Neutral Citation Number: [2015] EWHC 2141 (QB)

Case No: B90MA221

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Date: 23/07/2015

Before :

MR JUSTICE EDIS

- -

Between :

CHESHIRE WEST AND CHESTER COUNCIL
STEVE ROBINSON
DAVID FINLAY
MICHAEL JONES
HELEN WELTMAN

Claimants

- and -

ROBERT PICKTHALL **Defendant**

- -
- -

ADAM SPEKER (instructed by **Cheshire West and Chester Council Legal Services**) for the Claimants

The Defendant in person

Hearing date: 3rd July 2015

- -

JUDGMENT

Mr. Justice Edis :

1. This is an application for an interim injunction in proceedings in which the claimants seek an injunction under sections 3 and 3A of the Protection from Harassment Act 1997 ("the 1997 Act"). The application is made on notice and the defendant attended the public hearing and made submissions to me. No derogation from the principle of open justice is involved. The nature of the harassment relied upon is the publication of allegations and abusive remarks about employees, officers and Councillors of the first claimant Council. The Article 10 right of the defendant to freedom of speech is engaged. The right under Article 10 does not just exist for the benefit of the defendant but of the public at large and since the claimants are public officials and elected politicians there is a public interest in allowing free comment about them. There is a limit to the scope of that public interest and that is the context in which this applications falls for consideration.

2. The proceedings are brought under CPR Part 8. The claim form says

> "2. Pursuant to CPR 8.2(d) all the Claimants are acting in a representative capacity. The Second to Fifth Claimants are also acting in a personal capacity. They are acting on behalf of all employees, officers and Councillors of the First Claimant. They share the same interest: to ensure that the Defendant's campaign of harassment directed at Council employees and Councillors is stopped.
>
> "3. Pursuant to CPR 8.2(b)(i) and (ii) the questions the Claimants are seeking the court to decide are as follows:
>
> a. Does the Defendant's course of conduct, which is not disputed and is set out in the witness statements attached, constitute harassment under s.3 and/or s.3A of the Protection from Harassment Act?
>
> b. Does the Defendant have a defence to his actions?
>
> c. Should an injunction be granted and if so in what terms? The Claimants attach a draft Order to this claim form."

3. The proceedings were issued on 20th May 2015. On 22nd May 2015 His Honour Judge Davies gave directions on reading the claim form and evidence. He directed the defendant, who is representing himself, to file and serve with 14 days a "defence, limited to 2 pages of A4 font size 12, which summarizes his response to the claim and, in particular, which explains whether he admits or denies the claim and (as appropriate) summarises his reasons for denying the claim and his witness evidence in response." He directed that the claimants should serve similar documents in reply within 21 days of service of the defence and gave some further consequential directions.

4. Service was effected on 3rd June 2015, and on 6th June 2015 the defendant filed an acknowledgement of service indicating an intention to defend all of the claim and, when completing the form, the defendant indicated that his written evidence was filed

with it. This took the form of a letter dated 6th June 2015 which exceeded the two pages permitted by Judge Davies, but not by very much. I am treating this letter as both the defence and as a statement of the evidence relied upon which means that no issue of relief from sanctions arises. However, it is not supported by a Statement of Truth. This must be rectified within 7 days of the handing down of this judgment failing which it will be struck out. For present purposes I will deal with it as if it did contain the necessary Statement of Truth.

5. In reply, the claimants served a notice of application for an interim injunction, draft directions and a formal Reply on 26th June 2015.

6. Therefore, although the claim was issued quite recently, it has reached a stage where the issues are clear and accordingly I have a sound basis on which to consider whether or not to grant an injunction.

The Claim

7. The First Witness Statement of Karen Elizabeth McIlwaine dated 12th May 2015 sets out the evidence relied upon in support of the claim and the application for interim relief. She confirms that the Council seeks injunctive relief in a representative capacity to protect the officers, employees and Councillors of the Council. Mr. Robinson and Mr. Finlay are employees and officers of the Council and seek injunctive relief on their own behalf and on behalf of other officers and employees. Mr. Jones and Ms. Weltman are Councillors who seek relief on their own behalf and on behalf of the other councillors. It is unnecessary to refer to the claimants separately except where they individually complain of being victims of harassment. They all make the same claim on the same evidence. The defendant is a member of the public who lives within the Council's area of responsibility.

8. The claimants allege that the defendant is a vexatious complainant who is engaged upon a long and persistent campaign against the Council and its officers, employees and Councillors. This campaign is said to have started around 2010 and to have continued to date. The defendant agrees with this, except that he denies that his campaign is vexatious. He says that the allegations which he publishes are supported by evidence, are true and that he is acting in his own defence and in the public interest by making them. He relies on the statutory defences in section 1(3) of the 1997 Act.

9. In these circumstances I can summarise the nature of the defendant's activities quite briefly. According to Mr. Finlay, the defendant's dispute with the Council began in December 2010 when he was living in private rented accommodation and became involved in a dispute with the landlord. He told the Council that he was living without electricity, heating, hot water or gas. He said that he was admitted to hospital on Christmas Eve 2010, and sought the assistance of the Council. The defendant disputes this history saying that he only ever complained that the landlord failed to keep the electrical supply in a safe working order and as a result knowingly endangered the lives of his visitors, neighbours and himself. Nothing turns on this dispute about the exact nature of the defendant's historic complaint about his landlord. It is the means by which he pursued that complaint as far as the claimants are concerned which is important, but only because it puts his more recent activities into context. During this first phase of the campaign, the defendant sent over 1200 emails to the Council's Solutions Team and threatened to sue the Council for £1m in a

Human Rights claim. He set up a website to promote his cause. He then moved home to his present address, withdrew his claim for damages and closed his website. Some of the emails from this phase are contained in KEM 3 and show that at this stage the defendant accused an employee of the Council of regularly taking financial considerations from Landlords and being corrupt. He was publishing a blog and emails were sent from addresses other than his own which appeared to come from members of the public who had read it and been motivated to support him. Some of these alleged that the defendant's Landlord had received preferential treatment because he was a Mason. Some of these themes emerged again in the second phase of his campaign.

10. A second dispute arose after the defendant moved home. His present address is close to a piece of land at Davenham called Butchers Stile Playing Field. The defendant became concerned about the location of a road through this land and started to make enquiries about the conveyancing history of the land. On 30th July 2012 he made a request for documents under the Freedom of Information Act relating to a covenant affecting the land. This resulted in a meeting between him and two council employees in August 2012 at which he was allowed to inspect some original title deeds and other documents. Afterwards he complained that documents had been hidden from him and that the council employees had committed criminal offences. It transpired that a conveyancing error had occurred at some time in the distant past (perhaps about 1955), and there were also some errors in the compliance with the Freedom of Information Act requests. The defendant did not and does not accept that these were errors and alleges that he can prove fraud and corruption. He says that he welcomes these proceedings because all he seeks is the opportunity to produce his evidence in a court. He says that the Council has victimised and bullied him in order to cover up his discoveries.

11. The defendant sent a very large number of emails which were distributed widely by the defendant. The Council decided to adopt a "Single Point of Contact" system whereby all emails were diverted to David Finlay, who is the 3rd claimant. This began in September 2012. The email correspondence continued and the defendant continued to express his concerns about what he described as the theft of the land on which his house stood. Mr. Finlay wrote a letter on 7th December 2012 which listed 11 allegations which had been made by that date by the defendant which included several allegations of fraud and an allegation of corruption. He enclosed a copy of a summary of a report of an investigation into the conveyancing history of the land and answered each of the 11 allegations. He said that the Council now regarded the issue as closed.

12. The defendant had complained about the way in which his requests under the Freedom of Information Act had been dealt with and a review was undertaken by the Council in February 2013 which found that in certain respects he was right.

13. In January and February 2013 the defendant was in contact with the Local Government Ombudsman who published a decision on 5th February 2013. He rejected the defendant's complaint about the use of a single point of contact in his case and held that it did not amount to "intercepting" the defendant's communications. The Ombudsman decided not to pursue the complaint.

14. In October 2012 the defendant contacted the police. An entry on his website says that he gave them

> "a raft of evidence proving a number of senior Cheshire West officers, Davenham Parish Council officers and Directors of Weaver Vale Housing Trust Limited committing criminal offences. That raft of evidence comprised a large number of internal emails some written by those officers themselves – those official documents proved officers guilty of committing malfeasance in public office a crime so serious that it carries a sentence of life imprisonment. Cheshire Police not only refused to investigate my complaint its Chief Constable David Whatton also refused to tell me why he won't investigate, and as a result I began publishing and distributing leaflets containing transcripts of those emails and other evidence proving those officers guilty of corruption."

15. The Cheshire Police did not take any action as a result of this "raft of evidence".

16. In March 2013 the Council sent an email to the defendant which listed 14 email addresses from which communications had been received and alleged that he was responsible for them, using these other addresses as "proxies" to hide the true origin of the complaints and to suggest that other people, besides him, were outraged by the matters complained of. The defendant did not deny that this was so.

17. The quantity of emails sent to the Council over these years was very substantial. Allegations of criminal and dishonest behaviour were very frequently made against identified individual employees, officers and Councillors. After the police declined to investigate, the defendant started to publish his allegations widely. At paragraph 14 above I have set out his statement from October 2012 that he had started publishing leaflets. On 8th May 2013 he sent an email to an employee of the Council saying

> "following my earlier correspondence making you aware that your caseworker Helen Weltman is involved in unlawfully intercepting, redirecting and receiving private confidential correspondence sent by members of the public and intended for others are you able to confirm if you will or will not be seeking her resignation. Sir if I might push you for an early response only that my publication "The Bloodhound" a leaflet which is delivered regularly to 10,000 homes throughout Mid-Cheshire shortly to be increased to 20,000 homes, will go to print within the next 24 hrs and it is my intention to raise serious questions asking if all that private and confidential information that you hold and belonging to your Constituents is indeed safe in the hands of Helen Weltman."

18. Whether these leaflets are actually distributed physically to that extent or at all is not known, but it is irrelevant because the defendant also operates a website called www.thebloodhound.org.uk on which they are posted. 5 editions of the newsletter are described in the statement of Ms. McIlwaine. It appears that they were uploaded on 2nd September 2013 and she says that they are still accessible. They contain strident

allegations of fraud and also repeat the allegation of unlawful interception of private and confidential correspondence. This is a repeat of the old allegation based on the use of the single point of contact within the Council. The defendant apparently believes that it is a criminal offence for a Council to divert communications which he addresses to its employees, officers and councillors to a single point of contact whose job I is to deal with anything emanating from him. He was told that there is nothing in it by the Local Government Ombudsman in the ruling referred to above, but chose to ignore that and to continue to advance this legally inarticulate complaint over and over again. One of the 5 newsletters repeats allegations of criminal behaviour against Maria O'Neill, a Council employee who conducted the meeting at which documents relating to the land were shown to the defendant in August 2012. She is accused of forgery and lying. Mr. Robinson, the second claimant, and Mr. Goacher, the Council's Monitoring Officer, are accused of dishonestly covering up the behaviour of Ms. O'Neill. In another newsletter a series of allegations of bad faith are made against Helen Weltman, the fifth claimant. She is accused of burying the evidence provided by the defendant for her own selfish motives. The language used is deliberately offensive and provocative.

19. The website also contains a number of pages with what purport to be new articles. An example is the following dated January 2015 concerning Mr. Finlay, the third claimant and the single point of contact:-

> "FIRST HE IS PROVED A CORRUPT CHESHIRE COP – NOW HE IS PROVED A CORRUPT CHESHIRE COUNCIL OFFICER
>
> OFFICIAL INDEPENDENT POLICE COMPLAINTS COMMISSION [IPCC] DOCUMENTS PROVE FORMER CHESHIRE CONSTABULARY DETECTIVE CHIEF INSPECTOR DAVID FINLAY WAS PERMITTED TO RESIGN FROM THE FORCE SOONER THAT FACE A POLICE CRIMINAL INVESTIGATION FOR HAVING INFLICTED MENTAL HARM – PERVERTING THE COURSE OF JUSTICE – MISCONDUCT IN PUBLIC OFFICE – BLACKMAIL. HAVING LEFT THE CHESHIRE CONSTABULARY MR. FINLAY SOON FOUND EMPLOYMENT WITH CHESHIRE WEST AND CHESTER COUNCIL AS A SOLUTIONS TEAM OFFICER – ONCE AGAIN MR. FINLAY BECAME A TRUSTED PUBLIC SERVANT – ONCE AGAIN MR. FINLAY SET ABOUT ABUSING HIS OFFICE OF TRUST!"
>
> ……
>
> "Since October 2012 I have repeatedly provided the chief constable of Cheshire and the Cheshire crime and police commissioner more and more high quality irrefutable evidence proving David P Finlay and other Cheshire West and Chester Council officers guilty of criminal conspiracy, perverting the course of justice, and misconduct in public office –

> astonishingly they both refuse to carry out formal investigations into my complaints."

20. The defendant also has a "Wall of Shame" with names of Council employees on it. He offers to remove the names of people who "agree to support our rights". There is also a Twitter account "@bloodhound24" with which he makes similar allegations.

21. The Council investigated the defendant's conduct towards it, and its responses to him, in 2014. On 27th June 2014 the Internal Audit Team found that between July 2012 and May 2014 over 2,400 emails including over 1,000 items of correspondence were sent directly from the defendant.

22. In July 2014 the defendant made 5 more requests under the Freedom of Information Act. They were refused by the Council as vexatious in August 2014 and in September 2014 a Review by the Council upheld that decision on the ground that they were vexatious and repeated. The defendant complained to the Information Commissioner's Office who determined that the Council had properly applied section 14(1) of the Act in declaring the requests vexatious and refusing to deal with them.

23. In November 2013 the Cheshire Constabulary after consulting the CPS decided that it would not initiate a prosecution of the defendant for the statutory offence of harassment for the reasons explained in an email dated 4th November 2013 to the Council. A key factor in that decision was the availability of civil remedies and the view that an injunction would have a "greater binding effect" than a criminal prosecution. The defendant decided to say, in a letter accusing two councillors of misconduct in public office dated the 6th January 2015, that this meant that the Crown Prosecution Service "confirmed that it did not find any of my writings untrue."

24. On 2nd April 2015 the defendant used his website to publish an article which took the form of a letter to the Police and Crime Commissioner of Cheshire which said "I believe the days are fast approaching when corrupt public servants such as yourself and the disgraced former Cheshire Constabulary Chief Inspector David Finlay will no longer be able to escape justice simply by being a member of a Masonic Lodge." This article referred to the "raft of evidence" again. This is a common theme of these publications. For example, on 26th February 2015 the defendant had sent an email referring to "irrefutable evidence proving David P Finlay of the Cheshire West and Chester Council Solutions team to be a former senior Cheshire Police officer who resigned from the Force in 1999 having been suspected of carrying out a number of serious criminal offences". He said that emails from the IPCC showed that in 2003 the IPCC "satisfied itself in 2003 Finlay was guilty of subjecting his innocent victims to blackmail, mental harm, assault, conspired to pervert the course of justice and committed serious misconduct in public office." He went on to identify the various public servants who had shown themselves to be unworthy of trust by failing to act on this evidence. He repeated this to a different audience in an email of 4th April 2015, and again on 8th April 2015 and 9th April 2015. In this last email the defendant accused Mr. Finlay of torture.

25. There are witness statements from Mr. Robinson, Mr. Finlay, Mr. Jones and Ms. Weltman. They all say that the allegations are completely untrue and distressing to them and to the other people against whom they have been levelled.

26. The second witness statement of Ms. McIlwaine dated 26th June 2015 says that the defendant has continued to tweet, email, text, place articles on the website and deliver hard copy leaflets. He, by this stage, knew of these proceedings and had set up another website which proclaims that it will document the progress of the proceedings. She produces a number of exhibits to show that this is true. She points out that the Council now has a different political makeup and control has changed so that it is now a Labour controlled authority. She fears that the new political leaders of the Council will now be targeted for abuse in the same way as their predecessors were. On 24th May 2015 the defendant sent an email to Samantha Dixon, now leader of the Council, which accuses her of knowing that the Council regularly turns a blind eye to his complaints and evidence proving Council officers and their contractors are participating in serious wrong-doing including corruption. He demands that the police be called to investigate the use by a Councillor called Reggie Jones of a private email address for official business. He alleges that Councillor Jones has passed constituents private and confidential information to third parties. He does not pretend to have any evidence to support this allegation. He had earlier emailed Mr. Jones on 21st May 2015 accusing him of failing to act on his evidence and concluding

> "Reggie you do realise that by continuing to turn a blind eye to all that evidence I provided your Labour colleagues and yourself proving those offences, you, like they, will be seen by the public to have condoned dishonest practice – not only that Reggie but you, like they, will be seen by the public to encourage dishonest practice – and you do realise don't you Reggie by doing nothing you, like they, licence me to go out and tell not only your own community but also their communities, you, like they, are proven dishonest and untrustworthy public servants who have absolutely no right whatsoever to hold a public office of trust – and the very best of it Reggie is that you, like they, will not be able to honestly dispute a single word I say.
>
> "Come sir, search hard, and I assure in time you shall once locate your backbone."

27. By letter of 22nd January 2015 the Council had told the defendant that they were contemplating proceedings and asked him to give undertakings to stop his campaign of personal abuse and threats against its employees, officers and councillors. He replied on 26th January (on the day he received the letter)

> "Ms. McIlwaine I write to inform you that I have no intent what so ever of complying with any of your Council's demands. Further I wish to make it absolutely clear I do not require your Council's 14 day offer to further contemplate my actions and responses – in fact I reject that offer. Madam I assure you I have never been in a better position to prove your Council and numbers of its employees corrupt and therefore I am eager to go forward and prove my case in any Court of Law, be it Civil or Criminal."

28. The defendant has therefore refused to give undertakings and has not stopped his campaign after being served with proceedings. On 1st July 2015 he posted about these proceedings on his website. He said

> "We anticipate should the High Court rule in favour of the suppressors of free speech, Cheshire West and Chester Council, and temporarily suspend TheBloodhound pending a full trial then our websites [address given] and our yet to be titled second site which we have temporarily named "Son of Hound" will take over. For legal reasons we will not be able to repeat anything said on TheBloodhound but not to worry we have lots and lots of new material to publish.
>
> Ladies and gentlemen there will be a third site titled Peoples Alliance – almost live – which will also take on Cheshire West and Chester Council……."

The irrefutable evidence

29. It is against this background that the directions of His Honour Judge Davies recited above assume such importance. The defendant has been claiming to possess a raft of irrefutable evidence for months and to have supplied it to the police, to the first claimant and others. He suggests that his evidence has been suppressed. His Honour Judge Davies directed him to produce a short defence and his witness evidence. He said that he had done so when he acknowledged service and this, as I have said, is a reference to his letter to the court dated 6th June 2015 which I have dealt with above. It is reasonable to assume that this is his "raft of evidence" because deploying it in these proceedings is his remedy to suppression. His allegations of corruption and so on are largely based on the failure of public officials and others to act on his evidence, and one would expect him to be very keen to produce it now.

30. The letter sets out the history of the defendant's two substantive disputes with the Council: the housing dispute from 2010/2011 and the land dispute about Butcher's Stile. It accepts that he has sent multiple emails to try and resolve those issues and asserts that he was entitled to do so. He does not, however, produce any evidence that Mr. Finlay was guilty of serious criminal offences while he was a serving police officer. He does not mention Mr. Finlay, or Ms. Weltman, or Mr. Reggie Jones. He refers, so far as evidence is concerned, only to the events of 2010/11 and to internal emails which were disclosed to him by the Council in 2012 (he believes by mistake) which justified his conclusion that its officers, employees and councillors had colluded to obstruct his researches into Butchers Stile playing fields. He relies on the single point of contact policy as depriving him of his right to meet officials and employees and thus of his right to political representation. I have seen the emails to which he refers.

31. The internal emails referred to in the letter of the 6th June 2015 (which I treat as setting out his case for the reason I have given) do not come close to providing support for the allegations the defendant has been publishing in the way described in my summary of the evidence set out above. They are, I think, the emails in September 2012 surrounding the setting up of the single point of contact system and discussing tactics for dealing with the defendant. In my judgment they show nothing

more than a local authority seeking to deal with the offensive tirade directed against its employees and officers by the defendant. Of course, because they are a response to that tirade, they cannot logically be the cause of it. The meeting of August 2012 and the serious criminal allegations which followed from it occurred before these internal emails and were the reason they were written. The defendant has said nothing at all about the land issue in his letter of 6th June 2015 which could justify his allegations made prior to October 2012 when he discovered these emails.

32. His case substantially depends upon what he says about the events in 2010/11 at his previous address. This fact also appeared from his oral submissions to me where he placed considerable stress on the acute physical danger in which he had been placed as a disabled person while living in that accommodation. Having set out his version of the facts of that episode, he says

> "Based on all the above, it would be unreasonable for anyone to believe I had not legitimately suspected deliberate wrong doing/deliberate unlawful practices for it is clear my Landlord did all he was able not to comply with Health and Safety Laws. There can be no doubt he knew all along there was no safety certificate and I am certain at some point earlier than 2011 the Plaintiff should have known that the certificate did not exist, either way I prove I did suspect criminal offences had been committed and I prove that I did all I could to expose and prevent them. I refer the Plaintiff to its own policies on protecting vulnerable adults also to the Government's National agreement on protecting vulnerable adults titled "No secrets" a policy which the Plaintiff has a lawful duty to comply with at all times."

33. The muddled thinking which leaps from the paragraph I have just quoted underlies the defendant's whole approach to the claimants in my judgment. He asserts that he reasonably suspected crime by his Landlord nearly 5 years ago. He leaps from that to the assertion that the claimant Council was in some way implicated in the crime which he reasonably suspected. He does not explain why this is so, nor does he say that there actually was any crime. He appears to limit his claim to a claim that he reasonably suspected it.

34. Nothing that he says about the Landlord and Tenant dispute which he had with his previous landlord is remotely capable of justifying his current claims about present employees and officers of the Council. None of those whom he has been abusing recently are even named in the part of his letter which deals with that long finished dispute.

35. His case as set out in his letter in relation to the land at Davenham is as follows:-

i) He lives in one of several houses there owned by the Weaver Vale Housing Trust Limited which are accommodation for the disabled, but there are no external adaptations for the disabled.

ii) There is a road which leads through the group of houses which drunks and drug addicts use to get to the Butchers Stile playing fields at all hours of the

day and night causing noise and other anti-social behaviour. He says that he and his elderly and disabled former neighbours (he says he has been evicted although the letter of 6th June gives the same address and the proceedings were served there) continue to be attacked by the village bullies.

iii) It was in response to this problem that the defendant began to investigate ownership of the land. He claims to have discovered that the road and the entire residential site and the Davenham Cricket Club had been unlawfully built, in breach of planning control and a restrictive covenant.

iv) Two public authorities, the claimant and the Davenham Parish Council colluded to obstruct his researches and intercepted and re-directed his emails. He was denied access to Council officers and employees who were ordered not to meet him which deprived him of political representation. He does not say what further researches are required. The Freedom of Information Act requests he has made more recently have all been held to be repeat requests, which have already been dealt with. He does not identify anything which has been refused which has not already been dealt with.

v) He claims that the Police have refused to investigate any of those trusted public servants who he believes are guilty of committing serious criminal offences. Neither the offenders nor the offences are specified.

vi) He concludes:-

> "By way of the above it is clear that I have always acted rationally and logically in these serious matters and that I did so not only in order to protect my own life but also the lives of others many of whom are considerably more disabled and vulnerable than myself. I am confident a Jury will agree all of my aims and ambitions were designed not only to expose and prevent crime but also to protect people who were either incapable of, or had been too intimidated to protect themselves, and therefore I believe my defence meets all of the demands as set out in the Protection from Harassment Act 1997, section 3 subsections (1)(a)(b)(c)."

36. The reference to section 3 of the 1997 Act does not clarify the nature of the defence, but I will set it out because it (together with section 3A) is the origin of the jurisdiction which I am invited to exercise. It provides:-

> *3. Civil remedy.*
>
> *(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.*
>
> *(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.*
>
> *(3) Where—*

(a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and

(b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply for the issue of a warrant for the arrest of the defendant.

(4) An application under subsection (3) may be made—

(a) where the injunction was granted by the High Court, to a judge of that court, and

(b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.

(5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if—

(a) the application is substantiated on oath, and

(b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

(6) Where—

(a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and

(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.

(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.

(9) A person guilty of an offence under subsection (6) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

37. The reference in the letter is plainly an error and the defendant intended to refer to section 1 of the Act. This provides

1. Prohibition of harassment.

(1) A person must not pursue a course of conduct—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(1A) A person must not pursue a course of conduct:-

(a) which involves harassment of two or more persons; and

(b) which he knows or ought to know involves harassment of those persons; and

(c) by which he intends to persuade any person (whether or not one of those mentioned above) –

(i) not to do something that he entitled or required to do, or

(ii) to do something that he is not under any obligation to do.

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

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

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

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

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

38. Section 7 of the 1997 Act contains some definitions:-

"7.— Interpretation of this group of sections.

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

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve—

(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or

(b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons.

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

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

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

(4) "Conduct"includes speech.

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

39. The letter which I treat as the defence to these proceedings starts with a reference to *Hayes v. Willoughby* [2013] 1 WLR 935. In that case the Supreme Court considered the defence provided by section 1(3)(a) of the 1997 Act. Is it enough that the harasser believes his behaviour to be necessary for the prevention or detection of crime? As Lord Sumption JSC pointed out at paragraph 12

> "A large proportion of those engaging in the kind of persistent and deliberate course of targeted oppression with which the Act is concerned will in the nature of things be obsessives and cranks who will commonly believe themselves to be entitled to act as they do."

40. The passage cited by the defendant is a summary of Lord Sumption JSC's paragraphs 14 and 15:-

> "The test of rationality under the Protection from Harassment Act requires good faith – a logical link between the evidence and the perceived reasons for the harassment, and absence of arbitrariness. The alleged harasser must have thought rationally about evidence suggesting criminality and formed a view the conduct was appropriate for the purpose of preventing or detecting crime."

41. The test of rationality is not the same as a test of reasonableness. It is a less demanding test than that. It simply requires the defendant to have undertaken the necessary thought process in good faith to form the stated purpose.

The legal test

42. Mr. Speker who appears for the claimants prepared a Skeleton Argument which identifies the legal test which I have to apply in deciding whether to grant this application. It is set out in paragraph 22 of *Cream Holdings Ltd. v. Banerjee* [2005] 1 AC 253 which explains the application of section 12(3) and (4) of the Human Rights Act 1998 which provide:-

> *(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.*
>
> *(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—*
>
> *(a) the extent to which—*
>
> *(i) the material has, or is about to, become available to the public; or*
>
> *(ii) it is, or would be, in the public interest for the material to be published;*
>
> *(b) any relevant privacy code.*

43. In this context this means that I must be satisfied that it is likely that the claimants will establish at trial that the defendant should not be allowed to publish further acts of harassment because the defendant is unlikely to be able to establish any of the three statutory defences in section 1(3) of the 1997 Act. This is because it is common ground that the defendant has published the material and the defendant does not deny that his conduct amounts to a course of conduct which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. The harassment was by speech and caused distress and was intended to do so. Even if this was not common ground, I would find on the basis of the evidence which I have summarised above that the claimants are likely to establish these facts at trial.

44. The question therefore is whether the defendant is likely to fail to establish one of the statutory defences, in reality those afforded by section 1(3)(a) and (c) because the defendant does not rely on any enactment as requiring him to behave as he did. In reality, again, this boils down to section 1(3)(a) because if he cannot satisfy the rationality test in making out his avowed purpose of preventing and detecting crime, he will not be able to establish the more stringent test of reasonableness. It is for this reason that the defendant starts his defence with a reference to *Hayes v. Willoughby* and the rationality test.

The legal test applied to the facts

45. The alleged crimes involved are as follows:-

    i) The crime committed by the Landlord in 2010/2011 in relation to safety certificates.

    ii) Forgery and other criminal acts surrounding the meeting of August 2012 when documents relating to the land at Davenham were shown to the defendant.

    iii) Unlawful interception of communications in the course of transmission contrary to section 1(1) of the Regulation of Investigatory Powers Act 2000. This relates to the diversion or forwarding of emails within the claimant Council so as to give effect to the single point of contact policy in September 2012. Rather oddly, in this case, the defendant asserts that some of these communications were confidential although he has published many of them on his website more than once. Breach of confidence is not, in any event, a crime.

    iv) The various acts of nuisance committed by village drunks and drug addicts on the road to Butchers Stile playing fields. No specific criminal act by anyone in particular has been identified.

    v) The corrupt and dishonest suppression of the defendant's "raft of evidence" which amounts to misconduct in public office, blackmail and perhaps other criminal offences as well.

46. It appears that the defendant has raised all these matters with the police who decided not to investigate them. This decision was taken as long ago as October 2012. The

Local Government Ombudsman and the Information Commissioner have been involved. Neither found any significant infraction. The "raft of evidence" has now been placed before me. It does not prove any crime by anyone, or even raise any serious possibility that anyone has committed any crime. I will deal with the crimes identified above in the order in which they are listed:-

i) This issue was fully ventilated by the defendant many years ago and was a matter between him and his Landlord. The defendant did not seek to prosecute the Landlord then and it is now far too late to do so, even on the assumption that he did commit some criminal act. No reliable evidence of that has been provided.

ii) This allegation was considered by the Police and appears entirely spurious. The defendant says that he believes that these Council employees committed crimes to cover up a conveyancing error made in 1955 by a local authority which has long since ceased to exist. No sufficient evidence is provided in compliance with the direction of the court to suggest that there is any truth in the defendant's allegations in relation to the August 2012 meeting at all.

iii) RIPA 2000 is not a straightforward piece of legislation and I do not propose to burden this judgment with an analysis of the provisions as applied to a telecommunications system which is adapted by its owner so that communications from a particular source are directed to a single point of contact within that organisation whoever they are addressed to. It is clear from the evidence that many of the communications were received by their intended recipient and then forwarded. It is enough for me to say that on the evidence before me it is quite impossible to say that the single point of contact system involved any criminal activity.

iv) This appears to be at the heart of the defendant's claims. He suggests, as I have said above, that in acting as he has he is protecting his own life and the lives of his neighbours (or "former neighbours"). He appears to believe that by establishing the true status of the land in 1955 he will be able to close the road or in some other way prevent anyone from committing crime near the residential properties where he lives, or lived. However, it has been made quite clear to him as long ago as December 2012 that the Council regards this matter as closed, having investigated it. His conduct since that date was no longer capable of furthering the purpose of preventing crime by adjusting the ownership of the land in some way. To use the language of *Hayes v. Willoughby* at paragraph 16, the vendetta against the individuals employed by the Council was irrational. His persistence was obsessive. He was no longer guided by any objective assessment of the evidence of an ability to use the link between (1) a defective title to the land and (2) crimes which may be committed by third parties on the land to frustrate the potential criminals. There was no longer any logical connection between his suggested purpose and his acts.

v) This allegation fails because the defendant does not have a raft of evidence proving the criminal conduct of anyone. He does not have any evidence at all. If he did, he would have produced it to me. I described the Order of Judge Davies in discussing this aspect of the case with the defendant during the

hearing as an order that he "put up or shut up". This was an attempt to explain its effect in layman's terms as he is a self-representing party. The defendant is quite intelligent enough to understand the simple meaning of an order that he sets out his case briefly and files and serves his witness evidence relied upon. In any event, the raft of evidence has already been considered extensively by the Police and has not, therefore, been suppressed criminally or at all by the claimants. They have simply decided that they do not intend to do anything about his complaints as they are entitled to do.

47. Further, and in any event, the nature of the allegations which the defendant makes suggest strongly that there is no rational causal link between his campaign of harassment and his desire to prevent or detect crime. As an example, his allegations against Mr. Finlay are very specific but not supported by any evidence at all. To accuse him of being "bent" and committing acts of torture while he was a policeman many years ago cannot rationally further the prevention or detection of any of the crimes listed above.

48. For these reasons, I conclude on the evidence which the defendant has produced that he has no real prospect of establishing that his campaign of harassment was justified by section 1(3)(a) of the 1997 Act. It appears to me that he has become obsessed and perhaps even exhilarated by his ability to cause distress by repeating long dead allegations over and over again. By accusing each new recipient of corruption if they do not immediately do whatever it is he asks of them, he widens the scope of his campaign to include people who have nothing to do with it. He has long since ceased to apply any rational judgment of any kind in deciding what to do. On the evidence as it stands now, it appears probable to me that he simply wants to cause harm. I consider that it is likely that he is succeeding. Elected politicians and public officials must be subject to proper public scrutiny, but this is not unlimited. They are not helped in discharging their public functions by having to deal with vitriolic abuse addressed directly to them and published widely to the world at large. This is distressing, as the defendant knows: that is why he does it.

49. The restriction on his freedom of speech guaranteed by Article 10 of the Convention and section 12 of the Human Rights Act 1998 is proportionate. Nothing has been "suppressed" by this order. The defendant has already published his allegations as widely and as often as he can. If he has any new allegations which are caught by it, but which should not be, he can apply to vary the order: see paragraph 52 below.

50. I therefore grant the Order in principle. In doing so, I have considered carefully the submissions made by the defendant orally to me at the hearing, and the points listed at paragraph 30 of Mr. Speker's Skeleton Argument where he seeks to fulfil his obligation to the court as counsel appearing against a self-representing party. It appears to me that the defendant will continue his unjustified campaign of harassment unless restrained from doing so.

51. I have made the Order in the form suggested by the claimants except that I have not acceded to the request for an order restraining the defendant from publishing his website TheBloodhound. He must immediately edit that website so that it complies with the other terms of the injunction. If he cannot do this immediately he must take it down until he can. He can, however, continue to use it to publish material which does not breach the injunction.

52. If the defendant should become aware of some material which he wishes to publish and if he considers that he should be permitted to do so, but is prevented by the injunction from doing so, it is open to him to apply to vary the order. That must be done on notice, and must supported by evidence with a Statement of Truth.

53. I have reserved the costs of this application to Trial. The parties have liberty to apply to vary that Order on written notice to the other side and any such application should be supported by a skeleton argument which is also disclosed to the other side.