Neutral Citation Number: [2021] EWHC 3252 (QB)

Case No: QB-2020-002870

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/12/2021

Before:

MR JUSTICE JAY

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Between:

(1) TALLHA BASIM ABDULRAZAQ
(2) BASIM IBRAHIM ABDULRAZAQ
(3) ABDULAZIZ BASIM ABDULRAZAQ **Claimants**

- and –

(1) SHAHEED UL HASSAN
(2) TAHA HASSAN
(3) AHMED AL-JANNATI
(4) DR MOHAMMED MOSLEM SAFLO
(5) MOHAMMED ABDULLAH
(sued as Trustees of the Exeter Mosque and Cultural Centre, an unincorporated association) **Defendants**

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Eric Shannon and Beth Grossman (instructed by **Patron Law**) for the **Claimants**
Richard Munden (instructed by **Berrymans Lace Mawer LLP**) for the **Defendants**

Hearing date: 16th November 2021

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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.

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be Thursday 2nd December 2021 at 10.00am.

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MR JUSTICE JAY

MR JUSTICE JAY:

Introduction

1. The Claimants are two brothers and their father. The Defendants are the Trustees of the Exeter Mosque and Cultural Centre ("the Mosque"). The Claimants were members and attendees of the Mosque (it is said that they still are attendees, but nothing turns on this). These are defamation proceedings arising out of the publication of two documents: (1) a Notice published on 25th September 2019 (on a noticeboard at the Mosque and online), and (2) a similarly worded Leaflet handed out to members of the community as they left Friday prayers on 11th October 2019.

2. The Defendants have applied to strike out the claim and/or for summary judgment on the grounds (by way of simplification) that their defence of qualified privilege either must succeed on the pleadings or raises no issue which has a real prospect of success; and that the reply of malice is equally unsustainable. To my mind, the provisions of CPR r.3.4(2)(a) are not readily applicable in this situation because an analysis of the pleadings, particularly in the context of the plea of malice, is not dispositive. Mr Richard Munden for the Defendants agreed with me that he is in no worse position if I were to examine his clients' application solely through the lens of summary judgment, and this is what I propose to do, applying the well-known principles cited in the White Book and the authority that was drawn specifically to my attention, *Easyair Ltd v Opal* [2009] EWHC 339 (Ch).

3. There is also an application to amend the Claimants' Reply to improve the case on malice. The Defendants were content that for present purposes I should examine the case that the Claimants now wish to run.

Some Essential Background

4. Unfortunately, there has been considerable ill-feeling and acrimony between the parties for several years now, characterised by vilification and litigation. It is not possible to explore all the rights and wrongs of this underlying dispute, but I recognise the strength of feeling on both sides.

5. The Claimants say that the problems started in 2014 when over a number of months the Mosque received five cash payments each in the total amount of £50,000. It is said that the source of these payments was Sadiq Al-Ghariani, the Grand Mufti of Libya. It is also said that he is someone with extremist links. The Second Claimant was a trustee of the Mosque at the time and started questioning the source of the payments and their propriety. The Defendants say that these were legitimate payments which funded building work within the community. They deny the alleged impropriety and point out that Mr Al-Ghariani has close links with Exeter having studied for his PhD at the university before his return to Libya after the fall of Qaddafi. The Defendants also contend that the real reason for the animus was the First Claimant's unsuccessful attempt to become Secretary to the Executive Committee in 2015.

6. In September 2019 the Claimants were "excluded" from the Mosque. In fact, they were expelled from membership and simultaneously excluded. The Defendants say that the community were entitled to know the reasons for exclusion and that these were genuine reasons. The Claimants, on the other hand, say that there was no need to publicise the

reasons and that, in any case, the published reasons were not the true reasons for exclusion. The true reasons were that the Defendants were punishing the Claimants for raising perfectly valid questions about the Al-Ghariani monies.

The Pleadings

7. According to the Particulars of Claim, on or about 25th September 2019 the Defendants published a Notice on the noticeboard at the front of the Mosque and on its Facebook page and Twitter account. The Notice explained that as from that date "the three individuals" were excluded indefinitely from the Mosque, its premises and facilities. Surprisingly, these individuals were not named but appended to the noticeboard were photographs of the three Claimants. There was no point in publishing the information in the Notice without making it clear to whom it related.

8. The Notice referred to the unacceptable behaviour and malicious actions of certain individuals. They had shattered the peace, harmony and sanctity of the masjid, wasted resources, both financial and personal, and had caused non-Muslims to believe that the Mosque condoned terrorism. In particular:

> "From among the etiquettes required of Muslims, they are not to raise their voices in quarrels, disputes and arguments in the house of Allah (swt). Violence, condemning one another, laying false allegation and attacking others with words and threats are all Haram in the precincts of the Mosque and beyond. No one is allowed to behave in this manner and those who conduct themselves in this way are guilty of committing acts of grave disrespect in the house of Allah (swt). They are thus violating the law and command of Allah (swt) which he has given regarding the respect and esteem that is bestowed on a Mosque."

9. On 11th October 2019 it is pleaded that the Defendants caused, permitted, or allowed leaflets entitled "The Reason Behind the Exclusion Decision" containing the same or similar words to be handed to the members of the Mosque as they were leaving the building following Friday prayers. On this occasion, however, the Claimants were named.

10. It is pleaded that the words complained of caused the Claimants serious harm and aggravated damages are claimed.

11. According to the Defence, it is necessary to frame the Defendants' publications within their proper context, namely the publication by the Claimants of a number of statements which condemned the Defendants, anticipated the exclusion decision, and claimed that it was wholly unjustified. I will be referring to these publications in more detail later. The point has been made that all three of the Claimants were not responsible for all of these publications. However, the exclusion decision was made against all three of them, the Defendants taking the view that as a family they could be treated as one, alternatively that one or more Claimants were acting as agent for the others. This claim has been brought by all three Claimants, and within the Particulars of Claim it is not suggested that their cases need to be treated individually. In my view, it is not possible to differentiate between the Claimants in any meaningful way, and their cases stand or fall together.

12. In relation to the Notice, the Defence pleads that its publication was decided upon by the Board of Trustees and Executive Committee, "in particular to inform the Mosque Community as to the reasons for the decision to exclude the Claimants taken on 22nd September 2019, in response to the attacks previously published by the Claimants on the Trustees and on the proposed decision". It is also pleaded that the Notice was not written by any of the Defendants but by a member of the Executive Committee. I do not understand it to be argued that the Defendants' non-authorship amounts to be a defence, although there was a hint of that in Mr Munden's submissions. To dispose of the point very briefly, the evidence shows that Ms Neomi Alam was asked by the Executive Committee and the Trustees to do the necessary drafting, and the Defendants approved the final wording. Ms Alam was acting as their agent for this purpose.

13. Insofar as is relevant for present purposes, the core pleaded defence is as follows:

> "18.5 Following the meeting on 22nd September 2019, at which the proposal to exclude the Claimants from membership of the Mosque was considered, the Trustees:
>
> 18.5.1 had a legitimate interest in replying to the public attacks made upon them by the Claimants and explaining the exclusion decision, and in publishing such replies to broadly the same audiences to whom the attacks were published (worshippers at the Mosque, the local/community media, and on social media.
>
> 18.5.2 had a social or moral duty, or legitimate interest, in communicating with the Mosque's membership, worshippers and community as to the decision to exclude the Claimants and the reasons for that decision, and the Mosque's membership, worshippers and community had a corresponding duty or interest to receive such communications."

14. The draft Amended Reply is a somewhat discursive document. For present purposes I may concentrate on the following.

15. Paragraph 84 of the draft Amended Reply addresses both limbs of the qualified privilege relied on by the Defendants. As first the first limb ("reply-to-attack" privilege) it is averred that the Defendants' publications were not as a matter of fact a reply to the Claimants' publications at all, but an *ex post facto* justification for the decision to exclude the Claimants as a result of the pre-existing dispute between the parties. It is also averred that the allegations of violence, harassment and intimidation were not relevant or proportionate to the Defendants' publications, that the Claimants' publications were not defamatory, that the Claimants were making proper demands for the Defendants' activities to be scrutinised, and that that qualified privilege does not extend to "a reply to a reply-to-attack". As for the second limb ("common or corresponding duty and interest qualified privilege"), it is denied that the Defendants were under any legal duty to promulgate the purported reasons for the exclusion decision, and the basis of any other duty or interest is not admitted. It is averred in the alternative that the Defendants were acting out of self-interest.

16. The detailed averments in the draft Amended Reply directed to the issue of malice are more conveniently addressed at a later stage.

The Evidence

17. Although little reference was made during the course of oral argument to the witness statements that have been filed in this case, I have read and considered the following evidence: the two witness statements of Neomi Alam and Taha Hassan (for the Defendants) and the two witness statements of Tallha Abdulrazaq (for the Claimants). To the extent that this evidence is expository, I take it into account as relevant background; to the extent that it is controversial, I have to be far more cautious. I accept the generality of the submission advanced by Mr Eric Shannon on behalf of the Claimants that factual disputes cannot be resolved in this forum, although I continue to bear in mind that I may, other things being equal, give little or no weight to unsubstantiated assertions.

18. Inevitably in an application such as this, I propose to accord much greater weight to the contemporaneous documentation.

19. On 26th August 2019 there was a meeting of the Board of Trustees and the Executive Committee to "discuss about Basim Abdulrazaq and two others". At the meeting some of the history of the dispute was gone over, and the Third Defendant said this:

> "Following mediation, masjid took steps to end dispute. Masjid been quiet regarding dispute and kept quiet in order to find peace with Basim A. Our duty it to protect the institution. The next step is cauterisation."

20. I would read "cauterisation" as meaning, in this context, removal or expulsion. It is, of course, rather a strong word.

21. There was then some discussion as to whether the Claimants were in fact members of the Mosque, but my sense of the manuscript notes of the meeting is that the Executive Committee and Trustees had been advised that they were.

22. One of the Committee members (Mr Amine) observed that it was not clear to him how this dispute had come about, although it was obvious that it had divided the community and was damaging on a psychological level. Mr S. Hassan then gave a brief explanation of the origin of the dispute, and indicated that its source was the First Claimant's grievance that he had not been appointed secretary to the Executive Committee. There was no reference to the Al-Ghariani payments although Mr Amine clearly knew about the petition which related to them.

23. The "pros" and "cons" of the proposed expulsion were then debated:

> "PROS
>
> Positive message to community
>
> End of fitnah (strife)
>
> Inform community
>
> Social media to unite community.

> CONS
>
> Litigation
>
> Scenes at the Mosque
>
> Social Media backlash"

24. Everyone present agreed to take the first step to banning the three named individuals. Letters would be drafted within the next two weeks, and the feedback awaited. This, we know from Ms Alam's first witness statement, was a reference to her providing a draft and the Defendants approving the wording.

25. On 9th September 2019 identical letters were sent to the Claimants. These stated that the Trustees and Executive Committee were exercising their powers under clauses 4.10 and 4.10.4 to expel them from the benefits and membership of the Mosque, because "your conduct, taken singularly and together, in the opinions of the Executive Committee and Board of Trustees, has adversely affected the standing and reputation" of the institution so as to justify this course of action. Twenty-four reasons were given for the decision, including in particular the making of frivolous disputes and allegations, bringing a number of tribunal and county court claims which are "frivolous, vexatious, time consuming and put a needless strain" on the Mosque, and:

> "… aside from and in addition to the cases above, there is the conduct of physical, verbal and psychological discrimination against the Trustees, which we believe to be systematic in order to wear them down through persistence and belligerence."

26. Reference was also made in these letters to bullying of a child and attempts to cause physical harm, i.e. attempts to trip a trustee and he was walking past the perpetrator in the main prayer hall. I note the use of the plural, although para 19.23 of the Defence pleads that the attempted tripping (on one occasion only) took place in or about August 2018. The Defence pleads other matters which, although falling short of violence, come close to alleging physical harassment.

27. Significantly in my view, the point was made that expulsion would not prevent these vexatious cases continuing or prejudice them in any way (in other words, the Trustees were not seeking to deny access to the court), and the Claimants were invited to a meeting to put their case on 22nd September 2019.

28. These letters were not placed in the public domain. What happened next is that on Friday 20th September the First and Third Claimants handed out leaflets at the Mosque asserting that the First Defendant in particular had no right to ban them. Specifically:

> "[The First Defendant] plans to ban three law-abiding Muslims from worshipping at our Mosque. Their crime? They asked questions and highlighted concerns about your missing donation money and the undemocratic and unconstitutional way in which the Mosque is run.

> These brothers did not steal. They did not cause damage. They did not commit any violence.
>
> …
>
> If [the First Defendant] bans these brothers, you could be next. If you ever dare to disagree with him, he will ban you, ban your family, and will even ban your children."

29. Next, on the same day the First Claimant was interviewed by BBC Radio Devon. It appears that the BBC had gained access to the letter to the First Claimant dated 9th September. During the course of the interview, which was recorded on that Friday, the First Claimant said the following:

> " … so to be cut off from this is to essentially be cut off from the community. It's a very, very medieval way of dealing with someone who you disagree with."

The First Claimant also said that the meeting arranged for the Sunday afternoon was a "kangaroo court". In a Facebook message posted on 21st September the First Claimant accused the Trustees of acting tyrannically. The BBC interview was broadcast on the Sunday.

30. On Sunday 22nd September the meeting did not start at 2pm as scheduled. According to the minutes of the meeting, this was because the Claimants turned up with non-Muslim "friends" and the Trustees refused them entry. The police then tried to intervene. However, the Claimants were "adamant that the meeting take place with their associates". So it came about that the police asked the Claimants to leave, in order to avoid a breach of the peace.

31. During the course of the meeting, the following matters were discussed:

(1) A proposal by one of the Trustees that there should be an attempt at mediation was rejected. This had been tried in the past, had failed, and it was now too late.

(2) The Claimants' leaflets were accusing the Trustees of corruption and fraud. The First Claimant in particular was determined to launch a war with the Masjid.

(3) It was clear that the Claimants only had limited support within the community.

(4) It was resolved by 8 votes to 1 that the Claimants be excluded from the Mosque, and it was further resolved by 5 votes to 4 that they should be excluded immediately.

(5) It was agreed that Ms Alam would draft a brief statement for distribution on 27th September, by way of "a challenge to their own leaflet that was distributed in last Jummah (i.e. on Friday 20th September) by members of the [Claimant] family".

32. In fact, and has already been explained, the Notice was appended to the Mosque notice board and published online on 25th September, and, according to the pleadings at least, the Trustees' leaflet was distributed at the Mosque on or about 11th October. Ms Alam's recollection is that the leaflets were handed out on 27th September. Nothing turns on the timing of these publications.

The Constitution of the Mosque

33. Clause 4.10 of the Constitution provides in material part as follows:

> "A member shall at the discretion of the Executive Committee acting in accordance with the principles of the shariah be expelled or suspended from the benefits of membership for such period as the Executive Committee shall decide in the event of any act of misconduct by the member provided that the individual member shall have the right to be heard by the Executive Committee before a final decision is made. An act of misconduct includes the following but the list is not exhaustive:
>
> …
>
> 4.10.4 Any other act or conduct which in the opinion of the Executive Committee or Board of Trustees is likely adversely to affect the standing and reputation of the Centre or its members."

34. By clause 6.1.1, the Executive Committee is subordinate to the Board of Trustees.

35. The decision made on 22nd September 2019 was to "exclude" the Claimants rather than to expel them from the benefits of membership. The letter dated 9th September more accurately set out the legal position. Although a visitor to the Mosque could be excluded for any reason, I doubt whether a member could be excluded unless he had first been expelled or suspended. Ultimately, however, nothing turns on these fine points of distinction. The Claimants understood that they were being expelled and excluded simultaneously.

36. What may be more relevant is that the Constitution did not confer express power on the Executive Committee or Trustees to promulgate the reasons for its expulsion decision.

Qualified Privilege: Duty/Interest

37. I begin with this species of qualified privilege for two reasons. "Reply-to-attack" privilege has often been envisaged as a sub-category of "duty/interest" privilege. Furthermore, its application to the facts of the present case is reasonably straightforward.

38. The general principles are not in dispute and have been restated on numerous occasions.

39. The clearest exposition of the principle is to be found in Lord Atkinson's speech in *Adam v Ward* [1917] AC 309, at 334:

> "A privileged occasion is … an occasion where the person who makes a communication has an interest, or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it. This reciprocity is essential."

40. Given that the Defendants were not under a legal duty under the Constitution to publish reasons for an expulsion decision, reliance is placed on "social or moral duty". As Lindley LJ, as he then was, explained in *Stuart v Bell* [1891] 2 QB 341, at 350:

> "The question of moral or social duty being for the judge, each judge must decide it as best he can for himself. I take moral or social duty to mean a duty recognised by English people of ordinary intelligence and moral principle, but at the same time not a duty enforceable by legal proceedings, whether civil or criminal. My own conviction is that all or, at all events, the great mass of right-minded men in the position of the defendant would have considered it their duty, under the circumstances, to inform …".

41. The Defendants rely further or alternatively on the concept of mutual or reciprocal interest, the clearest exposition of which is to found in the judgment of Scrutton LJ in *Watt v Longsdon* [1930] 1 KB 130, at 147-8:

> "With slight modifications in particular circumstances, this appears to me to be well established law, but, except in the case of communications based on common interest, the principle is that either there must be interest in the recipient and a duty to communicate in the speaker, or an interest to be protected in the speaker and a duty to protect it in the recipient. Except in the case of common interest justifying intercommunication, the correspondence must be between duty and interest. There may, in the common interest cases, be also a common or reciprocal duty. It is not every interest which will create a duty in a stranger or volunteer. This appears to fit in with the two statements of Parke B already referred to …, and with the language of Erle CJ …, that the communication was made in the discharge of some social or moral duty, or on the ground of an interest in the party making or receiving it. This is approved by Lindley LJ in Stuart v Bell, but I think should be expanded into "either (1) a duty to communicate information believed to be true to a person who has a material interest in receiving the information, or (2) an interest in the speaker to be protected by communicating information, if true, relevant to that interest, to a person honestly believed to have a duty to protect that interest, or (3) a common interest in and reciprocal duty in respect of the subject matter of the communication between speaker and recipient"."

42. The instant case is not an example of "common interest". It may be an example of social or moral duty, but it may also be an example of "interest in the recipient and a duty to communicate in the speaker". In connection with this last category, what matters is the existence of an existing and established relationship which requires the flow of free and frank communication: see Simon Brown LJ, as he then was, *in Kearns v General Council of the Bar* [2003] 1 WLR 1357, paras 30 and 39.

43. Although the draft Amended Reply was somewhat non-committal about the existence of the relevant "duty/interest", Mr Shannon in written submissions and oral argument made the following points:

(1) There was no legal duty to publish anything, and the notice and leaflet did not in fact set out the reasons for expelling the Claimants.

(2) "Interest", without more, is insufficient. There was no relevant reciprocity here. The congregation as a whole did not need to know the reasons for expulsion.

(3) The present case is clearly distinguishable from the authorities relied on by Mr Munden, in particular, *Chapman v Ellesmere* [1932] 2 KB 431 and *Otuo v Watch Tower Bible and Tract Society of Britain* [2019] EWHC 1349 (QB).

(4) The Defendants in any event travelled outside the scope of any privilege into irrelevant matters.

44. Taking these objections not necessarily in the order in which they were raised, Mr Shannon was correct in submitting that there was no legal duty under the Constitution to publish the reasons for expulsion. However, in my judgment he was incorrect to submit that there was no social or moral duty. Applying an objective test rather than one based on perception of entitlement, I consider that the great mass of right-minded or right-thinking people would believe that those responsible for running this Mosque were under a duty to explain to the congregation why they were taking this somewhat draconian action under clause 4.10. Furthermore, I cannot accept Mr Shannon's submission that as a matter of fact the Notice and Leaflet did not contain the reasons for the decision being made under this provision. They clearly did (applying the appropriate test under CPR Part 24), and in my opinion there is no tenable basis for the contention that the Defendants strayed into extraneous or irrelevant matters. The Defendants may have been wrong (in which case qualified privilege would still apply) or they may have been acting maliciously (in which case the privilege would be disapplied for other reasons), but it is quite clear that what the Defendants were trying to do was to explain their actions for the purposes of clause 4.10.

45. Moreover, it seems to me to be equally clear that reciprocity of interest did exist on these particular facts, by which I mean that the legal principles are clear and there would be no point in having a trial in order to determine any disputed evidential matters; there are none. The reciprocity of interest related to the proper running of the Mosque and the draconian decision made under clause 4.10. The congregation had an interest in knowing why the decision was being made, and the Trustees had a corresponding duty to explain it, if minded to do so. It is plain from the minutes of the two key meetings that the two publications were uttered in the context of the expulsion decision, and none other.

46. Mr Shannon submitted that it was unnecessary and inappropriate to publish the reasons on social media. However, it is not arguable in my view other than that the Trustees were acting reasonably and proportionately in terms of the ambit of these publications. The Mosque has a Facebook page and Twitter account; not all the congregants would have seen the Notice or picked up the Leaflets; the Claimants themselves had used social media to get their message across.

47. In *Chapman v Ellesmere*, the Stewards of the Jockey Club published in the Racing Calendar a doping decision relating to a horse the plaintiff had trained. There was power under the Rules of the Jockey Club to publish such decisions. The three members of the Court of Appeal (Lord Hanworth MR, Slesser and Romer LJJ) were not in exact agreement as to the basis of the privilege, and Lord Hanworth MR may have gone further than his colleagues in the following respect:

> "It was of deep importance to persons interested in horse-racing – and they are many – to know that a certain horse had been found to be doped, and that the responsibility in respect of this had been visited on the trainer. The plaintiff's own testimony, which I have referred to above, makes this plain and also acknowledges that the Racing Calendar is the place where decisions of the Jockey Club are printed."

48. The Master of the Rolls' narrower basis for his decision, and where I think there was consensus within the Court, was that the terms and conditions of the trainer's licence stated that the Racing Calendar was the means whereby matters of interest and importance to those involved in this sport as participants or spectators would be conveyed. Rule 17 authorised the stewards to publish such matters "at their discretion".

49. In my view, the *Chapman* case does not avail the Defendants to the present application. Although there was no legal duty in the strict sense, the Rules make it clear that the stewards had the power to publish in a particular journal. The Constitution of the Mosque does not go that far. On the other hand, the *Chapman* case does not assist the Claimants because it says nothing about social or moral obligations.

50. In *Otuo*, the issue of qualified privilege arose in the context of provisions in the Articles of Association of a religious organisation which enabled the Elders to "disfellowship" a congregant if he was unrepentant. The Deputy Judge held, at para 154 of his judgment, that:

> "… there clearly was a need to communicate that information in order to "alert faithful members of the congregation to stop associating with that person". The persons tasked with the duty of communicating that information were the Elders, and the persons who had a corresponding interest in receiving it were the members …"

51. The same broad principle applied to the meeting which considered Mr Otuo's request for reinstatement. The Elders owed a duty to ascertain and evaluate the available evidence in connection with that request, and it was necessary for the decision to be communicated to those present.

52. In my judgment, the present case is not as clear as *Otuo*, for the obvious reason that under the Articles of Association the other congregants were themselves obliged not to associate with the person "disfellowshipped". Even so, I consider that in the context of a close-knit community where the Executive Committee and Trustees are empowered to make important decisions about misconduct and continued membership, "it was reasonable, and probably necessary" (to borrow the language of the Deputy Judge) to inform the membership not merely that certain individuals had been excluded but also

the reasons for that decision. There is considerable force in the observation that it would be unfair to leave the matter unexplained.

53. The Deputy Judge also said that "there was no procedural irregularity or impropriety of such gravity as to undermine the validity of the decision that Mr Otuo should be disfellowshipped, such as these reciprocal duties and interests did not arise". Mr Shannon did not seek to rely on any such irregularity or impropriety here, save to submit that the Notice and Leaflet travelled well outside the purview of giving reasons for the expulsion decision. I have already concluded that this point has no merit. On the issue of irregularity or impropriety, I would have sought further submissions from the parties on this topic had the Defendants not, for example, given the Claimants an opportunity to state their case before the final decision was made. They were, however, given that opportunity.

54. I agree with Mr Shannon that the Court should be slow to accede to a claim of qualified privilege (at this stage, I am not addressing the issue of malice) on an application of this nature. The evidence has, of course, to be sufficiently clear. It was, in *Kearns*, on entirely different facts, and in my judgment the Claimants have no real prospect at trial of resisting the application of this particular species of the privilege.

Qualified Privilege: Reply-to-Attack

55. The general principle is stated, and has been given judicial approval, in *Duncan & Neill on Defamation*, 5th Edn., at para 17.25:

> "A defamatory attack made publicly gives its victim a right to reply publicly. In doing so, the victim is entitled to make statements defamatory of his attacker, including statements impugning the attacker's credibility and motives. Provided that such statements are fairly relevant to a rebuttal of the attack and that the ambit of their dissemination does not significantly exceed that of the original attack, their publication will be the subject of qualified privilege."

56. As Bean J, as he then was, in *Bento v Chief Constable of Bedfordshire* [2012] EWHC 1525 (QB) explained at para 101 (citing directly from the argument of Mr Rampton QC, which he accepted):

> "a person may publish, in good faith, false and defamatory statements about another in reply to an attack by that other, and as a defence to that attack. … The rationale is that a person who has been attacked publicly has a legitimate right or interest in defending himself against it, and the [readers or viewers] of the original attack have a corresponding interest in knowing his response to it. The response has to be proportionate to the original attack in that it should not be made more widely than the attack or include irrelevant statements."

57. Both these statements of principles make clear that the response must be proportionate, as well as within the envelope of the original attack. Here, the responder has a reasonable degree of latitude. As the Court of Appeal in New Zealand put it in pithy

terms (see *Alexander v Clegg* [2004] NZCA 36; [2004] 3 NZLR 586), the riposte has to be "within the lawful range of the counterpunch". "Lawful" is the requirement of the common law to act reasonably.

58. Mr Shannon placed particular reliance on his summary of passages in *Gatley on Libel and Slander*, 12th Edn.:

> "A person whose character or conduct has been attacked is entitled to answer such attack, and any defamatory statements he may make about the person who attacked him will be privileged, provided they are published bona fide and are fairly relevant to the accusations made. 'The law justifies a man in repelling a libellous charge by a denial or an explanation. He has a qualified privilege to answer the charge; and if he does so in good faith, and what he publishes is fairly an answer, and is published for the purpose of repelling the charge, and not with malice, it is privileged, though it be false. Mere retaliation, which cannot be described as an answer or explanation, is not protected, but the defendant is not required to be diffident in protecting himself and is allowed a considerable degree of latitude in this respect. Qualified privilege is not available if the defendant is responding to an attack which he knows to be justified."

59. Mr Shannon did not give the paragraph numbers for these passages. In fact, they are somewhat of a melange, and not always in the right order, of paras 14.51 and 14.52. Moreover, the final sentence from the foregoing citations omits the words, "he is guilty of malice". In my opinion, having now read the entirety of the relevant section in *Gatley*, it is quite clear that its authors are on exactly the same page as *Duncan & Neill*.

60. Mr Shannon made the following submissions in resistance to the proposition that the "reply-to-attack" principle applies.

(1) On the facts, it is clear (or, at least, for summary judgment purposes reasonably arguably) that the Defendants were not replying to the Claimants' attack. They were giving false and factitious reasons for the expulsion decision, which was itself generated not by any misconduct on the part of the Claimants but, as the Defendants well knew, their own misconduct in mismanaging Mosque funds.

(2) The Defendants' asseverations of harassment, intimidation and violence were in excess of the occasion of the privilege.

(3) The Claimants' attacks, if that is what they were, were not defamatory.

(4) The Defendants are not entitled to qualified privilege for a reply to a retort.

(5) The privilege does not attach to the online publications.

61. In my judgment, the Claimants' case on the facts is slightly stronger in the context of "reply-to-attack" than it was in the context of "duty/interest" qualified privilege. In the latter instance, it was entirely clear that what the Defendants were doing, rightly or wrongly (I have not yet considered the issue of malice), was explaining and justifying

the expulsion decision. I can see some of the force of the argument that because the Defendants were in fact justifying that decision, they were not in fact replying to any attack.

62. Of course, as soon as one puts it in these terms, an obvious difficulty arises. The Claimants have to say that this was not a reply to an attack because it was in fact an explanation for the expulsion decision: in other words, the very making of this argument strongly fortifies the Defendants' related case on duty/interest qualified privilege.

63. Putting that difficulty to one side, there is in any event a further problem from the Claimants' perspective. Mr Munden was right to submit that one can trace a clear and unbroken thread through the documents beginning with the Defendants' letter dated 9th September 2019 to the allegedly defamatory publications. The Defendants clearly believed that, given the Claimants' public attacks on them, these would need to be answered. The fact that the answers were given in the context of the expulsion decision, and that the latter may have been differently worded had there been no such attacks, is not a valid answer to the legitimate donning of the cloak of this privilege.

64. Nor, in my judgment, do the Claimants get anywhere – at least at this stage - by saying that the Defendants well knew that the Notice and the Leaflet were untrue, and that the Claimants' publications were true. That goes to malice rather than the application of the privilege.

65. Mr Shannon's second submission (on my numbering) is that the allegations of violence etc. were in excess of the occasion of the privilege. I think that this is a different way of advancing the first submission. These matters were part and parcel of the reasons for expelling the Claimants from the Mosque. However, an integral part of the Claimants' "attack" was that the Defendants had no basis for expelling them. Accordingly, to answer that "attack" by explaining that there was a basis, and giving details of it, does not take the Defendants outside the scope of the privilege.

66. Mr Shannon's third submission is that the Claimants' attacks were not defamatory. That submission has no merit. The Claimants' attacks were clearly defamatory, and whether or not they were true is not relevant. In any case, it is unnecessary in these circumstances for a defendant to prove that the attack on him was defamatory: see *Khader v Aziz* [2010] EWCA Civ 716; [2011] EMLR 2, para 27.

67. Mr Shannon advanced the interesting submission that the privilege does not apply because the Claimants got in first. The submission runs along these lines (I confess that I was somewhat slow off the mark in oral argument in getting to the point). Given the terms of the 9th September letters, the Claimants reasonably anticipated that they would be attacked. The publications on 20th September and shortly thereafter were, accordingly, in anticipation of what was probable. It follows that the Claimants' publications are privileged, *qua* reply to an anticipated attack, and the Defendants' are not.

68. The way this defence works, at least in the paradigm case, is that privilege does not attach to the first publication, the attack. It does attach to the reply regardless of whether the first publication was defamatory. The author or maker of the first publication does not have a right of reply which the privilege respects. Accordingly, the privilege is for a defence, properly so called, not a reply to a defence.

69. Mr Munden submitted that it would be irrational for the application of the privilege to depend on the Claimants' state of mind, and that the policy of the law should not be to reward pre-emptive strikes.

70. My initial reaction to Mr Shannon's submission, once I had properly understood it, was that it was both ingenious and counter-intuitive. I thought that it came close to eliding two questions. The first question, which is academic on the facts of the instant case, is whether the Claimants' publications are served by the privilege because they were in anticipation of an attack. Bean J in *Bento* doubted whether they would be, but the point is moot. The second question is whether, because the Claimants got in first and were acting defensively, the Defendants were not replying to any attack. What they were doing was replying to a defence, and the privilege does not apply to that.

71. On further reflection, I can see that there may be a link, rather than an elision, between the two questions I have just articulated. If the reply-to-attack principle *does* apply to anticipated attacks, there may be some force in the contention that the reply to the anticipated attack is not protected.

72. As *Gatley* explains, Sir Maurice Drake held in *Bhatt v Chelsea and Westminster NHS Trust* (unreported, 16th October 1997) that the principle did cover anticipated attacks. In doubting whether this was so, Bean J held that the principle must in any event be confined to cases where the defamatory statement was (1) in reasonable anticipation of an imminent attack on the conduct of the maker of the statement, and (2) limited to a proportionate rebuttal of such an attack.

73. My approach to Mr Shannon's fourth submission is as follows. First, I cannot accept that the Claimants were genuinely anticipating an imminent attack on them. The Defendants had invited them to the Mosque on 22nd September to set out their case. They might have persuaded the Trustees and Executive Committee not to expel them. Instead, they launched a pre-emptive strike against an attack which might never have materialised. I agree with Mr Munden that on these facts no privilege attaches to the Claimants' publications. Secondly, if I had been compelled to decide the point, I would have elevated Bean J's doubts into something higher. Either I would have concluded that *Bhatt* was wrongly decided, or that it does not prevent qualified privilege applying to the response to the first public attack. As Bean J explained, the whole rationale of the privilege is that it protects reasonable and proportionate responses to such attacks.

74. Finally, I should address the Claimants' argument, such as it is, that the privilege cannot extend to the online publications. I agree with Mr Munden that the pleaded case is unclear, not least because republication is pleaded solely in the context of the claim for damages. The Claimants have not properly put in issue the question of whether it was reasonable to go beyond the Notice and the Leaflets. I would have thought that it was, given that a number of the relevant attacks were made online.

75. For all these reasons, the defence of qualified privilege in its iteration of "reply-to-attack" must succeed on the available evidence. I have reached this conclusion with slightly less firmness than I did in relation to "duty/interest", because the evidence is slightly less clear and in view of the decision I have reached on Mr Shannon's ingenious submission.

76. I should say, for completeness, that although some commentators have said that "reply-to-attack" privilege is a sub-set of "duty/interest" privilege, I would have concluded that this species of qualified privilege applies even if I were wrong about the wider category. The correct analysis is that the one species is not wholly within the other, but forms a Venn diagram.

Malice

77. Mr Munden's skeleton argument contains extensive citations from Lord Diplock's classic speech in *Horrocks v Lowe* [1975] AC 135. I do not think that any useful purpose would be served by my repeating these passages. Rather, and in the light of the parties' submissions, I should be attempting to encapsulate in my own words what the principles, as derived from that authority, are.

78. First, if the case appears to come within the ambit of the privilege, the maker of the statement is entitled to the protection of the privilege unless it be proved that no significant part of his motive was to protect a relevant interest because he was actuated by the dominant and improper motive to injure the person defamed. "Dominant and improper" are cumulative requirements and must be read together. The onus is on the Claimant to prove such a motive in the context of a properly pleaded case.

79. Secondly, the inference of express malice (i.e. the existence of a dominant motive) will arise if it be proved that the maker of the statement did not believe it to be true or was reckless as to that fact. This is tantamount to proof of dishonesty. If it exists, it is generally conclusive evidence of express malice, not least because an absence of belief in truth generates the inference that the maker of the statement knew that a privileged occasion either did not exist or that he was misusing it.

80. Thirdly, if it be proved that the maker of the statement was giving vent to personal spite or ill-will, and therefore was misusing the privilege, the defence should fail even if the maker positively believed the statement to be true.

81. Fourthly, and this would be my gloss on Lord Diplock's speech, it would be even harder to prove the third proposition than the second.

82. This gloss is supported, and probably taken further, by Nicklin J's analysis in *Huda v Wells* [2017] EWHC 2553; [2018] EMLR 7, at para 71:

> "71. I do not understand the Claimant's case in malice to have been advanced on this basis, but for the sake of completeness, I should note that (in theory) malice can also be established by proving that, in publishing the words complained of acted with a "dominant intention" to injure the claimant. This species of malice may still have a legitimate role in malicious falsehood claims (particularly trade libel) but it has a dubious justification when advanced in answer to a well-founded plea of qualified privilege. It has been expressly excluded as a basis for proving malice in answer to a fair comment/honest opinion defence: *Tse Wai Chun Paul v Albert Cheng* [2001] E.M.L.R. 31. In 2002, Eady J noted that he could not recall an instance of "dominant intention" malice having been proved and described this form of

> malice as an "endangered species" in relation to qualified privilege: *Lillie & Reed v Newcastle City Council* [2002] EWHC 1600 (QB) [1093]. I am not aware of any such case in the 15 years since."

83. Nicklin J returned to this topic in *Ward v Associated Newspapers Ltd* [2021] EWHC 641 (QB). There, the Court was seized of an application by the Claimant, a self-represented litigant, to amend his pleadings. At para 8 of his judgment, Nicklin J described the sub-species of "dominant improper motive" malice as raising what he called a "theoretical possibility" of possessing an independent life in circumstances where disbelief in truth was not found.

84. Mr Shannon relied heavily on this authority, but I do not read Nicklin J as in any way retracting from or diluting what he had said in *Huda*. It was the Defendant's case at the pleading stage that the averment of dominant improper motive should not be allowed to proceed (para 11). Nicklin J rejected that, at para 12:

> "I have recognised, above, that a finding of dominant improper motive against a defendant who is found to have believed that what s/he published was true is somewhat theoretical. But that does not mean that, at the pleading stage, the Court should set about attempting to isolate and exclude a pleaded case of dominant improper motive. The decision as to whether a defendant was malicious is an assessment of his/her state of mind at the time of publication. Ultimately, that depends upon an assessment of evidence. I do not think it is possible, as this case demonstrates, neatly to compartmentalise the evidence into the jurisprudential boxes of "*knowledge of falsity*" and "*dominant improper motive*"; permitting the former but excluding the latter. Such an exercise is unreal, at least on the facts of this case. Whether someone has, in fact, published something s/he knew (or believed) to be false is, in reality, likely to be bound up with the person's motivation for publication. A person's motivation may be a particularly powerful piece of evidence if the Court is required to consider whether s/he was reckless to the level of complete indifference to whether what s/he published was true or false. Whilst it may be possible, jurisprudentially, to separate the concepts of "*knowledge of falsity*" from "*dominant improper motive*", as a matter of evidence, in many cases and particularly this case, the evidence as to state of mind will either be inseparable or will substantially overlap."

85. But Mr Shannon was right to submit that, to the extent that the Defendant's present application turns on an analysis of the pleadings, the Court should be slow to strike out an averment of "improper dominant purpose" malice.

86. Mr Munden drew my attention to a number of authorities, all very familiar, dealing with the stringent pleading requirements applicable to a case of malice. On this topic, I may return to Nicklin J's judgment in *Huda*:

> "72. As malice is a serious allegation – the equivalent of fraud – "it must be pleaded with scrupulous care and specificity. … [I]t is quite inappropriate to proceed on the basis that something may turn up (whether on disclosure of documents or at trial)": *Henderson v The London Borough of Hackney* [2010] EWHC 1651 (QB) [40] per Eady J.
>
> 73. Each of the particulars relied upon by the Claimant is required to be indicative of this dishonest state of mind in order to be sustainable. Each particular has to raise a "probability of malice" and each particular has to be "more consistent with the existence (of malice), than with its non-existence": *Turner v MGM* [1950] 1 All E.R. 449, 455a-e per Lord Porter; *Telnikoff v Matusevitch* [1991] 1 Q.B. 102 at 120 per Lloyd LJ. As made clear in *Turner* "each piece of evidence must be regarded separately… [I]f the result is to leave the mind in doubt, then that piece of evidence is valueless as an instance of malice whether it stands alone or is combined with a number of similar instances". (455b-c).
>
> 74. The Court will scrutinise the statement of case in order to discern whether the malice plea has any prospects of success: *Branson v Bower* [2002] Q.B. 737 [16] per Eady J."

87. It is unnecessary to cite expressly from other similar authorities and textbook extracts, all helpfully collected by Mr Munden in his skeleton argument.

88. At this juncture, it is convenient to address the Claimants' pleadings.

89. Para 85.3 of the draft Amended Reply alleges that the Defendants knew the defamatory allegations to be true, or were reckless as to their truth, in the following respects:

(1) The allegation of violence made in the letter of 9th September was untrue and known to be so: this was the allegation that the Second Claimant tried to trip the First Claimant in the Mosque, in 2018.

(2) The allegations in the letter of harassment, threats and intimidation were baseless and knowingly so.

(3) These allegations were not raised at the meetings of 26th August and 22nd September: they would have been, had they been believed to be true, and yet the term "violence" featured in the Notice and the Leaflet.

90. Para 85.4 of the draft Amended Reply deals separately with the issue of sole or dominant motive. The Particulars given are somewhat discursive, but amount to the following. It is said that the Defendants' sole or dominant motive was to injure the Claimants as retaliation or revenge for their activities in highlighting the Al-Ghariani cash payments. This was the real reason for the Claimants' expulsion from the Mosque; everything else was a sham.

91. Somewhat unconventionally, appended to the Claimants' skeleton argument is a "Schedule", which is not a pleading as such, purporting to set out:

> "… a framework of facts and matters from which, on the claimants' contentions, malice may be inferred. All the facts are taken from the statements of case, Numbers in square brackets [ ] refer to the para number in the Reply (unless otherwise stated) where such fact is set out. (Please note that these are to paragraphs in both the original and draft Amended Reply).
>
> The schedule also illustrates the sequence of events in relation to attacks and replies by either of the parties."

92. It is entirely unsatisfactory in a case as serious as this to serve what is in reality another pleading as an annex to a skeleton argument and not seek the Court's permission for it. On the other hand, the Schedule is largely (by which I mean not entirely) a synthesis of other pleadings, recognising always that the Claimants do not yet have permission to advance the averments made in the draft Amended Reply.

93. On my understanding of Mr Shannon's written and oral arguments:

(1) Malice (in the sense of knowledge of falsity) should be inferred from the facts and matters set out in para 85.3 of the draft Amended Reply.

(2) This is a paradigm case of "dominant improper purpose" malice, an independent category left open by Nicklin J in the two authorities I have mentioned. The Court cannot possibly determine the important issues raised by the Claimants on a Part 24 application.

94. Mr Munden submitted that the Claimants' pleadings are in a state of disarray, and that I should apply the strictures that have been expressed on so many occasions by judges in the Media and Communications List, and by judges such as Eady J who were in charge of the then Jury List. The Claimants cannot be permitted to proceed in this fashion, particularly in circumstances where they cannot surmount the high hurdle that has been imposed, namely that each particular must be more consistent with malice than honest belief. Mr Munden submitted that a close examination of all the available evidence shows that the Defendants had a clear and solid basis for expelling the Claimants from the Mosque, and the Al-Ghariani payments are a red herring. Noting my concern about the allegation of violence, he submitted that it clearly related to the tripping allegation. There, it was clear that the Defendants were of the belief that it was true.

95. I have reflected very carefully on these competing arguments. The malice issue is more difficult than the qualified privilege issues, not because it raises complex matters of law, but because it requires a fair and balanced assessment of the available evidence. I express myself in those terms because I am not prepared to strike out the Claimants' pleadings under r.3.4 nor would I be minded to refuse permission to amend the Reply, if I were of the view, that is, that the amendments survive the current Part 24 application. Further, in considering the evidence through the prism of Part 24, I must recognise that this is not a trial, or indeed a mini-trial, and that there are issues of fact incapable of resolution in this context. On the other hand, I will also continue to bear

in mind para 72 of *Huda*, acknowledging also that the burden of proof on the issue of malice would be on the Claimants at trial.

96. I am not impressed by the allegations of malice pleaded under para 85.3 of the draft Amended Reply. I do not think that the Claimants would have a real prospect at trial of proving that the Defendants knew that these allegations were untrue. My reasons, in summary, are as follows.

97. Two out of the three allegations relate to the 9th September letter which was not in fact published. As for the attempted tripping incident, this could fairly be described as "violence" although it would be towards the lower end of the scale. The other allegations of harassment, threats and intimidation have been clearly pleaded in the Defence. Although the Claimants take issue with what is said, the inference that the Defendants must have known that these allegations were baseless is very difficult to sustain. The Claimants' contrary case is founded on no more than bare assertion. In my judgment, they need to do better than that. Furthermore, the fact that these matters were not raised at the meetings of 26th August and 22nd September, assuming that the minutes in the bundle are complete, does not give rise to the inference that the Defendants knew that they were untrue. The purpose of the first meeting was to set out the position in general terms and then task Ms Alam to set out the "case" against the Claimants in detail. This she did on 9th September. There was nothing further to discuss on 22nd September because the Claimants did not set out their case in opposition to the letter. They turned up with people they knew should not have been there – they were not members of the Mosque – and it was hardly surprising that the police advised that they had to leave, to avoid a breach of the peace. Frankly, rather than launch a generalised attack on the Defendants, in particular the First Defendant, through the channels they chose to deploy on and after 20th September, it would have been more sensible, and less inflammatory, to have sought to counter the 9th September letter in writing, line by line.

98. For these reasons, the plea of malice, founded on knowledge of untruth or recklessness as to truth, does not have a real prospect of success. I would not grant permission for para 85.3 of the draft Amended Reply.

99. Mr Shannon had sensed before the hearing that he might be on weak ground in relation to para 85.3 because in oral argument the principal point he made was that para 85.4, with its plea of improper dominant purpose (not that this is quite the language deployed) could survive on a free-standing basis. It is for this reason that he placed particular reliance on Nicklin J's case of *Ward*.

100. As I have already said, I do not think that *Ward* changes the legal landscape. The sole point that was being taken against Mr Ward is that he should not have permission to amend because his pleadings were unclear and improper dominant purpose malice could not be run as a standalone averment. But on the facts of *Ward* it was not being run on that basis: it was linked to a separate plea of "ordinary" malice (i.e. knowledge of falsity) and each set of averments could avail the other.

101. Contrary to Mr Shannon's submission, Nicklin J was not saying that all pleas of malice cannot be determined on a summary basis. The Defendants were not making a Part 24 application in *Ward*.

102. So, in the present case the Claimants are left with para 85.5 of the draft Amended Reply which they do have to run on a standalone basis. *Ward* does not cover the present situation.

103. In my opinion, the question that arises is this: do the Claimants have a real prospect at trial of establishing that the inference to be drawn is not that the Defendants had proper grounds to expel the Claimants but rather that they were acting with the dominant purpose of retaliation or revenge for the Claimants' attacks against their probity in relation to the Al-Ghariani monies?

104. My overall assessment is that a case of malice put forward on this basis would be extremely difficult to sustain. My reasons, which must be taken cumulatively, are as follows.

105. First, this "endangered species" is close to extinction as a matter of law and Nicklin J, writing in 2018, was unaware of any such case since *Lillie & Reed* in 2002. I appreciate that Lord Diplock was less pessimistic (see para 80-81 above), although he emphasised the difficulties.

106. Secondly, the contemporaneous documents indicate that the Defendants believed that they did have a solid basis for expelling the Claimants, not least all the strife they had caused in the community, the frivolous litigation and the bad blood between the warring parties. I consider that Mr Munden makes a reasonable point when he invites me to compare the differences of tone between the Claimants' and the Defendants' publications: the one vituperative, the other more measured and balanced. The Defendants have said that much of the litigation has been held to be frivolous and vexatious. It was open to the Claimants, on whom the burden of proof resides, to contradict that by filing evidence of court/tribunal orders and judgments. They have not.

107. Thirdly, the Claimants have asserted that the Al-Ghariani cash payments lie at the heart of this dispute, and represent the real reason for all the decisions made. The limited documentary material that has been made available do not support that interpretation, but I can understand why that could not be conclusive. On the other hand, apart from the assertions made at some length in the pleadings, the Claimants have not produced any contemporaneous evidence to support their interpretation. Going back to 2014 as the Claimants have sought to do, one would have thought that such documentation existed.

108. Fourthly, I return to what was said in the 9th September letters:

> "your conduct, taken singularly and together, in the opinions of the Executive Committee and Board of Trustees, has adversely affected the standing and reputation [of the institution]."

That in due course became the stated reason for the expulsion. The Claimants have to say that the Defendants either did not believe that this was true (or were reckless as to its truth), or were putting it forward as a smoke-screen for the real reason for the expulsion. That is a tall order.

109. A fusion of these four factors had led me to conclude, albeit not by the widest of margins, that the Claimants do not have a real prospect of proving malice in this case.

Conclusion

110. For the purposes of Part 24, the defence of qualified privilege has been made out and the reply of malice has not been.

111. It follows that the Defendants are entitled to summary judgment in relation to this claim.

IN THE HIGH COURT OF JUSTICE **Claim Number: QB-2020-002870**
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

THE HONOURABLE MR JUSTICE JAY

BETWEEN:

(6) TALLHA BASIM ABDULRAZAQ
(7) BASIM IBRAHIM ABDULRAZAQ
(8) ABDULAZIZ BASIM ABDULRAZAQ

Claimants

- and –

(3) SHAHEED UL HASSAN
(4) TAHA HASSAN
(3) AHMED AL-JANNATI
(9) DR MOHAMMED MOSLEM SAFLO
(10) MOHAMMED ABDULLAH

(sued as Trustees of the Exeter Mosque and Cultural Centre, an unincorporated association)

Defendants

ORDER

UPON the Defendants Application by Application Notice dated 23 July 2021 seeking (1) to strike out the Claimants' Reply to the Defence pursuant to CPR Part 3.4 and/or (2) summary judgment pursuant to CPR Part 24.2 ("the Application")

AND UPON considering the evidence filed

AND UPON hearing counsel for the Defendants and for the Claimants

AND UPON handing down judgment on 3rd December 2021, with neutral citation [2021] EWHC 3252 (QB) ("the Judgment")

IT IS ORDERED THAT

1. The Defendants are granted summary judgment for the reasons set out in the Judgment.

2. The Claimants shall pay the Defendants' costs of the Application and of the action, to be the subject of detailed assessment if not agreed.

3. The Claimants shall make an interim payment on account of the costs referred to above within 21 days, in the sum of £60,000.

Dated this 3rd day of December 2021.