule suggest that an application under the rule is appropriate if permission would have been refused, if permission had been necessary. That accords with common sense.

52. The court may strike out a statement of case, or part of one, if it appears to the court that it discloses no reasonable grounds for bringing the claim, or is an abuse of process, or otherwise likely to obstruct the just disposal of the proceedings: CPR 3.4 (2) (a), (b). The power to strike out is a draconian power, to be exercised only in a clear case. On occasion the court m56]ay strike out without prejudice to an

application for permission to amend. That can be done, and is done, even where permission for one set of proposed amendments has been refused. There has to be a limit to this. The court must be alive to the interests of the opposite party, the requirement of proportionality, and the need to make efficient use of its own resources. But subject to these and other elements of the overriding objective, where it appears that a tenable case could be pleaded but the attempt has gone wrong, the Court may permit another try.

Serious harm

53. I deal with this for completeness, and because it might become relevant on any appeal, or at this level given my point about the effect of s 1. The defendants object to the claimants' pleading on this issue, contained in paragraph 11 of the Particulars of Claim. This comprises a single allegation, in relation to all of the articles complained of, that "The said statements of the Defendants were and are defamatory of the Claimants because their publication has caused, and/or is likely to continue to cause, serious harm to the reputation of the Claimants within the meaning of section 1 of The Defamation Act 2013." No further detail is provided.

54. It was suggested by Ms Michalos at one stage that the claimants should be pleading specific facts relied on in support of the case of serious harm, but she did not press that argument. As Mr Price has argued, it would be enough - in this case at least - if the claimants established that the defendants' articles bore meanings with a tendency to cause the claimants serious reputational harm. The defendants' primary and better objection is that the plea is "composite", covering all the articles complained of, against both defendants. Mr Engelman accepts that his clients can only succeed in respect of any article if they prove that the statutory threshold of seriousness is satisfied in respect of that article. He submits, however, that the suggestion that he should plead accordingly runs counter to CPR 16.4(1) and para 6.7.1 of The Queen's Bench Guide, which require pleadings to be concise and brief. In this and other respects, he submits that the defendants are seeking needlessly to drive up the costs of this litigation. That is a surprising submission to make on behalf of claimants whose costs estimates for this litigation as a whole approach £500,000, and who sought a budget of over £105,582 for this hearing alone. The defendants' costs budgets are much lower. I have not detected wasteful conduct on the part of the defendants. But in any event, the casual attribution of improper motives is not helpful.

55. I do not regard the "prolixity" objection as compelling. I do consider the pleading as it stands to be defective because of its composite nature. But that is clearly capable of remedy. I accept Mr Engelman's submissions to this extent: in a case where the claimant complains of multiple publications it can be legitimate to set out the claimant's case on serious harm in a single paragraph, so long as (a) it is made clear that the plea relates to each and every publication individually; and (b) the statement of case sufficiently identifies the basis on which the claimant will invite the Court to conclude that the serious harm requirement is met. If the case on serious harm is confined to the gravity of the imputation and the scale of publication that might be convenient, and could be a legitimate approach in this case, depending on how it was done.

The Posts

56. Paragraph 5 of the Particulars of Claim makes allegations against News Group as follows:-

> "The First Defendant also published and/or caused to be published numerous statements posted by third parties, ("the Posts"), responding to the content of the 7 Articles. The Posts contained words that are defamatory of the Claimants. The Claimants' solicitors wrote to the First Defendant on 17th February 2017 requesting that the Posts be taken down from its site but the First Defendant has refused to do so. The Claimants will rely upon each of every third party posting published by the Defendants and each of them at trial."

57. Paragraph 8 of the Particulars contains similar allegations against the Express, though the date of the take-down request is given as 29 August 2017. The prayer for relief does not claim any remedy specifically tied to these parts of the Particulars of Claim. On the other hand, the prayer seeks damages for libel without specifying which publications are complained of. The fact that in paragraphs 5 and 8 the claimants chose to allege that each defendant had published words that were defamatory of them led me to infer that this was another strand of their libel claims. But it turns out that I was wrong. Mr Engelman made clear that there is no intention to claim damages for libel in respect of the Posts.

58. News Group applies to strike out paragraph 5. It advertised its criticisms of that paragraph in a letter of 23 January 2018 from Mr Price QC. This said that "the purpose of reliance on the posts in this context is not apparent" and that the posts – by which he clearly meant the Comment Posts - were taken down prior to the Particulars of Claim. That second point is supported by News Group's evidence in support of the application to strike out which says this, in paragraph 4:

> "The letter of claim was sent on 17 February 2017. The only claim identified was in defamation. It was directed to 7 online articles and 3 print articles. The letter stated that the online articles contained offensive reader comments. The reader comment function was disabled on 21 February in relation to the 7 articles. For the avoidance of doubt, this meant that no comments that had been made were visible and no further comments could be made."

59. This has not been contradicted. It is possible that the claimant's side did not realise that this paragraph had the status of evidence. The statement of truth was in the application notice, and the words I have quoted were in a continuation sheet. At any rate, Mr Engelman's starting position was that there was no evidence in support of the defendants' position. The position was explained by Mr Price. By the end of the hearing, Mr Engelman's position was twofold. He argued that the grounds of challenge were under CPR 3.4(2), and no evidence was admissible. Alternatively, the defendant's evidence was contrary to the Particulars of Claim which bear Counsel's name and a statement of truth; so there is a dispute of fact which cannot be resolved at this stage.

60. I suspect this approach may be unhelpful, and ultimately fruitless. The assertion that the Posts were taken down is not new. It was made in correspondence long ago. All this took place well before the Particulars of Claim were prepared. There was no reply in correspondence nor is there any explanation from the claimants' side of why it is that they believe that the Posts were not taken down, as alleged by News Group. The printed copies of the Posts which are in the Bundle date from September 2016, and Mr Engelman told me that they are unable to produce some of them for what may be "technical reasons". All of this tends to suggest that News Group may be telling the truth. If so, the allegation that there was a failure to take down would be manifestly false and summary judgment could be entered on that basis.

61. But Mr Engelman's points are procedurally sound. News Group's application is indeed made under r 3.4(2), and for that purpose the court assumes the truth of what is alleged in the statement of case; evidence is not admissible. And although I agree with Mr Price that the purpose of these paragraphs is unclear, I have been persuaded that they are not completely irrelevant or pointless. Although not clearly anchored to any of the causes of action relied on, they do provide a factual platform for some of the other claims, including (most relevantly) the harassment claim, which is now to be amended to embrace the Posts.

62. The position of the Express in this respect is weaker than that of News Group. Ms Michalos told me that the Express's position is that it took down the Comment Posts on request, and she referred me to correspondence to indicate when that happened. It is said that the Express's policy is to take down on receipt of a complaint. But the correspondence referred to did not say that the Comment Posts were taken down, and the Express has filed no evidence to support its contention. I therefore dismiss the applications to strike out the whole of paragraphs 5 and 8. However, I will strike out the sentences in paragraph 5 and paragraph 8 alleging that the "Posts" as there defined were defamatory. I do so on the grounds that, in the light of the clarification provided during the hearing, these passages can now be seen to be irrelevant and confusing, and thus liable to obstruct the just disposal of the proceedings. If the claimants are not suing for libel in respect of the Posts, the question of whether the Posts were defamatory is immaterial. The words I am striking out certainly are confusing. The Particulars of Claim should also make clear that the libel claims relate only to the Articles. I leave it to the claimants' Counsel to devise a suitable means of doing this, but one obvious means would be an amendment to the prayer for relief.

Harassment

63. A claim in harassment was pleaded in the claim form from the outset and, as I have said, there is no application to strike it out of the claim form or the Particulars of Claim. There is however an application by the claimants to amend the claim by expanding it, to cover the Posts. The application to amend is not opposed, and I grant it. The claim is novel, but it is not manifestly unarguable. I record that the amendment only seeks to claim in respect of Comment Posts, and not any Third Party Posts. Although Mr Engelman made some play in argument of the Third Party Posts that I have quoted in paragraph 3 above, and others, he did this only in the context of his argument on serious harm. No Third Party Post is relied on as involving a tort by either of the defendants, or in any other way.

Exemplary damages

64. Paragraph 13 of the Particulars of Claim asserts that the claimants are entitled to exemplary damages against News Group and the Express. The following particulars are given:

> "The fact of the sequence of publications by each of them demonstrated an overriding motive to take economic advantage of the damage caused to the Claimants reputations from those publications. On some occasions the said articles appeared upon the front page of the Defendants' newspapers from which it can be inferred that the Defendants considered that the Articles would assist the Defendants to sell their respective newspapers and or promote their respective online content. "

65. The defendants apply to strike this out. Their reasoning is set out in Mr Price's letter of 23 January 2018: the necessary elements to make good a case in exemplary damages are not pleaded; it sets out a composite case; there is no identification of any individual with the necessary mental state; and no proper grounds are identified from which to draw the necessary inferences, to satisfy a claim in exemplary damages.

66. In response, the claimants assert that paragraph 13 is compliant with the requirements of CPR 16.4(1)(c), as it contains both a statement that the claimants seek exemplary damages and the grounds for claiming them. The claimants do however seek to amend paragraph 13 by adding this sentence: "The claimants will in addition rely upon the matters set out in paragraphs 12, 23 and 26 hereof". Those paragraphs contain (in paragraph 12) a plea in aggravation of damages; (in paragraph 23) allegations that the defendants intended to dissuade the claimants from applying for suitable council housing, to encourage third parties to publish racial attacks on the claimants, and/or to "sell their respective newspapers thereby"; and (in paragraph 26) a claim that the claimants and their family members are entitled to claim damages for anxiety caused to them by the alleged harassment.

67. I have no hesitation in refusing permission to amend and striking out this part of the Particulars of Claim. I indicated as much in the course of argument, because the position seemed to me so clear. Put shortly, Mr Price's submissions are correct. A claim for exemplary damages must be tied to a single tort. It cannot be advanced as a collective claim in respect of a series of torts. More significantly, whenever such a claim is advanced it must allege the necessary elements for an award of exemplary damages, and it must give sufficient particulars of those elements. The only basis on which an award of exemplary damages could be claimed in this action is that the defendants libelled the claimants "with guilty knowledge, for the motive that the chances of economic advantage outweigh the chances of economic ... injury" (*Broome v Cassell* [1972] 2 AC 1027, 1079 (Lord Hailsham LC). The Particulars of Claim do not even assert these elements, let alone a factual basis for concluding that they are present.

68. It is true that paragraph 13 contains some "grounds" for claiming exemplary damages, but they are not tenable grounds. The fact that newspapers are published for profit is plainly not enough to justify an exemplary damages claim: Gatley on Libel and Slander, 12th ed para 9.27. An allegation that the defendants intended to make money from publishing the articles therefore cannot suffice. An allegation that the defendants' motive was "to take economic advantage" of damage to reputation is not

enough either. There is no plea of any "guilty knowledge". Further, where (as here) exemplary damages are claimed against a corporation, the pleading must identify one or more individuals who participated in or caused the relevant conduct, and had the relevant state of mind. The pleading here does not attempt to do that. Mr Engelman has disputed the existence of such a principle. But it has long been axiomatic in this context (as it is in the pleading of fraud): see *Broadway Approvals v Odhams Press* [1965] 1 WLR 805, *Webster v British Gas Services Ltd* [2003] EWHC 1188 (QB) [30].

Malicious falsehood

69. This claim was first introduced by the manuscript amendments made to the claim form on 22 December 2017, without the Court's permission. The claim was pleaded out in the Particulars of Claim of the same date. The claim is brought by Mr Sube only. It is pleaded shortly. It begins by repeating paragraphs 2 to 8, in which the parties are identified and complaint is made of the various publications and their meanings. The statement of case continues as follows:

> "15. … The Defendants and each of them wrote and published in their respective series of articles with words concerning the First Claimant's profession.
>
> 16. The words were false and published maliciously. As to their falsity, the First Claimant repeats paragraph 10 hereof.
>
> 17. As to the malice with which they were made, the First Claimant repeats paragraph 11 and 21- 24 herein.
>
> 18. In consequence, the First Claimant is likely to lose employment opportunities he would otherwise have retained had the words not been published.
>
> 19. Further or alternatively, the words were calculated to cause the First Claimant pecuniary damage in his profession."

70. News Group applies for an order disallowing the amendments to the claim form, by which this claim was introduced. The grounds stated in the application notice are that the claims have no real prospect of success and/or were made outside the limitation periods for malicious falsehood. Further and in the alternative, both defendants apply to strike out this part of the Particulars of Claim in its entirety. The grounds relied on are that the Particulars of Claim set out a composite case of falsehood; not all the articles contain the "falsehoods" that are alleged; and there is no proper case in malice, which again is pleaded against the corporations without identification of any individual who is said to have been malicious. Further, it is said that "it is fanciful that any element of material falsity in any article could be likely to have the alleged consequence." No amendments to the malicious falsehood claim have been proposed by the claimants.

71. It certainly appears to be the case that this claim was added after the expiry of the limitation period which, as in defamation, is 1 year from the date of publication: Limitation Act 1980, s 4A. It would seem difficult to justify such an amendment, if

permission was required: see CPR 17.4(2). Hence, no doubt, the application for an order under s 32A of the 1980 Act, disapplying the primary limitation period. But Mr Price has not pressed his objection on that ground, though he has not abandoned it. The Express did not make an application under CPR 17.2. In the light of my conclusions on the pleading objections I do not need to address the s 32A application, at least at this stage.

72. Again, I accept the submissions of Mr Price and Ms Michalos. Indeed, I would go a little further than them, when it comes to the issue of falsity. The case of falsity that is set out in paragraph 10 of the Particulars of Claim, and incorporated by reference into paragraph 16, is highly unsatisfactory. It asserts that certain propositions are false, without anchoring that criticism in any of the words complained of, or linking it to any meaning complained of. As a result, this hearing has involved an unedifying argument in which Mr Price submits "we didn't say that" and Mr Engelman responds "Oh yes, you did". This method of pleading, without any clear reference point, is liable to obstruct the just disposal of the action, and paragraph 10 is therefore apt to be struck out pursuant to CPR 3.4(2)(b). As I have indicated, however, I hold back from such a measure. I am however asked to strike out the allegation of falsity which is based on paragraph 10 and I do so.

73. The plea of malice falls woefully short of what is required. Ms Michalos identifies the oft-cited principles. Malice is a serious allegation, tantamount to an accusation of dishonesty, and should not be lightly made: *Webster v British Gas Services Ltd* (above) [28]. A pleaded case, in order to be probative of malice, must state facts that are more consistent with the presence of malice than with its absence: *Telnikoff v Matusevitch* [1991] QB 102. No such facts are pleaded. Indeed, no facts from which an inference of malice *could* be drawn are pleaded. The particulars under paragraph 17 amount to no more than repetition of the allegation in paragraph 11 that the articles are defamatory and of the allegations in paragraphs 21-24 that their publication amounted to harassment. It is a common experience in this Court to encounter pleas of malice that will not do because they are formulaic, or allege facts which on analysis are equally consistent with innocence. But in this case the plea of malice amounts on analysis to nothing more than an assertion of malice coupled with some immaterial averments, and no supporting particulars. There is not even an allegation of dominant improper motive.

74. The objection that the plea of malice is "composite" is also sound. To make out a case of malicious falsehood in respect of any individual article a claimant must establish that it was false, malicious, and caused special damage or falls within a statutory exception to that requirement. It is no answer to say that it would be prolix to provide details in relation to each individual publication. A pleading must be concise but it must also be sufficient. The provision of the details that are necessary to make out a cause of action cannot be characterised as prolix.

75. The defendants are also right to object that there is no identification of any "malicious" individual. The suggestion that this is superfluous cannot be accepted. A corporation cannot be vicariously liable, unless at least one individual for which it is vicariously responsible is personally liable. The person(s) to be accused of malice must be identified, and both they and their employer presented with an adequately detailed factual case in support of the inference of malice. Mr Engelman's submission is that this would be unfair, at this stage, and that he should be allowed to allege

malice first and give particulars after disclosure. That would be contrary to long-established principles. Speculative accusations of corporate dishonesty based on fuzzy generalities are no more acceptable in this context than they would be in a criminal court.

76. There is a further point, which seems likely to be the death knell of this claim. No special damage is alleged. Paragraphs 18 and 19 of the Particulars of Claim are evidently meant to invoke the statutory exceptions in s 3(1) of the Defamation Act 1952. The defendants are right, in my judgment, to argue that it is fanciful to suggest that the publication of the alleged falsehoods is or was "likely" to cause the loss of employment opportunities for Mr Sube. It is also fanciful to suggest that the alleged falsehoods are or were "calculated" to cause him any other form of financial loss. The word "calculated" in this context, means more likely than not. The alleged falsehoods relate to the employment status of the claimant, his approach to the adequacy of the housing offered by the Council, and the sums he is supposed to have cost the taxpayer. No special factors are identified which might lead a prospective employer or anyone else to treat those matters as a basis for refusing Mr Sube employment or any other economic opportunity. There is no suggestion that, over the 2 years since such matters were reported Mr Sube has in fact encountered any reluctance to employ him, or suffered any actual financial loss. It is wholly unreasonable to suggest that this is or was likely to happen.

Equality Act

77. This claim was first introduced by the amendments to the claim form of 22 December 2017, and the Particulars of Claim that accompanied them. There is a claim of direct discrimination, contrary to EA s 13, that "… by the authorship and publication of the Articles, the defendants discriminated against the claimants because of their race by treating them less favourably than the defendants treat, or would treat others". Further and alternatively, it is alleged that there was indirect discrimination contrary to EA s 19 by "applying the practice of publishing a series of articles about the claimants' race that were discriminatory". Further, and in the alternative, a complaint is made of harassment contrary to EA s 26 "by committing unwanted conduct related the claimants' race" which has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment" for them. There is also a complaint of victimisation, contrary to EA s 29. The claimants are said to have victimised the claimants "by subjecting them to detriment and/or … in providing a platform to the Posts acted in a matter that constitutes discrimination, harassment and/or victimisation by publishing the said Articles/Posts" (sic).

78. News Group applies for an order disallowing the amendments to the claim form that introduced this claim. Further and in the alternative, both defendants apply to strike out the claim in its entirety. The grounds on which these attacks are made are, in summary, that the claim is too late, brought in the wrong court, and hopeless. The defendants point to the 6 month time limit imposed by s 118(1)(a) of the EA, which expired long before this claim was added by amendment to the claim form. The 6 month period starts with "the date of the act to which the claim relates". The defendants also say that the claim falls within the exclusive jurisdiction of the County Court. In any event, they argue that the claim would be bound to fail. They add that the claimants have failed to identify any material advantage that the addition of this claim would afford them, such as to justify the additional expenditure of costs and

resources which the claim would require, so the amendment to the claim form should be disallowed, and the relevant parts of the Particulars of Claim struck out.

79. In response, the claimants have applied for a determination under EA s 118(1)(b) that the period within which this claim was brought is "just and equitable". The claimants have also formulated some draft amendments to this claim, for which they seek permission. These would abandon the claim of direct discrimination, and modify and expand the claim in indirect discrimination. There is no proposal to alter the claims of racially discriminatory harassment and victimisation. The relief claimed includes compensation under the EA and "a recommendation that the Defendant remove any requirement relating to the nationality and/or race when exercising editorial control of the quantity/quality of Articles/Posts on non-British nationals."

80. It is clear that this Court has no jurisdiction over such claims. An EA claim must be brought in accordance with Part 9: s 113. Section 114(1) of the EA provides that "A county court … has jurisdiction to determine a claim relating to – (a) a contravention of Part 3 (services and public functions)". It is common ground that this is an exclusive jurisdiction; any claim for discrimination contrary to the EA other than one relating to employment must be brought in the County Court: see *David v Hosany* [2016] EWHC 3797 (QB) [9.2], *Hamnett v Essex County Council* [2017] EWCA Civ 6 [2017] 1 WLR 1155. Defamation claims, by contrast, can only be brought in the High Court, unless the parties agree in writing to confer jurisdiction on the County Court: County Courts Act 1984 ss 15(2)(c) and 18. Harassment and data protection claims can in principle be pursued in either venue, subject to the rules of allocation contained in PD7A.

81. No doubt, in a case which raised viable claims of discrimination in conjunction with other causes of action, the Court would exercise its powers so as to avoid concurrent trials of overlapping issues in different courts. It might do so by transferring the entire litigation to the County Court, as contemplated by HHJ Moloney QC in *David v Hosany*. The alternative advocated by Mr Engelman is for a Judge of this Court to hear all the claims together, sitting concurrently as the County Court and the High Court. Mr Engelman points to s 5(2)(h) and (i) of the County Courts Act 1984 (as substituted by the Crime and Courts Act 2013 Sch 9 Part 1 para 1), which provides that the judges of the County Court include a puisne judge of the High Court and a deputy judge of the High Court. This is an ingenious suggestion, though it is instinctively uncomfortable. There is however no need to explore it further, as I have reached the same conclusion as HHJ Moloney in *David v Hosany*: the claims should be struck out. In addition, the amendment to the claim form that introduced this claim must be disallowed.

82. The primary reason for that conclusion is that neither the EA claim as pleaded nor the proposed amendments disclose any reasonable basis for a claim, nor could any other form of EA claim be advanced, because all the conduct complained of falls outside the scope of the EA. As Tugendhat J put it in *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) [2012] 4 All ER 717 [71], the EA "does not apply to statements published to the public at large in the press or online". Mr Engelman points out, rightly, that this observation was an *obiter dictum*. Nobody had put forward a case under the EA in *Trimingham.* I also bear in mind Mr Engelman's submission that I should be cautious about striking out a claim in a relatively novel and untested area of the law. Striking out is for plain and obvious cases only. But in

my judgment this is such a case. Tugendhat J was correct, and the reason no claim was brought under the EA in *Trimingham* is likely to be that this was seen to be untenable.

83. The EA is very clearly structured. In Part 2 Chapter 1, it identifies certain protected characteristics (race being one). In part 2 Chapter 2, it identifies certain kinds of prohibited conduct (including direct and indirect discrimination, harassment, and victimisation, by reference to prohibited characteristics). But the prohibitions only apply to conduct in certain specified contexts. One of those is employment. The others, that fall within the jurisdiction of the County Court, are specified in Parts 3 (Services and public function), 4 (Premises), 6 (Education) and 7 (Associations). Mr Engelman has argued that some of the conduct is actionable even if it does not fall within one of these contexts. That is clearly wrong. Alternatively, he has submitted (and this appears to be the way the case is pleaded) that the offending conduct in this case was performed in the course of providing services and/or performing a public function within the meaning of Part 3 of the EA. In my judgment, this is quite unarguable.

84. The meaning of "public function" for the purposes of the EA is defined by s 31(4): "a function that is a function of a public nature for the purposes of the Human Rights Act 1998". That takes one to the familiar wording of s 6 of the HRA, which is headed "Acts of public authorities". The relevant provision is s 6(3)(b) which defines "public authority" as including (a) a court or tribunal and "(b) any person certain of whose functions are functions of a public nature." This is of course much-litigated territory. It is plainly unarguable that defendants are such persons. The claimants have not identified any "function of a public nature" which they perform. It is better to draw a veil over the detail of the argument advanced by Mr Engelman in reliance on *Chambers v DPP* [2012] EWHC 2157 [2013] 1 WLR 1833 [23]-[25]. Suffice to say that the case has no bearing at all on this point.

85. The argument that the conduct complained of involves the provision of a "service" within the meaning of EA Part 3 has slightly more traction, but on analysis it is clearly doomed. The relevant provisions are contained in EA s 29. The prohibitions in that section apply to a "service-provider", meaning "a person … concerned with the provision of a service to the public or a section of the public". The pleaded case is that the defendants "provide an internet service which hosts the Articles and the Posts… [and] in providing newspaper reporting services." That is an odd way to put it, but it may be the case that newspaper publishers are service-providers within s 29(1). But the claimants have failed to identify in their existing statement of case, the draft amendments, or their argument any prohibition within s 29 that could apply to the conduct of which they complain. The primary argument seems to be that the defendants have "failed to provide" a service to the claimants, contrary to EA s 29(1). I am unable to follow the reasoning. Other prohibited acts include discrimination against a person as to the terms on which the service is provide, or by termination the provision of the service. None of this is apt to the present case, where the essential complaint is that the claimants are victims of the way in which the defendants have provided their services to third parties. I do not believe that Mr Engelman's argument was advanced by his reliance on EA Sch 3 Part 8 para 31(1) and s 32(7) of the Communications Act 2003. If anything, the argument seemed to undermine his case.

86. In the circumstances, it is perhaps superfluous to mention that the proposed amendments do not appear to me to disclose a tenable case of indirect discrimination. By EA s 19(1), a person (A) indirectly discriminates against another (B) "if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's". Section 19(2) explains when a provision, criterion or practice ("PCP", in the draft amended Particulars) is discriminatory in relation to a protected characteristic. There are four requirements. The first is that "A applies, or would apply, it to persons with whom B does not share the characteristic." Yet the claimants' draft amendments seem to assert the opposite. It is alleged (in paragraph 29C) that "the Defendant's treatment of articles and posts concerning peoples of non-British race resident within the United Kingdom are treated by the Defendant disadvantageously when compared to those of British nationality." My reading of the draft amended statement of case is that it alleges that the claimants have been put at a disadvantage by the application to them of a PCP that *is not and would not be* applied if they were white. That may be direct discrimination, or victimisation, or perhaps harassment, but it is not indirect discrimination.

87. Given these conclusions, I express no view on the application to extend time for bringing the claim, except to say that it is not obvious that it would have been granted.

Data protection

88. The data protection claim was first pleaded on 22 December 2017, when the claim form was amended and the Particulars of Claim were formulated. News Group applies for an order disallowing the amendment that introduced a DPA claim. Further and in the alternative, both defendants apply to strike out in its entirety the claim as pleaded in the Particulars of Claim. In the further alternative, the defendants apply for a stay of the claim, pursuant to s 32(4) of the DPA. In response, the claimants have formulated some draft amendments, for which they seek permission. These are substantial. The defendants oppose the application to amend, maintaining that the draft amendments are gravely deficient and wanting in the necessary particularity.

89. I deal first with the claim as it presently stands. This claim relates only to the Posts. The pleaded claim is for compensation under s 13 of the DPA and/or orders under ss 10 and 14 of the DPA for the rectification, blocking or erasure of the Posts, or for them to be supplemented by statements of the true facts. The basis for this, as set out in the pleading, is that the Posts are and were "data" and that the defendants are and were "data controllers" within the meaning of the DPA. It is said that "Further, the Posts were 'sensitive personal data'" within the meaning of DPA s 2 (because the Posts referred to the claimants' racial or ethnic origin and to the alleged commission of offences, in unlawfully claiming benefits). Notwithstanding the word "Further", Mr Engelman tells me that in fact this claim was meant to be limited to a complaint about sensitive personal data in these categories.

90. The factual case then put forward in paragraphs 38 and 39 is as follows:

> "38. The Claimants by their solicitors' letter dated 20 December 2017 provided notice in writing to the Defendants and each of them requiring them at the end of 14 days to cease processing the said Posts on the ground that the processing of those Posts is causing or is likely to continue to cause

> substantial damage or substantial distress to the Claimants and their children, and that damage or distress was is or would be unwarranted. The Defendants despite the terms of that notice, as of the date hereof, have failed to comply with the Claimants' requests in breach of s.10 of the Data Protection Act 1998.
>
> 39. By reason of the actions of the Defendants, the Claimant have suffered damages. The Claimants have suffered serious injury to their feelings. "

91. There has been debate about the proper interpretation of these paragraphs in their context. Mr Engelman maintains that they set out, adequately, a claim for remedies in respect of processing by the defendants of sensitive personal data comprised in the Posts before, during, and after the period referred to in paragraph 38. He has pointed to a number of words which were said to indicate as much. I am not persuaded. Whatever the intention may have been, it seems to me that the words used in these paragraphs cannot fairly be read in that way. On a natural and ordinary reading, they do not go beyond a claim that the defendants acted in breach of DPA s 10 by failing to comply with a written request to cease processing, and that their continued processing following such breach caused "damages" including injury to feelings. That interpretation is consistent with the context, including the prayer. A more extensive claim would have to be much more clearly set out.

92. Mr Price submits that on its face the claim is bad as being premature. The Particulars of Claim were dated 22 December 2017, only 2 days after the s 10 notice that is relied on. The 14 day period set by that notice had not expired, so it could not have been true to say that the defendants "have failed to comply with the claimants' requests". The claim had not crystallised when it was pleaded. Mr Price points out, further, that the statute allows a data controller 21 days in which to respond to the s 10 notice, not 14. This all appears to be sound in principle. But if, as alleged in the pleading, News Group failed to cease processing in response to the notice of 20 December 2017, then in due course the claimants would have a basis – or part of a basis - for claiming the relief sought under DPA s 10(4): an order "to take such steps for complying with the notice… as the court thinks fit". If the failure to comply caused damage and entitled the claimants to compensation there would also be a platform for relief by way of blocking, erasure or destruction under s 14(4). It would be unduly technical to dismiss the claim as premature.

93. News Group's better answer to the s 10 claim is the one I have already indicated when addressing paragraphs 5 and 8 of the Particulars of Claim. They say that the claim is false as a matter of fact; they had already ceased processing the Posts, long before the s 10 notice was served on 20 December 2017. If so, the notice was baseless and/or there was no failure to comply. But – technical though it may be - Mr Engelman's response holds good in this context as it does in respect of paragraph 5: the defendants' strike out applications are made pursuant to CPR 3.4(2)(a) and (c), and evidence is not admissible; for the time being I must take the factual averments in the pleading to be true. The right approach for a defendant who wishes to bring an end to a claim on the basis that it cannot be made good as a matter of fact is to seek what is sometimes called "reverse" summary judgment under CPR 24. It remains open to News Group to make such an application, but it would be wrong to treat the present application as if it were for summary judgment. The procedural requirements for such

an application have not been satisfied. I do not think it is a satisfactory answer to say that the application under CPR 17.2 asserted that the claim had no prospect of success. No evidence was served in support of that application.

94. I have however concluded that I must stay this claim, pursuant to s 32(4) of the DPA which provides as follows:

> "(4) Where at any time ("the relevant time") in any proceedings against a data controller under section 7(9), 10(4), 12(8) or 14 or by virtue of section 13 the data controller claims, or it appears to the court, that any personal data to which the proceedings relate are being processed -
>
> (a) only for the special purposes, and
>
> (b) with a view to the publication by any person of any journalistic, literary or artistic material which, at the time twenty-four hours immediately before the relevant time, had not previously been published by the data controller,
>
> the court shall stay the proceedings until either of the conditions in subsection (5) is met."

95. The conditions in s 32(5) are:

> "(a) that a determination of the Commissioner under section 45 with respect to the data in question takes effect, or
>
> (b) in a case where the proceedings were stayed on the making of a claim, that the claim is withdrawn."

96. A determination by the Commissioner under section 45 is a determination that personal data

> "(a) are *not* being processed only for the special purposes, or
>
> (b) are *not* being processed with a view to the publication by any person of any journalistic, literary or artistic material which has not previously been published by the data controller"

(the emphasis is mine).

97. In a letter of 16 March 2018 Mr Price asserted, on behalf of News Group, that "Any viable DPA claim would be liable to be stayed pursuant to section 32(4). My client claims that any personal data to which the proceedings relate are being processed only for the purposes of journalism and with a view to the publication by it of journalistic material which it has not previously published." His argument is simple: section 32(4) is satisfied by the mere fact that the defendant has made such a claim: *Stunt v Associated Newspapers Ltd* [2017] EWHC 695 (QB) [2017] 1 WLR 3985 [31].

98. I reject the claimants' argument that s 32(4) is only engaged if the defendant can bring itself within s 32(1). That seems to me to be misconceived. Section 32(4) is a stand-alone provision. The claimants' alternative argument is that s 32(4) applies only to unpublished information. I am not sure that is quite accurate. The wording seems to contain a rather different and more precise test. In any event, this argument does not engage with the point made by Mr Price in reliance on *Stunt.* It is not for me to determine that News Group's claim is wrong. The statute provides that when a data controller makes claims of the kind described in s 32(4) it is the Information Commissioner who has the exclusive or at least the primary jurisdiction to determine whether those claims are sound. News Group has made such claims, and I accept the argument of Mr Price.

99. The Express also relies on s 32(4), but Ms Michalos has not identified for me any claim by her clients that it is processing the data in question only for the special purposes or (critically) that is doing so "with a view to" the publication by anybody of any journalistic or other material within the scope of s 32 which had not previously been published by the Express. However, it seems inevitable that this case is coming back before me or another judge. The court has powers to stay where just and convenient: CPR 3.1(2)(f). I exercise those powers in respect of the s 10 claim against the Express, on the basis that an application may be made to lift the stay at any convenient time, if that is thought appropriate. The most obvious time would be the hearing of the further application for permission to amend which I fully expect to be made by the claimants.

100. The draft Amended Particulars of Claim propose substantial changes to the DPA claims. First, they extend the claim to embrace the Articles as well as the Posts. That of course is a substantial change. Secondly, they include for the first time an express allegation that the defendants engaged in "processing" of the claimants' data. The acts of processing that are relied on are identified: "The obtaining, holding, preparation for publication and publication of the Articles and Post" (sic). Thirdly, and again for the first time, the pleading alleges that the defendants owed the duty imposed by s 4(4) of the DPA. It goes on to allege breach of that duty. Apart from the typo, so far so good. But at this point, the problems start.

101. Mr Price argues that,

> "The only breach alleged in the APOC (at [37B]) is that 'the obtaining and publication of the information contained in the Articles and Posts amounted to a misuse of the Claimant's [sic] personal information and a breach of confidence and were therefore unlawful, and that the photographs taken in the Articles was [sic] taken without disclosure of the Defendants' intended purposes and therefore surreptitiously and unfairly".

102. Mr Price goes on to suggest (and he has not been contradicted) that this form of words appears to be a "lift" from a *Bullen & Leake & Jacob* precedent where the fictional facts are far different from those of the present case. He submits that the claimants' case is "hopelessly unparticularised, given the amount and nature of the information and photographs 'in the Articles and Posts' and the claimants' role in making them public". A viable DPA claim, says Mr Price, requires proper identification of the relevant data and particularisation of the alleged breaches of data protection principles

in relation to it. The breadth of the data protection principles make this all the more important. Ms Michalos adopts these arguments.

103. The claimants' response is to suggest, again, that the defendants are making technical points of no merit that tend towards needless prolixity and are meant to and/or serve to do no more than waste costs. I disagree. I accept Mr Price's submissions. This part of the draft amended statement of case needs to be made much clearer, and much more specific. To do that will not involve prolixity, or need not do so. It will or should involve compliance with the paramount requirement of any statement of case, that it make clear to the opposite party the nature of the case that is being advanced, and the essential factual basis on which that case is being put forward. The draft statement of case here is not beyond redemption, but it cannot be allowed as it stands.

104. Mr Price's criticisms of paragraph 37B are in my judgment entirely merited. It is well-established that a data protection claim requires adequate particularisation of the information, the processing of which is complained of, and the respects in which the processing is alleged to be wrongful: see, eg, *David v Gabriel* [2016] EWHC 2799 (QB) [31], [34], *NT1 v Google LLC* [2018] EWHC 799 (QB) [79]. The approach adopted here is decidedly odd. But whatever the explanation, it cannot be permissible to introduce by a side wind, in a single sentence, two further causes of action (misuse of private information and breach of confidence) which are not relied on independently and have never been pleaded before. A claim in either of those wrongs requires proper particularisation: see, for instance, *Candy v Holyoake* [2017] EWHC 373 (QB) [49]. Nor can it ever be legitimate to plead a case of unfair and unlawful conduct by specifying only some respects in which the conduct is said to have been unlawful, "without prejudice to the generality of this allegation". The defendants are entitled to know the full case they have to meet, not just some of it. If there is nothing more to that case than is so far specified then the words I have quoted should be omitted. If there is something more, it should be spelled out. These basic points apply with all the more force to an application for permission to amend.

105. The defendants' arguments are not quite accurate, because the Amended Particulars do contain allegations of breach that go beyond the one to which Mr Price refers. These are in paragraphs 38A and 38B, which read as follows:

> "38A. None of the conditions in Schedules 2 and 3 to the Data Protection Act have been met in breach of the first data protection principle.
>
> 38B. The personal data contained in the Articles and Posts was not obtained for a lawful purpose contrary to the second data protection principle."

However, these paragraphs serve as further illustrations of the unduly broad nature of the pleaded case. Paragraph 38A is bald assertion. Paragraph 38B is entirely obscure. As I understood Mr Engelman, the complaint in paragraph 38B arises (at least in part) from a contention that the claimants or one of them spoke to a journalist under a misapprehension about the purposes of the interview. There is no hint of that in the pleading. The words used do not identify the purpose which was not lawful. They tend to imply that the claimants' case is that writing about them is not a lawful

purpose, but they do not explain why that should be so. It is impossible to see how the defendants are supposed to plead to this allegation in any meaningful way.

106. For these reasons, I refuse the application for permission to amend, but without prejudice to a further application. I am not by any means deciding that no legitimate DPA claim can be formulated. I am merely saying that no such claim has yet been formulated in accordance with established principles, (except for the limited claim already pleaded in the Particulars of Claim). The claimants' team need to devote some more thought to the parameters of the DPA claim, and to its finer detail. They need to decide, with certainty, what information is to be the subject of the claim (is it, for instance, just the sensitive personal data or more than that, and if the latter, what?). They need to identify all respects in which the defendants can realistically be said to have acted in breach of the duty imposed by s 4(4), and to tie each complaint of breach to some specifics.

107. I note that the original Particulars of Claim seek, among other things, an order for the data to be supplemented by a statement of the true facts. That would appear to be a claim under DPA s 14(2), which depends upon data being shown to be inaccurate. Hence my suspicion that paragraph 10 of the Particulars of Claim might be linked to the DPA claim. But there is as yet no such link. Paragraph 10 does appear to be a loose end. It may be that there is, lurking in the background, an as-yet-unformulated contention that the defendants processed personal data relating to these claimants that were inaccurate, in breach of their s 4(4) duty to comply with the Fourth Data Protection Principle. It is now clear law that a claim may be made under the DPA in respect of the publication in good faith of non-defamatory falsehoods. Again, I emphasise that I am not encouraging or inviting any particular course of action. My aim is to ensure that the boundaries of this case are set with clarity and certainty. As to the prospect of a stay under s 32(4), see paragraph 14(4) above.

Costs

108. It seems beyond dispute that the defendants have had more success than the claimants on this occasion, but I will need to hear argument on costs before reaching a decision. I mention this topic now only to record that the assessment of costs which I expect to make will be carried out by reference to budgets, approved in advance of this hearing. The importance of costs control in relation to substantial meaning determinations has become clear. Costs budgeting seems to be the most effective method. Hence, on 14 February 2018, when I ordered the trial of preliminary issues and the concurrent hearing of the defendants' applications, I also made an order of the Court's own initiative, giving directions for costs budgets to be filed and exchanged, limited to the costs up to and including the giving of judgment on the preliminary issues and other applications. Budgets were filed and exchanged, and on 15 March 2018 I made a costs management order. I did so without a hearing, pursuant to CPR 23.8(c). That meant that any party who wished to do so could apply to discharge or vary the order, and would be heard on such an application. I set a time limit of 22 March 2018 for any such application. None was made. The approved budgets are £41,810 (claimants), £28,800 (News Group), and £18,550 (Express).

ANNEX TO JUDGMENT

Article (1): The Sun, 7 September 2016

ARE THEY SERIOUS? First picture of four-bed house that jobless couple with eight kids **slammed** council for offering

The family insist they need SIX double bedrooms for their brood

By LAUREN FRUEN

7th September 2016, 10:48 am Updated: 21st February 2017, 12:13 pm

PHOTOS have emerged of one of the council houses turned down by a migrant family-of-ten because it was too small – and "didn't even have a dining room".

[1] Cameroon-born Arnold Mballe Sube, 33, came to Britain with wife Jeanne and their seven children four years ago because the NHS agreed to fund a £27,000 degree for him.

[2] The dad-of-eight has since bagged £108,000 **hand-outs** in a year.

[3] The family, since boosted by the arrival of a three-month-old daughter, now live in a four-bed house, kitted out with big flatscreen tellies, games devices and a Sky HD box.

[4] But Arnold, whose family ran up a £21,000 bill for food when the council put them in a hotel for four months, wants out of "the worst place they have ever lived."

[5] He is **furious** at only being offered a five-bedroom property.

[6] He said: "There wasn't space for the things of ten people. It didn't even have a dining room."

[7] Arnold, who uses one bedroom as a gym/office, said: "Me and my family have been neglected.

[8] "We are living in a three-bedroom house and there's not enough room for us.

[9] "It's so cramped and the conditions are terrible. My children are starting school and we can't stay here any longer.

[10] "The council is trying to make things hard for us.

[11] "My wife is a full-time mother and I am a student. They're just making excuses.

[12] "We need a five or six-bedroom house with double rooms to comfortably fit our family."

[13] Arnold moved to France at 18 and started a family with Jeanne, who is also from Cameroon.
[14] He wanted to study psychiatric nursing but failed to find a suitable course so moved to Britain with their seven children.

[15] The NHS funded the annual £9,000 cost of his three-year degree at the University of Bedfordshire while they were housed in a five-bed council property in Luton.

[16] They were evicted when the landlord decided to sell. So the council booked them into two rooms at the town's £160-per-night Hampton by Hilton hotel for four months at a cost of £38,400.

[17] When Arnold refused to pay the extra £21,000 room service and restaurant bill run up by the family, the council **coughed** for that too.

[18] Arnold said: "We couldn't cook. Children were eating on the carpet. We were ordering room service, chicken and chips, Chinese food. We had to order it twice per day for all the kids and all the family.

[19] "The council said I had to pay a bill for living in the hotel. That was very traumatising because we didn't ask for them to put us there."

[20] The couple were then moved into a four-bed house in Bletchley, Bucks, but complained because it is too small, especially with the arrival of Mary, now three months.

[21] Arnold and Jeanne, 33, both have smartphones, a laptop, with a 60in flatscreen TV and Sky HD box in their front room, plus a 52in telly in their bedroom.

[22] Their children — Mejane, 16, Fabian, 13, Analia, 13, Prosper, ten, Dylan, nine, six-year-old twins Sharon and Stacy, and baby Mary — also have a TV and an Xbox with dozens of games.

[23] The family have received annual **hand-outs** worth £44,000 since their arrival.
It is made up of housing and child benefits, as well as child tax credits and Arnold's NHS course payments.

[24] But their hotel stay has **pushed** that total to £108,000 in the last 12 months.

[25] **Yet unhappy Arnold**, who was offered a five-bed property last month, said: "We are entitled to six bedrooms. I believe that the council has to support me in order for me to become a positive person and contribute to the tax system."

[26] A neighbour said last night: **"They've got some cheek**. I'd bite the council's hand off if they offered me a five-bed house. **They're too fussy and they shouldn't be allowed to get away with it.**"

[27] Another said: "**I think it's a disgrace.** There are people out on the streets in the city centre and ex- soldiers with nowhere to live**. It is a struggle but don't go on and moan about it."**
[28] Councillor Tom Shaw, responsible for housing at Luton Borough Council, said: "We have managed to find them a **large** four-bed house and then a five-bed which they turned down.

[29] **"We can't be any more sympathetic. We can't just magic property that people want out of thin air**."

[30] A spokesperson for the council said: "Housing stock in Luton is under constant pressure.

[31] "**Despite difficulties we managed to find Mr and Mrs Sube affordable housing that is large enough to house them and their eight children.**

[32] "After a **generous** offer on our part, **we have done our bit** and **if housing is offered and declined without, what we judge, good reason,** then we will offer the property to another family."

Photo/graphic captions (attributed to *SWNS:South West News Service*]

[A] *Arnold Mballe Sube (far right) and wife Jeanne, pictured with their baby, with their children at their home in Luton after turning down a five-bed property*

[B] *They were offered this four-bedroom house in Chertsey Close, Luton but also turned it down*

[C] *The house where Arnold Mballe Sube and wife Jeanne – who claim they are being neglected – live with their children*

[D] *The family's living room has a wide screen television*

[E] *The children also have a TV and Xbox in their bedroom*

[F] *Mballe Sube says it is 'the worst place they have ever lived'*

[G] *The Cameroon-born student uses one room as a gym/study*

[H] *Arnold moved from Cameroon to France at 18 before travelling to Britain with his wife ans [sic] seven children after the NHS agreed to fund his degree*