Neutral Citation Number: [2020] EWHC 1105 (QB)

Case No: QB-2019-002996

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/05/2020

Before :

SENIOR MASTER FONTAINE

- -

Between :

Hamish Hunter	**Claimant**
- and -	
(1) Oliver Cooper	**Defendants**
(2) David Douglas	
(3) The Hampstead & Kilburn Conservative Association	
(4) Maria Higson	
(5) Henry Newman	
(6) Kirsty Roberts	
(7) Giovanni Spinella	

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The Claimant appeared in person
Mr Greg Callus (instructed by **Manleys Solicitors**) **appeared for the First Defendant** in the defamation claim
Mr Tom Cross (instructed by **Manleys Solicitors**) **appeared for all Defendants** in the non-defamation claims

Hearing date: 31 January 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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SENIOR MASTER FONTAINE

Senior Master Fontaine :

1. There were two applications before me. The first in time is the application of all Defendants dated 9 October 2019 ("the non-defamation application") for the following order:

    i) Under CPR 11 (1) for an order declaring that the High Court does not have jurisdiction to try the non-defamation claims (as defined in the application and in paragraph 8 below) ("the non-defamation claims"), alternatively that it should not exercise any jurisdiction that it may have.

    ii) Under section 40 (1) of the County Courts Act 1984 ("the CCA") for the claim to be struck out on the basis that the Claimant knew or ought to have known of the requirement that the non-defamation claims be issued in the County Court.

    iii) Insofar as the Claimant is suing Maria Higson and/or Giovanni Spinella on their own behalves, the claim should in any event be struck out on the additional basis that the Particulars of Claim discloses no discernible or reasonable basis for a claim against those individuals; accordingly there are no reasonable grounds for these claims and they are an abuse of process for the purposes of CPR 3.4 (2) and the Claimant has no real prospect of succeeding on these claims for the purposes of CPR 24.2.

    iv) To the extent that the court does not strike out the non-defamation claims on either of the above bases, the Defendants apply for an order in the exercise of the court's power in section 40 (2) of the County Courts Act 1984 to transfer the non-defamation claims to the County Court.

2. The second application is by the First Defendant dated 10 October 2019 ("the defamation application") to strike out, alternatively to be granted summary judgment, on the defamation claim set out at paragraphs 88.1 to 88.9 of the Particulars of Claim ("the defamation claim") against him.

3. The non-defamation application is supported by a witness statement of James Daniel Roochove dated 9 October 2019, the grounds of the application settled by counsel and counsel's skeleton argument.

4. The defamation application is supported by the witness statement of Oliver Cooper dated 10 October 2019 and counsel's skeleton argument.

5. Both applications are responded to by the Claimant's witness statement of 14 January 2020. The Claimant also provided separate skeleton arguments in response to each application. Documents referred to in this judgment are in the following format [bundle number/tab number/page number].

The Factual Background to the Claim

6. I summarise the factual background from the Particulars of Claim and the witness statements filed as follows. The Claimant was a member of the Conservative party and of the Third Defendant, the Hampstead and Kilburn Conservative Association ("the Association") from 2006 to 2019. The Association is an unincorporated

association and a constituency association of the Conservative party. The Claimant was the Association's candidate for the ward of Hampstead Town in the London Borough of Camden for the 2018 London local elections from 1 January 2017 to (according to the Claimant's case) 6 February 2018. The First, Second and Fourth to Seventh Defendants are and were at all material times members, officers and/or employees of the Association. The First Defendant is one of three councillors for the Hampstead Town ward on Camden Council, and is also the leader of the Conservative group and leader of the opposition on Camden Council.

7. The factual allegations in the claim all relate to the alleged conduct of the Defendants in requiring the Claimant to no longer stand as a candidate in the local election, in relation to handling complaints subsequently made by the Claimant about that, and in expelling the Claimant from the party: see Particulars of Claim paragraphs 21 to 79 [1/2/17 to 27].

The Non-Defamation Application

8. The non-defamation claims can be categorised as follows:

   i) claims in breach of contract: Particulars of Claim paragraphs 80 to 84 [1/1/32-37];

   ii) claims in breach of the Equality Act 2010: Particulars of Claim paragraph 85 [1/1/31 to 32];

   iii) claims in tort: Particulars of Claim paragraphs 86 to 87 [1/1/32 to 37].

9. I deal first with two applications in relation to the non-defamation claims that can be dealt with briefly, before dealing with the more substantial applications.

Claimant's Application under CPR 11 (1)

10. The Claimant made an oral preliminary submission (foreshadowed in his witness statement and skeleton argument) that the Defendants have submitted to the jurisdiction of the court by completing the acknowledgment of service form stating that they intend to contest the claim and therefore they are not entitled to dispute the court's jurisdiction or argue that the court should not exercise any jurisdiction which may have under CPR 11 (1), relying on *Global Multimedia International Ltd v Ara Media Services and another* [2007] 1 All ER (Comm) 1160 at [30].

11. The Defendants submit this application is no longer live, the Claimant having now accepted that the non-defamation claims should be transferred to the County Court.

Discussion

12. Section 40 (1) of the CCA provides as follows:

> "40 Transfer of proceedings to county court.
>
> (1) Where the High Court is satisfied that any proceedings before it are required by any provision of a kind mentioned in subsection (8) to be in the county court**]** it shall–

> (a) order the transfer of the proceedings to the county court; or
>
> (b) if the court is satisfied that the person bringing the proceedings knew, or ought to have known, of that requirement, order that they be struck out."

13. The provisions referred to in section 40 (1), by subsection 40 (8), are any provisions made either under section 1 of the Courts and Legal Services Act 1990 or by, or under, any other enactment.

14. It is common ground that the non-defamation claims are required by statute to be in the County Court: in the case of the Equality Act claim, by section 114 of the Equality Act 2010; ("the Equality Act") and, if necessary, any associated provisions in that Act, and in the case of the remaining non-defamation claims, by Articles 4A and/or 5 High Court and County Courts Jurisdiction Order 1991 ("the 1991 Order") and/or CPR 7.1 read together with paragraphs 2.1 and/or 2.2 of Practice Direction 7A.

15. This court is satisfied that that s.40(1) applies and must therefore either transfer the proceedings to the county court or strike them out.

16. It is therefore immaterial whether or not the Defendants have submitted to the jurisdiction of this court in respect of the non-defamation claims. The issue is governed by s. 40(1) of the CCA. It is pointless to examine in detail the authorities in relation to submission to the jurisdiction where jurisdiction is governed by statutory provisions, and all parties have agreed that the claims should be transferred to the county court, alternatively, in the case of the Defendants, struck out under s. 40(1) (b) of the CCA.

Defendant's Application to transfer the non-defamation claims to the County Court under section 40 (2) of the CCA

17. The Claimant has accepted, in his response to the application, that the non-defamation claims should have been issued in the County Court, so this application is no longer in dispute, save for any costs consequences, and the determination of the Defendants' primary application.

Application to strike out under section 40 (1) (b) CCA

18. This application is the Defendants' primary contention, the application to transfer to the County Court under s. 40 (1) (a) being only an alternative submission (now agreed) if the application to strike out is unsuccessful.

Summary of the Defendants' Submissions

19. The Defendants rely on the decision of the Court of Appeal in *Restick v Crickmore* [1994]1 WLR 420 in relation to the operation of section 40 (1) (b) of the CCA. It was held that, if the court is satisfied that a claimant knew or ought to have known of the requirements referred to in section 40, the court has a discretion either to strike out or to transfer. The court's discretion is unfettered, conditional only on the need to be satisfied that the claimant knew or ought to have known of the requirement. The Defendants rely in particular on the judgment of Stuart Smith LJ at 428E – F.

20. The Defendants submit that the Claimant knew, or ought to have known, that the non-defamation claims needed to be brought in the County Court because:

    i) although he is not represented by a lawyer he is himself a sophisticated lawyer, a commercial litigation barrister employed by Herbert Smith Freehills, who could be taken to be well aware of the relevant rules, and in his correspondence has demonstrated his familiarity with the CPR and the law; furthermore he has received advice in relation to his claim from top London lawyers, including Mishcon de Reya, leading counsel, junior counsel Ms Hannah Slarks, who is an expert in discrimination law, and a friend, Ms Jo Moore, who is a barrister; and

    ii) the Claimant has deliberately used the claim, and specifically the fact that it was to be issued in the High Court, as of means of attempting to harass the Defendants and damage their reputations, and the Claimant's general conduct supports a strike out.

21. The Defendants rely on the following in support of the latter submission:

    i) Prior to issuing the claim, the Claimant tweeted a picture of the White Book with the hashtags #TheWhiteBook#Civil Procedure#LitigateYourself Happy: Roochove paragraph 27 iii [1/10/109], [1/11/130];

    ii) Prior to serving the issued claim, the Claimant sent a copy of the claim form, showing the High Court venue, to the media, including the Guido Fawkes website and the MailOnline website: Roochove paragraphs 21, 27i [1/10/107, 108], letter Manleys to Claimant dated 30 August 2019 [2/14/371]; Cooper paragraph 20 [1/8/83] and [1/9/99];

    iii) When two of the Defendants, Mr Cooper and Mr Newman, who are approved to stand as Conservative party candidates, were applying to various seats for selection, the Claimant deliberately sent the Claim Form to local associations, namely the Hertford and Stortford Conservative Association, the Beaconsfield Association and the Watford Association: Roochove paragraphs 27iv, 27v, 27vi [1/10/109], [1/1/131-132];

    iv) On receipt of the Defendant's application, the Claimant stated that he required the First Defendant to attend the hearing to give oral evidence so that he might be cross-examined [2/14/391], and he maintained that position through subsequent correspondence: [2/14/395, 398, 400]. The Claimant did not state until 20 January 2020 that he no longer required the First Defendant to be produced: [2/14/411]; this is consistent with an approach of harassment and intimidation;

    v) He has tweeted to say that he has a High Court case concerning his experience with "@CamdenTories and @OliverCooper" "mirroring" the experience of a Conservative party activist who had committed suicide: Roochove paragraph 27vii [1/10/109], [1/11/134];

    vi) The Claimant has tweeted to publicise that the First Defendant is a defendant "in High Court proceedings". He has tweeted images of the Claim Form and

Schedule of Defendants in an attempt to "name and shame" the Claimant has sought fit to implead: Roochove paragraphs 27 viii [1.1.109], [1/1/134]; Cooper paragraphs 19 to 20 [1/83] [1/98];

vii) The Claimant's conduct towards members of the Association following his alleged "deselection": Roochove paragraphs 31 to 33 [1/10/110 -111], [1/11/137 to 138]. He threatened the Deputy Chairman of Membership of the Association that: "*if I don't get reinstated in Hampstead Town*" messages between him and Mr Cooper would "*come out*". He threatened the Chairman by sending a private message from the First Defendant criticising the local Conservative cndaidate for the 2017 General election and threatened to release them publicly if he was not reinstated as the candidate for Hampstead Town ward. In the message he stated: "*A little trailer of what will come out if I don't get reimnstated in Hampstead Town. Do the Association, DD and Oliver want to see the whole film – or would they rather come to a private agreement which rights the wrongs that were done?*" He threatened that, unless he was "*brought back in*", "*I will be taking legal action against them speaking out more publicly about my experience*".

viii) The Claimant's publication of a written threat to sue Ms Kirsty Roberts, the Sixth Defendant, before Ms Roberts had even received the letter: Roochove paragraph 27ii [1/10/10829], [1/10/125 - 129].

ix) The Claimant sought to use the fact of his instruction of Mishcon de Reya by telling Mr David Douglas, the Second Defendant and an agent of the Association, that he should be "*very careful about what you're saying*": Roochove paragraph 29 [1/10/110] [1/11/136].

x) The decision of the national Conservative party, following the Claimant's appeal against expulsion: Roochove paragraph 34 [1/10/111 -112]; which made it clear as to its view of the Claimant's threatening and bullying behaviour.

xi) The nature of the Particulars of Claim, which contain wide-ranging allegations based on numerous causes of action against a large number of defendants. The basis of the naming of many of the Defendants is not clear. The framing of the pleading appears itself designed to cause inconvenience. For example, it is either difficult or impossible to follow which facts pleaded in the "Factual Background" section relied on in support of specific allegations of unlawful action.

22. The Defendants submit that the Claimant's suggestion that he made a mistake in issuing the non-defamation claims in the High Court is unlikely and that it is more likely that the Claimant was using the fact of issuing in the High Court as a means of causing greater harassment or intimidation to the Defendants than would be the case if the claim were issued in the County Court. It is submitted that the defamation claim, which takes up only a small part of the pleaded case would not have had the same impact.

23. In any event, even if it is not the case that the Claimant had acted deliberately that does not preclude strike out, and it remains the Defendants' submission that the

Claimant's conduct merited that result because he has on any view used the fact of issuing the claim in the High Court as a way of maximising damage to the Defendants.

24. It is not accepted that the Claimant would necessarily be entitled to issue the majority of his claims again in the County Court if the claims were struck out, but the matter does not arise for determination at this hearing. But if the Claimant is right that he may reissue the claims in the County Court, that is a factor in favour of striking the claim out, because it would mean that, save in relation to court fees and any implications as to costs, the strike out would not preclude the Claimant from continuing the majority of his claims.

25. The Defendants provided a detailed letter of response to the proposed claim [2/14/338 – 347].

Summary of the Claimant's submissions

26. The Claimant accepts that in respect of his claims under the Equality Act and because of the value of the contractual and tortious claims issued, the claims are in the wrong forum and that they should been issued in in the County Court and not the High Court, but he says this was an honest mistake for which he has apologised to the court. He says that his intention was for all claims against the Defendants arising out of the same factual circumstances to be dealt with in one set of proceedings as a more convenient, cost-effective, and more proportionate use of the court's resources. He submits that had the Defendants engaged fully and properly with the Claimant's claims, in particular before the Claim Form was issued and the Particulars of Claim served, many of these issues could have been ventilated and resolved without the need for the hearing.

27. The Claimant submits that section 40 (1) of the CCA does not require the court to strike out the proceedings. It may, and it is submitted normally should, transfer them to the County Court; a *bone fide* mistake tends against strike out and towards transfer: *Restick v Crickmore* at 428-429. It is necessary, but not sufficient, for a claimant to know or ought to have known the venue is incorrect: *Restick v Crickmore* at 427D to E. It is therefore submitted that the test for achieving strike out under section 40 (1) is at least as high as that under CPR 3.4.

28. The Claimant disputes the allegation that he deliberately issued his claim in the High Court as part of a desire to intimidate or harass the Defendants. He submits that this allegation is based on flawed logic, because if that was his motivation it would have left his claims vulnerable to a strike out application. A claimant motivated in such a way could have avoided that eventuality by, for example, inflating the value of his claim.

29. It is submitted that the evidence relied on by the Defendants is spurious, irrelevant, incorrect and simply wrong, to establish the Claimant's alleged motivation. It is also inconsistent with his pursuing a complaint initially with the Third Defendant and then within the Conservative party complaints process to seek redress of the matters complained of. The Claimant notes that he sent detailed letters before claim to the Defendants with voluminous supporting evidence in accordance with the Practice Direction – Pre-Action Conduct. He also made an open offer to agree to enter into a

standstill agreement in order to attempt to settle the dispute without recourse to proceedings. He made an open offer to agree to transfer the proceedings to the County Court.

30. The case law is consistent in the view that striking out a claim is a draconian option and should never be the court's first resort: see Stuart Smith LJ in *Restick* at 427. The Claimant relies on this judgment to support his submission that a defendant cannot use s. 40(1) of the CCA to strike out a claim which, but for the mistake as to forum and absent a "*contumelious disobedience of the court's order*", would not otherwise be struck out. In summary, none of the *Restick* factors are present and it would be disproportionate to strike out claims where no finding has been made on the merits.

31. The Claimant submits that the Defendants should not be allowed to profit from their lack of engagement in the pre-action process in this application. The Defendants acknowledged that they were well aware of the venue in which the proceedings were to be issued but did not raise the point: Roochove para. 25 [1/10/108].

32. It is accepted that the Defendants are not obliged to offer assistance or advice to the Claimant, but they are obliged to comply with the Practice Direction on pre-action conduct. The Defendants' own evidence is that they were aware of the jurisdiction issues that they now complain about well in advance of the issue of the Claim Form. Their conduct should be assessed in the light of this knowledge.

Discussion

33. It is clear from the judgments of the Court of Appeal in *Restick* that there is no fetter to the discretion of the judge dealing with an application under s. 40(1) (b). The Defendants rely in particular on Stuart Smith LJ's judgment at 428 E to F:

> "Where the action should plainly have been started in the county court, and the failure to do so was not due to a bona fide mistake, but can be seen as an attempt to harass a defendant, deliberately run up unnecessary costs, be taken in defiance of a warning of the defendants as to the proper venue or where a party, or more likely his solicitor, persistently starts actions in the wrong court, it may well be desirable for the court to apply the more draconian order of striking out."

34. In this case I am satisfied that the Claimant knew or ought to have known that the non-defamation claims needed to be brought in the County Court. In coming to that conclusion I rely on all the matters identified by the Defendants, namely his profession as a litigation barrister at a top international firm of City of London solicitors, his previous instruction of a well-known and experienced litigation London firm of solicitors, and the advice he had from both leading and junior counsel. I note also the Claimant's attention to detail in relation to the Civil Procedure Rules demonstrated in the correspondence between the parties and in the skeleton arguments he has prepared for both applications. I note also his persistence in pursuing his opposition to the Defendants' application under CPR 11(1) until very close to the hearing, when no practical result could be achieved, which demonstrates his adherence to rules and technical arguments in the face of clear and logical argument

to the contrary, and without any proper exercise of judgment or consideration of proportionality.

35. The Claimant's conduct as described in paragraphs 21 above, is not disputed by him in his evidence. I have only summarised the First Defendant's evidence, but the exhibits to Mr Roochove's witness statement demonstrate conduct that would be deserving of severe reproof to a non legally qualified litigant in person, and is reprehenensible conduct for a lawyer during the course of a legal dispute. I have concluded that the Claimant could only have conducted himself in such a manner for the purposes of causing harassment and intimidation to the Defendants.

36. I note also the conclusions reached by the Conservative party Membership Committee when considering the Claimant's appeal against his expulsion from the Association and the Conservative party:

> "17. The Committee was particularly concerned that the Member threatened others unless he achieved what he wanted, which was furthering his political career, including expressly and repeatedly using the threat of instructing his solicitors Mishcon de Reya, in order to exert pressure on people; the threat of litigation; the threat of adverse publicity; and using other intimidating behaviour and language. For example, he posted an extract of Instructions to Counsel on social media apparently about a dispute between him and the Association with the phrase "Winter has Come". The evidence is of threatening, overbearing and intimidating behaviour from a member of the Party against other people, in poor taste, shows a lack of judgement and an inability to control aggression. It cannot conceivably be in the interests of the Conservative Party and it brings it into disrepute." [1/10/111-112]

37. The evidence in the exhibit to Mr Roochove's statement demonstrates the same conduct as described in that extract.

38. The Claimant submitted, both in his written and oral submissions, that the Defendants failed to comply with the protocol for pre-action conduct or engage fully or properly with him pre-action. However, the Defendants' solicitors Manleys wrote a nine and a half page letter dated 5 August 2019 [2/13/261] in response to the Claimant's letter before claim dated 6 July 2019, and the Claimant has acknowledged that in paragraph 17 of his witness statement [2/12/142]. I have not examined whether this complied in all respects with the pre-action protocol, but it is a detailed response and foreshadows the grounds relied upon in the Defendants' applications.

39. The Claimant's conduct, in my judgment, meets the threshold for strike out under s. 40 (1) (b) of the CCA. The court is not bound to strike out a claim that falls within the subsection, but has an unfettered discretion. The facts in the five cases considered in *Restick* were very different to this case and the sanction of strikeout was not applied in any of them. The facts in this case are unusual, and were not in contemplation of the Court of Appeal in *Restick*, but it was made entirely clear that the court had an unfettered discretion. I consider that the conduct of the Claimant in utilising the fact that proceedings were to be/had been brought in the High Court as a threat to several

of the Defendants, and also to others, in the manner described in the evidence, amounted to an abuse of process. The conduct described does not suggest that the Claimant's primary motive was to achieve compensation under the Equality Act or damages for breach of contract or in tort, but rather to achieve his aim of reinstatement as a candidate for the local constituency by intimidation, bullying and harassment. I have concluded that although the jurisdiction available under s. 40 (1) (b) is not to be used lightly, it is appropriate for the non-defamation claims to be struck out under that section.

Application to strike out claims against Fourth and Seventh Defendants under CPR 3.4 (2) and for summary judgment under CPR 24.2

Summary of the Defendants' Submissions

40. The Particulars of Claim implead six individuals as defendants. The header to the Particulars describes those individuals as each sued "on his/her own behalf" and sued "on behalf of the [Association]". The Claimant seeks to explain why he has named the individual Defendants in paragraph 11 of the Particulars.

41. Without making any concession as to whether any pleaded fact is correct or that any named Defendant may be liable, the Defendants accept that the Particulars contain allegations that certain of the individual Defendants, by their conduct, acted unlawfully. However, there are no allegations that the pleaded conduct of Ms Higson or Mr Spinella was unlawful. Accordingly the inclusion of those Defendants cannot be explained on that account. It is unclear whether the Claimant has named them as Defendants for some other legitimate reason. If they have been named as representatives of the Association under CPR 19.6, on the basis that they are said to have the same interests as other members of the Association, it is unclear, and has not been asserted by the Claimant. In any event their inclusion adds nothing, and they should be removed, if necessary pursuant to rule 19.6 (2).

Summary of the Claimant's submissions

42. The Claimant submits that the legal nature of unincorporated associations and the nature of the relationship between an unincorporated Association and its individual members is clear and settled. Unincorporated associations have no separate legal personality from that of their individual members and are not as a matter of law legal entities distinct from them. The nature of the relationship between an unincorporated association and its members is governed by the law of contract; the terms of the relevant contract are found in the rules of the Association; see: *Evangelou and others v McNicol* [2016] EWHC Civ 817 per Beatson LJ at [18] to [24]. The rules of the Association therefore constitute contractual obligations as between the members of the unincorporated Association and can only be enforced as against other members. The Fourth and Seventh Defendants are and were at all material times members of the Third Defendant and held senior leadership or representative positions within the Third Defendant, set out at paragraph 6 and 9 of the Particulars of Claim [ref]. As a result they owed the same duties in contract, tort and under statute that the Third Defendant owed and can be sued and held liable for the wrong doings of the Third Defendant.

43. It is submitted that the Defendants have advanced no case or evidence to rebut what is pleaded with respect to the Fourth and Seventh Defendants' membership of positions with the Third Defendant. The Defendants have advanced no contrary submissions of fact or law to the Particulars of Claim on these points. The Claimant submits that they have therefore come nowhere near satisfying the requirements of rule 3.4 (2) for strike out or rule 24.24 summary judgment.

Discussion

44. The Claimant's submission that no contrary submissions of fact or law have been advanced to meet the relevant paragraphs of the Particulars of Claim is not to the point, as there is no dispute as to the facts, or the law, in relation to claims against unincorporated associations. The issue the Defendants raise is a pleading point, in that no specific allegations have been made against either the Fourth or Seventh Defendants, so that it is difficult to see why they have been added as Defendants when it was unnecessary.

45. It is trite law that the members of an unincorporated association constitute the association and either a representative of the association can be sued under Rule 19.6 or all the members can be named. The usual course, for convenience, is for an association to be asked to nominate a representative for the purposes of the proceedings. The Claimant has taken neither approach and has selected six individual members as defendant representatives of the Association, but has also made it clear that they are sued in addition in their personal capacity: see title page of Particulars of Claim. In addition, at Paragraph 11 of the Particulars of Claim he states that:

> "The Claimant brings these proceedings against the individual Defendants (i) because of their own conduct and (ii) because they are Association members the most responsible for the Association's wrongdoing by reason of (a) their position within the Association as set out above and/or (b) their own conduct and/or (c) the fact that they gained and/or stood to gain from the wrongdoing."

46. With regard to bringing proceedings against the individual Defendants in their personal capacities, the only references in the Particulars of Claim to the Fourth and Seventh Defendants are at paragraphs 6 and 9 where each of them are described. Ms Higson is described as a councillor for Hampstead Town since May 2018 and until September 2018 also an officer of the Association in the role of Women's Officer. Mr Spinella is described as a councillor for Frognal and Fitzjohns and until June 2018 chairman of the Association. However he was not chairman of the Association at the time when these proceedings were issued.

47. The only other reference to Ms Higson is at paragraph 29 where there is a reference to the Association announcing that the Claimant had resigned his candidacy and had been replaced by Ms Higson. There is accordingly no basis pleaded for a claim against Ms Higson in her personal capacity.

48. The only references to Mr Spinella are at paragraphs 19 and 20 were the Claimant alleges that Mr Spinella shouted and swore at him on two occasions in public or at a

meeting and that when this was mentioned to another member of the Association the response suggested that Mr Spinella had a "*barely concealed desire to remove him from his position as a candidate in Hampstead town*". Neither of these references to Mr Spinella provide any basis for a claim against him in his personal capacity.

49. With regard to the claims against Ms Higson and Mr Spinella as members of the Association, I do not consider it is necessary for there to be any other Defendants to represent the Association than the current officers of the Association, or a representative officer nominated by the Association. It is unnecessary and disproportionate to identify six members out of the whole Association for a representative claim.

50. Accordingly I shall order that the claims against Ms Higson and Mr Spinella in their personal capacities be struck out under CPR 3.4(2) as showing no reasonable grounds for having been made. If the claim were to proceed (which I have concluded that it should not under s. 40 (1) (b) of the CCA) I would have made an order under CPR 19.6 (1) (b) that the claim be continued only against the remaining Defendants.

The Defamation Claim

51. There are three claims for defamation, two in the tort of libel, one in the tort of slander. The Claim Form was issued on 21 August 2019. The first alleged libel is set out at paragraph 88.1 of the Particulars of Claim ("the first libel"), the second alleged libel at paragraph 88.3 of the Particulars of Claim ("the second libel") and the alleged slander at paragraph 88.5 of the Particulars of Claim ("the slander"). The Claimant's pleading on meaning is set out at paragraph 88.8.

Summary of the First Defendant's submissions

52. The First Defendant seeks to strike out or be granted summary judgment on the defamation claims on four grounds:

(i) pleading deficiencies;

(ii) limitation;

(iii) serious harm;

(iv) abuse of process.

Pleading deficiencies

53. The First Defendant submits that none of the publications have been adequately particularised in the Claim Form, contrary to paragraph 2.2 of CPR Practice Direction 53 (as it was in force the date of issue the Claim Form). In relation to the alleged slander, the Claimant has not pleaded either special damage or slander *per se;* he has failed to adequately plead meaning or reference.

54. CPR PD 53 2.2 states:

> "(1) In a claim for libel the publication the subject of the claim must be identified in the claim form.

> (2) In a claim for slander the claim form must so far as possible contain the words complained of, and identify the person to whom they were spoken and when. ”

55. Mr Callus, Counsel for the First Defendant, referred to the most important element of a claim in defamation, namely identifying the particular publication sued upon. *Gatley on Libel & Slander* (12th edition) at §26.5 states:

> “Unless there are good grounds for variance, the particulars of claim should allege, in respect of each publication relied on as a cause of action, that the words were published by the defendant on a specific occasion to a named person or persons other than the claimant” (subject to exceptions in §26.7).

56. Mr Callus also referred to Lord Denning’s judgment in *Collins v Jones* [1955] 1QB 564 at page 571 in the paragraph which begins: “*In a libel action it is essential to know the very words on which the plaintiff founds his claim*.”

57. It is submitted that neither the Claim Form nor the Particulars of Claim adequately identify the date of publication of either the first libel or the second libel, the means of publication of either the first libel or the second libel, or the identity of the publishees of either the first libel or the slander. Accordingly none of the alleged libels/slander identify the occasion of publication which is the core element of the tort of defamation.

58. The slander claim does not adequately plead the words complained of in either statement of case, the only reference being in paragraph 88.5 of the Particulars of Claim:

> “In an oral statement made by Mr Cooper in the Garden Gate Public house in South End Green to members of the Holborn and St Pancras Conservative Association after their annual general meeting on 26 March 2019 (the “Garden Gate Statement”) Mr Cooper told those assembled that:
>
> The Claimant had “*attempted to stab*” him and tried to kill him in an “*attempted murder*”.”

59. The decision of Warby J. in *Bode v Mundell* [2016] EWHC 2533 (QB) at [12]:

> “…precision in the pleading and proof of publication, including the actual words used, is always essential. It is not enough to plead or prove the gist or substance of what was said. In libel this is rarely a problem. In slander, it often is.”

And at [16]

> “These requirements are not mere technicalities.… The actual words used are critical because everything else flows from the words: meaning, whether defamatory, defences and damages.…”

60. It is submitted that where the Claimant has given the 'gist' of the slander but made no attempt to plead the precise wording, his claim must be struck out and has no real prospect of success. Although a slander imputing "*attempted murder*" might well satisfy the common law form slander *per se* being the imputation of a criminal offence for which a person would be imprisoned, the imputation of "*attempted to stab*" is less clear cut because of the complexities of the law in this area, see: *Gatley* §§4.3 to 4.12.

61. The Claimant's plea at paragraph 105 of the Particulars of Claim for pre-judgment interest under section 35A of the Senior Courts Act 1981 must be struck out because interest under section 35A is only available in defamation claims on special damages, i.e. pecuniary loss, not general or aggravated damages.

62. Further although the Claimant has pleaded a meaning at paragraph 88.8 of his Particulars of Claim, he has impermissibly pleaded only one meaning: "*had committed the criminal offence of attempted murder of Mr Cooper*", said to be the natural and ordinary meaning in respect of all three publications, even though they are only consistent with the gist of the pleaded words of the slander. The first and second libels as pleaded do not allege the offence of attempted murder. Instead, on the Claimant's case, they plead he "threatened to kill" and "an attempt to stab ". These are different offences in criminal law. The libel meanings are incapable of the natural and ordinary meaning of the words complained of and should be struck out.

63. The Claimant has not, in the case of either the second libel or the slander, particularised in his pleading how the words complained of referred to the Claimant. In both cases this is because he has failed to set out as required all words published upon which he relies.

Limitation

64. The First Defendant has stated in his evidence the actual dates and means of publication of both the first libel and the second libel, and to whom those publications were made:

    (i) the first libel was published by email dated 27 July 2018 to Richard Milestone, the vice-chairman of the Association, who was investigating the Claimant's complaint;

    (ii) the second libel was published by Facebook Messenger on 31 July 2018 to James Hellyer, a Conservative councillor in Devon who had expressed an interest in the treatment of the Claimant and his candidacy in Hampstead Town.

65. Accordingly, both libels were published more than a year before the Claim Form was issued on 21 August 2019, and are time-barred under section 4A Limitation Act 1980. The cause of action in defamation accrues upon the date of publication, notwithstanding s. 8 of the Defamation Act 2013: Lord Sumption in *Lachaux* at [18]. Unless the Claimant were to make a successful application under section 32A of the Limitation Act 1980 the First Defendant passes the threshold for summary judgment on the Claimant's claim in respect of both libels.

66. It is submitted that any application under section 32A would be doomed to fail, given that the Claimant pleads that he had knowledge of the first libel by December 2018 (paragraph 88.2 Particulars of Claim) and of the second libel by 20 September 2018. Accordingly, on his own pleaded case, he waited at least between 9 and 11 months before commencing libel claims of which he was aware.

67. It is submitted that in any event this would not be a suitable claim for the equitable extension of time, in circumstances where the Claimant did not even expressly set out the first and second libels in the initial letter from Mishcon de Reya dated 2 October 2018 [2/13/169].

Serious Harm

68. In the First Defendant's solicitors' response dated 13 August 2019 to the Claimant's letters of claim the Claimant's attention was drawn to the recent Supreme Court decision in *Lachaux v Independent Print Ltd* [2019] 3 WLR 18. Lord Sumption, giving the judgment of the court, emphasised at [14] that the test for surpassing 'serious harm' in s. 1 (1) of the Defamation Act 2013 was no longer a matter of mere inference from the seriousness of the meaning imputed to the words complained of (their objective 'tendency'), but instead requires a claimant to plead and prove actual harm that he or she has subjectively suffered as a result of the publication of the defamatory statement.

69. Despite that correspondence, the Claim Form and Particulars of Claim issued a week later contain no particularised elements of serious harm beyond the inference that the Claimant says should be drawn from the seriousness of the words themselves at paragraphs 101- 104. It is well established that the injury to feelings caused by defamatory comments and the failure to apologise and not in themselves sufficient to constitute 'serious harm': see Warby J. In *Munroe v Hopkins* [2017] 4 WLR 68 at [67] "*unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient*".

Abuse of Process

Collateral Purpose Abuse

70. The sole proper purpose of defamation proceedings is the swift vindication of reputation, and any other collateral motive is intrinsically improper. A predominant collateral motive renders a claim liable to be struck out as an abuse of process: *Weston v Bates* [2015] EWHC 3070 (QB) per Sir Michael Tugendhat at [40].

71. In defamation claims, the collateral purpose can often be inferred from the fact of the delay in bringing or prosecuting the proceedings: *Grovit v Doctor* [1997] 1 WLR 640 per Glidewell LJ, upheld by the HL and cited in *Weston v Bates.* In the present case the First Defendant relies not only on the unexplained delay in issuing proceedings, causing two of the three defamation claims to be out of time, but that a notice under CPR 7.7 was required to compel service of the claim. This arose out of the Claimant seeking to publicise the fact of these proceedings, so as to damage the First Defendant's prospects of standing for Parliament on behalf of the Conservative party at the next general election. The Claimant has sent copies of the Claim Form directly to three constituency associations, and has tweeted a copy of the Claim Form and

asked rhetorically whether this makes the First Defendant an unsuitable candidate. In the context of the facts pleaded in this case, and the First Defendant's evidence as to the unreciprocated romantic feelings of the Claimant for him and the subsequent vendetta of the Claimant against him, the collateral purpose of this defamation claim is easily established evidentially. It is submitted that there is clear evidence of an abusive collateral purpose.

Jameel Abuse

72. The essence of *Jameel* abuse (arising out of the Court of Appeal decision in *Jameel v Dow Jones* [2005] 946 (QB)) is that the tort is complete, but having regard to the significant interference in the defendant's Article 10 rights which would be caused by the cost of a full trial, and the relatively limited degree of interference (if any) in the Article 8 rights of the claimant (of which their reputation may be a facet) the court decides *"…the game will not merely not have been worth the candle, it will not have been worth the wick*": Lord Phillips MR in *Jameel* at [69].

73. Of the three publishees of the defamatory publications, the first publication is covered by qualified privilege and there is no pleaded case on malice; the second and third publishees approached the Claimant to report the First Defendant's remarks to him. There is no pleaded case or evidence of any subjective harm, and the First Defendant submits that the defamation claims should be struck out as instances of *Jameel* abuse.

Alternative Submission

74. The First Defendant's primary contention is that the defamation claims should be struck out/summary judgment be granted in their entirety. It is submitted that if any of the defamation claims are not struck out they should be transferred to the County Court under ss. 15 and 18 of the CCA in conjunction with s. 40 (2) of the CCA, the latter section providing a mechanism whereby the High Court can transfer claims to the County Court which would otherwise not be within the jurisdiction of the County Court: *National Westminster Bank v King* [2008] EW HC 280 (Ch) at [23] to [24] per David Richards J., endorsed by the Court of Appeal in *Wallace v Crossley* [2009] EWCA Civ 896.

Summary of the Claimant's submissions

75. The Claimant submits that he has brought the proceedings to vindicate his reputation, remedy the damage already done to it, and to prevent further damage. He submits it is obvious that he would wish to do so given the nature of the defamation.

Pleading deficiencies

76. The Claimant accepts that the Particulars of Claim have deficiencies, for example that he did not state the person to whom the slander was spoken. He does not accept that he has not properly pleaded the defamatory meaning of the publications relied on. The Claimant rejects the criticism of his pleading of the slander, and states that the precise words spoken are stated in quotation marks at paragraph 88.5 of the Particulars of Claim.

77. The Claimant accepts that the pleading in the Particulars of Claim "may not be perfect" but states that it is adequate and suggests at paragraph 62 of his witness statement that the issue could have been avoided had the First Defendant engaged more fully in pre-action correspondence. Insofar as there are pleading deficiencies he should be given the opportunity to remedy these. The case law is clear that a party should be given the opportunity to amend their pleadings before the court strikes it out: *In Soo Kim v Youg Geun Park* [2011] EWHC 1781 (QB) at [40] Tugendhat J. said:

> "…where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided there is reason to believe that he will be in a position to put the defect right."

78. It is submitted that the deficiencies identified by the First Defendant do not justify striking out the claim. They cannot be said to be a "*striking failure to comply*" with the requirements, but in any event, striking out a claim where there was such a "*striking failure*" is not inevitable and has been held to be "*disproportionate*": *McLaughlin v Lambeth LBC* [2010] EWHC 2726 (QB) at [113].

Limitation

79. The Claimant submits that the limitation position is not so clear cut as the First Defendant submits. The First Defendant's case on limitation does not deal with the issue of the risk of future re-publication and/or repetition, the prevention of which is a vital purpose of a libel action: *McLaughlin v Lambeth LBC* at [112]. The limitation position is also affected by the number of times that the defamation has been published.

80. Further, the Claimant has a more than merely arguable case that the primary limitation period should be extended, not least because the fact of publication of the first libel was not known to him until December 2018 and the date of publication not known until the First Defendant's application was made.

81. The Claimant submits that in this case there is a clear conflict of fact which can only be resolved on a proper investigation of the facts at trial with the full evidence which will then be available. This will also deal with when and how many times the defamatory words have been published, which it is submitted, affect the limitation position.

Serious Harm

82. The Claimant relies on paragraphs 63 to 68 of his witness statement for his case on serious harm. He rejects the suggestion that the Particulars of Claim rely only on an inference of serious harm. He submits that the first libel will have had an effect as to how the Third Defendant dealt with his complaint about being removed as a candidate in Hampstead Town. He says that this is also the case in respect of the other members of the Conservative party who looked at his complaints and considered the question of his membership. The Claimant submits that insofar as the court considers that his case on serious harm is deficient, it can be remedied without recourse to strike out or

summary judgment and to allow him to do so would be consistent with the case law in *Kim v Park* at [40]; *Candy v Holyoake* at [11]; and *Mark Universal Coatings and Services Ltd* at [49]. At the time of service of the Particulars of Claim important information as to the defamatory statements was not known, and some of it has come to light subsequently, and no doubt more will be revealed at the time of disclosure. The defects in the pleadings on serious harm do not mean that the Claimant' s case is fanciful.

Abuse of Process

Improper Collateral Purpose

83. The Claimant rejects the First Defendant's submission that he has any collateral purpose other than wishing to seek vindication of his reputation and redress by issuing proceedings. He says that the First Defendant's case that he is doing so because he is motivated by feelings of personal animosity, vindictiveness or general antagonism towards the First Defendant is, even if true, "*nothing on the point*" (*Wallis v Valentine* [2002] EWCA EWCA Civ 1034 at [31]). The only reason for his delay in issuing proceedings was his wish to seek resolution on a personal level with the Defendants or within the structure of the Conservative party complaints process, and it was only when neither of those avenues bore any fruit that he resorted to proceedings. Accordingly, any alleged collateral purpose is related to the subject matter of the proceedings, and the effects on the First Defendant and not beyond those "*ordinarily encountered in the course of properly conducted litigation*": *Goldsmith v Sperrings Limited* [1977] 1 WLR 478 at page 503F.

Jameel Abuse

84. The Claimant submits that there is, and will be indefinitely, available to an unknown number of people in the Conservative party, an easily accessible, searchable and shareable document making an allegation that the Claimant attempted to stab and/or kill another person. If the court strikes out the Claimant's claim, that defamatory statement will remain for as long as it is stored electronically, could be used against the Claimant in future. The Claimant wishes not only to seek redress for the damage the defamation has already done, but also to prevent further damage by preventing any future publication or repetition of the statements. He is entitled to do so to obtain vindication of his reputation see: *McLaughlin v Lambeth LBC* at [112]. In that case the High Court declined to strike out a libel action for *Jameel* abuse because, amongst other things, the words complained of could easily be re-published.

85. Further, the First Defendant's case on *Jameel* abuse is based solely on the identities of the relatively small number of people to whom the defamations have already been published. It does not take account of the very real risk that the defamatory publications have in fact been more widely published already. In any event publication to a small number of people is not, of itself, a ground to strike out on the basis of *Jameel* abuse: *McLaughlin v Lambeth LBC; Ansari v Knowles*[2013] EWCA Civ 1448*; Sullivan v Bristol Film Studios* [2012] EWCA Civ 570*; Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB) .

86. The people to whom the first libel was published were involved with the Claimant's political activities and investigating a complaint that that the Claimant had brought. In

those circumstances the publication could have had an especially damaging effect and prejudice the Claimant's ability to obtain redress for his complaint. In *Ansari v Knowles* the court stressed that the nature of the defamation and the identities of the people to whom it was published made the defamation potentially very serious.

Objection to the Evidence of the First Defendant

87. The Claimant submits that the First Defendant is an unreliable witness and the court should not assume that his assertion that the statements made are true is correct. The Claimant relies on paragraph 84 of his witness statement to support this submission. He says that the description of his alleged attempt to stab him is partial and incomplete and gives a grossly distorted impression of what occurred. He disputes the First Defendant's chronology of events when the First Defendant attended the Claimant's home in September 2017 and gives details of other examples where he says that the First Defendant's description of events is incomplete, which distorts their accuracy.

Claimant as a Litigant in Person

88. Finally, the Claimant submits that his status as a litigant in person should weigh in his favour in the court's determination.

Discussion

The Law in respect of Strike Out and Summary Judgment Applications

89. The principles applicable to applications for strike out under CPR 3.4 (2) and summary judgment under CPR 24.2 are not in dispute and are well known, so I do not cite them here. I have been assisted by the principles particularly relevant to defamation claims in the authororities cited by the parties, as referred to above.

Pleading Deficiencies

90. I accept Mr Callus' detailed submissions with regard to the pleading deficiencies in the Claim Form and Pariculars of Claim. The core element of a defamation claim, namely the identification of the publication relied upon, the words written/spoken, to whom they were published and the date of publication are missing in some respect in each of the publications relied upon by the Claimant. (See *Gatley on Libel & Slander* (12th Edn) at §26.5 and CPR 53PD para. 2.2).

91. The pleading is also deficient in respect of the pleading of meaning, in that he has pleaded only one natural and ordinary meaning for all three publications, namely "*the Claimant had committed the criminal offence of attempted murder on Mr Cooper*", even though such meaning can only be consistent with the gist of the words of the slander. Neither of the libels as pleaded allege the offence of attempted murder, but rather, different offences of "*threatened to kill*" and "*an attempt to stab*", which would be likely to be an assault or other offence. The Claimant has also failed to particularise how the words complained of in the second libel and the slander refer to him.

92. With regard to the libel claims, I therefore consider that the grounds for both strike out and summary judgment are satisfied. The claims show no reasonable grounds for being made, because they do not satisfy the requirements of a libel claim, and they are in breach of Rule 53 and the Practice Direction 53. They have also for the same reasons no real prospect of success, and there are no compelling reasons for permitting such claims to proceed to trial, not least because of the matters referred to above with regard to the Claimant's conduct, and the other hurdles facing the claims, identified below.

93. I consider at the end of this judgment whether it is appropriate to allow the Claimant further time to attempt to plead amended Particulars of Claim in respect of the libel claims which would comply with the requirements of the Rule and the Practice Direction.

94. In principle the Claimant accepts the pleading deficiencies identified in the libel claims. However, he considers that he has complied with the requirement to plead the precise words of the slander. I do not consider that this is correct.

95. The pleading requirement is set out in CPR 53 PD 2.4:

> "In a claim for slander the precise words used and the names of the persons to whom they were spoken and when must, so far as possible, be set out in the particulars of claim if not already contained in the claim form."

See also *Bode v Mundell* at [12] and [16], relied on by the First Defendant in paragraph 59 above.

96. The Claimant has identified certain words as being part of what was said, and the Particulars of Claim at Para 88.5 make it clear that additional words were spoken, but he has not identified the complete sentence(s) said to have been spoken and the words pleaded do not make sense on their own. Mr Callus has identified that this failure to identify the exact words was also the case in Mishcon de Reya's letter dated 27 March 2019 [1/9/91] sent only the day after the slander was said to have been spoken, so that it appears that the Claimant does not know the precise words spoken. In the period since the application has been served the Claimant has not sought to amend Paragraph 88.5, to comply with the relevant rule, practice direction and authorities relating to claims for slander, although in his witness statement at Paragraph 58 he identifies two people who have confirmed to him that the words (as pleaded) were spoken to and/or heard by each of them.

97. The Claimant has also not pleaded any special damage, as is required, and although it is possible that a slander imputing 'attempted murder' or even 'attempted to stab' might satisfy the common law relating to slander *per se,* the failure to plead the words spoken would render any argument in that regard pointless.

98. There would therefore seem to be no purpose to allowing the Claimant more time to re-plead the slander claim.

Limitation

99. I agree with Mr Callus' submissions that as both libels were published more than a year before the Claim Form was issued on 21 August 2019, (on 27 and 31 July 2018 respectively) they are time-barred under section 4A of the Limitation Act 1980. The Claimant is mistaken as to the law when he submits that the limitation bar does not apply to re-publication of the libel. That was the case at common law prior to the coming into force of the Defamation Act 2013, and any uncertainty as to the effect of S. 8 of the 2013 Act was resolved by the judgment of Lord Sumption in *Lachaux* at [18]. The judgment in *McLaughlin*, on which the Claimant relies in this regard, was in 2010, before the passing of the 2013 Act. Thus, unless the Claimant were to make a successful application under section 32A of the Limitation Act 1980, the First Defendant passes the threshold for summary judgment on the Claimant's claim in respect of both libels, because there is no real prospect of success, the First Defendant having a complete defence to such claims. The Claimant has not made any application under s. 32A, as he could have done in the period of over 3 months between the service of the application and the hearing, so I do not consider that there is any good reason to deprive the First Defendant of his right to rely on such defence. It appears that the Claimant was mistaken as to the law, believing that the date of his knowledge was the date when the cause of action accrued, and that he could rely on republication. That would be very unlikely to found a basis for a successful application under s. 32A, particularly when he did not act promptly in making an application when the error was pointed out to him in this application. The Claimant also failed to act promptly in issuing proceedings once he knew of the publications, and as the aim of defamation proceedings is to achieve vindication of reputation that is a relevant consideration. There are also other reasons why such an application is unlikely to succeed, such as his conduct in utilising the threat of proceedings, the fact that the Conservative party's reasons for expelling him from the party have been available to party members for some time, and the failure to properly particularise his claims in pre-action correspondence and in the Claim Form and Particulars of Claim.

Serious Harm

100. Again, I accept the submissions of Mr Callus. The pleading at paragraphs 100 -104 is wholly inadequate to meet the serious harm test as required by s. 1(1) of the 2013 Act, as can be seen from the relevant authorities, in particular *Munroe v Hopkins* at [67] and *Lachaux v Independent Print* at [14]. This was also a deficiency identified by the First Defendant's solicitors in pre-action correspondence [2/14/369-370] but not rectified when the claim was issued.

Abuse of process

(1) Collateral Purpose Abuse

101. I have concluded that there is sufficient evidence of an improper dominant purpose, namely to prevent the First Defendant from becoming a successful candidate to stand at the next general election. The Claimant's delay in bringing and then serving proceedings, together with his pre-and post action conduct, identified at paragraph 21 above, and as described in the evidence of Mr Roochove at paragraphs 27-33 [1/10/108-111], not denied by the Claimant (save to the extent identified in paragraph 87 above), very much suggests that the issue of these proceedings was part of a

campaign or vendetta against the First Defendant rather than to achieve vindication of his reputation. Further, his failure to pay any heed to the First Defendant's solicitors notification of the defects in his claim, sustained in his response to this application, suggests that his primary purpose was not to obtain vindication, as he would otherwise surely wanted to ensure that his claim had the best chance of success, but to cause annoyance and inconvenience to the First Defendant.

102. I am cognisant of the comments by Tugendhat J. in *McLaughlin* at [113], relied on by the Claimant, but in that case he had concluded that the evidence did not support the submission that the action was brought for a collateral purpose. If the other deficiencies in this claim were not present, my conclusion above might not be sufficient ground, on its own, for for striking out this claim: see the judgment of Sir Murray Stuart Smith in *Wallis v Valentine* at [31], relying on *Broxton v McClelland* at 497 – 498. But given the conclusions I have reached in this judgment it is not necessary for the First Defendant to rely on this ground as a basis for a finding abuse of process to support the strike out of the claim.

(2) *Jameel* abuse

103. This ground for establishing abuse process arises from the Court of Appeal decision in *Jameel v Dow Jones* [2005] QB 946 at [69-70]. There are only three named publishees of the defamatory publications. That alone is not sufficient grounds for establishing *Jameel* abuse, and had the other deficiencies in the Claimant's case, as outlined above, not been present I would not regard that on its own as being sufficient to constitute *Jameel* abuse. However, the following considerations are also relevant:

i) the conclusions reached by the Conservative party in its report which led to the Claimant being expelled from the party are likely to have been more damaging to the Claimant than any of the publications relied upon, and support the likelihood that, even if he were to replead paragraphs 101 to 104, the Claimant would be unable to establish serious harm caused by any of the publications;

ii) the first libel is likely to be covered by qualified privilege, and there is no pleaded case in malice, nor any suggestion in the evidence that this could be established;

iii) those to whom it is alleged the second libel and the slander were published approached the Claimant to inform him of the First Defendant's remarks to them, so it seems unlikely that there was any subjective harm, and none is pleaded or referred to in the evidence;

iv) the many deficiencies in the Particulars of Claim, most of which cannot or are unlikely to be capable of remedy, which mean the claim is in any event most unlikely to succeed, so that the considerable costs and time involved in pursuing the defamation claim to trial are simply not proportionate to the likely benefit.

104. I note that in the authority relied on by the Claimant, *Sullivan v Bristol Film Studios,* which was not a defamation claim, but where one of the grounds relied on by the defendant was *Jameel* abuse, the Court of Appeal upheld the judge below's conclusion, and Lord Justice Etherton (as he then was) stated at [40]:

> "I would emphasise that the disproportion justifying the strike out of [the claimant's] claim is not merely between the likely amount of damages he would recover if successful in the proceedings and the litigation costs of the parties. It includes consideration of the extent to which judicial and court resources would be taken up by the proceedings."

105. Lord Justice Etherton also noted that, in *Jameel v Dow Jones* at [70], Lord Phillips noted that in many cases of small claims (and in the case of *Sullivan*) a small claims procedure was available, which was not the case the defamation claims.

106. The factors set out in paragraph 103 above, and the factors supporting all the other grounds successfully relied upon by the First Defendant in favour of strike out and/summary judgment, lead me to the conclusion that the considerable costs and time involved pursuing this defamation claim to trial are simply not proportionate to any likely benefit.

Whether the Claimant should be permitted an opportunity to amend the Particulars of Claim

107. I have considered whether I should permit the Claimant to amend the defamation claim in his Particulars of Claim rather than impose the ultimate sanction of striking out or granting summary judgment. I have come to the conclusion that I should not, for the following reasons:

i) The Claimant was given ample opportunity to make an application to amend in correspondence from the First Defendant's solicitors [2/14/369-370] but despite that, and the considerable length of time, almost 4 months, between the issue and service of the Defendants' applications and the hearing, he has not availed himself of that opportunity: see notes in the White Book Vol 1, 2019 edn. 3.4.3.7 page 94, where the case of *In Soo Kim*, relied on by the Claimant, is cited, but is followed by a further comment:

> "Strike out may be appropriate where the court is satisfied that the claimants have made it clear that they have no intention of trying to amend to put forward a coherently pleaded and intelligible claim (*Spencer v Barclays Bank plc* 30 October 2009, unrep. (Ch D.)."

ii) I note also the caveat in the judgment of Tugendhat J. at [40]:

> "… where the court holds that there is a defect in a pleading it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right." (my emphasis)
>
> It is apparent from this judgment that there are so many defects in relation to this claim that would not be the case here.

iii) Despite the Claimant's repeated assertion in both oral and written submission that the First Defendant did not fully engage in pre-action correspondence, there was a detailed response by the First Defendant's solicitors to the Claimant's letter before action [2/14/348-364, 368-370]: see (i) above.

iv) The Claimant has the benefit of professional legal advice, including very experienced London solicitors and leading and junior counsel.

v) Although the Claimant is a litigant in person, he is also a barrister and a specialist in litigation at a top City firm, and would have been expected to have taken a sensible and responsible approach to the deficiencies in the pleaded case pointed out in correspondence and in the application. In any event, it is clear from the Supreme Court decision in *Barton v Wright Hassall LLP* [2018] UKSC 12 that litigants in person are expected to comply with court rules and practice directions unless they are particularly inaccessible or obscure. Part 53 and Practice Direction 53 constitute a complete code relating to defamation claims and are clearly identified as such in the White Book. The Claimant has referred in his oral submissions to the fact that he is not a defamation specialist, and that he recognises that his claim could be improved by amendment, but he has provided no explanation as to why he took no heed of the warnings where the deficiencies were clearly pointed out to him, and has taken no steps to prepare draft amended Particulars of Claim which would meet the criticisms made and apply for permission to amend his claim.

Disputes of fact

108. With regard to the Claimant's submissions that there are disputes of fact, and that the First Defendant is not a reliable witness:

i) for the purposes of this application only, I have proceeded on the basis that the content of the publications are untrue. In defamation proceedings the defendant bears the burden of proving that the publications are true. I have not attempted to deal with the truth or falsity of the allegedly defamatory publications, nor was that issue any part of the application.

ii) For the same reasons I have not needed, or attempted, to resolve any dispute of fact.

109. For all the reasons above the defamation claim shows no reasonable grounds for being made, fails to comply with CPR PD53 and is an abuse of process, and has no real prospect of success, nor is there any compelling reason why the case or any issue should be disposed of at a trial. Accordingly, the First Defendant's application to strike out that part of the Claim Form and Particulars of Claim, and for summary judgment on the defamation claim, is granted.