Case No: HQ18M00500

Neutral Citation Number: [2018] EWHC 241 (QB)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 February 2018

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Shakil Khan **(formerly JMO)**	**Claimant**
- and -	
Tanweer Khan **(formerly KTA)**	**Defendant**

- -
- -

Hugh Tomlinson QC and **Aidan Wills** (instructed by **Sheridans**) for the **Claimant**
The Defendant appeared in person and represented himself

Hearing date: 9 February 2018

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Judgment

The Honourable Mr Justice Nicklin :

1. This is a claim for harassment. It is an unfortunate family dispute; the Claimant and Defendant are brothers. In summary, the Claimant complains that he is being harassed by the Defendant's sending of a large number of emails to him and others; some 70 emails sent over a period of around 9 months. The Claimant's solicitor, in a witness statement, has described the alleged campaign against the Claimant as "*the sending of abusive, threatening and defamatory communications to [the Claimant] …, to his friends and business associates and third parties*".

2. The Claim Form was issued on 7 February 2018. It contains only a claim for breach of the Protection from Harassment Act 1997. Particulars of Claim have not yet been served. At a hearing in private, he was granted permission by Master Yoxall to anonymise both himself and the Defendant. Also, on 7 February 2018, the Claimant issued an Application Notice seeking an interim injunction to restrain the Defendant from further acts of harassment. The injunction application was supported by the Claimant's witness statement; the material parts of which were set out in a confidential exhibit. Notice of the Application was given to the Defendant. The injunction application came before me, as Interim Applications Judge, on 9 February 2018. The Defendant attended the hearing and represented himself. I reserved judgment.

Hearing in private

3. The Claimant applied at the commencement of the hearing for an order that the hearing be in private. I heard submissions and granted the application but indicated that I would review the position after judgment was given. The principal basis on which the application was granted was that, because of the earlier order anonymising the parties, a hearing in open court (and the evidence and submissions that it was obvious would be made) would have destroyed the anonymity. The parties' identities would have been fairly obvious to well-informed observers (and others would have been able to discover their names with little difficulty). As can be seen from the title of this judgment, I have discharged the anonymity order. My reasons for doing so are set out below (paragraphs 81 to 96 below). This judgment is given in open court.

The parties and other central individuals

4. In his witness statement, the Claimant describes himself, simply, as an entrepreneur and investor, specialising in tech start-ups. He says that he is an investor in over 20 companies, including Spotify, and is also the co-founder of Student.com. Daniel Ek is the founder and Chief Executive Officer of Spotify ("Mr Ek"), is said by the Claimant in his witness statement to be "*a long-standing and close personal friend*". Jim Breyer, of Breyer Capital, is a venture capitalist and also significant investor in Spotify ("Mr Breyer").

5. The Defendant submits that the Claimant is much more involved in the operations of Spotify than the picture painted in his witness statement. On the evidence presented by the Defendant, it is clear that the Claimant has played a very prominent public role in relation to Spotify, going far beyond the role of investor. In his LinkedIn profile, in September 2017, the Claimant described himself as "*Head of Special Projects*" at Spotify, a post he had occupied since 2008. In an article in *Wired* magazine in

July 2009, the Claimant (described as Mr Ek's "*second-in-command*" and "*consigliere*") is quoted as saying that working with Mr Ek "*feels like being Bill Gates' roommate*". On 20 May 2014, the Claimant was interviewed at Cass Business School of the City University, London by Matt Cowan, Tech writer for *Wired*. A recording of the full interview is available on YouTube, published by Thomson Reuters. Dr Andrew Fletcher, Director of Thomson Reuters Labs, wrote an article, based on the Claimant's interview, that was published on the Thomson Reuters website. Under the heading, "*So what does Shak do as the Head of Special Projects at Spotify?*", the article states:

> "He is the eyes and ears of the CEO, building relationships in countries two years before Spotify launches there. He is the advance party. Negotiations with the music industry were hard, although they were helped by starting with Sweden as a test case, since it is not one of the big markets internationally. If they had tried to first launch in the U.S. it would have never happened. Instead momentum was built by growing from Sweden to Norway to Finland to the UK... Influential backers such as Sean Parker also helped, an intro which Shak made as part of his role to make sure the product was seen by the right people. Sean was introduced to the product at a barbecue by someone who had early access. Suddenly Shak was getting long emails from Sean saying how great he thought Spotify was. At first Shak didn't know who he was, but when he found out he put him in contact with Daniel [Ek] and the relationship sprung from there.
>
> Li Ka-shing of Horizon Ventures had been an early investor in Spotify and he suggested that Shak meet Nick d'Aloisio, founder of Summly (which was later acquired by Yahoo). Shak met him and was struck by the amazing IQ and EQ, and quickly became convinced the 16 year old was exceptional. When he gave Nick no nonsense feedback during their first meeting, rather than running away, Nick asked Shak to be his mentor and as a result they traveled together around the tech event circuit, including an introduction to Yahoo CEO Marissa Mayer at DLD Munich."

6. It appears to me that the Claimant plays a very significant role at Spotify; certainly, that is the public profile he appears to have cultivated and to enjoy. The Defendant submitted that the Claimant is a *de facto* director, the "*second-in-command*", even co-CEO, of Spotify but that he is hiding that role. He points to the fact that, in January 2018, the Claimant amended his LinkedIn profile to amend the title of the position at Spotify he had held, from 2008, from "*Head of Special Projects*" to "*Investor and Advisor*". Mr Tomlinson QC told me that the Claimant was a "*trusted advisor*" to Spotify, but that he had never been employed and was not on the board. I need not resolve this issue on this application, but I do find it surprising (particularly given the context of the dispute that will become apparent) that, in his witness statement, the Claimant described himself only as an "*investor*" in Spotify, and Mr Ek simply as a "*close personal friend*".

7. The Defendant is currently the Head of Credit & Emerging Markets Financing of Unicredit Bank, based in the UK. In the evidence, the Defendant has described himself as a senior director and Chief Operating Officer with "*cross-product expertise in financial markets… with a proven track record in leading start-up and established businesses in asset management, hedge funds and investment banking*". From his CV, it appears that the Defendant has spent his career working in financial markets and

asset management. From his submissions to me in Court (which were focused, measured and relevant), it is clear that the Defendant is very intelligent and experienced in his field.

The alleged harassment

8. The allegedly harassing emails number over 70 all of which have been exhibited to the Claimant's witness statement. Although I have read them all, in the interests of proportionality, Mr Tomlinson QC has rightly concentrated on the key features and incidents upon which the Claimant relies.

9. The Claimant has set out in his witness statement what he believes to be the origins of the dispute with his brother. In late 2016, the Defendant was developing an online sales platform for cars, Carbaya. On 11 November 2016, he sent his business plan to the Claimant. In it, there was a section headed "*Advisory Board Profile*". On page 28 there was a full-page profile of the Claimant, together with a photograph, describing him as the Advisory Board Chairman. The Claimant acknowledged receipt of this business plan. No complaint was made by the Claimant, at that stage, that he was being so visibly associated with Carbaya.

10. In his witness statement, the Claimant says:

> "On 2 May 2017 I became aware that my name was being used by the Defendant in connection with Carbaya. Several articles appeared in the press which suggested that I had co-founded or invested in Carbaya with the Defendant and that I was heavily involved in the initiative… In fact, I had nothing to do with Carbaya. I had previously introduced the Defendant to a variety of people, to try to give him a helping hand…"

11. When I read this, I got the impression that the Defendant had used the Claimant's name and profile without his consent and that he had stumbled across the fact that he had done so. In fact, it is plain from WhatsApp messages that I have been shown by the Defendant, it was the Defendant who had sent the press articles to the Claimant. It is also clear that the Defendant believed that he had the Claimant's blessing. It may be that the Claimant had not read (or read closely) the business plan that he had been sent. Solicitors were involved, but matters resolved themselves with the various articles being taken down. It is clear that this episode caused resentment on the part of the Defendant.

12. On 4 May 2017, the Defendant wrote to the Claimant's solicitors raising a number of issues, including a complaint about the sale of the family home and the suggestion that the Claimant was bankrupt. The email included: "*Surely, as a fiduciary responsibility to his investors, [the Claimant] needs to make… [his] bankruptcy public. Otherwise he is deceiving and lying to investors.*" A demand was made that the Claimant should make public his bankruptcy. In his witness statement, the Claimant says of this email: "*It also demanded that I send out a press release detailing my … alleged bankruptcy. I have never been bankrupt*". The impression created was that the Defendant had included the claim of bankruptcy that was false and a malicious invention. The Defendant does not challenge the Claimant's evidence that he was not bankrupt, but he has referred me to WhatApp messages sent by the Claimant to the Defendant on 2 May 2017. Expressing his anger at having been

publicly associated with Carbaya, the Claimant said: "*I explained I cannot be involved. I owe folks millions of dollars. I am nearly bankrupt… And don't need external noise in my life.*"

13. The allegation that the Claimant was bankrupt was incorrect, but this context shows that the suggestion of bankruptcy came from the Claimant and was not a malicious invention by the Defendant.

14. An important feature of this alleged campaign concerns the Claimant's previous convictions. In his witness statement, the Claimant confirmed that he has a number of "*spent convictions*" dating from 1990 to 1999 (when he was aged between 16 and 25). He claims that these convictions were "*known only to my family and closest friends*". That may be the Claimant's belief, but given the public nature of criminal proceedings, knowledge of the Claimant's convictions may be wider than this limited group. No details are provided about these convictions in the Claimant's witness statement. At the hearing, Mr Tomlinson QC gave me full details about them. These convictions are now all "spent" under the Rehabilitation of Offenders Act 1974. A court should always exercise caution when deciding whether it is necessary to include, in a public judgment, details of a person's spent convictions. If the court does so, those details will remain permanently on the public record. I have decided that it is not necessary, to explain the decision I have made, to include details of the convictions in this judgment. It is necessary, but it suffices, for me to record that the one of the matters was a serious drugs conviction, for which the Claimant was sentenced to 2½ years' detention. Although I need not include their full details, the previous convictions are highly material to my decision because (a) they are centrally important to the Defendant's explanation for the emails that he has sent; and (b) the Claimant himself has chosen recently to speak publicly about his convictions in the following circumstances.

15. On or around 11 May 2017, the Claimant was interviewed for a Podcast by Om Malik on "*The Om Show*". It appears that this was the first edition of this Podcast. The total interview lasted over an hour - covering many areas of the Claimant's life - and included the following statements by the Claimant:

> "… I kid you not, when I say within the first three months of us moving [to Dagenham] I think I had to fight either on the way to school or on the way home from school every single day. I had to have some sort of fight with another kid older than me or my age who was different or saw me as being different. And to make it worse, I had a very strict father who, if I went home and I had had a fight – whether I had lost or whether I had won he didn't care – he was going to beat me up again so that was what life consisted of…"

And a little later, after giving an account of running away from home and sleeping rough, the Claimant said:

> "… I did many things that I regretted, you know, I stole cars. I think the first time I got arrested was for stealing cars or car stereos cause, hey, at the time, you know, I had to survive, right. So, I got arrested. Not a proud thing, but that was the life I was living at the time; … you're trying to do survival and you do a lot of things which, if you now look back, you think 'what was I thinking?', but it happens. So on one side was sleeping rough on the streets; no food, begging for

> money, you know. On the other side, breaking into cars and stealing cars. These are all things which, 25-26 years ago seem like, 'hey, that seems a good idea'. You know, looking back at it now, quite a bad idea at the time so I hope that answers at least something… You then go… this is how life is gonna be and you then starting thinking, 'I don't have to live like this'. Maybe if I do something else. So, I got involved in the nightclub scene and with the nightclub scene comes organising great parties but the comes, you know, the consumption of illegal substances. And then you think, 'hey, I can make some money here'. So, you know, is that a time I look back at fondly? No. I had great times at that time, but… I also made some money smoking or actually smoked some drugs and, to pay for that, sold some drugs. That was the kind of life I led. It's interesting learning from those days and, I don't know, you know, not a period I'm happy with 'cause that ended quite badly and I got arrested and, you know, put in what's known as a young offenders, you know, when you're under 21 or whatever. There are certain places they send individuals to and I ended up going there and unfortunately that was when my father passed away on my 20th [birthday]… I was 20-years-old at the time and my father passed away with me incarcerated so, yeah, hey, do I regret things sometimes? Yeah, absolutely. If I could turn the clock back, would I? Absolutely. But the reality is, Om, I am who I am today probably because of those journeys."

16. It is clear, from what happened later, that the Defendant was incensed by the suggestion that his father had beaten the Claimant. He told me at the hearing that, in his culture, disrespecting one's father is regarded very seriously and all the more so if he is dead. The Defendant pointed to the fact, at the time he was alleged to have hit the Claimant when he came back from school, their father was living in Pakistan. On that basis, he said the allegation must have been false.

17. The other factor that was a key driver in subsequent events was the issue of the Claimant's criminal record. The Defendant, who knows the detail of the Claimant's previous convictions, submits that the account he gave in the Podcast was a varnishing of the truth. Certainly, having considered that section of his interview, it might be said that the Claimant was down-playing the seriousness and extent of his offences. Whether the Claimant intended this or not, listeners to the Podcast may have gained the impression that he had been sentenced to detention for small-scale dealing to support his own habit. Given the reduction to his sentence that the Claimant would have received for his plea of guilty, his youth and the fact he had only one previous conviction for an unrelated offence, a sentence of 2½ years suggests that the Court regarded the drugs offences as much more serious than that. Whatever is the true position, it is clear that the Defendant thought that the Claimant had not given a candid account of his previous convictions in the Podcast. Largely, it is that belief which led him to send the emails that are said to constitute harassment. A feature of some harassment cases can be an irrational fixation on a perceived wrong which is then pursued with a persistence that is (or borders on) obsessive. It does not seem to me that the Defendant's belief, that the Claimant had not told the full truth about his past convictions, was irrational; a reasonable person might conclude that the Claimant had not been candid. Nevertheless, the Claimant submits that what the Defendant then did was obsessive and oppressive and to such a degree that it amounts to harassment.

18. On 12 May 2017, the Defendant emailed the Claimant's solicitors, copied to the Claimant. The Claimant had previously told the Defendant, by a WhatsApp message,

that all future communication was to be via his solicitors. One of the difficulties I have had in assessing the correspondence is that the emails and letters included in the hearing bundle largely represent only what the Defendant sent. I have very little of the correspondence he was sent. In the 12 May 2017 email, for example, the Defendant complains to the solicitors: "*please don't lecture me on the tone of my emails*". It is also clear that, in this email, he is responding to an allegation that he has interpreted as suggesting that he is trying to blackmail the Claimant. As I do not have the document to which the Defendant is responding, it is hard to assess the submission that this email is part of the 'campaign' of harassment. The email does contain the following section:

> "I have asked your client and Mr Ek to help me with a fundraise on commercial terms – and I find it totally absurd that when I am writing to you advising that your client's current strategy of taking legal action, where all the facts will be made public, could backfire spectacularly and could have far-reaching and potentially disastrous consequences for Spotify el al, is being likened to a blackmail attempt… Imagine for a moment if he took me to court, it will be his word against mine. For the sake of argument, our previous records would be brought out into the public domain. A journalist might seize on that, given your client's high profile, and might write a piece about that. Surely that is not the type of publicity Spotify needs at this stage – if ever… Nevertheless, as a gesture of goodwill, I am prepared to discuss this matter with him in private under the guidance of our mother over the weekend, as I had proposed earlier."

19. Mr Tomlinson QC submits that this is a clear threat made against the Claimant. He does not go so far as to suggest that it was a threat of blackmail, but he says that it is a threat.

20. On 13 May 2017, in an email headed "CARBAYA fallout" sent to the Claimant and their other brother, Jamil, the Defendant said:

> "Guys, Are we going to solve this problem as mature adults – or do we let it get ugly? Please let me know and we can sit and discuss this tomorrow. Otherwise, this could get VERY VERY MESSY, VERY VERY QUICKLY. Ball is in your courts – if I don't hear from either of you by 12PM tomorrow, then I will assume that you have thought about the potential consequences and are happy to let potentially severe damage take place to a number of people, their companies and reputations. I guess 'you make your bed, so you must lie in it'".

21. On 18 May 2017, the Defendant sent an email to Mr Breyer. In it, he asked Mr Breyer whether he would be an advisor or mentor on the Carbaya project. The email was forwarded by Mr Breyer, without comment, to the Claimant. It is a feature of this case that both Mr Ek and Mr Breyer routinely forwarded emails that they received from the Defendant to the Claimant, but without comment. I do not know, and the Claimant sheds no light on this in his witness evidence, whether Mr Ek and Mr Breyer were sending on these emails simply for the Claimant's information, on the unspoken basis of '*here's another email from your brother*', or whether they were sufficiently troubled by what was said to require the Claimant's answer. On the evidence as it stands, it appears more likely to be the former.

22. On 31 May 2017, solicitors instructed by the Defendant sent a letter to the Claimant complaining that statements made by the Claimant in the Podcast were defamatory of

the Defendant. Having read the letter – and the transcript of the Podcast – it seems to me the complaint that the Defendant had been defamed was somewhat optimistic. It is, however, consistent with the Defendant's objective of seeking ways to compel the Claimant to withdraw the claim that the Claimant had been beaten by their father.

23. On 5 June 2017, the Defendant sent a long email to Mr Ek (which Mr Ek forwarded to the Claimant). It is important to note here that Mr Om Malik had promoted the Podcast on social media and, at some stage, Mr Ek had "liked" Mr Malik's post, arguably giving it his public endorsement. The email started:

> "As Shak's older brother, I cringed at the many lies that Shak told in the Podcast. Effectively, he painted a picture of extreme hardship whereby he single-handedly overcame life's challenges through his own hard work and efforts alone. The fact is that Shak is a serial criminal – and has been to prison many times… Most of what the Podcast says is difficult for people to verify as being true or not; so readers will have to either take mine or his words for it. Needless to say, his criminal record is available from the police and people can check it for themselves. His police record will be very different [than] the desperate homeless guy (from the Podcast) selling a joint so he could eat that day; it will be more of an organised criminal machine, owning and driving around in a brand new Range Rover carrying out various drug-related crimes and being caught it possession of £10,000s of illegally and immorally earned money."

The email continued with a very long narrative before concluding:

> "The reason I am writing this letter to you is because as the CEO of a major company, I honestly thought you subjected yourself to a higher degree of personal standard and etiquette, and in fact in my previous email I had alluded to you to get your governance in order – and talk to Shak on this subject. However, you decided to endorse this fabricated Podcast – and give Shak's fairy tale the kind of credibility the rest of us can only dream of getting. Needless to say, if you didn't do the necessary due diligence on Shak's life/career/criminal record etc. then that in itself is a major talking point you may well have to address with your network/stakeholders in due course – as Shak's recent behaviour inevitably means that most of these things will come out in the open very soon…"

In context, that final comment appears to be a reference to the Claimant's decision to speak publicly about his criminal record in the Podcast.

24. About two hours later, the Defendant sent a further email to Mr Ek with further thoughts about Spotify's due diligence. The final paragraph stated:

> "Once a company moves onto the market, journalists have a habit of digging up in the strangest of places to find some very bizarre answers that can leave companies a little bit embarrassed."

Mr Tomlinson QC relies upon this paragraph as the making of a further threat. However, although subsequently forwarded by Mr Ek to the Claimant, if there was a 'threat', it was being made to Mr Ek.

25. On 7 June 2017, the Defendant emailed Mr Ek again. He forwarded an email exchange between the Claimant, the Defendant and his brother, Jamil, from

November 2012. At that time, the Claimant had apparently been considered as a possible candidate to be the Prime Minister's Ambassador to Tech City. On 15 November 2012, the Claimant had forwarded to both his brothers an email from Rohan Silva (a special advisor) suggesting the ambassador role and said: "*I am gonna turn this down. With my background this is a scandal waiting to happen. Nice to be offered though…*". Jamil responded: "*Amazing! But I think you are right to turn it down.*" The Defendant replied: "*True… will only get you into trouble, especially as the government will be very keen on CRB checks etc. after all the recent scandals…*" Forwarding that exchange to Mr Ek, the Defendant said:

> "Please [see] below – pretty self-explanatory.
>
> Imagine what people would think if they found out that Daniel Ek's right hand man (who attends big meetings with him etc.) is a serial criminal that has been convicted for drug-dealing… Probably not the kind of information you would want in the public domain – especially with an impending IPO. Of course, you could go out and say to people that you didn't know any of this. Hopefully, people will give you the benefit of the doubt; but equally they might say if you didn't know any of this, then what else is there lurking in the background that you don't know about. Alternatively, you could of course say that you knew all of this, and let investors, VCs, journalists and your subscribers decide for themselves what else it is that you know but have kept hidden from the public at large."

26. Mr Tomlinson QC says that this is another threat harassing the Claimant. The Defendant submitted that he was putting pressure on Mr Ek because he considered it was his responsibility to ensure that he made what the Defendant believed were required disclosures to the market. In this email, the Defendant is not threatening to make any disclosure himself.

27. On 19 June 2017, an email was sent to a firm of venture capitalists, 137ventures, from "Concerned Citizen". The Defendant accepts that he sent this message. Mr Tomlinson QC relies upon this email as demonstrating a concerning escalation of the Defendant's campaign by moving into the sending of anonymous emails. The email included the following:

> "We have recently learned that Shakil Khan – Daniel Ek's right hand man and Board Advisor at Spotify has a big criminal record… From what we understand, Shakil's criminal activities includes drug selling… We are also led to believe that he has spent up to 5 years in prison…"

The email also forwarded the email exchange from 2012 regarding the ambassador role (see paragraph 25 above).

28. On 21 June 2017, the Claimant's solicitors sent a letter to solicitors then instructed by the Defendant. It complained about the "Concerned Citizen" email and contended that, by sending it, the Defendant had breached the Data Protection Act 1998 by processing 'sensitive personal data' relating to the Claimant by publishing details of his previous convictions. Under the heading "*Reputational harm and Distress*", the letter stated:

> "Our client has established himself an unrivalled reputation amongst those in the international tech community. Your client's actions are designed to cause (and it is inevitable that our client will have suffered) serious harm to his reputation as a result and is likely to continue to do so…"

Under the heading "*Harassment*", the letter continued:

> "This is not the first occasion [on] which your client has made defamatory and damaging statements about our client. More generally, over the past few months your client has actioned various communications to others about our client and continues to do so. We are instructed to request that your client refrain from disseminating or publishing further information of the nature complained of in this letter and making statements to third parties it intends to contact concerning our client (sic). If your client ignores this reasonable request, conduct of this nature is likely to harassment within the meaning of section 1 of the Protection from Harassment Act 1997 (in addition to giving rise to further claims for libel and/or breach of the DPA)."

The letter threatened the Defendant with an application for an injunction unless, by 26 June 2017, he gave an undertaking that "*he will not further repeat the allegations he has made about our client or make similar statements concerning our client to any third party… under any circumstances, anonymously or otherwise*". I note that the undertaking sought was limited to publications to third parties and not to the Claimant.

29. The next act of alleged harassment on which Mr Tomlinson QC relies was an email dated 22 June 2017 from the Defendant to Mr Ek and the Claimant (copied to Mr Breyer):

> "Please see attached letter – which I will send out to Billboard and others on Monday, if this matter is not sorted out beforehand. Every day, this Podcast is out there, more and more people have the potential of hearing the false statements that it contains. So the sooner we resolve this, the better."

The attachment was a draft letter to Billboard. It complained only of the allegation in the Podcast that the Claimant had been beaten by his father.

30. On 29 June 2017, apparently following correspondence with solicitors acting for the Claimant (not all of which I have seen), the Defendant signed a "*Letter of Undertaking*":

> "In consideration of Shakil Khan refraining from issuing an application for injunctive relief I now provide the following undertaking…
>
> I, Tanweer Khan, undertake not to publish to any third party statements about Shakil Khan, which make reference to, or rely upon, any convictions of Shakil Khan which are 'spent' under the Rehabilitation of Offenders Act…"

31. This undertaking is not relied upon by the Claimant on this application as a contractual basis upon which to grant the interim injunction. It is relied upon by Mr Tomlinson QC as demonstrating: (1) that the Defendant accepted that what he was doing was wrong; and (2) that his undertaking cannot be trusted because subsequently

he breached it. The Defendant told me that he thought that he had provided the undertaking on the understanding that the Claimant would, within 4 weeks, remove the Podcast. It is difficult for me to assess the importance of this "undertaking", as I have not been provided with the full correspondence that led to the Defendant giving it.

32. The Claimant's solicitors sent a letter to the solicitors for the Defendant on 11 July 2017 (a copy of which was not in the hearing bundle but provided to me after the hearing). They were writing about an email sent on 9 July 2017 by the Defendant to undisclosed recipients. The Defendant's email was headed: "*The Om Show Podcast*". It complained again about the Podcast, but also included other matters. Although this is relied upon by the Claimant to support his claim of harassment, Mr Tomlinson did not rely upon it as one of the key documents. The 11 July 2017 letter complained that the 9 July 2017 email: "*contains a number of defamatory statements about our client and discloses private and confidential information. It is plainly sent with the intention of causing our client distress and anxiety and forms part of your client's ongoing campaign of harassment against our client.*" The letter concluded by setting out the Claimant's demands:

> "Before our client can consider further discussion with yours or amendments to the podcast he requires the following:
>
> 1. A list of all recipients of the 9 July Email and any similar emails sent by your client.
>
> 2. Your client's agreement to send a retraction and apology to those recipients in agreed terms."

33. Those demands do not reflect a concern about harassment (at least at this stage). One would usually expect to see a request for undertakings regarding further contact. These demands reflect a concern about damage to reputation.

34. On 5 August 2017, the Defendant sent an email to Mr Ek and Luke Nolan (at Student.com). The email makes reference to an earlier meeting between the Claimant and Defendant (or their representatives) at which a QC had been present. I have no evidence about what took place at this meeting but, from the context, it is clear that this is part of the ongoing dispute in the context of which the undertaking was given. Mr Tomlinson QC submits that it contains another threat:

> "What about if investors at Spotify, particularly, with an impending listing were to find out that Shak has been lying and start investigating further. They would have a genuine cause for concern regarding Daniel's integrity – and that would not bode well for Spotify".

35. The email was forwarded to the Claimant by Mr Ek. I do not read the email as making a threat against the Claimant. If any threat was being made, it appears to have been directed at Mr Ek.

36. On 5 September 2017, the Defendant sent an email to the Claimant's solicitor (copied to the Claimant) expressing regret that they had been unable to achieve a resolution of his complaint about the Podcast, he continued:

> "But of course, it is well within his rights to do so. And of course, I have the right to correct it in the public domain myself and clear my father's name... Given Shak is a senior and significant individual with Spotify, Spotify are by law (US Securities Act 1933), required to provide full details about Shak's background so that the reasonable investor can make an informed decision about whether to invest or not. Whilst the SEC due diligence definition of legal proceedings date back 10 years before the securities are launched on a recognised market, any conviction that resulted in a custodial sentence must always be disclosed irrespective of whether they are spent or not."

The email concluded:

> "Please don't treat this email as a threat. It is just friendly advice, outlining the legal framework and my obligations."

37. Mr Tomlinson QC submits that, despite that express disavowal, the email was precisely a threat.

38. It will be apparent from the recitation of the facts that one of the concerns of the Defendant was an impending listing of Spotify. The only evidence relating to this has been provided by the Defendant. The Claimant's witness statement is silent about it, even though it is quite clear that the Defendant has, for some time, been contending that the Claimant and/or Spotify have an obligation to disclose information. I do not know what the Claimant's position is regarding this contention. No correspondence from his (or Spotify's) solicitors on this topic has been included in the hearing bundle, there is no reference to it in the Claimant's witness statement. In reply, Mr Tomlinson told me that the Defendant "*had no reason to suppose that Spotify's solicitors would not properly discharge their obligations in providing disclosure to the SEC*". I suppose the absence of this evidence may be because the Claimant believes that, on a narrow view, even if the Defendant has a point, it does not justify the persistent correspondence about it. That seems to me to overlook the fact that the Court is required, at the interim stage, to determine whether the Claimant can demonstrate that he is likely to succeed at trial and that, necessarily, involves an assessment of the purported justification for the actions of the Defendant.

39. Neither can it be said that this issue comes as a surprise. The point emerges pretty clearly from the Defendant's correspondence and has been made very clear in the Defendant's witness evidence:

> "I fear that given the claimant's previous track record, Spotify's secretive listing process, the claimant's financial problems, his amending of his online profiles, and producing a fabricated interview in the podcast will lead to investors being deprived of the full information mix – and they could lose billions of dollars very quickly, especially given that Spotify is operating in a market where Apple Inc is a huge competitor with a much larger portfolio of business… Therefore, unless the claimant and/or Spotify make full disclosure in the public domain, investors including pension funds stand to lose up to US$22bn [which the Defendant says is Spotify's current valuation]. As a financial market participant, it is my moral, legal and fiduciary responsibility to warn clients about investing in Spotify. However, I will need to provide them with a true and correct reason…"

40. I have neither the knowledge of, nor evidence about, US Securities Law to assess whether the Defendant has a point. I have received no submissions on behalf of the Claimant on the issue. I do not know whether Spotify does have an obligation to disclose the Claimant's criminal record or whether it is said (for example) that, because he is not a director or employee of the company (just an investor), no obligation arises. If an obligation does arise, then it does not seem to me fanciful to suggest that a failure to disclose *might* have some market impact. The only evidence I have on this point comes from the Defendant. He has spent a career working in the financial services sector. He cannot simply be dismissed as some 'crank' advancing nonsense. It might have been thought that, if what he was saying was demonstrably incorrect, the Claimant would have said so. He has not.

41. Mr Tomlinson QC referred me to an email from the Defendant dated 21 September 2017. Included amongst the recipients were the Claimant, his solicitors and what I understand to be solicitors for Spotify. In it, the Defendant says that he has been liaising with a law firm "*that specialises in SEC whistleblowing cases*". Essentially, the email sets out why the Defendant believes that a failure to disclose the Claimant's criminal record would not be in accordance with SEC rules and he concludes:

> "… I am still happy to be convinced by you all that this is not material nor deliberate. However, please do bear in mind that with the press speculating that Spotify might do an IPO as soon as Q4 2017, then for good order sake, I must think of investor protection and such come October 1st 2017. I will formally start collating all the information together for my SEC lawyers so that they can ensure investors are protected as soon as Spotify goes public."

Mr Tomlinson QC submits that this is a further threat. I am not convinced that a threat emerges from this email.

42. On 27 September 2017, the Defendant sent to Mr Ek, Mr Breyer and the Claimant a further email. He raised reports, published in the media, that Goldman Sachs were selling off US$75m in Spotify shares. He concluded:

> "This is going to get very interesting. To think I was asking you guys to help me raise a tiny amount (a few hundred thousand pound), but instead your contrived behaviour may lead to hundreds of millions of pounds of losses to investors".

43. Mr Tomlinson QC invites me to construe this paragraph as containing an implicit threat that unless the Defendant receives the investment he sought, the disclosures will be made. That might be one possible construction of the paragraph. However, this email cannot be read in isolation. If the Defendant was making a simple 'blackmail' demand, then he would have done so more clearly and more often. Subtlety is rarely a trait shown by blackmailers. The alternative construction, and the one that I would think is more likely, is that this paragraph is simply noting the irony of the position.

44. As I have noted, I have not been shown *any* response sent by the Claimant or Spotify dealing with or responding to the Defendant's points. The Defendant has shown me one email from Horacio Gutierrez, General Counsel of Spotify dated 27 September 2017. The email is headed: "*Your unsolicited contacts with Spotify*":

> "My name is Horacio Gutierrez and I am the General Counsel of Spotify. I write to ask for a call with you as soon as possible to discuss the multiple emails you

> have sent Spotify and a number of third parties. Up until this point we have patiently refrained from taking any steps regarding what we perceive as unfounded claims and misguided threats you make in those emails, but our patience has run out and I have been instructed to act unless the incessant unwanted contacts stop immediately. I'm hoping we can avoid the costly and protracted actions that will follow, including those involving your employer, so and (sic) I'm reaching out to you in good faith to discuss before we act…"

45. The Defendant says that the reference to involving his employer is a threat. I cannot immediately see a reason why the Defendant's employer would need to become involved and none has been suggested. In fairness, the Claimant may not know what Mr Guttierez had in mind.

46. Included within the hearing bundle, there are a few emails to the Defendant from Mr Guttierez, but none addresses the substantive point. If a substantive response to the Defendant's complaints has been provided by Mr Guttierez (or Mr Ek or Spotify), I have not been shown it.

47. Mr Tomlinson QC submits that what makes this harassment is that the Defendant simply will not desist in his email correspondence mainly targeted at Spotify (but copied directly or indirectly to the Claimant). There might have been more force in this submission if the Claimant had been able to show me a response addressing the point that the Claimant kept raising. The Defendant might not have accepted the answer, and continued to email, but the Claimant would then have had a better argument that repeated demands to provide an answer were harassing when the answer had been provided.

48. The Claimant has identified 6 further emails sent by the Defendant in October 2017 that he says are harassing him. The last of these was on 13 October 2017. There is then a gap until 22 November 2017, the only email sent November about which complaint is made. There are two emails in December and in January 2018 the frequency of the emails increases. From 19 January 2018, the Defendant started including the board members of Spotify as recipients to some of his emails.

49. Mr Tomlinson QC relies in particular on the email from the Defendant to Mr Ek, Mr Guttierez and the Claimant sent on 19 January 2018 which included the following:

> "You guys will end up in prison for sure, for your deliberate attempts to lie, make false and misleading statements and using deceptive devices… And the thing is you know this too – otherwise you would have taken me to court a long time ago as you had threatened."

The language being used by the Defendant has certainly become by this stage more strident. But I also note that there is reference in this email to events about which I have no evidence.

> "… you have in writing threatened me and suggested to take legal action against my employer, confirmed that the Podcast is fictitious but only a private apology is available and what the reason for doing the podcast in the first place was."

There is reference to correspondence with Baker McKenzie who I understand were solicitors for Spotify at some point. Again, I have not seen that.

50. It is difficult to decide, on an interim application, that the correspondence sent by the Defendant is a course of conduct amounting to harassment - or more accurately that it is more likely than not that the Claimant will demonstrate at trial that it is - when (with only few exceptions) I have only seen one side of that correspondence. It is harder to say that the Defendant's emails are harassment if they form part of a dialogue rather than standing alone.

The Claimant's evidence as to the impact of the alleged harassment

51. In his witness statement, the Claimant has stated:

    i) that he "*found [the] allegation that I represent a risk and have covered up information to the detriment of Spotify to be especially distressing given my relationship with Daniel Ek*";

    ii) that he is "*alarmed that the Defendant has sent numerous emails containing derogatory and highly damaging remarks about me to members of the Spotify Board*";

    iii) that the threats to go to the press and the US Securities and Exchange Commission "*have caused me great distress and anxiety*";

    iv) that the Defendant's email campaign has caused him "*considerable anxiety*" for 9 months and will continue to have a negative effect on his health and well-being "*until his emails are curtailed*"; and

    v) that it has caused great upset to his girlfriend who sought medical treatment as a result of the "*latest episode of emails*", and that the campaign is having an effect on their relationship.

52. I should set out, in full, three paragraphs from his witness statement in which the Claimant describes the effect of the campaign on him:

> 40. I am particularly distressed by the emails which the Defendant sends to third parties and the fact the range of people to whom the emails are being sent is increasing. The Defendant's decision to email more and more people about me means that I am living in a constant state of torment fearing news of who the Defendant has decided to contact next.
>
> 41. Many of the recipients of these emails people (sic) are high-profile individuals whom I know or may wish to get to know in the context of my professional life. They are people whose impression of me is important to me. The fact that my brother, who is necessarily linked to me, is sending numerous emails referring to me is causing me great anxiety and embarrassment. I fear that the Defendant's stream of allegations and negative comments about me is harming my standing in the business world.
>
> 42. If the Defendant is permitted to continue to publish damaging statements about me, as he has and continues to threaten to do, the effect on my reputation may be grave. I am serial investor in tech companies and the impact on my reputation will undoubtedly have a negative effect on my

ability to engage in the industry and invest. I am finding the constant fear that this will happen extremely upsetting.

Terms of the injunction that are sought

53. A draft order setting out the terms of the interim injunction that the Claimant asks the Court to make is attached to the Application Notice. The relevant part seeks an order:

> "Until the trial of this action or further Order of the Court in the meantime, the Defendant must not:
>
> (a) Pursue a course of conduct which amounts to harassment of the Claimant contrary to the Protection from Harassment Act 1997 and, in particular, will not do any of the following…
>
> (i) Communicate with and/or contact and/or attempt to contact the Claimant directly or indirectly, including but not limited to speaking to him, approaching him, telephoning (with or without speaking), writing, sending messages electronically (including through email, WhatsApp or any other messaging service or through facsimile or through any other written form of communication) or in any other way whatsoever.
>
> (ii) Communicate with any other person or entity about the Claimant, including but not limited to:
>
> (a) Sending emails or any other form of electronic messages relating to or referring to the Claimant (either by name or through any other information capable of identifying or referring to the Claimant) to any person, or posting actual or purported information concerning the Claimant on Facebook, Twitter or any website or any blog, or on any social media site.
>
> (b) Sending postal correspondence relating or referring to the Claimant (either by name or through any other information capable of identifying or referring to the Claimant) or any other person.
>
> SAVE THAT nothing in this sub-paragraph shall prevent the Defendant:
>
> (1) from disclosing actual or purported information about the Claimant for purely private and personal purposes and in confidence (that is, on the express understanding that there will be no further disclosure of the information);
>
> (2) from communicating with his professional advisers;
>
> (3) from disclosing any information concerning the Claimant not previously communicated by him to regulators or law enforcement agencies or from responding to any questions from such regulators or agencies about the Claimant."

The Order also included an injunction, in standard form, to enforce the anonymity Order.

54. The terms of that order, if granted, would represent a very serious interference with the Defendant's right of freedom of expression. It would prevent the Defendant from communicating any information to any third party "*about the Claimant*" (even if the Claimant had no knowledge of the communication). The exceptions allow only disclosure of information about the Claimant (1) "*for purely private and personal purposes*" (but only if the Defendant imposes an express obligation of confidence on that information); and (2) to regulators and law enforcement agencies (but only if he has not provided the information to them before). Colloquially, this would be a gagging order, with very limited exceptions, preventing the Defendant from making any non-private/personal statement containing information about the Claimant no matter how anodyne.

55. These restrictions are so onerous that I struggle to see that they could be justified as proportionate and necessary in all but a handful of the very worst cases of harassment. The form of order is also objectionable on the grounds that it prohibits, generally, the Defendant from pursuing "*a course of conduct which amounts to harassment of the Claimant contrary to the Protection from Harassment Act 1997*." An injunction, the breach of which may render the respondent liable for imprisonment, must specify clearly and unambiguously what the respondent is not permitted to do. As this case demonstrates, what constitutes "*a course of conduct which amounts to harassment*" is a question that would trouble a lawyer. To subject an ordinary citizen to the obligation to decide for himself what amounts to harassment (on pain of imprisonment if he gets it wrong) is wrong in principle.

56. No doubt Mr Tomlinson QC and Mr Wills would be able to fashion a less restrictive order, in an appropriate form, if the Court were prepared to grant some form of injunctive relief.

Interim injunctions: s.12 Human Rights Act 1998

57. In harassment cases that do not involve speech (e.g. classic stalking behaviour), the test at the interim injunction stage is the familiar ***American Cyanamid Co Ltd -v- Ethicon Ltd*** **[1975] AC 396**. However, the grant of interim injunctions in cases that engage the defendant's right of freedom of expression are subject to s.12(3) Human Rights Act 1998, which provides:

> "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."

58. "*Likely*" in this context means "*more likely than not*": ***Cream Holdings Ltd -v- Banerjee*** **[2005] 1 AC 253**.

59. Warby J summarised the position for the Court at the interim stage in ***YXB -v- TNO*** **[2015] EWHC 826 (QB)** [9]:

> "The test that has to be satisfied by the claimant on any application for an injunction to restrain the exercise of free speech before trial is that he is 'likely to

> establish that publication should not be allowed': [s.12(3)]. This normally means that success at trial must be shown to be more likely than not: ***Cream Holdings***... In some cases it may be just to grant an injunction where the prospects of success fall short of this standard; for instance, if the damage that might be caused is particularly severe, the court will be justified in granting an injunction if the prospects of success are sufficiently favourable to justify an order in the particular circumstances of the case: see ***Cream*** at [19], [22]. But ordinarily a claimant must show that he will probably succeed at trial, and the court will have to form a view of the merits on the evidence available to it at the time of the interim application."

60. In some circumstances, the Court may consider that the only way of doing justice in a case is to grant an injunction for a very short period to allow the injunction application to be fully argued on better evidence. It is not suggested that this present application falls into that category, so the hurdle the Claimant must surmount on this application is to demonstrate that his claim for harassment will probably succeed at trial.

Harassment injunctions: the law

61. Section 1(1) of the Protection from Harassment Act 1997 provides:

> "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."

62. Subsection (2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective: ***DPP –v- H*** **[1997] 1 WLR 1406.**

63. s.3 provides that any actual or apprehended breach of s.1(1) may be the subject of a civil claim by anyone who is or may be the victim of the course of conduct.

64. s.7(2) provides: "*References to harassing a person include alarming the person or causing the person distress*"; and in subsection (3) (b): "*A 'course of conduct' must involve, 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.*" Conduct can include speech (s.7(4)).

65. A defendant has a defence if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that in the particular circumstances the pursuit of the course of conduct was reasonable (s.1(3)).

66. In ***Hourani -v- Thomson*** **[2017] EWHC 432 (QB)**, Warby J summarised the applicable principles:

> [138] … s.7(2) of the 1997 Act, which provides that 'references to harassing a person include alarming the person or causing the person distress'. This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The

Supreme Court gave further guidance in ***Hayes -v- Willoughby*** **[2013] UKSC 17 [2013] 1 WLR 935**, where Lord Sumption SC said at [1] that harassment is '*… an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress.*'

[139] As these words suggest, behaviour must reach a certain level of seriousness before it amounts to harassment within the scope of PHA s.1. That is not least because the 1997 Act creates both a tort and, by s.2, a crime of harassment. The authoritative exposition of this point is that of Lord Nicholls in ***Majrowski -v- Guy's and St Thomas's NHS Trust*** **[2007] 1 AC 224** [30]:

> '[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2.'

[140] There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see ***Dowson -v- Chief Constable of Northumbria Police*** **[2010] EWHC 2612 (QB)** [142] (Simon J).

[141] The reference to an 'objective standpoint' is important, not least when it comes to cases such as the present, where the complaint is of harassment by publication. In any such case the Court must be alive to the fact that the claim engages Article 10 of the Convention and, as a result, the Court's duties under ss.2, 3, 6 and 12 of the Human Rights Act 1998. The statute must be interpreted and applied compatibly with the right to freedom of expression, which must be given its due importance. As Tugendhat J observed in ***Trimingham -v- Associated Newspapers Ltd*** **[2012] EWHC 1296 (QB)** at [267]: '*[i]t would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on* ***subjective*** *claims by individuals that they feel offended or insulted*' (emphasis added).

[142] The Court's assessment of whether conduct crosses "*the boundary from the regrettable to the unacceptable*" needs to be conducted with care in cases such as this, for several well-established reasons. Among them are that freedom of expression

(1) '*… is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country*':

***R -v- Secretary of State for the Home Department, ex p Simms* [2000] 2 AC 115, 126** (Lord Steyn)

(2) '*.. is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb*':

***Nilsen and Johnsen -v- Norway* (1999) 30 EHRR 878** [43].

(3) '*… is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly*':

Nilsen and Johnsen (ibid).

[143] In ***Nilsen*** the Court set out the well-known three part test for justification of an interference with a fundamental right. '*The test of "necessity in a democratic society" requires the Court to determine whether the "interference" corresponded to a "pressing social need", whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient.*"…

[146] When applying these principles it is necessary to have in mind not only that the rights under Articles 10(1) and 11(1) are qualified rights but also that in this, as in many publication cases, the countervailing rights to be considered appear to include the fundamental right to respect for private and family life, under Article 8 of the Convention. The gravity of the imputations against [the Claimant] and their consequences for him mean that this right is engaged. It is necessary to assess the gravity of any interference and whether such interference is justified under Article 8(2). That task itself involves the application of the three part test. The resolution of any conflict between Article 8 and Articles 10 and 11 is achieved through the "*ultimate balancing test*" referred to in ***In re S (A Child)* [2005] 1 AC 593**.

67. The alleged course of conduct need not be targeted specifically at the claimant as long it is foreseeably likely that s/he will be harmed by it: ***Levi –v- Bates* [2016] QB 91**.

68. In harassment by speech cases, Mr Tomlinson QC submits that the truth or falsity of the information is not relevant, relying upon ***Merlin Entertainments LPC & Others – v- Cave* [2014] EWHC 3036 (QB)** [41]. That is an over-simplification and it is important to note what Elizabeth Laing J held:

[40] Harassment can take different forms. Where the harassment which is alleged involves statements which a defendant will seek to justify at trial, there may be cases where an interim injunction will be appropriate. These are cases where such statements are part of the harassment which is relied on, but where that harassment has additional elements of oppression, persistence or unpleasantness, which are distinct from the content of the statements. An example might be a defendant who pursues an admitted adulterer through the streets for a lengthy period, shouting "*You are an adulterer*" through a megaphone. The fact that the statement is true, and could and would be justified at trial, would not necessarily prevent the conduct from being harassment, or prevent a court from restraining it at an interlocutory stage... (emphasis added)

[41] This means that the real question is whether the conduct complained of has extra elements of oppression, persistence and unpleasantness and therefore crosses the line referred to in the cases. There may be a further question, which is whether the content of the statements can be distinguished from their mode of delivery... [T]he fact that conduct consists of, or includes, the making and repetition of statements which a defendant will seek to justify at trial means that a court must scrutinise very carefully claims that that line has been crossed in any particular case, and ensure that any relief sought, while restraining objectionable conduct, goes no further than is absolutely necessary in interfering with article 10 rights...

69. It is clear that the Judge is saying that special care needs to be taken when an interim injunction is sought, ostensibly to restrain acts of harassment, where the defendant contends that his statements are true. The megaphone example is potentially harassing because the complainant is being pursued through the street. If the respondent used a megaphone to broadcast his remarks in a town square 200 miles away from the applicant, it is hard to see how that conduct would bear the description 'harassment' (in the ordinary sense of that word). If the applicant has a complaint about *what* has been said, then it is to the law of defamation (for example) that s/he must turn. For harassment, the harassing conduct must come more from the *manner* in which the words are published than their *content*. This is particularly so because of the continuing importance of the principle from ***Bonnard -v- Perryman* [1891] 2 Ch 269**. At the interim stage, "*the court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest*" ("the defamation rule") (*per* Lord Denning MR in ***Fraser -v- Evans* [1969] 1 QB 349, 360-361**). The applicability of the defamation rule, in the post-Human Rights Act era, was upheld in ***Greene -v- Associated Newspapers Ltd* [2005] QB 972**. The Court of Appeal rejected the argument that the test for the grant of interim relief in all freedom of expression cases was now to be found in s.12.

70. In ***LJY -v- Persons Unknown* [2017] EWHC 3230 (QB)**, Warby J considered the impact of the defamation rule on applications for interim injunctions where the claimant relies upon a cause of action other than defamation:

[41] … In ***Holley -v- Smyth* [1998] QB 727** (CA) the defamation rule was held to preclude the grant of an injunction to restrain an alleged libel, even though the claimant asserted not only that the allegations were false but also that the defendant's motive for the threatened publication was blackmail. Because the claimant could not satisfy the court that the allegations were plainly untrue the Court decided, by a majority, that the injunction should be discharged.

[42] As a matter of legal policy, the Court applies the more demanding defamation rule if it detects 'cause of action shopping'. By that I mean that the rule will be applied in cases where, although another cause of action is relied on, the Court concludes that the claimant's true purpose is to prevent damage to reputation. The policy was described in this way in the breach of confidence case, ***McKennitt -v- Ash* [2008] QB 73** [79] (Buxton LJ):

> "If it could be shown that a claim in breach of confidence was brought where the nub of the case was a complaint of the falsity of the allegations, and that that was done in order to avoid the rules of the tort

> of defamation, then objections could be raised in terms of abuse of process."

> [43] The authorities do not reveal any touchstone or any very clear criteria by which the Court is to discern whether a claimant is engaging in abuse of this kind. A claimant who engages specialist Counsel and expressly relies on defamation as a basis for his injunction is not an obvious candidate. But [Counsel for the Claimant] fairly recognises that his client is concerned about reputation, and has said so clearly in his evidence. He acknowledges that the Court might conclude that the defamation rule applies, whichever cause of action he advances.

71. In ***Service Corporation International Plc -v- Channel Four Television Corporation*** **[1999] EMLR 83**, the claimant company sought an interim injunction to restrain the broadcast of a television programme. It had originally complained that the publication would be defamatory, but by the time of the application for the interim injunction it had abandoned that claim in favour of other causes of action. Refusing the injunction, and applying the defamation rule, Lightman J held [pp.89-90]:

> "… [The defamation rule] does not extend to claims based on other causes of action despite the fact that a claim in defamation might also have been brought, but if the claim based on some other cause of action is in reality a claim brought to protect the plaintiffs' reputation and the reliance on the other cause of action is merely a device to circumvent the rule, the overriding need to protect freedom of speech requires that the same rule be applied: see ***Microdata -v- Rivendale*** **[1991] FSR 681** and ***Gulf Oil -v- Page*** **[1987] 1 Ch 327** at **334**. I have great difficulty in seeing the three alternative claims made in this case as other than attempts to circumvent the rule and to seek protection for the plaintiffs' reputation."

72. Subsequently, it has been held that the defamation rule applies if the 'nub' of the claimant's claim is the protection of reputation: ***Cushnahan -v- BBC & Another*** **[2017] NIQB 30** [11]-[12] *per* Stephens J. The Court should "*stand back and ask itself what really is the gist and purpose of the application*": ***Viagogo Ltd -v- Myles & Others*** **[2012] EWHC 433 (Ch)** *per* Hildyard J). "*[O]ne cannot obtain an easier route to an injunction preventing publication, where the gravamen of the complaint is as to reputation, by merely choosing another cause of action*": ***Browne -v- Associated Newspapers Ltd*** **[2007] EMLR 19** [30] *per* Eady J.

Submissions

73. On behalf of the Claimant, Mr Tomlinson QC submits that the emails sent by the Defendant over this 9-month period is a course of conduct that has gone far beyond the unattractive and unreasonable and has become highly oppressive and unacceptable. Although he has submitted that many of the assertions in the emails about the Claimant are false, he has not identified what is said to be false and what is true. He submits that repeatedly to email the Claimant and others in relation to his spent convictions is oppressive and unacceptable. Mr Tomlinson relies upon the sending of emails to third parties on the basis that, although not sent to the Claimant, they are foreseeably likely to harm the Claimant. As to any defence under the Act upon which the Defendant might rely, he submits that the campaign of emails is not,

in all the circumstances, reasonable. Mr Tomlinson submits that any legitimate concerns that the Defendant had could have been raised, once, in a letter to Spotify.

74. The Defendant's response is quite simple. He submitted that the allegations he has made against the Claimant are true and this claim is all about defamation and the protection of the Claimant's reputation and has been "dressed up" as harassment. The fact that the Claimant has applied for anonymity in the proceedings, the Defendant submits, further demonstrates that the objective here is the protection of his reputation. I asked him why he kept sending emails and he told me that if Spotify had acknowledged his concerns and genuinely sought to deal with them, then he would not have had to keep raising the issue. In his submissions he did accept, on reflection, that the terms of some of his emails may have been "*a bit over zealous*". In his witness statement he stated: "*whilst my conduct has been less than exemplary here, [for] which I apologise unreservedly, my genuine concern is to prevent securities fraud.*"

Decision

75. In my judgment, having considered the evidence relied upon by the Claimant, particularly the number of emails sent, their recipients and their contents, I am not satisfied that the Claimant has shown that he will probably succeed at the ultimate trial of this claim. My reasons are:

i) I do not consider that either individually or collectively these emails have crossed the line from unattractive, even unreasonable, to oppressive and unacceptable. I do not doubt that the Claimant is irritated by the persistence of the Defendant and that the emails are causing him distress and annoyance. But that distress is largely caused by the content of the emails – and the fact they are being sent to third parties - rather than the manner (and frequency) of delivery. As to that latter point, the Claimant is an experienced businessman. The receipt of repeated complaints from an individual could hardly be regarded as unusual; in public life it might be regarded as an occupational hazard for those that occupy a role of any prominence. Here, the Claimant can exercise a degree of self-help by simply deleting the emails he receives from his brother (if he wants, without reading them). He can ask those who have been forwarding his brother's emails to him, not to do so. It is a striking feature of this case that only a fraction of the emails complained of have addressed directly to the Claimant rather than his being copied in to emails addressed to others. This is not a case where the respondent is protesting outside the applicant's business or residential premises and so cannot be avoided. I accept that there may be an element of distress caused by continuing to wonder whether the Defendant is continuing to send emails, what they contain and to whom, but this is nowhere near the level of oppression that requires or justifies a court injunction. So far, the Defendant has been reasonably consistent. His complaints – although sometimes lengthy – essentially concentrate on the same issue. This is not a person whose allegations change or become more extravagant or serious as time goes on (which can be a hallmark of some harassment cases).

ii) Some of the emails contain language suggestive of threats. But these 'threats' lack clarity and consistence and, over 9 months, they have never been acted

upon. The essential underlying theme of the emails is to say to the Claimant and Spotify: "*you make this disclosure to the market and the regulators or I will*". That is not blackmail. It lacks the element of a demand for something to which the person is not entitled, typically money (or some other benefit). Spotify can decide for itself whether disclosure is required. If it is, the Defendant's complaint may have played a part in getting it to recognise that fact. If it is not, the simple answer to the Defendant is to tell him that no disclosure is required, that he is welcome to take a different view and that he is free to report the matter to the regulator himself.

iii) I do not find the Claimant's evidence as to the impact on him to go much beyond annoyance and distress. The evidence strongly suggests that the Claimant's distress is caused by what the Defendant has said to third parties not the manner in which he has said it. There is no evidence that the Claimant is having to confront third parties who are raising the Defendant's complaints with him and, even if there were, that it has reached a level that could be properly regarded as oppressive. At the moment, the people to whom the Defendant is sending his emails fall within a fairly narrow group. The selection is clearly deliberate; it is not indiscriminate. They are people connected with Spotify whom the Defendant clearly believes would have an interest in (at least) investigating the matters that he has raised.

iv) I consider that the Defendant may well have an arguable defence that, in the particular circumstances, the pursuit of the course of conduct is reasonable. Ultimately, if advanced, that would be a matter to be determined at trial. But, at this stage, the very clear impression given by the correspondence is that the Claimant and Spotify are ignoring the Defendant's complaint (see paragraphs 44-47 above). A strategy of non-engagement may be one way to deal with unwanted emails, but the failure to deal with points contained in the correspondence may well come with the risk that the sender remains persistent in his efforts to obtain a response. Mr Tomlinson says that the Defendant should have sent one letter of complaint to Spotify and left it at that. Some people might be content with that approach to complaints. But that is not the point. It is not for the Court to mandate that a complaint should be made once, perhaps twice, but that further complaints after that run the risk of being characterised as harassment. Every case will depend on its facts. Equally it is not for Mr Tomlinson (or the Claimant) to draw up an 'approved' list of recipients for the Defendant's complaint (limited to regulators and law enforcement agencies). In the exercise of his right of freedom of expression, it is for the Defendant (not the Court at the interim stage) to decide how widely he decides to publish his allegations, how often and in what terms:

> "Free speech includes not only the inoffensive but the irritating, the contentious, the eccentric, the heretical, the unwelcome and the provocative… Freedom only to speak inoffensively is not worth having" (*per* Sedley LJ in ***Redmond-Bate* -v- DPP [2000] HRLR 249** [20]).

v) I can see no basis – and certainly not one justifying an injunction to prevent alleged harassment – upon which it would be proper to restrain the Defendant (if he wanted to) from publishing his allegations in a newspaper, online, on the radio or television, or at Speakers' Corner. If he defames the Claimant in the

process, then he will be liable to answer under the law of defamation for such publications. On this application, the Claimant has not attempted to demonstrate, on the evidence, that the Defendant is publishing anything that is false. The emails contain frequent expression of the Defendant's opinion on the behaviour of the Claimant and Spotify, but that too is an important dimension of the Defendant's right of freedom of expression. There has been no suggestion – nor on the evidence could there be – that the Defendant does not believe his allegations to be true.

76. I am also quite satisfied that the 'nub' or gravamen of the Claimant's complaint is one of defamation and that injunctive relief should additionally be refused on this ground applying the defamation rule. This is a defamation claim being advanced under the guise of a harassment claim in order to avoid the defamation rule. My reasons for this are:

    i) The Claimant's solicitors' letters of 21 June 2017 (paragraph 28 above) and 11 July 2017 (paragraph 32 above) appear to me to complaining mainly about reputational harm. Reference is made both to alleged breaches of the Data Protection Act 1998 and alleged harassment, but these are simply being used as vehicles – together with a threatened defamation claim – to prevent further publication of the Defendant's allegations. In this respect, I attach importance to the fact that the undertaking sought in the letter of 21 June 2017 was to prevent publication to *third parties*. In harassment, the claim is primarily directed at stopping the Defendant from emailing or harassing *the complainant*. In the letter of 11 July 2017, the Claimant sought a retraction and apology which indicates clearly that the paramount concern was damage to reputation.

    ii) That correspondence dates from over 6 months ago, but paragraphs 40-42 of the Claimant's witness statement (set out in paragraph 52 above) concentrate mainly (if not exclusively) on the alleged damage to his reputation and the distress that has been caused to him by this. Of course, there will be cases in which an element of distress comes from the fear of the impact of the harassing acts on a claimant's reputation, but that will usually be a subsidiary concern to the main impact of the harassing acts. Here, I am satisfied that reputational harm is the principal complaint. The Claimant's witness statement says little at all about the distress caused to him as a result of receiving the Defendant's emails personally; the focus is almost entirely upon the distress he feels at the emails going to third parties.

77. For these reasons, the Claimant's application for an interim injunction is refused.

78. I should make plain, and for the avoidance of any doubt, in this judgment I am **not** deciding that the Defendant has not pursued a course of conduct that amounts to harassment. That is a matter that will be determined at trial. It may turn out that the Claimant's claim succeeds. More evidence may emerge, and the Defendant may be responsible for further acts of alleged harassment. My task, at this stage, is to make an assessment, on the evidence as it stands, whether the Claimant has shown he is likely to succeed in his claim. I have decided that he has not.

79. In ***APW –v- WPA*** **[2012] EWHC 3151 (QB)** Tugendhat J, in refusing an injunction in a harassment case, observed [48]-[49]:

> "If no injunction is granted, and if the Defendant does in the future commit an act amounting to harassment, then he will face a remedy in damages for what he has done. There may then also be a further application for an injunction on the basis of evidence as it is at that time. I do not say that damages are an adequate remedy for harassment that has occurred, although it is in some cases the only remedy available. But the fact that damages could and would be awarded if the Defendant were to commit such an act in the future seems to be to be sufficient protection for the Claimant's interests as matters stand today. In any event, and whether or not the [Defendant's behaviour was harassment], it does not follow that an injunction is a necessary or proportionate measure as at the date of the hearing. In my judgment, for the court to grant an injunction against the Defendant in the circumstances of the present case, as they appear on the evidence before the court today, would be excessive and disproportionate."

The same applies equally to this case.

80. Finally, I also need to make clear that this judgment has, necessarily, dealt with matters relating to Mr Ek and Spotify. They are not parties to the proceedings and have not had a chance to set out their position. The Court is making no finding at all in relation to them. They feature in this judgment simply because they are at the heart of the events upon which the Claimant bases his claim for harassment.

Anonymity Order

81. The power to anonymise a party is to be found in CPR Part 39.2(4). If an order is made, this will usually prevent the name of the relevant party from being *discovered* as a result of the proceedings. However, such an order, on its own, will not prevent the party being publicly identified if his/her identity is known or can be discovered. If a party wishes to prevent his/her identification as a party to the litigation, then the Court must make a further order (e.g. under s.11 Contempt of Court Act 1981). s.11 provides:

> "In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

82. As the section makes clear, an order prohibiting publication of a party's name in connection with the proceedings can only be made if the Court has made an order withholding that name from the public in proceedings before the court. If the name has already been made public in proceedings before the court, then a s.11 order cannot be made: ***R -v- Hasan*** **[2005] 2 AC 467** [2]; ***CVB -v- MGN Ltd*** **[2012] EMLR 29** [46].

83. Anonymity orders (or a decision to sit in private) should only be made where it is necessary for the due administration of justice. In other words, if the relevant order was not made, the administration of justice would be frustrated: ***Attorney-General -v-***

Leveller Magazine Ltd **[1979] AC 440, 457e**. This principle was derived from ***Scott -v- Scott*** **[1913] AC 417** in which Viscount Haldane L.C. made it clear: (pp.437-439):

> "… the exceptions [to the principle of open justice] are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done . . . As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration . . . I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made."

Earl Loreburn said (p. 446):

> "… in all cases where the public has been excluded with admitted propriety the underlying principle, as it seems to me, is that the administration of justice would be rendered impracticable by their presence, whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court."

84. Derogations from the principle of open justice are therefore not matters of convenience. Any interference with the public nature of court proceedings is to be avoided unless justice requires it: ***R -v- Legal Aid Board, ex parte Kaim Todner (A Firm)*** **[1999] QB 966, 978g**. No doubt there will be many litigants in the courts who would prefer that details of their affairs were not made public in the course of their proceedings. In ***Kaim Todner***, Lord Woolf MR explained (p.978):

> "It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however, parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule…
>
> There can however be situations where a party or witness can reasonably require protection. In prosecutions for rape and blackmail, it is well established that the victim can be entitled to protection. Outside the well established cases where anonymity is provided, the reasonableness of the claim for protection is important. Although the foundation of the exceptions is the need to avoid frustrating the ability of the courts to do justice, a party cannot be allowed to achieve anonymity by insisting upon it as a condition for being involved in the proceedings irrespective of whether the demand is reasonable. There must be some objective foundation for the claim which is being made."

85. That is not to say that all the Article 8 rights of parties (and *a fortiori* witnesses) have to be sacrificed on the altar of open justice. Consistent with the Court's obligation to act compatibly with the Article 8 rights of litigants and witnesses, steps may need to be taken to protect the disclosure of highly private information (for example sensitive medical information). The Court can achieve this by measures ranging from case management, to withholding orders (and a concomitant s.11 order) and, ultimately, to sitting in private for part of the proceedings. But, in most cases, some interference with a party's Article 8 rights is likely to be necessary in order to comply with the obligations of open justice (Articles 6 and 10). It is often overlooked, but in relation to the requirement that proceedings being conducted in open court, Article 6 is a *qualified* right. The material part of Article 6(1) is:

> "… Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."

This is wording similar to Articles 8(2) and 10(2), both of which qualify the rights of privacy and freedom of expression respectively. The result is that, when in conflict, the tension is to be resolved by applying the familiar "*ultimate balancing test*" from ***In re S* [2005] 1 AC 593**. The decision whether to grant anonymity is not a matter of discretion; it is a matter of weighing up the competing Convention rights: ***AMM -v- HXW* [2010] EWHC 2457 (QB)** [30]-[32].

86. The existence of this underlying tension between the competing interests of open justice and Article 8 rights was recognised by Tugendhat J in ***ZAM -v- CFW* [2013] EMLR 27** [33]:

> "Anonymity orders are granted in the criminal and civil courts in cases involving children, and in other circumstances where the public interest in publishing a report of the proceedings which identifies a party (or the normally reportable details) does not justify the resulting curtailment of the rights of the claimant (or others) to respect for their private lives: ***JIH -v- News Group Newspapers Ltd* [2011] 1 WLR 1645**…"

See also ***Secretary of State for the Home Department -v- AP (No.2)* [2010] 1 WLR 1652** [7] *per* Lord Rodger

87. An order for anonymity is a less significant derogation from the principle of open justice than the Court sitting in private. The Court of Appeal has set out the principles applicable to the making of such orders in ***JIH -v- News Group Newspapers Ltd* [2011] 1 WLR 1645** [21]:

> (1) The general rule is that the names of the parties to an action are included in orders and judgments of the court.
>
> (2) There is no general exception for cases where private matters are in issue.
>
> (3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle

of open justice and an interference with the article 10 rights of the public at large.

(4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application, and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

(5) Where the court is asked to restrain the publication of the names of the parties and/or the subject matter of the claim, on the ground that such restraint is necessary under article 8, the question is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies a party and/or the normally reportable details to justify any resulting curtailment of his right and his family's right to respect for their private and family life.

(6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.

(7) An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.

(8) An anonymity order or any other order restraining publication made by a judge at an interlocutory stage of an injunction application does not last for the duration of the proceedings but must be reviewed at the return date.

(9) Whether or not an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a publicly available judgment should normally be given, and a copy of the consequential court order should also be publicly available, although some editing of the judgment or order may be necessary.

(10) Notice of any hearing should be given to the defendant unless there is a good reason not to do so, in which case the court should be told of the absence of notice and the reason for it, and should be satisfied that the reason is a good one.

88. In the area of media and communications law, issues concerning exercise of the Court’s jurisdiction to sit in private and to anonymise one or more parties arise most frequently in privacy claims. When parties are anonymised, or hearings take place in private, that is because the Court has been satisfied that it is strictly necessary to do so. Usually, that is because, if the parties were named and the hearing took place in public, there is at least a risk (and in most cases an inevitability) that the Court by its proceedings would destroy that which the Claimant was, by those very proceedings, seeking to protect. That would be to frustrate the administration of justice.

89. There are very few privacy claims, in which interim injunctions are sought to prevent disclosure, where the parties are named. That is because, if the parties are named, the Court will inevitably have to deal in any public judgment with the private matters (the

disclosure of which the claimant seeks to prevent) at a level of generality to ensure again that that which the claimant is seeking to protect is not destroyed by the proceedings themselves. The most important factor in favour of anonymising one or more of the parties is usually the fact that the Court is better able to explain in a public judgment why an injunction has been granted or refused.

90. These considerations do not arise in most harassment proceedings. The reason for that is simply that the claim is not usually based upon the protection of private information (the exception is the type of blackmail harassment claim of which ***LJY*** and ***ZAM -v- CFW*** are examples (see discussion [39]-[41])). In most harassment claims, the disclosure of private information in open court is simply an incidence of the litigation and that is no different from any other civil case. But, unlike privacy claims, in most harassment claims there is normally no risk that the administration of justice will be frustrated by the proceedings being heard in open court. If a claimant succeeds in a harassment claim and obtains damages and/or an injunction, these fruits are not damaged in any way by publicity of the proceedings. An anonymity order therefore cannot be justified on that basis. If there are discrete pieces of the evidence, that engage significant Article 8 rights, then the way to deal with that is not by blanket anonymisation, but by the sort of targeted measures I have identified in paragraph 85. Put simply, any greater derogation from the principle of open justice is not necessary.

91. As to sitting in private, CPR Part 39.2(3) provides:

> A hearing, or any part of it, may be in private if—
>
> (a) publicity would defeat the object of the hearing;
>
> (b) it involves matters relating to national security;
>
> (c) it involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality;
>
> (d) a private hearing is necessary to protect the interests of any child or protected party;
>
> (e) it is a hearing of an application made without notice and it would be unjust to any respondent for there to be a public hearing;
>
> (f) it involves uncontentious matters arising in the administration of trusts or in the administration of a deceased person's estate; or
>
> (g) the court considers this to be necessary, in the interests of justice."

92. Guidance as to Part 39.2(3)(c) rule is contained in §1.5 of the Practice Direction 39A:

> "The hearings set out below shall in the first instance be listed by the court as hearings in private under rule 39.2(3)(c), namely: …
>
> (9) proceedings brought under … the Protection from Harassment Act 1997…"

93. The types of proceeding identified are those in which, experience shows, issues of confidentiality typically arise. Listing the matter, initially, in private ensures that there

is an opportunity for consideration of what (if any) orders are justified to protect that confidential information. If the proceedings were held in open court, either the confidentiality would be destroyed or the opportunity to make a withholding order (and s.11 order) would be lost. §1.5 of the Practice Direction is not an indication that all hearings in the identified categories of case should be held in private. The Court must be satisfied that conducting any hearing in private is strictly necessary in accordance with the principles I have identified above.

Submissions on anonymity

94. I asked Mr Tomlinson QC to make submissions at the hearing as to the continuation of the anonymity order that had been granted by Master Yoxall. He submitted that the anonymity order should continue. In support of that he relied upon the private nature of the evidence of (1) the Claimant's previous convictions (now spent); and (2) certain medical information relating to the Claimant that was mentioned in the evidence and briefly in submissions. He submitted that the order was justified under the principles identified in ***JIH***.

Decision on anonymity

95. I have reached the very clear conclusion that the anonymity order should be discharged (together with the s.11 order that was made). My reasons are:

    i) There is simply no justification for a blanket order. This is not a privacy claim; it is a claim for harassment. It is not in the category of 'blackmail harassment' (see paragraph 90 above). The only 'threat' made by the Defendant is to disclose details of the Claimant's previous convictions and the Claimant has himself generally made these public in the last year. The administration of justice will not be frustrated by the Claimant being identified and the proceedings taking place in open court.

    ii) The Claimant has to accept being identified as a party in these proceedings as any other litigant would (***JIH*** paragraph (6)).

    iii) Insofar as private or confidential information has been raised in the evidence and at the hearing, that *may* justify a more limited and targeted order withholding that information from proceedings in open court together with a reporting restriction under s.11 (***JIH*** paragraph (4)). In this case, as the hearing of the injunction application took place in private, the detail of the Claimant's previous convictions and the medical information have not been mentioned in open court and I have deliberately made no reference to these details in this judgment.

96. For these reasons, I will discharge paragraphs 1-6 of Master Yoxall's order of 7 February 2018. I will hear submissions if the Claimant considers that there is a basis on which the Court can be asked to make a more targeted order.

97. The effect of this is that the parties to this litigation can be identified and there is no restriction on the publication of this judgment.