

Case Nos: HQ15D00085
HQ15D00086

Neutral Citation Number: [2015] EWHC 3154 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/11/2015

Before :

MR JUSTICE WARBY

Between :

CAMILLE SASKIA RICHARDSON	<u>Claimant</u>
- and -	
FACEBOOK	<u>Defendant</u>

And between :

CAMILLE SASKIA RICHARDSON	<u>Claimant</u>
- and -	
GOOGLE (UK) LIMITED	<u>Defendant</u>

The Claimant in person
Caroline Addy (instructed by **White & Case**) for **Facebook UK Ltd**
David Glen (instructed by **Pinsent Masons**) for **Google (UK) Ltd**

Hearing date: 26 October 2015

Judgment

Mr Justice Warby :

INTRODUCTION

1. In these two actions the claimant, Saskia Richardson, seeks damages in respect of the publication in 2013 and 2014 of a Facebook profile (“the Profile”) and a posting on the Google Blogger service (“the Blogpost”). The Profile and the Blogpost each purported to have been created by the claimant, but she complains that each was a fake, created by an impostor. She claims that each was defamatory of her, and infringed her right to respect for her private life under Article 8 of the European Convention on Human Rights (ECHR). The claimant has since changed her name.
2. On 9 January 2015 the claimant issued proceedings against “Facebook” in respect of the Profile (“the Facebook Action”), and against Google UK Limited (“Google UK”) in respect of the Blogpost (“the Google Action”). In each action she claims very substantial pecuniary and non-pecuniary damages for libel, and non-pecuniary damages for breach of Article 8.
3. By orders of 24 and 26 June 2015 Master Kay QC dismissed both actions. He did so on the applications, respectively, of Facebook UK Limited (“FBUK”) and Google UK. The principal ground for dismissing the actions was, in each case, that the claimant had sued or attempted to sue a company that was not responsible for the publication complained of. That is, she had sued the wrong defendant.
4. The claimant now seeks to appeal against each of Master Kay QC’s orders. Before her appeals are heard, however, she wishes certain issues to be referred to the Court of Justice of the European Union (“CJEU”) for a preliminary opinion. In June and July 2015 she issued appropriate applications in each action, as well as an application for anonymity in the proposed references. Although these are separate actions in respect of separate and distinct publications I heard the matters raised by the claimant together because they raise overlapping issues.

THE ISSUES

5. The main issues that arise at this hearing, listed in the order they were raised by the claimant, are whether I should:-
 - (1) order a reference to the CJEU pursuant to CPR 68 (“the Reference Issue”);
 - (2) make orders for anonymity in the reference (“the Anonymity Issue”);
 - (3) direct a stay of the appeals pending the said reference (“the Stay Issue”); or alternatively
 - (4) grant permission to appeal against the Orders of Master Kay QC (“the Permission Issue”) and,
 - (5) if permission is granted, allow the appeals (“the Appeal Issue”).
6. The claimant has also issued an application in each action for permission to adduce fresh evidence on appeal. In reaching my conclusions I have – without opposition

from the respondents - allowed in and taken into account the fresh evidence referred to in these applications, which takes the form of job advertisements placed by FBUK and Google UK, in the period since the hearings before Master Kay QC.

7. The claimant represents herself. She has done so on these applications with clarity, courtesy, and sophistication. Her lack of legal training has inevitably handicapped her to some extent. However, despite having had no legal help she gives all the appearance of having had some. She is also clearly an intelligent woman. She has been able to grapple coherently, even if not always compellingly, with the challenges of the relevant procedural and substantive law. I have also been assisted in dealing with the issues by the written and oral submissions of Counsel for FBUK and Google UK, Miss Addy and Mr Glen, both of whom I invited to address the court.

THE MANCHESTER ACTION

8. Before turning to the issues in the Facebook Action, it is pertinent to refer to this third set of proceedings, the existence of which has emerged only recently. On 17 July 2015 the claimant issued a claim in the Manchester District Registry. The claim related in essence to the content of the Blogpost. It was brought against Google Inc and Google UK, and sought damages for the tort of misuse of private information and remedies under ss 10 and 13 of the Data Protection Act 1998, arising from publication of the same matter as is the subject of the Google Action. On 19 September 2015 permission was granted by District Judge Moss in the District Registry to serve proceedings in the Manchester Action on Google Inc outside the jurisdiction. It is at that stage that Google UK became aware of the proceedings. On 14 October 2015 Notice of Discontinuance was received by Google UK, which has been treated as discontinuance against Google UK and not Google Inc. The action has not yet been served on Google Inc. The action is not before me, but it is relevant by way of context and I shall make some references to it later in this judgment.

THE FACEBOOK ACTION

Background

9. The facts as alleged by the claimant can be shortly summarised.
 - i) She first became aware of the Profile in May 2013. It made a variety of defamatory allegations about her private life which it is not necessary to detail here. It also contained personal information such as her date of birth, National Insurance number, and information about a criminal complaint she had made.
 - ii) The claimant emailed “the Facebook Service” requesting the removal of the Profile. A few days later it was removed. However, it continued to appear in Yahoo! and Google search engine results.
 - iii) On 24 January 2014 the claimant discovered that the same Profile had been republished once more on Facebook and was again accessible via search engines such as those already mentioned. She sent a request to “Facebook” to have the Profile removed again. It took another week for this to happen.

10. Later in 2014 the claimant brought proceedings against the University of Glasgow in the Glasgow Sheriff Court. This was an action over, it appears, unrelated matters. However, in October 2014 she obtained a third party disclosure order in those proceedings against “Facebook Corporate Office”. The order required the production of records relating to the Profile. That order was sent by email to FBUK.
11. By a letter of response dated 22 October 2014 sent to the Sheriff Court and copied to the claimant FBUK’s solicitors, White & Case, disputed that their client had been properly served with the order. They asserted that it could not comply in any event. They stated:

“In any event, Facebook UK’s activities include public relations, consultancy, and communications. Importantly Facebook UK does not operate, host, or control the content available on the Facebook service, including any website available at www.facebook.com. Consequently, Facebook UK cannot comply with any request for user data.

As explained in its terms of use, the Facebook service is operated by Facebook Inc, a corporation organized and existing under the laws of the United States and/or Facebook Ireland Limited, a company organized and existing under the laws of Ireland.”

It has been FBUK’s consistent position in its evidence and submissions in this action that it does not control user content on Facebook social media, which control rests with Facebook Inc (a Delaware corporation), and Facebook Ireland Ltd.

12. On 7 January 2015 the claimant wrote to FBUK reiterating her demand for documents for her Scottish action. On 9 January 2015 she issued the claim form in the Facebook Action. The address given on the claim form was the corporate address of FBUK, and FBUK received the claim form and particulars of claim in the Facebook Action on about 20 January 2015. However, the defendant was named as ‘Facebook’, which is not the name of any corporate entity.
13. On 20 January 2015 White & Case wrote to the claimant in response to her letter of 7 January, reiterating FBUK’s position on its lack of responsibility for Facebook social media. On 6 February 2015 White & Case responded to the claim form. They wrote to the claimant stating that she had sued a non-existent entity, and reasserting in the same or substantially the same terms FBUK’s previously stated position that it “does not operate, host, or control the Facebook service”. The letter threatened to apply to strike out the claim.
14. On 9 February 2015 the claimant responded, dismissing these representations and, pursuant to an application she had issued on 2 February, she obtained judgment in default of defence against ‘Facebook’. In granting her application for that purpose Master Kay QC gave directions. He ordered among other things that:

“within 21 days of this order the Claimant must serve and file an amended Particulars of Claim which complies with the provisions of Practice Directions 53 2.1, 2.2 and 2.3.”

The provisions mentioned here are those which require statements of case to be confined to the information necessary to inform the other party of the case he has to meet, to be concise and proportionate, to identify the publication complained of, and to specify the defamatory meaning(s) complained of.

15. FBUK thereupon made applications dated 10 and 17 February 2015 for orders setting aside the default judgment, extending time for service of a defence, and striking out the Facebook Action pursuant to CPR 3.4(2)(a), (b) and/or (c) or granting summary judgment in favour of FBUK pursuant to CPR 24.2. In support of these applications FBUK filed evidence in the form of two witness statements from its solicitor Mr Benjamin. On 9 March 2015 Master Kay QC gave directions for those applications to be heard by him on 24 June 2015.
16. On 25 April 2015 the claimant emailed FBUK a document entitled Amended Particulars of Claim, in which the defendant's name had been changed to Facebook UK Limited. Master Kay QC had ordered her to amend in the manner identified above, but he had not ordered her or given her permission to change the name of the defendant, or to amend her claim in any respect other than those specified in his order. It would of course have been highly irregular to amend a defendant's name after the entry of judgment, and no such amendment could properly be made without the court's permission, or consent.
17. On 13 May 2015 the claimant issued an application for permission to amend her Particulars of Claim pursuant to CPR 17.1(2)(b). The Amended Particulars advanced a claim against FBUK, but no application was made to substitute FBUK as defendant, or to amend the claim form. The claimant's application for permission to amend was also heard by Master Kay QC on 24 June 2015. The claimant submitted a skeleton argument but did not attend the hearing, which proceeded in her absence. Miss Addy appeared then as she does now as Counsel for FBUK.

The Master's decision

18. In her skeleton argument the claimant had agreed that FBUK's application to set aside the default judgment should be granted, and it was. The Master proceeded to dismiss the claimant's application for permission to amend her Particulars of Claim, and to grant FBUK's application for the dismissal of the action. He explained his decision in written reasons that accompanied his order. These contained, in essence, four grounds. The first three may be described as procedural grounds. The fourth represented a decision on the merits.
19. The first procedural ground was that "The Claim brought must be set aside as a nullity having been brought against a non-existent party." The Master elaborated this ground by reciting key elements of the history that I have set out above, and noting that despite opportunities to amend the deficiency the claimant had never applied to add FBUK to the proceedings. The Master rejected the notion that his order of 9 February 2015 entitled the claimant to amend in this way, and noted that her own application for permission to amend "did not ask for such addition or substitution and the mere fact that the name Facebook UK Ltd was incorporated into the heading [of the Amended Particulars of Claim] is not adequate."

20. The Master identified two further procedural grounds: that the claimant had chosen not to attend the hearing, and that the draft amended Particulars of Claim failed to comply with his Order of 9 February 2015 or CPR PD 53, as the claimant had failed:

“to plead proper particulars of publication, and in particular that any actionable publication has taken place within the limitation period and within the jurisdiction; and

“to plead any proper particulars of her case that Facebook UK Limited was responsible for the purported failure to remove the words complained of from the internet within a reasonable time.”

21. The Master next turned to the merits of the claim. He did so on the assumption that, contrary to his earlier conclusions, the claimant was procedurally entitled to proceed against FBUK. He concluded that the claim must be dismissed for two reasons. The first was that on the claimant’s own case FBUK had an unassailable defence under s 1(1) of the Defamation Act 1996. The second was expressed as follows:

“4. Further the evidence provided by Facebook UK Ltd amply demonstrates that it is not the party responsible for hosting the relevant site or for controlling what is published thereon. That is one of two separate legal entities, namely Facebook Inc of the USA or Facebook Ireland Ltd.

5. In other words the Claimant has commenced the action against the wrong party and a claim against Facebook UK Ltd is bound to fail.

6. She was given early warning that this was the case and has chosen to ignore the warnings.”

22. The form of order made by the Master on the FBUK application was this:

“3. The claim form and particulars of claim are struck out and the claim is dismissed pursuant to CPR 3.4(2)(a), (b) and/or CPR 24.”

The Permission and Appeal Issues

23. It is convenient to deal with these first. That involves taking the issues in the reverse of the order in which they were raised by the claimant (paragraph 6 above). But it seems to me logical to consider first of all whether there appears to be any arguable ground of appeal against the Master’s Order. If not, it is hard to see to what proceedings the claimant might attach her application for a reference to the CJEU, whatever its merits might otherwise be.
24. The claimant’s first and second grounds of appeal can conveniently be taken together. They are that the Master’s dismissal of her application for permission to amend was “incompatible with CPR r 17.3(1)(a)”, and that he was wrong to dismiss the claim on the grounds it had been brought against the wrong party. The claimant suggests that

she complied with the Master's order of 9 February by sending amended particulars by post on 16 February; that she should have been given some leeway on the matter of party identity, having issued against 'Facebook' without realizing the implications of using an abbreviated version of the defendant's name; and that the Master failed to consider properly or at all the exercise of his discretion.

25. I do not consider that there is any arguable merit in any of this. The claimant's argument that the order of 9 February 2015 required or permitted her to change the name of the defendant is clearly misconceived. It did no such thing, as reference to the cited provisions of the Part 53 Practice Direction would have swiftly revealed. The Master was clearly correct to say that there had never been any application for permission to amend the name of the defendant. He was fully entitled, against the factual background to which he referred in his reasons, to conclude that the claimant had unreasonably failed to take opportunities to address this basic point.
26. The claimant's written grounds of appeal do not address the Master's second and third procedural grounds. The effect of her submissions at the hearing was however to maintain that in her draft Amended Particulars of Claim she had in substance complied with the Master's order of 9 February 2015 and the Part 53 PD. Her draft pleading set out verbatim the statements complained of and by doing so stated the meanings complained of, which were essentially the literal meanings of the quoted words. I can see that there is some force in those points. The claimant made no complaint of the Master's reliance on her failure to attend the hearing but I do not see that as a point on which it would have been appropriate to found a decision dismissing her claim.
27. But all that I have said so far is by the way, in my judgment, given that the Master decided to and did address the merits of the proposed claim against FBUK. Unless the claimant can identify some arguable ground of challenge to the Master's conclusions on that score, she can have no real prospect of success on an appeal. It was not suggested, and nor do I consider, that this is a case in which there could be any other compelling reason to grant permission to appeal.
28. Reading the Master's order and reasons together, it is plain that he concluded both that the draft Amended Particulars of Claim failed to disclose any reasonable basis for a claim against FBUK (CPR 3.4(2)(a)), and that on the evidence any such claim had no real prospect of success, and there was no other compelling reason why it should be disposed of at a trial (CPR 24.2(1)(a) and (b)). In my judgment the first conclusion is plainly correct; the claimant has failed to plead a reasonable case of legal responsibility against FBUK. Even if that were wrong it would remain clear on the evidence that the Master's second decision was correct: there is no realistic prospect that a court would conclude at a trial that FBUK was legally responsible for the offending publications. I should deal in turn with the two heads of claim relied on.

The libel claim

29. The starting point is to consider the relevant principles of responsibility for publication. Internet service providers are not liable as publishers at common law if their role in the dissemination of allegedly wrongful material is merely passive and instrumental, and is undertaken without knowledge of the relevant words: *Bunt v*

Tilley [2007] 1 WLR 1243 [23] (Eady J). An ISP which plays more than a merely passive role, and facilitates publication, may be strictly liable as a publisher at common law; that is, it may be liable even at a time when it is unaware of what it is that it is participating in publishing: *Godfrey v Demon Internet Ltd* [2001] QB 201. That, however, is not the case advanced against FBUK in this action. As is clear from the draft Amended Particulars of Claim, to which I shall refer in more detail later, the claim is based upon the continued availability of the material online after complaints and requests for removal made by the claimant. Responsibility is said to attach because of an unreasonable failure to remove and/or unreasonable delay in removing the material.

30. The relevant common law principles are identified in *Byrne v Deane* [1937] 1 KB 818. That decision was of course made long before the advent of the internet, let alone Facebook. However, the golf club notice board that was at the heart of *Byrne v Deane* has been considered an analogue of some internet services. The facts of the case are well known. The Seaford Head Golf Club kept automatic gambling machines on its premises. Someone told the police, and the machines were removed. An unknown individual posted on the club noticeboard a few lines of doggerel verse, suggesting that the one who “gave the game away” should “byrnn in hell and rue the day”. The reference to the claimant was unmistakable.
31. At trial the judge held that the words were defamatory of the claimant, and that the two defendants were both liable for publication as they “had complete control of the walls of the club and could have removed the paper after they had seen it” so that the publication had been made with their approval. On the defendants’ appeal the Court of Appeal by a majority upheld the judge’s conclusion on publication. (The appeal was successful nonetheless because, by a different majority, the court held that the words were not defamatory, given that they imputed that the claimant “had put in motion the proper machinery for suppressing crime”). The basis for the majority’s decision on responsibility for publication is perhaps most clearly set out in the judgment of Greene LJ at 837:

“... the affixing of this notice to the walls of the defendants’ property was in fact a trespass, and they were entitled as proprietors to remove the trespassing article from the walls. It was a matter which fell right outside the rules of the club; it was not authorized and, therefore, it appears to me that they had ample power, notwithstanding the position and rights of the committee, to remove something from their property the presence of which could not be justified under the rules.”
32. The underlying rationale of the decision in *Byrne v Deane*, that the defendants were responsible for publication, was that they were in control of the notice board and had the power to act so as to remove a posting by a third party which was unauthorised and wrongful; by failing to exercise that power in the knowledge of the posting they became liable for its continued publication. This rationale is plainly capable of applying to some of those involved in the provision of internet services and social media platforms.
33. The Defamation Act 1996, s 1(1) mitigates the rigour of the common law principles by providing a defence for those who, by the application of those principles, are

publishers at common law. The statutory defence is available to those who play a secondary or minor role, if they do so in what might be called legitimate ignorance of the contribution they are making to the publication of a defamatory statement. The defendant must show that his case meets three requirements. The first is that he was not the “author, editor or publisher”. These terms are partially defined, and “publisher” means “commercial publisher”. The other requirements are:

“(b) that he took reasonable care in relation to the publication;
and

(c) that he did not know and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.”

34. This, however, is a defence for those who are publishers at common law. ISPs and others that are not responsible for publication according to the common law principles discussed above - that is to say, who are not publishers at common law - have no need to resort to the s 1 defence: *Bunt v Tilley* [37]. Those who are publishers at common law on the strict liability basis referred to in *Godfrey* may be able to satisfy the requirements of s 1 up to the point at which they become aware that they are participating in the publication of a defamatory statement. As *Godfrey* itself shows, however, they will be unable to do so if, after acquiring such knowledge, they are able but fail to put a stop to publication. Likewise, those who become publishers at common law by dint of the *Byrne v Deane* principles will be unable to rely on s 1(1) of the 1996 Act. They may not be publishers within the meaning of s 1(1)(a), but they will by definition be unable to satisfy requirements (b) and (c).
35. Further statutory provision is made by the Defamation Act 2013, which came into effect on 1 January 2014.
 - (1) Section 5 applies “where an action in defamation is brought against the operator of a website in respect of a statement posted on the website”: s 5(1). Section 5(2) provides that “It is a defence for the operator to prove that it was not the operator who posted the statement.” That defence can be defeated in certain circumstances, specified in s 5(3). These provisions are, on their face, applicable to actions brought against “operators” of websites. They provide a defence. Again, such a defence is only required by an “operator” if the operator would at common law be responsible for the publication. A person or entity that would not be responsible according to common law principles has no need of this or any defence.
 - (2) Section 10(1) provides that “A court does not have jurisdiction to hear and determine an action for defamation brought against a person who was not the author, editor or publisher of the statement complained of unless the court is satisfied that it is not reasonably practicable for an action to be brought against the author, editor or publisher.” Section 10(2) provides that for this purpose the terms “author, editor and publisher” have the same meaning as in s 1 of the 1996 Act.
36. In her draft Amended Particulars of Claim the claimant pleads as follows

“5. The defendant [FBUK] is a subsidiary of Facebook Inc, that owns the Facebook Service, which includes the website (www.facebook.com) ...

6. Under the Facebook Service terms of service ... Facebook Ireland Limited is the entity responsible for the processing of the personal data of users located outside the United States and Canada ...”

37. The draft pleading proceeds in paragraphs 7-9 to record the contentions of FBUK that I have outlined above, to the effect that it “does not have control over the servers that host the Facebook Service nor does it manage them”, or access to user data, and that it “could not be liable in the manner alleged by the claimant”. After setting out the claimant’s case as to the appearance of the Profile on the Facebook Service in 2013 and 2014 the draft pleading refers at 16 and 18 to emails which the claimant sent to “the Facebook Service” and “Facebook”, requesting the removal of the Profile. At paragraph 20 the pleading “accepts that [FBUK] is not the publisher of the posting ... within the meaning of s 1(2) and 1(3) of the Defamation Act 2013 and can thus avail themselves of any liability by virtue of section 1(1)(a) of the Defamation Act 1996.” It goes on however to assert that “the defendant received multiple notifications from the claimant” and that the defamatory material was not removed in reasonable time. The conclusion asserted at paragraph 22 is that: “The defendant is thus liable for libel by virtue of sections 1(1)(b) and 1(1)(c) of the Defamation Act 1996.” Paragraph 23 goes on to say: “It is denied that the defendant cannot be held liable for any wrongdoing on the basis that it neither owns nor operates the Facebook Service.”
38. This is confused, and in my judgment the Master was plainly right to hold that it fails to disclose a reasonable basis for a claim in libel. In a defamation claim the onus is on a claimant to plead and prove that the defendant is responsible for the publication complained of. That must involve a clear and coherent statement of the factual basis on which the defendant’s legal responsibility is alleged to arise, sufficient to enable the defendant (and, I would add, the court) to understand the basis on which the defendant is said to be responsible. This draft statement of case fails to assert any such factual case.
39. The pleading acknowledges on its face that Facebook Inc “owns” the Facebook Service and the associated website. It appears to adopt the statement in the terms of service that Facebook Ireland Ltd is, according to the terms of service, responsible for processing data outside the US and Canada. So far as FBUK is concerned, there is an allegation that it was notified of the offending postings. However, the pleading wholly fails to advance against FBUK any clear or coherent case that it has or had any form of control over any aspect of the content of the Facebook Service, let alone the Profile. The allegation that FBUK was notified of the claimant’s complaint goes beyond what is alleged earlier in the pleading, where notification is said to have been given to “the Facebook Service” and “Facebook”. It also appears to be factually untenable. But even if it were true it could not, in the absence of an allegation that FBUK had the power or ability to control content, form a proper basis for the attribution of responsibility for publication on the basis of *Byrne v Deane* principles.
40. The double negative in paragraph 23 of the draft pleading merely adds confusion. The claimant’s pleaded case cannot be shored up by the rest of what is said in paragraphs

23 to 26 of the draft. In her Skeleton Argument before the Master Miss Addy neatly and aptly characterised this part of the claimant's pleaded case. Having cited the claimant's acknowledgment in paragraph 6 of the draft pleading of the role of Facebook Ireland Ltd she said:

"She nevertheless takes issue with [FBUK's] case on responsibility for publication. She does so on the tendentious basis that (i) [FBUK's] purpose is Communications and Public Policy ... (ii) removing content falls within this remit ... and (iii) the Head of the Europe, Middle East and Africa Communications and Public Policy is 'stationed' in London, indicating that content responsibility is also located here."

Miss Addy rightly describes this as "illogical assertion". I agree. The reasoning is clearly unsustainable.

41. It follows from what I have said so far that what is pleaded in the draft Amended Particulars of Claim about s 1(1) of the 1996 Act rests on a false premise, for which the draft pleading states no basis, namely that FBUK is responsible as a publisher at common law. I can readily understand why the Master's reasoning addressed s 1. The claimant's own acknowledgement that the first of the three requirements of the s 1(1) defence was satisfied was an invitation to do so. The shorter and conclusive point, however, is that in the absence of a pleaded case sufficient to sustain a case of responsibility at common law for any part of the publication complained of, FBUK has no need of a defence of any kind. The claimant has failed to present it with a case to answer.
42. The same point disposes of those aspects of the claimant's argument before the Master, repeated in her grounds of appeal, that referred to s 5 of the Defamation Act 2013. That section has no role to play in a case such as this, where the defendant plainly does not bear responsibility for publication at common law.
43. In my judgment it is also clear on the evidence that the claimant has no *Byrne v Deane* case with any prospect of success. Mr Benjamin's first witness statement verified what had been said by White & Case in correspondence, stating among other things, the following:

"9. The claim is fundamentally defective because Facebook UK Limited has no involvement in or responsibility for the Facebook Service as explained below, and could not be held liable for the alleged wrongdoing even if (which is denied) there were any merit to the claim.

10. I am informed that the Facebook Service is operated by Facebook Inc, a corporation organized and existing under the laws of the United States, and Facebook Ireland Limited, a company organized and existing under the laws of the Republic of Ireland. As explained in its terms of service, users outside of the United States and Canada contract with Facebook Ireland Limited ...

...

12. Section 18(1) of the [terms of service] states that Facebook Ireland Limited is the entity responsible for the processing of personal data of users located outside the United States and Canada. Furthermore the last paragraph of the Data Use Policy (see page 5 of Exhibit JMB 1) states again that for users outside the United States and Canada, Facebook Ireland Limited is the data controller responsible for the processing of personal data

13. Facebook UK Limited, however, is a separate and distinct entity. Facebook UK Limited's sole corporate purpose is public relations, consultancy, and communications in the United Kingdom.

14. Facebook UK Limited does not process personal data of users of the Facebook Service. Furthermore, Facebook UK Limited does not have control over the servers that host the Facebook Service, nor does it manage them. Facebook UK Limited does not access user data within the course of its operations or functions, and could not be liable in the manner apparently alleged by the Claimant in these proceedings.

15. Indeed, English Courts have previously found that Facebook UK Limited does not control or operate the Facebook Service (for instance in *R v Blandford*, Reading Crown Court, 13 April 2012) as well as, I understand a decision by the French Courts (*Giraud v. Facebook UK Ltd*, France Appeals Court of Paris, 4 January 2011)."

44. As I observed in the course of argument, the fact that other courts have made such findings in other cases does not dictate my own conclusion, which must be based on the evidence before me. However, the evidence in paragraphs 12 and 14 of Mr Benjamin's statement appears clear.
45. The claimant's response has two strands. First, she points to evidential material that she says casts doubt on FBUK's position. This consists of copy job advertisements issued by FBUK. Some of these were before the Master. The claimant complains that the Master ignored this material, and points to the further job adverts contained in her fresh evidence before me. The adverts are said to indicate that Mr Benjamin's account of FBUK's functions is inaccurate, and that the company in fact has or may have a role in controlling Facebook content. The second strand of the claimant's case is that the court should be wary of granting summary judgment when disclosure might undermine the position adopted by the applicant. In that connection she has referred me to *Derkson v Pillar* [2004] EWHC 2969 (Ch) where Laddie J noted at [33] the need for the court to be aware of the risk that it might be misled by one-sided evidence.
46. The context in *Derkson* was quite different: it was an application for a freezing order. Nevertheless, the point has general resonance. I remind myself that the test for

granting summary judgment is absence of reality. It is not enough that success appears improbable, or that the court views the prospects of success as slender. The court should only grant summary judgment if persuaded that it is fanciful to suppose the claim would succeed. In reaching a view on that issue the court must keep in mind that disclosure might cast a different light on things. With all these warnings in mind, my conclusion is nonetheless that the Master was clearly right. It is far too narrow a reading of the Master's judgment in my view to suggest that he ignored the job adverts on which the claimant was then relying. However, the claimant has drawn my attention to the passages in those adverts on which she places particular reliance, as well as the additional adverts she has introduced by way of fresh evidence. I do not regard these as casting any doubt on the veracity or accuracy of Mr Benjamin's evidence.

47. The two FBUK job ads to which the claimant pointed me in the evidence before the Master were for a Product Security Engineer and a Software Engineer, Products. The additional adverts relied on were for the same or similar jobs and for a Product Designer. These adverts were said to demonstrate that FBUK does undertake some kind of online activity, and that the engineers were not being recruited just to provide consultancy. I can see that there may be some room for questioning whether Mr Benjamin's paragraph 13 is wholly accurate. The question is however a rather more specific one. It is whether this evidence indicates that, despite what Mr Benjamin says, the claimant has a real prospect of demonstrating that FBUK had at the relevant times a power to control user content on the Profile, analogous to the power which the defendants in *Byrne v Deane* were held to have over the notice board in that case. The job advertisements do not in my judgment suggest any such thing. What they do show on their face is that FBUK recruits and employs individuals who contribute to the design of software products, and to giving guidance on security. That, however, says nothing about whether FBUK has any ability to control user content on Facebook. The evidence of FBUK is that this is controlled by the US and Irish companies. That is what the terms of service state, and the claimant's own draft pleading appears to adopt this. I am not persuaded that there is any arguable basis for inferring from the job adverts that the terms of service, and Mr Benjamin's evidence about the matter, mis-state the true position.
48. In reaching my conclusion on this issue I have approached it on the basis that the burden lies on a claimant to establish that the defendant bears responsibility for publication. That is in accordance with principle. As a matter of fact, however, FBUK has persuaded me that if there were a trial it would inevitably demonstrate that it is not responsible. There is absolutely no reason for this issue to be resolved at what would be an inordinately expensive trial. Far from it. This has already been very expensive litigation. It is hard to see why the claimant chose to start a claim against FBUK. Other than seeking to protect her costs position it is hard to see what good reason she has had for continuing with such a claim. She has at all times been aware of other identified corporate entities which evidently accept responsibility for user content on the Facebook Service (though they may have other answers to a claim, if one were made). The Manchester Action indicates that the claimant is able to navigate the procedures for bringing claims against foreign corporate defendants. The overriding objective demands that this claim should be brought to an end now.

Limitation

49. At the hearing before me the claimant argued that the Master wrongly based his decision to dismiss the libel claim on limitation grounds. It is true that a limitation issue was raised by FBUK in its Skeleton Argument before the Master. It was based upon the “single publication rule” provided for by s 8 of the Defamation Act 2013. That rule, in summary, is that where a person publishes and then republishes substantially the same statement, any cause of action is to be treated for limitation purposes as accruing at the date of the first publication. The broad effect of s 8, in conjunction with the one year limitation period provided for by s 4A of the Limitation Act 1980, is that a claim in respect of a defamatory statement is barred once a year has passed since its first publication by the defendant.
50. Here, FBUK’s argument was that because the January 2014 publication was, on the claimant’s own case, the same as the publication of May 2013 the limitation period expired in May 2014, some 8 months before the issue of the claim form. The claimant submitted that this point was bad. I found her reasoning on the point hard to follow. As Miss Addy acknowledged in her argument before the Master, there is room for debate about whether the new rule applies to a case where the first publication took place before the 2013 Act came into force. However, the limitation point did not form any part of the Master’s reasoning and I therefore say no more about it.

The Article 8 claim

51. The claimant complains that the Master’s written reasons failed to address her claim under Article 8. I agree that this claim is separate and distinct from the defamation claim, and requires separate consideration. I do not accept, however, that it failed to receive such consideration from the Master. It is true that he did not expressly refer to this aspect of the claim, but it is separately pleaded in the draft Amended Particulars of Claim and was dealt with distinctly in the parties’ Skeleton Arguments. The argument for FBUK was that “since [FBUK] was not the publisher/tortfeasor it cannot have any separate liability to the claimant pursuant to Article 8 ECHR.” The Master must in my judgment be taken to have disposed of this claim on the basis that since the claimant has no tenable case that FBUK bore responsibility for publication the Article 8 claim is doomed.
52. That, on the evidence and arguments before the Master, seems to me to be clearly right. Even if it is assumed that a direct claim under Article 8 could in principle be brought against FBUK, no such claim could possibly succeed unless responsibility for the publication of the Profile at the material times can somehow be brought home to FBUK. The only basis on which such responsibility was alleged in the claimant’s draft amended pleading and Skeleton Argument before the Master was culpable failure to remove the posting, and her case in that respect was rightly found wanting by the Master both as a matter of pleading and on the evidence.
53. This is subject to the claimant’s arguments based on the decision of the CJEU in *Google Spain SL v Agencia Española de Protección de Datos (AEPD)* [2014] QB 1022 (“*Google Spain*”), to which I turn next.

Google Spain

54. In Grounds 3 and 5 of her Grounds of Appeal the claimant advances a fresh basis for alleging that FBUK can, at least arguably, be held responsible for continued

publication of the Profile, and accordingly liable in defamation and under the Human Rights Act. The argument is that this can be achieved by the application of *Google Spain*. The claimant requires permission to pursue this point, as it was not raised before the Master, but no objection was taken on that ground, and it is a point of law.

55. At the heart of this argument is the contention that *Google Spain* shows that FBUK should or may be held responsible for the publication of the Profile, on the basis that Facebook Inc and its subsidiaries are to be treated as a single economic unit. The argument is in my judgment entirely misconceived, for several reasons. Firstly, *Google Spain* is a decision on the scope and application of the Data Protection Directive, 95/46/EC. The decision might have a bearing on the approach that should be taken to a domestic claim for breach of data protection law, which is a body of law that ought to reflect the Directive. But the decision has nothing to say about the domestic law of responsibility for publication in defamation. That is a matter determined by the common law and the Defamation Acts. Second, *Google Spain* has no bearing on how English law should approach a contention that a given defendant is liable for breach of Article 8. That also turns on domestic law, and in particular the scope and application of the Human Rights Act 1998, which has no interaction with the law of data protection.

56. There are two other points. The first is that the claimant has misunderstood the relevant aspect of the *Google Spain* decision. The CJEU did not hold that subsidiary and parent companies are to be treated as a single unit from the perspective of data protection law, still less that a European subsidiary is or may be liable in respect of data processing activities undertaken in Europe by its US parent, as the claimant appears to believe. In *Google Spain* the relevant issue before the court related to the interpretation and application of Article 4(1) of the Directive. This provision concerns the territorial applicability of data protection law. It provides, under the heading “National law applicable”, as follows:

“Each member state shall apply the national provisions it adopts pursuant to this Directive to the processing of personal data where: (a) the processing is carried out in the context of the activities of an establishment of the controller on the territory of the Member State;... “

57. The court held at [60] that Art 4(1)(a)

“... is to be interpreted as meaning that processing of personal data is carried out in the context of the activities of an establishment of the controller on the territory of a member state, within the meaning of that provision, when the operator of a search engine sets up in a member state a branch or subsidiary which is intended to promote and sell advertising space offered by that engine and which orientates its activity towards the inhabitants of that member state.”

58. Accordingly, national data protection laws, adopted pursuant to the Directive, were applicable to data processing undertaken by the US company, Google Inc, in providing the Google Search facility within an EU territory - in this case, Spain. Those were activities carried out “in the context of the activities of an establishment

of the controller on the territory of the member state” within the meaning of Article 4(1). The “establishment” referred to was Google Spain. However, this was not a decision that Google Spain itself was a data controller, subject to the Directive. On the contrary, the “controller” for this purpose was Google Inc. So far as Google Spain is concerned, the Spanish court had held that it was not a data controller. As the CJEU noted at [46]: “... the referring court states that Google Search is operated and managed by Google Inc and that it has not been established that Google Spain carries out in Spain an activity directly linked to the indexing or storage of information or data contained on third parties' websites. ...” The “activities” undertaken by Google Spain that served in the opinion of the CJEU to make Google Inc’s operation of Google Search subject to the provisions of Spanish data protection law were the promotion and sale of “advertising space offered by the search engine which serves to make the service offered by that engine profitable”: see [55]-[56].

59. It is therefore nothing to the point for the claimant to draw an analogy between the role of Google Spain within the Google corporate structure and that of FBUK within Facebook. At best, such an analogy would lead to the conclusion that data processing activities of Facebook Inc or, more likely, Facebook Ireland Ltd undertaken in England and Wales are carried out “in the context of” advertising and other activities by FBUK in this jurisdiction, so that they are subject to English data protection law. That would lend no support to the claimant’s case against FBUK.

Facebook as a ‘hybrid public authority’

60. The claimant complains that the Master failed to address the question of whether FBUK might be liable for infringement of the claimant’s Article 8 rights. For the reasons already given, I do not consider the Master needed to address this issue: the claim manifestly failed in any event for want of a tenable case of responsibility for publication. That conclusion is unaffected by the claimant’s arguments based on *Google Spain*, which has no bearing on the domestic law of responsibility for publication in defamation or under Article 8. The claimant’s contention that FBUK might be considered directly liable under Article 8 is in any event hopeless.
61. This is a new argument, not advanced before the Master, but I have addressed it on the present applications nonetheless. The submission is that FBUK might be considered a “hybrid public authority”. The claimant’s arguments confuse the provisions of national law with those of the Convention, introducing non-statutory wording at the same time. This is illustrated by a passage from her Written Submissions before me: “Article 8 of ECHR makes clear that direct challenges under this Act may only be made to the actions of a [hybrid] public authority or core public authority”. The issue is of course whether FBUK can be sued pursuant to ss 6 and 7 of the Human Rights Act 1998, and the answer is that it plainly cannot.
62. The framework can be shortly outlined. By s 6(1) of the 1998 Act it is unlawful for a “public authority” to act in a way which is incompatible with a Convention right, such as Article 8. Section 7(1) of the Act provides that a person who claims that a “public authority” has acted incompatibly with a Convention right may bring proceedings “against the authority”. There is no exhaustive definition of the term “public authority”, but the terms “core” and “hybrid” public authority have been coined to identify two categories of authority. The first is a person or body which carries out only public functions. The term “hybrid public authority” is used to describe a person

or body which fits the description in s 6(3)(b) of the 1998 Act, which provides that “In this section ‘public authority’ includes - ... (b) any person certain of whose functions are functions of a public nature ...” The proper interpretation and application of that inclusive definition have been considered on a number of occasions, in Parliament and in the courts.

63. The claimant submits that the application of this definition is not an easy matter, and that it is not fanciful to argue that FBUK might be held to fall within it. She argues that FBUK may be said to be a public authority “on the basis that it provides a public service and acts in the public interest ... [it] can be said to carry out functions of a public nature on the basis that [it] processes user data and makes it available to members of the public on the internet ...” It is of course correct to say that the mere fact that an organisation is a commercial enterprise does not prevent it qualifying as a public authority within the scope of s 6(3)(b). But by the criteria advocated by the claimant, almost any commercial enterprise providing valuable services to the public at large would qualify as a “public authority”. There is no difficulty in rejecting these arguments as clearly absurd. Facebook does not act “in the public interest” in the relevant sense, nor can it conceivably be described as performing “functions of a public nature”. It is enough to refer to the speech of Baroness Hale in *YL v Birmingham City Council* [2007] UKHL 27, [2008] 1 AC 95 at [61]-[66], from which I select these key passages

“ *Functions of a public nature*

61. This is a domestic law concept which has no parallel in the Convention jurisprudence
62. The contrast is drawn in the Act between 'public' functions and 'private' acts. This cannot refer to whether or not the acts are performed in public or in private. ... There are many acts performed in public (such as singing in the street) which have nothing to do with public functions. ... The contrast is between what is 'public' in the sense of being done for or by or on behalf of the people as a whole and what is 'private' in the sense of being done for one's own purposes.
63. Hence it is common ground that 'functions of a public nature' include the exercise of the regulatory or coercive powers of the state. ...
-
65. ... While there cannot be a single litmus test of what is a function of a public nature, the underlying rationale must be that it is a task for which the public, in the shape of the state, have assumed responsibility, at public expense if need be, and in the public interest.
66. One important factor is whether the state has assumed responsibility for seeing that this task is performed. ...”

The Reference Issue

64. The nature and purposes of the CJEU's jurisdiction to give preliminary rulings, and the role of the court in doing so, are conveniently summarised in the court's *Recommendations to national courts and tribunals in relation to the initiation of preliminary ruling proceedings* (2012/C 338/01):

“I - GENERAL PROVISIONS

The Court's jurisdiction in preliminary rulings

1. The reference for a preliminary ruling is a fundamental mechanism of European Union law aimed at enabling the courts and tribunals of the Member States to ensure uniform interpretation and application of that law within the European Union.

...

The role of the Court of Justice in the preliminary ruling procedure

7. As stated above, under the preliminary ruling procedure the Court's role is to give an interpretation of European Union law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings. That is the task of the national court or tribunal and it is not, therefore, for the Court either to decide issues of fact raised in the main proceedings or to resolve any differences of opinion on the interpretation or application of rules of national law.”

65. The domestic rules providing for references to the CJEU are contained in CPR 68. The claimant has two applications under that Part. The first seeks a request to the CJEU for “a preliminary ruling on the authoritative interpretation on Directive 95/46/EC and on the CJEU decision in [*Google Spain*]”. I reject this application on the basis that the Facebook Action does not give rise to any issue requiring the interpretation or application of the Directive or *Google Spain*. The case involves the interpretation and application of rules of national law. That, as para 7 of the *Recommendations* makes clear, is not a matter for the European Court. Furthermore, even if the case did require the interpretation or application of the Directive or the *Google Spain* decision, it would be quite unnecessary to invoke the preliminary ruling procedure. The position is quite clear, and it is not arguable that the need to ensure the uniform interpretation and application of European Law requires a ruling by the CJEU.
66. The claimant's second application is for a request “for the EU Court to determine whether the Defendant can be said to be a hybrid public authority pursuant to Article 8 of ECHR and accordingly whether a direct challenge can be made to the actions of the Defendant under Article 8 of ECHR.” This is plainly misconceived in principle,

on a number of counts. First, the question of whether FBUK can be said to be a “hybrid public authority” turns on the interpretation of the Human Rights Act 1998 and not any provision of the ECHR. Secondly, the interpretation of the ECHR is not a matter for the CJEU, but for the domestic courts, subject to the jurisdiction of the European Court of Human Rights. Moreover even if, hypothetically, the CJEU had competence in this area a reference application would inevitably be refused on the grounds that there is no room for any doubt about the issue.

The Anonymity and Stay Issues

67. Given my conclusion on the Permission, Appeal and Reference Issues these issues do not arise.

The Google Action

68. I can deal with this action more shortly, as it represents in many ways a simplified version of the Facebook Action.

Background

69. The claim issued on 9 January 2015 was against an extant corporate entity in the form of Google UK. The claim form and particulars of claim were framed in terms similar to those in the Facebook Action. The Blogpost was said to have been in existence “as early as October 2013” and to have come to the claimant’s attention in January 2014. It was alleged that on 24 January 2014 the claimant “requested that Google remove the Blogpost.” The claimant alleges that she was told that it had been removed, but that “a few days after that the claimant noticed that the Blogpost was still available online” and that “it took a further three weeks for the Blogpost to be removed.” The claim sought damages for libel and for breach of Article 8.
70. On 26 January 2015 Google UK’s solicitors, Pinsent Masons, wrote to the claimant asserting that she had brought proceedings against the wrong entity, inviting her to withdraw the claim, and threatening to apply to strike out if she did not. The claimant responded the same day stating that she would not be discontinuing under any circumstances. On 9 February 2015 Google UK issued an application to strike out the claim or for summary judgment on the grounds that “the defendant does not operate or control Blogger and is not the publisher of any content on the website and accordingly there is no serious issue to be tried in relation to the claim against it. The Claimant has sued the wrong company and has refused to withdraw her claim”.
71. The application was supported by the first witness statement of David Christopher Barker of Google UK’s solicitors, Pinsent Masons. He stated that “Blogger is operated and controlled by Google Inc., a company incorporated in Delaware in the United States, with its principal place of business in Mountain View, California”, and that this was explained in the Google Terms of Service, to the detail of which he referred. He described the services provided by Google UK and went on

“Google UK does not provide any online services. It does not own Blogger and does not control the way in which Blogger works ... Google UK does not specify or control how data is processed on Blogger or what material is made available.”

72. On 25 March 2015 the claimant issued an application for permission to amend the Particulars of Claim. The draft Amended Particulars of Claim followed a pattern very similar to that of the corresponding document in the Facebook Action. Thus, the pleading accepted that the defendant was not the publisher of the material complained of and positively asserted that it could thus avail itself of s 1(1) of the 1996 Act. It alleged however that s 1(1)(b) and (c) could not be satisfied. After receiving multiple notifications from the claimant “the defamatory material was not removed in reasonable time and the defendant has contributed to the publication of a defamatory statement.” The pleading went on at paragraph 28 to say that: “It is denied that the defendant cannot be held liable for any wrong-doing on the basis that it neither owns nor operates Blogger.” In paragraphs 28 to 30 an argument was advanced on lines indistinguishable from the one that I have described at [40] above.

The Order of Master Kay QC

73. The claimant’s amendment application was heard by Master Kay QC on 26 June 2015, together with Google UK’s application to strike out or for summary judgment. After a hearing lasting 3 ½ hours the Master dismissed the amendment application and granted Google UK’s applications under CPR 3.4(2)(a) and summary judgment under CPR 24.2(a)(i) and (b). He refused permission to appeal. The formal order setting out these decisions contained written reasons, which it is convenient to set out in full (the emphasis is mine).

“1. This is a claim in which Miss Richardson seeks to establish liability for defamation upon Google UK Ltd which is the wholly owned subsidiary of Google Inc, a company established under the laws of Delaware and operated in California.

2. She has also sought to bring her claim under the Human Rights Act. In my view the Human Rights Act is irrelevant for present purposes and does not give rise to a cause of action against the Defendant.

3. The Draft Amended Particulars of Claim provided by the Claimant fail to show that the Claimant’s case against Google UK Ltd has a real prospect of success:

a. Section 1(1)(a) of the Defamation Act 1996 provides that a person has a defence if he shows that “*he was not the author, editor or publisher of the statement complained of*”.

b. The evidence available demonstrates that Google UK Ltd does not own or control the site upon which the offending material was posted. Therefore it is not the publisher.

c. That conclusion follows the decisions in *Byrne v Deane* [1937] 1 KB 818, see p. 837, *Tamiz v Google Inc* [2012] EWHC 499 (QB), see p. 597-598, para.4 and [2013] 1 WLR 2151 (C.A) and *Metropolitan International Schools v Designtechnica Corp* [2011] 1 WLR 1743.

d. **The evidence provided by Google UK Ltd amply demonstrates that it is not the party responsible for hosting the relevant site or for controlling what is published thereon. The site is under the control of Google Inc of the USA.**

e. Although the Claimant seeks to rely on the CJEU decision in [*Google Spain*], in my view that decision does not assist her. It can be distinguished because it is a case about data protection control rather than defamation and it is far from certain that it would be followed in this country in a defamation context. However even if it was followed the decision merely established the responsibility of a parent company for its operations within Europe but does not establish that its subsidiaries are to be held liable for those matters which fall within the responsibility of the parent company.

f. Insofar as the Claimant has argued that Google UK Ltd may still be liable, because it did not take reasonable care in the publication or because it had received notification and did not respond in a reasonable time, such arguments cannot succeed against Google UK Ltd. This is because those considerations can only apply to the actual publishers. On any construction section 1(1)(a) stands alone and it follows that **if a party is not a publisher it cannot be held liable in any circumstances.**

g. In any event it is apparent that the notification given by Miss Richardson in January and March 2014 was to Google Inc not to Google UK Ltd.

4. In my judgment, **the Claimant has commenced the action against the wrong party and a claim against Google UK Ltd must fail.**

5. The Claimant was given a warning that this was the case and has chosen to ignore the warnings.

6. With respect to the application to amend, permission should only be granted if the court holds that the amended statement of case contains material which has a real prospect of success, see

the White Book at 17.3.6. Since I take the view that a claim against Google UK Ltd has no prospect of success it is not appropriate to allow permission to amend the statement of case.”

The Permission and Appeal Issues

74. There are in substance four Grounds of Appeal. They raise points very similar to points raised in the Facebook Action, and dealt with above. The first ground is that the Master’s decision is at variance with the Data Protection Directive and *Google Spain*. It is said that the Master was wrong to rule “that Google UK Limited cannot be held liable for the operations of the parent company (Google Inc).” The claimant argues that it is necessary to approach the matter on this basis in order to ensure “effective and complete protection of the fundamental rights and freedoms of natural persons”. This ground of appeal is unarguable. Again, the claimant ignores the fact that the claims in the Google Action are claims in defamation and under Article 8, and not data protection claims – a point underscored by the nature of the claims pleaded in the Manchester Action. The Directive has no bearing on the law of responsibility for publication in these different torts. In any event, the argument is based on a misunderstanding of the *Google Spain* decision (see 56 to 58 above).
75. The second ground of appeal is that the Master’s decision is “incompatible with the appellant’s human rights” under Articles 8 and 13 of the Convention. It is said that the *Google Spain* decision justifies a claim against Google UK under the Human Rights Act because “within the context of the activities of Google UK Limited, the respondent can be said to carry out functions of a public nature.” It is however perfectly plain that this *cannot* be said of Google UK’s activities, on any view of what those activities are. For this purpose there is no relevant distinction between the position of Google and that of Facebook. Each is providing a valued commercial service, for commercial motives. In no sense is either performing a public function within the meaning of s 6 of the 1998 Act. The Master was right. There is clearly no basis for a claim under the Human Rights Act against Google UK. It is a misconception to think that the *Google Spain* decision has any bearing on this issue, for the reasons given in paragraph 3(e) of the Master’s decision, and in this judgment above.
76. The third ground of appeal is that the Master “wrongly relied on section 1(1) of the Defamation Act 2013 [sic] and should have exercised a discretion conferred by section 10(1) of the Defamation Act.” The claimant adds that the Master “Failed to consider that pursuant to section 5(3)(a),(b) and (c) the respondent has no defence and acted unreasonably with regards from notification of the defamatory and confidential material published on Google Search [etc.]”. As I have indicated above, all of this is based on a false premise. A claimant seeking remedies for defamation must establish that the defendant was responsible for publication. The validity of the defences and jurisdictional limits provided for by s 1 of the 1996 Act and ss 5 and 10 of the 2013 Act are only material if that can be done. Applying the relevant legal principles to the facts established by the evidence, it cannot be done. Google UK plainly was not the publisher of the material complained of. The Google job advertisements relied on by the claimant do no more to undermine the defendant’s evidence in this case than did the job ads in the Facebook Action. The conclusions of the Master in paragraphs 3(b), (d) and (f) and paragraph 4 of his reasons that I have emphasised above are

unassailable. The provisions of the 1996 and 2013 Acts are thus immaterial, (and it is no doubt for this reason that they were not relied on by Google UK, or indeed by Facebook). In addition, it follows from the unchallenged finding at paragraph 3(g) of the Master's reasons, that the complaint notification was made to Google Inc and not Google UK, that any *Byrne v Deane* case must fail.

77. Finally, the claimant contends that her claims raised complex issues which were inadequately addressed by the Master, who should not have concluded that CPR 3.4(2)(a) and 24.2(a)(i) were applicable. I wholly disagree. The key issue raised was a relatively straightforward one, and the answer was clear at an early stage. The Master gave careful attention to the issues and reached conclusions which I consider to be unappealable. The matter has been needlessly complicated by the claimant's approach before the Master and, in particular, on these applications. The Permission Issue is therefore decided against the claimant.

The Reference Issue

78. The claimant has three applications, which are not materially different from those made in the Facebook Action. I dismiss these for the same reasons. Accordingly, the Stay and Anonymity Issues fall away.

THE MANCHESTER ACTION again

79. The Manchester Action first came to the attention of Google in late September 2015, when both Google Inc and Google UK received copies of the order of District Judge Moss. The action was brought to this court's attention by a third witness statement of Mr Barker, dated 22 October 2014. In the meantime, on 29 August 2015, the claimant had put in Supplemental Written Submissions in the Google Action, dealing with the issues that I have addressed above. At paragraph 11 of those submissions she stated that "... the Claimant has not raised a claim against the Defendant under the DPA 1998 and has no intention of doing so."
80. Mr Glen identified several areas of concern. One related to the proportionality and propriety of the claimant's conduct in issuing separate and parallel proceedings against his client and Google Inc over the same, or substantially the same, matters as are complained of in the Google Action, whilst relying on different causes of action. As he pointed out, that is conduct liable to drive up the already substantial costs. A second concern related to the extent of the claimant's disclosure to the court on her without notice application for permission to serve Google Inc outside the jurisdiction. Thirdly, Mr Glen suggested that paragraph 11 of the claimant's supplemental submissions was simply untrue. At the time she put in those submissions she had "raised a claim against [Google UK] under the DPA 1998..."
81. The claimant has responded to this third concern, stating that she did not lie in paragraph 11 of her Supplemental Submissions. She stated that when that document was created she had already filed a notice of discontinuance with the Manchester District Registry. The notice of discontinuance took time to reach Google UK's solicitors, she said, because the court was on vacation at the time the notice was filed.
82. It is not necessary for me to reach any conclusions about any of these matters, and it would not be appropriate. Time at the hearing was tight, Google Inc has not been

represented on these applications, and nobody has applied for any order in relation to the Manchester Action. That is not surprising given the limbo status of the action, and the fact that what the claimant said to the Manchester court when seeking permission to serve out is not yet known. At this stage I merely record these matters in case that is of assistance to the parties involved or to the court at some future stage, and I add that there may be an argument for transferring the Manchester Action to this court if and when the proceedings are served on Google Inc., given the experience that this court has gained of the relevant issues of fact and law.