Neutral Citation Number: [2026] EWHC 1775 (KB)

Case No: KB-2025-003394

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2026

Before :

MR JUSTICE LINDEN

- -

Between :

(1) IDEASOFT SOLUTIONS LLC
(2) ANDRII LAZORENKO
(3) IDEASOFT GRUPP OÜ

Claimants

- and -
PETER KOLOMIETS

Defendant

- -
- -

Alexandra Marzec and Greg Callus (instructed by **Gunnercooke LLP**) for the **Claimants**
Jonathan Price KC and Claire Overman (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: 12 May 2026
(further written submissions on 26 June 2026)

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE LINDEN

MR JUSTICE LINDEN :

Introduction

1. In this matter the Claimants claim damages and/or injunctive relief for harassment of the Second Claimant and/or employees of the First Claimant, defamation based on two publications by the Defendant, and causing loss to the Third Claimant by unlawful means. Proceedings were issued on 10 September 2025 and the "Defence and Set Off" (which I will call "the Defence") is dated 11 November 2025.

2. On 8 January 2026, Master Eastman ordered that the following applications were to be listed together, with a time estimate of one day, and directions were given accordingly:

   i) The Claimants' application, dated 10 December 2025, for further information about the Defence pursuant to CPR Part 18;

   ii) The Defendant's application, dated 15 December 2025, for summary disposal of the whole of the Claim i.e. "reverse" summary judgment pursuant to CPR Rule 24.2(a), or alternatively to strike out the Claim pursuant to Rules 3.4(2)(a) and/or (b).

3. Subsequently, the parties' applications were significantly modified:

   i) On 23 January 2026, the Claimants purported to amend their application so that they now sought to strike out the Defence pursuant to CPR Rule 3.4(2)(a) and/or (b) on the grounds of failure to comply with Rule 16.4 and/or Practice Direction 53B, *or alternatively* further information pursuant to Part 18.

   ii) The Defendant narrowed his application. By the time of the hearing on 12 May 2026 he sought summary disposal of the harassment claims in their entirety and the claims in defamation brought by the First Claimant. If successful, this would leave a defamation claim brought by the Second and Third Claimants based on one of the publications complained of, and the causing loss by unlawful means claim brought by the Third Claimant.

4. In broad summary, the Claimants' application to strike out was put on the basis that the Defence, which was drafted when the Defendant was a litigant in person, does not comply with the basic requirements of pleading in this area of the law. Moreover, the document is extremely lengthy (c350 pages including so called "exhibits") and is drafted and constructed in a confusing, prolix and unhelpful manner. Without deciding the application, there appeared to be a good deal of force in these complaints, and Mr Price KC acknowledged that the Defence would require amendment now that the Defendant is legally represented.

5. There was disagreement between the parties as to the order in which their respective applications should be addressed at the hearing:

   i) Ms Marzec's submission was that I should hear the Claimants' application to strike out the Defence first and, if it was successful, could then give the Defendant an opportunity to file a proposed substitute or amended Defence, as the court did in *In Soo Kim v Park & Others* [2011] EWHC 1781 (QB) at [40].

ii) Mr Price's position was that his application should be dealt with first. If that application was wholly or partly successful, substantial parts of the Particulars of Claim ("POC") would no longer be "live" and the question of amendment of the Defence would be considered in this context. On the other hand, if Ms Marzec's approach was taken, time would potentially be wasted in debating whether parts of the Defence which responded to these aspects of the Claimants' pleaded case should or should not be struck out. The logical approach was to decide which parts of the Claim would go to trial first and then deal with the Defendant's pleaded case, particularly in circumstances where it was accepted that the Defence required to be amended and the Defendant would be likely to be given an opportunity to apply to do so if the court concluded that the current version or parts of it are liable to be struck out.

6. I agreed with Mr Price for the reasons which he gave. I therefore indicated that I would hear argument on the Defendant's application first and then, if time allowed, the Claimants'. In the event, as predicted by the parties, the Defendant's application took the whole day and we did not reach the Claimants' application.

Overview of the Claimants' pleaded case

The parties

7. The First and the Third Claimants are software development companies. The former is registered in Ukraine and the latter in Estonia. In April 2025, Ideasoft Holding Limited ("Holding") was incorporated in England for the purposes of a partial sale to investors based in the United Arab Emirates ("the UAE investors"), and it became the holding company of the First and Third Claimants. The UAE investors then acquired a majority interest in Holding by June 2025. This is referred to in the POC as "the Takeover".

8. At all material times the Second Claimant, who is a Ukrainian national and resident in Portugal, was the Chief Executive Officer of the First Claimant and the Third Claimant, and a director of the latter. He is also a director and shareholder of Holding.

9. The Defendant is the former Chief Business Development Officer of the First Claimant. He was also a 10% shareholder of this company. He is an Israeli citizen and he is and was at all material times resident in England.

10. In November 2022 the Defendant stood down from his role and, on 1 January 2023, he and the First Claimant entered into exit agreements which included an agreement that he would sell his shareholding back to the company for US$240,000. Under the exit agreements, various other payments would be made, including what is referred to in the POC as "the Clause 9 Payment". This was a payment of $162,036 which would be made subject to certain client debts of the company being settled within 18 months of the agreement. In the event, those debts were not settled and the payment was not made.

The harassment case

11. The Claimants' pleaded case is that the Defendant learnt of the negotiations between the First Claimant and the UAE investors, although they had not been made public. Between 8 April and 22 May 2025, when the negotiations were continuing, he sent a

series of emails to the Second Claimant, members of the Senior Management Team ("SMT") of the First Claimant and employees of the then majority shareholder of the First Claimant, Sigma Software LLC ("Sigma"), as part of a campaign of blackmail and harassment targeted at the First Claimant's employees and the Second Claimant.

12. It is pleaded that these emails were harassing in nature, threatening, oppressive and unreasonable. The Defendant made repeated serious and false allegations that the First and Second Claimants were involved in criminal activity, including tax evasion, money laundering and drug trafficking, and had connections to criminals and members of the Russian Special Services. The emails made express and implied threats to jeopardise the Takeover by informing the UAE investors and an auditor associated with them of these matters, as well as existing clients and shareholders of the First Claimant. The Defendant also threatened to inform members of international news outlets including Al Jazeera, one of the primary news outlets in the UAE. There were also threats to disclose confidential information about the Takeover to third parties and to hand over material about the First and Third Claimants to law enforcement bodies operating in various jurisdictions, and to issue claims. And the Defendant indicated that he had made covert recordings of the Second Claimant. The emails made repeated and baseless demands for large sums of money to be paid to the Defendant although he knew that he had no entitlement to them. He also required the First Claimant to terminate the exit agreements and to return his 10% shareholding to him.

13. The Claimants give particulars of the emails relied on and they plead that the emails were frequent and persistent, despite the Defendant's allegations being refuted by them. They allege that the emails were calculated to pressurise the First and Second Claimants into complying with his demands. The emails amounted to blackmail, and the Defendant knew or ought to have known that his conduct amounted to harassment.

14. The alleged harassment of the Second Claimant and employees of the First Claimant is said to be contrary to sections 1(1A) and 3A of the Prevention of Harassment Act 1997 ("the 1997 Act"). It is also alleged that the Defendant's harassment of the Second Claimant was in breach of sections 1(1) and 3 of the 1997 Act. It is alleged that his conduct caused the First Claimant's employees alarm and distress and that the allegations were highly offensive to the Second Claimant and caused him extreme stress and anxiety. Employees of the First Claimant who received or heard about the emails contacted senior managers of the First Claimant to ask what was happening and whether the claims in the Defendant's emails were true. Ms Datsenko, the Chief Operating Officer of the First Claimant, was forced to issue a company-wide email to prevent misinformation spreading among the employees.

15. The First and Second Claimants seek injunctive relief to restrain the Defendant from contacting the First Claimant's employees or the Second Claimant and from sending false and menacing communications to them. The Second Claimant also claims general and aggravated damages in harassment.

<u>The defamation claims</u>

The Warning Email

16. As far as the defamation claims are concerned, the pleaded case is that on 23 April 2025 the Defendant sent an email to Guy Aharoni, the Vice President and Head of Research

and Development at Browzwear Solutions PTE Limited, a Singaporean company based in Israel, and Stylezone Limited, an Israeli company which formed part of the Browzwear group of companies. The Defendant had introduced the First Claimant to Browzwear and, on 24 June 2023, they had entered into a contract to supply three software developers to Browzwear. On 10 March 2024, that contract had been replaced by a contract between the Third Claimant and Stylezone which was in substantially the same terms as the first contract save that it was to supply a single software developer to Stylezone.

17. The Defendant's email of 23 April 2025, which is referred to in the POC as "the Warning Email" reads as follows:

> "Dear Guy,
>
> I recently heard that Ideasoft has started to cause complications. I genuinely regret this, as I was the one who introduced you to the company and feel a degree of responsibility for the current situation.
>
> There are a few critical points I believe are worth your consideration:
>
> 1. **Change of Ownership and Regional Risks**
>
>   The company is in the final stages of being acquired by a group of partners from the Arab world, who are not particularly friendly toward Israel. This may affect your ongoing cooperation, both operationally and reputationally.
>
> 2. **Legal Exposure of the CEO**
>
>   The CEO of Ideasoft is currently under international investigation for connections with Russian intelligence and organized crime networks operating in Albania, the UAE, and Colombia. These issues raise serious concerns about compliance and due diligence, particularly for international clients like Brozwear [sic].
>
> It is the last thing I would want — for Brozwear [sic] to suffer reputational damage or be exposed to unintended legal risk due to the actions of a vendor I recommended. I'm already aware that your team has been negatively affected by the ongoing issues with Ideasoft.
>
> I expect formal criminal charges will be brought against the CEO in the near future. If needed, these developments may qualify as a force majeure basis for contract termination.
>
> I remain at your disposal to help resolve this situation with minimal disruption. Please don't hesitate to reach out if you need support or legal context to protect your team.
>
> Warm regards, Peter Kolomiets"

18. The Second Claimant was copied into this email which is also relied on by him and the First Claimant as part of the alleged course of conduct amounting to harassment.

19. The Claimants plead that the Warning Email referred, and would have been understood to be referring to, the Second Claimant who was the CEO of the First and Third Claimants, as Mr Aharoni knew. They also plead, by way of innuendo meaning, that the Warning Email referred to, and was understood to refer to any company, including the First and Third Claimants, which bore the "Ideasoft" name. Moreover, in their natural and ordinary meaning the words complained of meant that:

   i) "The Second Claimant has connections with Russian Intelligence and organised criminal networks operating in Albania, the UAE and Colombia, and that - as a result of these connections – he is guilty of crimes with which he will shortly be charged by law enforcement bodies;"

   ii) "The First and Third Claimants are companies that knowingly or recklessly employ an international criminal as its CEO;" and

   iii) "As such, association with the Second Claimant is likely to adversely impact the reputation and operations of its business partners."

20. The POC goes on to allege that the Warning Email has caused, and is likely to cause, serious financial loss to the First and Third Claimants for the purposes of section 1(2) of the Defamation Act 2013, and particulars are set out. There is then a plea that the Warning Email has caused and is likely to cause serious reputational harm to the Second Claimant within the meaning of section 1(1) and, again, particulars are provided.

21. The Defendant's application does not seek summary disposal of the pleaded case of the Second and Third Claimants in relation to the Warning Email under section 1(1) and (2) of the 2013 Act. I therefore only need summarise the particulars of serious financial harm pleaded on behalf of the First Claimant, albeit these are the same as in relation to the Third Claimant. The pleaded case is that:

   i) The allegations are self-evidently seriously defamatory of the First and Third Claimants.

   ii) Readers were likely to believe the Defendant, given that he was a former employee of the First Claimant and member of its SMT with inside knowledge of the Ideasoft Group.

   iii) The Defendant also deliberately increased the credibility and impact of the email by purporting to act as a concerned former business associate of the Browzwear Group who was seeking to convey important information in its interests. He intended to cause Mr Aharoni to believe and urgently act upon its contents and, indeed, suggested that the allegations would give rise to a basis for terminating contracts with Ideasoft. He also sought to legitimise the allegations by referring to ongoing investigations by international law enforcement bodies and criminal charges which, he said, were soon to be brought against the Second Claimant.

   iv) The allegations were so serious that they were likely to spread by way of the grapevine effect, such that their publication was and is likely to impact the First and Third Claimants' ability to conduct further business and cause future serious, but unquantifiable, financial loss.

v) Indeed, the Warning Email has in fact caused the Third Claimant to suffer serious financial loss. Although the Second Claimant immediately emailed Mr Aharoni refuting the allegations and explaining that the Defendant was no longer associated with Ideasoft, and that the email was part of an attempt to blackmail the First Claimant, on 27 April 2025 Mr Aharoni emailed the Second Claimant to terminate the Stylezone Contract on the basis that his company cannot "[take] risks with team members". On 22 May 2025, the Third Claimant and Stylezone therefore signed a Termination Agreement, which was deemed effective from 31 May 2025. As a result, the Third Claimant has suffered and continues to suffer serious financial loss in the sum of $7,700pcm, from 31 May 2025 and continuing indefinitely albeit the Third Claimant has chosen to limit its claim to one year's loss from the date of the POC.

22. Given that there is an issue about this, I will set out the plea of double actionability in relation to the Warning Email which is at [39.7] of the POC:

> "39.7. The above serious financial loss was caused by the publication of the words complained of in Israel. For the purposes of section 1(2) of the Defamation Act 2013, the Third Claimant relies upon the presumption that the words complained of would be actionable in Israel."

23. Essentially the same plea is repeated in respect of the Second Claimant at [41] of the POC. It is therefore clear that the claim is made on the basis that the words complained of were published in Israel. However, double actionability is not pleaded in respect of the First Claimant's claim based on the Warning Email.

The Social Media post

24. The defamation claim based on what is referred to in the POC as "the Social Media Post" is made by the First Claimant alone. Its pleaded case is that, on or about 29 May 2025, the Defendant published the post on his LinkedIn account to his c.13,000 subscribers and, on the same date, he also published substantially the same words on his Instagram account to c.6,900 followers and, on his Facebook account, to c.5,800 followers.

25. The Social Media Post appears to have the title: "From Strategy to Survival – Why people – not plans – define your real legacy". It is written in bullet point or text form, with emojis, rather than prose, and is not always easy to understand. However, it appears to say that before 24 February (presumably 2022 when Russia invaded Ukraine), "everything felt like it was just beginning" and it refers to, amongst other things "Launched a venture fund…Big ambitions, global plans". It says that then the war changed everything. There are then references which appear to recount experiences of the Defendant during the war. Then he says that "Crisis reveals who people really are" and he makes complimentary statements about a Serhii Mokriiev ("the unexpected hero" who stepped up "When we shifted to humanitarian aid") and the Defendant's partner/wife, Kate ("my partner in life & purpose"), and how they responded.

26. The statements complained of by the First Claimant then appear under what appears to be an explosion emoji:

> "But also - betrayal

Someone I called a friend sabotaged the fund.

Later, we learned he was connected to Russian intelligence.

That was one reason I stepped away from Ideasoft and other ventures."

27. The Defendant goes on to say that what seems like misfortune may be a stroke of luck as he and his partner/wife launched a foundation which helps those affected by the war in Ukraine, especially children. As it was International Children's Day they were fundraising by selling tee shirts featuring art by children who survived the war. A link was provided.

28. The First Claimant pleads that in their natural and ordinary meaning, alternatively their innuendo meaning, the words complained of mean that the First Claimant (a Ukrainian company) has hidden ties to Russian intelligence and that an individual who was acting on its behalf promoted Russian interests during the Russo-Ukrainian war by sabotaging a venture capital fund. The particulars of innuendo allege that a small but unquantifiable number of readers of the Social Medial Post knew that the First Claimant is a Ukrainian company and would have understood that it had ties with an enemy state and had sought to promote the interests of that state.

29. It is then pleaded that the publication of the Social Media Post has caused and is likely to cause serious financial loss to the First Claimant within the meaning of section 1(2) of the Defamation Act 2013. The particulars of this contention are:

> "49.1. The imputation is self-evidently grave, as it suggests that clients, shareholders and other individuals interacting with the First Claimant are in fact at risk of their information being shared with the Russian security services.
>
> 49.2. Prospective clients and business partners *in England and Wales* would be unwilling to form any commercial relationship with a Ukrainian company which had covert links to Russian intelligence services, as the aggressor state in the Russo-Ukrainian war. (emphasis added)
>
> 49.3. The words were published in English, to clients and potential clients of the First Claimant.
>
> 49.4. The Defendant shared the post across several platforms to generate the largest possible readership.
>
> 49.5. The use of the 'explosion' emoji suggests that this is an explosive, or new, revelation about the First Claimant.
>
> 49.6. Readers would also have been interested in, and likely to believe, what the Defendant had to say, given his professional experience at the First Claimant.
>
> 49.7. Readers would understand the conduct alleged to be so serious and traitorous that it caused the Defendant to leave the First Claimant company.
>
> 49.8. Allegations of this nature are inherently likely to cause serious financial loss, as evidenced by Mr Aharoni's immediate termination of the Stylezone Contract upon receipt of similar allegations…

49.9. It is likely that other clients, upon reading the Defendant's Social Media Post, will refuse to enter into, or terminate, agreements and investment opportunities with the First Claimant as a result of the Social Media Post.

49.10. The First Claimant will also rely on grapevine dissemination."

30. There is no plea of double actionability in respect of the Social Media Post.

31. The evidence is that the Social Medial Post was taken down from each platform on 23 October 2025 i.e. just short of 5 months after it was posted.

Relief in relation to the defamation claims

32. The Claimants claim an injunction to restrain the Defendant from repeating his allegations, and general and aggravated damages for libel. The Third Claimant also claims special damages in the sum of US$103,200 for libel i.e. the loss flowing from the loss of the Stylezone contract, and there is a claim for an order under section 12 of the Defamation Act 2013.

Causing loss by unlawful means

33. The Third Claimant's pleaded case is that the Defendant published the Warning Email with the intention of deceiving Mr Aharoni into relying on his false representations and terminating the contract which was in place with the relevant entity of the Ideasoft Group. It is to be inferred that damaging the Third Claimant's commercial interests in this way and demonstrating his ability to cause loss to the Ideasoft Group was part of the Defendant's plan to harass and menace the First Claimant and others to such an extent that it would pay him money, under the exit agreements, to which he was not entitled. Stylezone would have a cause of action in deceit and particulars of the alleged false representations relied on are provided.

The Defendant's application for summary disposal

34. The Defendant seeks to strike out, alternatively summary judgment in his favour in relation to:

i) The whole of the harassment claim brought by the First and Second Claimants, on the basis that:

a) the harassment alleged by them is not said by the Claimants to have affected, and does not affect, any relevant person in England and Wales; or alternatively

b) the pleaded case and/or the evidence fall short of a course of conduct of sufficient seriousness to give rise to reasonable grounds for bringing the harassment claim, or a real prospect of the claim succeeding.

ii) The defamation claim based on the Warning Email brought by the First Claimant (though not the claim brought by the Second and Third Claimants based on the same email), on the basis that the First Claimant has not pleaded reasonable grounds for asserting, and has no real prospect of establishing, that it:

a) Has a trading reputation in England and Wales; and/or

b) Has suffered or is likely to suffer "serious financial loss" for the purposes of section 1(2) of the Defamation Act 2013.

iii) The defamation claim brought by the First Claimant based on the Social Media Post on the same bases as apply to the Defendant's application in respect of the Warning Email.

The approach to be applied to applications for summary disposal

Striking out a statement of case

35. CPR Rule 3.4(2) provides, so far as material:

> "(2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;…"

36. As the White Book 2026 puts it at 3.4.1:

> "Grounds (a) and (b) cover statements of case which are unreasonably vague, incoherent, vexatious, scurrilous or obviously ill-founded and other cases which do not amount to a legally recognisable claim or defence."

37. In contrast to an application for summary judgment under Rule 24.2, the court is required to focus on the pleaded case and to ask whether that case is hopeless or bound to fail. Applications to strike out on the "no reasonable grounds" basis do not require evidence, and the court should normally assume the pleaded facts to be true unless they are contradictory or obviously wrong: see e.g. *MF Tel Sarl v Visa Europe Limited* [2023] EWHC 1336 (Ch) at [34 (1)].

38. [1.4] of Practice Direction 3A gives the following examples of where the court may conclude that a particulars of claim falls within Rule 3.4(a):

> "(1) those which set out no facts indicating what the claim is about, for example 'Money owed £5000',
>
> (2) those which are incoherent and make no sense,
>
> (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant."

39. Even if a statement of case or parts of a statement of case do satisfy the Rule 3.4(2)(a) test, it does not follow that the defective pleading will necessarily be struck out: the court "may" do so. In these circumstances the court should consider whether it is proportionate and in accordance with the overriding objective to take this potentially draconian step (see e.g. *Fairclough Homes v Summers* [2012] 1 WLR 2404 at [48]). In

determining this question it will be relevant to consider whether the defects are capable of being corrected by appropriate amendments (see e.g. *In Soo Kim v Park & Others (supra) at [40]*) or whether other measures such as the provision of further particulars are appropriate (see e.g. *Biguzzi v Rank Leisure Plc [1999] 1 WLR 1926* at 1932B).

Summary judgment on a claim or defence

40. CPR Rule 24.3 provides as follows:

> "24.3 The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> > (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
> >
> > (b) there is no other compelling reason why the case or issue should be disposed of at a trial."

41. In *Easyair Ltd (t/a Openair) v Opal Telecom Ltd* [2009] EWHC 339 (Ch) Lewison J (as he then was) set out the following principles in relation to applications for summary judgment by defendants, which were approved by the Court of Appeal in *AC Ward & Sons Ltd v Catline (Five) Ltd* [2009] EWCA Civ 1098 at [24]:

> "(i) The court must consider whether the claimant has a "realistic" as opposed to a "fanciful" prospect of success: *Swain v Hillman* [2001] 2 All ER 91;
>
> (ii) A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8];
>
> (iii) In reaching its conclusion the court must not conduct a "mini-trial": *Swain v Hillman*;
>
> (iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10];
>
> (v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;
>
> (vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the

case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

(vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be…..."

Determining points of law in the context of applications for summary disposal

42. It is well recognised that, generally, the court should not determine points of law which are not settled, particularly where the facts are in dispute or evidence would potentially shed light on the issue of law, or the issue of law may not arise when the facts are found. Thus, for example, in *Barrett v Enfield LBC* [2002] AC 550 Lord Browne-Wilkinson said this at 557:

"In my speech in the *Bedfordshire case* [1995] 2 AC 633, 740-741 … I pointed out that unless it was possible to give a certain answer to the question whether the plaintiff's claim would succeed, the case was inappropriate for striking out. I further said that in an area of the law which was uncertain and developing ….it is not normally appropriate to strike out. In my judgment it is of great importance that such development should be on the basis of actual facts found at trial not on hypothetical facts assumed (possibly wrongly) to be true for the purpose of the strike out."

43. However, this does not mean that points of law can never be determined in the context of an application for summary disposal: see principle (vii) from the *Easyair* case, cited at [40] above. In *Commerz Real Investmentgesellschaft mbh v TFS Stores Limited* [2021] EWHC 863 (Ch) at [12(1)] Chief Master Marsh said that the reference to the point of law being "short" may relate to the length of the hearing which is required to determine it and the complexity of the matrix of fact which the court will have to consider. He said that in his experience the court regularly deals with points of law of real difficulty on the hearing of an application for summary judgment but he added that:

"there may be some overlap between the idea of a point of construction not being 'short' and the second limb of CPR rule 24.2. There may be some points that the court is capable of grappling with (or grasping the nettle as it is sometimes put) that, nevertheless due to the context in which they arise or other factors are best left to be dealt with at a trial."

The harassment claim

The legal framework

44. The preamble to the Prevention of Harassment Act 1997 states that it is:

> "An Act to make provision for protecting persons from harassment and similar conduct."

45. Sections 1 to 7 make provision for England and Wales, and sections 8 to 11 make provision for Scotland. So far as material for present purposes, section 1 provides:

> "**1 Prohibition of harassment**.
>
> (1) A person must not pursue a course of conduct—
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other.
>
> (1A) A person must not pursue a course of conduct —
>
> (a) which involves harassment of two or more persons, and
>
> (b) which he knows or ought to know involves harassment of those persons, and
>
> (c) by which he intends to persuade any person (whether or not one of those mentioned above)—
>
> (i) not to do something that he is entitled or required to do, or
>
> (ii) to do something that he is not under any obligation to do….."

46. Section 1(1A) was inserted into the 1997 Act by the Serious Organised Crime and Police Act 2005.

47. A defendant has a defence under section 1(1) or (1A) if s/he shows: (i) that the course of conduct was pursued for the purpose of preventing or detecting crime; and/or (ii) that it was required by an enactment or rule of law; and/or (iii) that in the particular circumstances the pursuit of the course of conduct was reasonable (section1(3)).

48. Section 2 of the 1997 Act then provides that a person who pursues a course of conduct in breach of section 1(1) or (1A) is guilty of an offence and liable on summary conviction to imprisonment for up to 6 months. And section 3 provides for civil remedies as follows, so far as material:

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

49. Section 3 does not specifically enact the availability of injunctive relief but this is implicit, as is apparent from the rest of the section which deals with the consequences of a breach of such an order. However section 3A, which was also inserted by the 2005

Act, deals with injunctive relief in relation to section 1(1A) as follows, so far as material:

> "**3A Injunctions to protect persons from harassment within section 1(1A)**
>
> (1) This section applies where there is an actual or apprehended breach of section 1(1A) by any person ("the relevant person").
>
> (2) In such a case—
>
> (a) any person who is or may be a victim of the course of conduct in question, or
>
> (b) any person who is or may be a person falling within section 1(1A)(c),
>
> may apply to the High Court or the county court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction….."

50. Section 7, which is the interpretation section in relation to section 1 to 5A, provides, so far as material, as follows:

> "(2) References to harassing a person include alarming the person or causing the person distress.
>
> (3) A "course of conduct" must involve—
>
> (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
>
> (b) in the case of conduct in relation to two or more persons (see section 1(1A)), conduct on at least one occasion in relation to each of those persons……
>
> (4) "Conduct" includes speech…"

51. Section 14 states, under the Heading "Extent" that:

> "(1) Sections 1 to 7 extend to England and Wales only.
>
> (2) Sections 8 to 11 extend to Scotland only.
>
> (3) This Act (except section 13) does not extend to Northern Ireland."

52. So far as England and Wales are concerned, the 1997 Act also includes offences of stalking (section 2A), putting people in fear of violence (section 4) and stalking involving fear of violence or serious alarm or distress (section 4A). It does not make provision for a civil remedy in relation to these matters. Section 4B(1) deals with cases where the course of conduct which would constitute an offence under section 4 or 4A

"consists of or includes conduct in a country outside the United Kingdom" (section 4B(1)(a)) and "the person is a United Kingdom national or is habitually resident in England and Wales" (section 4B(1)(c)). In such a case "the person is guilty in England and Wales of that offence". These sections were added to the 1997 Act by the Protection of Freedoms Act 2012.

53. In *Hayden v Dickenson* [2020] EWHC 3291 (QB) at [44] Nicklin J gave the following distillation of the principles where the alleged harassment is based on speech, which was subsequently approved by the Divisional Court in *Scottow v Crown Prosecution Service* [2020] EWHC 3421 (Admin), [2021] 1 WLR 1828. I set out the principles so far as relevant to the present case, and without including the authorities to which Nicklin J referred, save where relevant:

> "i) Harassment is an ordinary English word with a well understood meaning: it is a persistent and deliberate course of unacceptable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress; " a persistent and deliberate course of targeted oppression": *Hayes v Willougby* [1], [12] *per* Lord Sumption.
>
> ii) The behaviour said to amount to harassment must reach a level of seriousness passing beyond irritations, annoyances, even a measure of upset, that arise occasionally in everybody's day-to-day dealings with other people. The conduct must cross the boundary between that which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the border from the regrettable to the objectionable, the gravity of the misconduct must be of an order which would sustain criminal liability under section 2….. A course of conduct must be grave before the offence or tort of harassment is proved….
>
> iii) …section 7(2) [of the 1997 Act]…… is not a definition of the tort and it is not exhaustive. It is merely guidance as to one element of it… It does not follow that any course of conduct which causes alarm or distress therefore amounts to harassment…….
>
> iv) section 1(2) provides that the person whose course of conduct is in question ought to know that it involves harassment of another if a reasonable person in possession of the same information would think the course of conduct involved harassment. The test is wholly objective...…..
>
> v) Those who are "targeted" by the alleged harassment can include others "who are foreseeably, and directly, harmed by the course of targeted conduct of which complaint is made, to the extent that they can properly be described as victims of it….
>
> vi) Where the complaint is of harassment by publication, the claim will usually engage Article 10 of the Convention and, as a result, the Court's duties under sections 2, 3, 6 and 12 of the Human Rights Act 1998. The [1998 Act] must be interpreted and applied compatibly with the right to freedom of expression………...
>
> vii) In most cases of alleged harassment by speech there is a fundamental tension. Section 7(2) [of the 1997 Act] provides that harassment includes "alarming the

person or causing the person distress". However, Article 10 expressly protects speech that offends, shocks and disturbs. " Freedom only to speak inoffensively is not worth having ...

viii) Consequently, where Article 10 is engaged, the Court's assessment of whether the conduct crosses the boundary from the unattractive, even unreasonable, to oppressive and unacceptable must pay due regard to the importance of freedom of expression and the need for any restrictions upon the right to be necessary, proportionate and established convincingly. Cases of alleged harassment may also engage the complainant's Article 8 rights. If that is so, the Court will have to assess the interference with those rights and the justification for it and proportionality…. The resolution of any conflict between engaged rights under Article 8 and Article 10 is achieved through the "ultimate balancing test" identified in *In re S* [2005] 1 AC 593 at [17]….

ix) The context and manner in which the information is published are all-important….. The harassing element of oppression is likely to come more from the manner in which the words are published than their content….

x) The fact that the information is in the public domain does not mean that a person loses the right not to be harassed by the use of that information….

xi) Neither is it determinative that the published information is, or is alleged to be, true…That is not to say that truth or falsity of the information is irrelevant…The truth of the words complained of is likely to be a significant factor in the overall assessment (including any defence advanced under section 1(3)), particularly when considering any application interim injunction…. On the other hand, where the allegations are shown to be false, the public interest in preventing publication or imposing remedies after the event will be stronger…The fundamental question is whether the conduct has additional elements of oppression, persistence or unpleasantness which are distinct from the content of the statements; if so, the truth of the statements is not necessarily an answer to a claim in harassment.

xii) Finally, where the alleged harassment is by publication of journalistic material, nothing short of a conscious or negligent abuse of media freedom will justify a finding of harassment. Such cases will be rare and exceptional…."

<u>Is the Claimants' case on harassment sufficiently arguable assuming no territorial effect issue?</u>

54. Mr Price's argument that the First and Second Claimants are not able to plead or prove a course of conduct on the part of the Defendant which has a real prospect of being held to be sufficiently serious to amount to harassment appeared to be very much secondary to his argument on the territorial effect of the 1997 Act. However, for reasons which will become apparent, I will deal with it first.

55. Mr Price put forward a general argument that the emails relied on were essentially part of a hard fought negotiation in the course of which both sides were blunt and aggressive, and made threats. I should also bear in mind that the emails were translations and may therefore appear more blunt than if they were read in their original language and cultural differences are taken into account. A fair consideration of the emails leads to the

conclusion that the claim in harassment will inevitably fail at trial because the Defendant's conduct in sending them does not have the necessary quality of seriousness, unreasonableness and oppressiveness etc to amount to harassment contrary to the 1997 Act.

56. In my view there is no defect in the First and Second Claimant's pleaded case in harassment, which is perfectly coherent and makes the necessary averments. There is nothing on the face of the POC, or in the evidence thus far, which would enable me to go behind the pleaded allegations, or which causes me to conclude that the course of conduct pleaded against the Defendant is bound to fail to meet the level of seriousness which is necessary for the claim in harassment to succeed. Mr Price did not appear to suggest otherwise: his argument was really that the claim is bound to fail on the evidence rather than on the pleaded case. I am quite satisfied that the POC discloses reasonable grounds for bringing the claim in harassment and is not abusive for the purposes of Rule 3.4(2).

57. As far as the Defendant's application under CPR Part 24 is concerned, I have read the relevant email exchanges. As one would expect, their contents and addressees (see [11]-[15], above) are accurately summarised in the POC. It is clear that the Defendant made a number of threats and demands and that he circulated his emails relatively widely and to key people so far as the business was concerned. It is clearly arguable that, on their face, those threats were effectively to damage the Claimants' business if his demands were not met. On their face, the emails provide a solid basis for their case that, if carried out, these threats *would* seriously damage their business and the First Claimant's position in the negotiations with the UAE investors. They also provide a solid basis for the Claimants' allegations as to the Defendant's motives and objectives in making these threats and demands: in short, that he had seen an opportunity to blackmail them and was acting in bad faith. The Second Claimant and Ms Datsenko also give evidence as to the seriousness of the Defendant's conduct and its impact, in support of the case pleaded in the POC.

58. I accept Mr Price's point that the Second Claimant himself made threats and was robust in his responses to the Defendant but I agree with Ms Marzec that the harassment claim has a real prospect of success, subject to Mr Price's territorial effect argument which I address below. The appropriate course is for the court to hear contextual evidence about the email exchanges at trial rather than evaluating them in the abstract. On the basis of that evidence, it will be for the trial judge to determine whether to accept the pleas in the POC that the Defendant's allegations were baseless, that he knew that they were baseless, that he knew that he was not entitled to the payments which he was demanding, that his actions were cynical and vindictive and amounted to blackmail, and that he was trying to put additional pressure on the First and Second Claimants by copying employees etc. The determination of these issues, and others, will inform the court's overall conclusion as to whether the requisite level of seriousness is established.

<u>The territorial effect of the Protection from Harassment Act 1997</u>

The Defendant's argument

59. Mr Price relied on a line of authority to the effect that, for a course of conduct to amount to harassment contrary to section 1(1) of the 1997 Act, it must take place in England

and Wales and its effect must be felt here. For the former proposition he relied, amongst other authorities, on *Piepenbrock v The London School of Economics and Political Science* [2018] EWHC 2572 (QB) at [225] and, in any event, there is no dispute that the course of conduct by the Defendant in this case took place in England and Wales. However, the evidence suggests that at all material times those who are alleged to have been harassed by the Defendant were outside the jurisdiction, and there is no plea by the Claimant to the contrary. Mr Price relied on the following authorities as establishing that this is fatal to the harassment claim.

60. In *Shakil-Ur-Rahman v ARY Network Ltd* [2016] EWHC 3110 (QB), [2017] 4 WLR 22, Sir David Eady accepted that there was a sufficiently serious course of conduct to amount to harassment when a series of programmes was broadcast in England and Wales. However, at [115]-[120] he dismissed the claim in harassment because, at the time of the broadcasts, the claimant was not within the jurisdiction. He said that this factor was relevant to whether the defendant knew or ought to have known that its conduct amounted to harassment and to the question "whether a tort was committed within this jurisdiction" [115]. In contrast to defamation, the tort of harassment "is not complete unless and until it impacts upon the person concerned" [117]. The claimant's submission that it was sufficient if the acts of harassment took place within the jurisdiction made "insufficient allowance for the nature of this particular wrong" [119]:

> "clearly modern technology and instantaneous communication have made it easier to reach such "victims" wherever they may be, but that does not mean that jurisdictional reach has been correspondingly extended…. It is an essential element of [the tort of harassment] that the person concerned should be harassed. It will not suffice for the defendant to complete his act or acts within the jurisdiction unless there is also an impact there upon the "victim"."

61. Similarly, in *Lawal v Adeyinka and Coker* [2021] EWHC 2486 (QB) Mr Richard Spearman KC (sitting as a Deputy High Court Judge) rejected an on notice application for an interim injunction to restrain alleged harassment, essentially on the basis that, at all material times, the alleged victim was in Nigeria ([17]-[23]). It is not clear whether any relevant authority was cited to him but he described this feature of the case as a "fundamental jurisdictional problem" for the applicant's case [17]. His clear view was that it was not sufficient that the acts complained of took place in the United Kingdom because "the concept of harassment is all to do with the effect upon the victim" [21]. Here, the effect of the acts of the defendant was felt outside the jurisdiction. There had therefore been no criminal offence committed, and there was no civil cause of action, in this jurisdiction [21]. Mr Spearman said that that the applicant might in principle be able to obtain injunctive relief to restrain the acts complained of if he was going to enter the jurisdiction and would experience the harassing conduct here because, on entry, the tort would have been committed here. But that was not the situation on the facts of the *Lawal* case [22]. (I note that an injunction was granted on this basis by Ritchie J in *HXZ v NMX* [2025] EWHC 697 (KB) at [52]).

62. In *Bukhari v Bukhari* [2025] EWHC 2391 (KB) the tweets and videos complained of were published in England and Wales. However, the claimant was only here during some of the alleged course of harassing conduct. At [23] Mr Aidan Eardley KC (sitting as a Deputy High Court Judge) noted that the authorities including *Shakil-Ur-Rahman* "suggest that a claim for harassment is made out only if the claimant experienced the

harassing effects of the defendant's course of conduct whilst in England and Wales" and that this was "a requisite ingredient of the harassment claim", albeit noting that no one had asked him to depart from this principle ([134]). However, he held that in deciding whether there had been a course of conduct amounting to harassment he could take into account all of the tweets and videos which constituted the course of conduct and did not need limit himself to those which were published whilst the claimant was in England and Wales [135]. He also held that the "'being harassed' limb of the tort would be complete if the claimant experienced the Defendant's tweeting to a more than minimal extent while he was in this jurisdiction" [136]. None of the *Shakil-Ur-Rahman* line of cases stated that the defendant's course of conduct must be experienced exclusively in England and Wales [137].

63. In *Rzucek v Vinnicombe* [2026] EWHC 946 (KB) at [38]-[42] Mr Dan Squires KC (sitting as a Deputy High Court Judge) followed *Shakhil-Ur-Rahman* and *Lawal*. He said that far from there being "powerful" reasons to depart from them, as would be required given that they were decisions of the High Court (see *Willers v Joyce* [2016] UKSC 44, [2018] AC 843 at [9]), there were strong arguments in support of the analysis and conclusions in those cases.

64. I note, however, that at [43], Mr Squires acknowledged that this interpretation of the 1997 Act may produce undesirable results given that modern communication makes it easy to "harass" a person extraterritorially. He also noted that in the context of the criminal law, albeit in relation to other offences, the courts of England and Wales have "exerted jurisdiction" where the conduct took place within the jurisdiction but its effects were felt abroad. He gave the example of *R v Smith (No 4)* [2004] EWCA Crim 631, [2004] QB 1418 where, in a case of obtaining by deception, the deception took place in London but the property was obtained in New York. He observed that it could be said that the rationale for this case (i.e. a recognition of the nature of modern financial transactions) was applicable by analogy to harassment but, as he had not heard full argument on the point, he did not discuss the point further.

65. In *Gotti v Perrett* [2025] EWCA Civ 1168 at [20(iii)] the Court of Appeal noted, as one of various reasons why the claimant's application for an injunction to restrain alleged harassment was "deeply misconceived", that the court lacked jurisdiction under section 3 of the 1997 Act "because the jurisdictional reach of the [Protection from Harassment Act] 1997 is England and Wales (see in this regard *Lawal v Adeyinka…*). At all material times, the Appellant has lived outside of the jurisdiction, in Scotland.". However, Mr Price appeared to accept that this was not ratio. The issue in the appeal was whether an application for an injunction issued under CPR Part 23, prior to a claim form being issued, constitutes "proceedings" in respect of which key elements of the CPR apply so that the court has a power to make a range of orders in respect of such an application including for the discharge of an injunction granted pursuant to it and costs. In effect, the Court merely noted in passing that "As it happens" the application was deeply misconceived and it is not clear that there was detailed argument on the point.

The Claimants' argument

66. Mr Callus presented the arguments on the territorial effect of the 1997 Act on behalf of the Claimants. He emphasised that there is no issue as to what he called "general jurisdiction" in the sense that the courts of England and Wales have jurisdiction over those who are within their territory, as the Defendant is. He was at all material times,

and is, resident here. He has been served with the proceedings and there is no question that he is properly before the court. Mr Callus submitted that there is therefore no issue as to jurisdiction in this case at all. The question is as to the territorial effect of the Protection from Harassment Act 1997.

67. Mr Callus accepted that the line of cases relied on by Mr Price is against his proposed interpretation of the 1997 Act. And he did not shy away from the fact that the relevant holdings in *Shakil-Ur-Rahman, Lawal, Bukhari* and *Rzucek* are ratio. His argument, however, was that they were *per incuriam* because they failed to take into account the authorities on the approach to territorial effect in the criminal law, and wrong because (a) it is not necessary for harassment to be experienced by the alleged victim for breach of the 1997 Act to be established: all that is needed is that a course of conduct which, on an objective assessment, is of the nature described by the Act; and (b), even if this is wrong, it does not follow from the fact that the course of conduct is experienced abroad by the claimant that the 1997 Act does not "bite".

68. As to Mr Callus' argument that harassment does not necessarily require to be experienced by the putative victim, he relied on the following passage from the judgment of Baroness Hale in *Majrowski v Guy's & St Thomas Hospital* [2006] UKHL 34, [2007] 1 AC 224 at [66]:

> "All sorts of conduct may amount to harassment. It includes alarming a person or causing her distress: section 7(2). But conduct might be harassment even if no alarm or distress were in fact caused. A great deal is left to the wisdom of the courts to draw sensible lines between the ordinary banter and badinage of life and genuinely offensive and unacceptable behaviour."

69. And he submitted that error had crept into the law in Lord Sumption's judgment in *Hayes v Willoughby* [2013] UKSC 17, [2013] 1 WLR 395 when he said:

> "Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to <u>and does</u> cause that person alarm, fear or distress: see *Thomas v News Group Newspapers Ltd* [2002] EMLR 78 , para 30 (Lord Phillips of Worth Matravers MR)." (emphasis added)

70. Mr Callus submitted that, in fact, Lord Phillps had not said "and does" and Baroness Hale had made clear in *Majrowski* that this was not a requirement. He also relied on remarks by Collins Rice J in *Sayn-Wittgenstein-Sayn v Juan Carlos I* [2023] EWHC 2478 (KB) including those at [84]-[87] where she noted, albeit in the context of determining whether the court had jurisdiction to entertain the case, that "the statutory definition does not itself specify the causation or production of any particular results by the course of conduct,…. It simply provides that the course of conduct must, judged wholly objectively, amount to 'harassment'".

71. As far as Mr Callus' alternative argument is concerned, he took me to various authorities in the criminal context including *R v Treacy* [1971] AC 537 in which the House of Lords held that the offence of blackmail was committed in England in a case where the unlawful demand was posted from England to Germany. However, it is sufficient for present purposes to look more closely at two of these authorities.

72. The first is *R v Laskowski* [2023] EWCA Crim 494, [2023] KB 602 in which the defendant, who was in the Netherlands, offered, in an exchange of encrypted messages with a man in England, to supply the latter with 5kg of cocaine. The Court of Appeal held that the offence of "offering to supply a controlled drug to another", contrary to section 4(1)(b) and (3)(a) of the Misuse of Drugs Act 1971, required that the defendant had made an offer to supply drugs to another and that the offer was to supply the drugs in the United Kingdom. It did not require the offer to have been received or read. On the facts of *Laskowski*, the offence was therefore completed in the Netherlands.

73. However, at [18] Holroyde LJ asked:

> "18. Was it nonetheless an offence which the courts of this country had jurisdiction to try? The starting point is the general principle of interpretation that there is a presumption against the extraterritorial application of a criminal statute. That presumption may however be displaced by the express terms of a statute or by necessary implication; and in relation to the latter, the mischief against which the statute is aimed, and the public interest, are important considerations."

74. He then reviewed the authorities including *R v Treacy* (supra), *R v Smith (Wallace Duncan) (No 1)* [1996] 2 Cr App R 1, *R v Smith (Wallace Duncan) (No 4)* (supra) and *R v Sheppard* [2010] 1 WLR 2779. In *R v Smith (Wallace Duncan) (No 1)*, at pages 19-20, Rose LJ noted the following observation in *Libman v The Queen* [1985] 2 SCR 178:

> "The English courts have decisively begun to move away from definitional obsessions and technical formulations aimed at finding a single situs of a crime by locating where the gist of the crime occurred or where it was completed. Rather, they now appear to seek <u>by an examination of relevant policies to apply the English criminal law where a substantial measure of the activities constituting a crime take place in England</u>, and <u>restrict its application in such circumstances solely in cases where it can seriously be argued on a reasonable view that these activities should, on the basis of international comity, be dealt with by another country</u>." (emphasis added)

75. Holroyde LJ noted that the "substantial measure of activities" approach had been followed in *R v Smith (Wallace Duncan) (No 4)* and in *R v Sheppherd* and had been characterised as the development of the common law "in order to meet the needs of contemporary society" ([21]). The Court of Appeal in *Laskowski* held that it would be consistent with the aims of the Misuse of Drugs Act 1971 to follow this approach ([25]) and that there were no considerations of international comity which militated against it:

> "27. Given that the offer was an offer to supply controlled drugs in the United Kingdom, we see no reason why any such considerations should militate against the courts doing so. On the contrary, we would expect every state to wish to be able to prosecute those whose conduct is aimed at bringing dangerous drugs into its territory. Moreover, all states have an interest in trying to stop the international trade in dangerous drugs."

76. The Court concluded that a substantial measure of the activities constituting the crime in *Laskowski* did take place in England given that the mischief at which the 1971 Act

is aimed is the unlawful possession and supply of controlled drugs in the United Kingdom. The offer was to supply cocaine in England. The harm which would be caused by the supply would therefore be suffered in the United Kingdom and the offeree was as a matter of fact also in England.

77. Secondly, in *R v NS* [2023] EWCA Crim 1409, the Court of Appeal held that the Crown Court had "jurisdiction" to try an offence of controlling or coercive behaviour in an intimate or family relationship contrary to section 76 of the Serious Crime Act 2015, despite the fact that some of the matters relied on by the prosecution took place and/or had their effect outside the jurisdiction (in Serbia). The submission that the Crown Court did not have jurisdiction was based on [19] to [21] of *Lawal* in which, as noted above, Mr Spearman KC held that no crime had been committed in this jurisdiction and nor was there any civil cause of action. It was submitted that, like harassment, the offence under section 76 of the 2015 Act, in Mr Spearman's words, "is all to do with the effect on the victim". This submission was rejected. At [25] Males LJ said that, absent particular provision setting out a different position:

> "the basis of English criminal jurisdiction is territorial. However, it is now well established that in general the Crown Court has jurisdiction to try a defendant, if a substantial measure of the activities constituting the crime took place in England, even though some elements occurred abroad."

78. Males LJ referred to the authorities summarised above and said:

> "29. In our judgment, the principle that the Crown Court will have jurisdiction, if a substantial measure of the activities constituting the crime takes place in England, sets out the *prima facie* position where the statute does not deal expressly or by necessary implication with its territorial application, but it remains necessary to consider whether the principle accords with the purpose of the statutory provision in question, in the light of the mischief at which that provision is aimed."

79. He then considered the mischief at which the offence of controlling or coercive behaviour is aimed. His conclusion, at [30] was that:

> "If the relationship is between parties who are habitually resident in this country, it is in accordance with the purpose of section 76 for such conduct to be criminal, notwithstanding that some elements of it may have occurred outside the jurisdiction. A man is not allowed to abuse his partner merely because they are on holiday abroad. The section is concerned with relationships which have their closest connection with this jurisdiction."

80. Males LJ held that "the substantial measure principle" should be applied:

> "31…..We do not find the decision in *Lawal v Adeyinka* of any relevance in this case although, on its facts, the Deputy Judge was no doubt right not to grant an interim injunction. It is apparent however that the *Smith (Wallace Duncan)* line of authorities was not cited to him in that case."

81. Mr Callus also submitted that it may be of relevance that particular provision as to territorial effect is made by section 4B in relation to the offences under sections 4 and 4A. Section 4B addresses the situation where the conduct complained of takes place

abroad but does not specify where its effect must be felt. If there is no separate requirement in the case of the section 4 and 4A offences for the conduct to be experienced within the jurisdiction, he asked, why would the position be different under section 1?

Decision

82. For the following reasons, I have concluded that I should not determine the issues of law on which this part of Mr Price's application is based, or strike out the claim in harassment. Rather, this claim should go to trial and the territorial effect issue, if it arises, should be determined on the facts as found by the trial judge at the same time as the Claimants' other claims.

83. As Mr Callus acknowledged, on the current state of the authorities Mr Price has (at the very least) a very strong case that the claim in harassment will fail as a matter of law. Without deciding the position under the law of precedent (not least because I was not referred to the relevant authorities), even assuming that I am not strictly bound by the authorities on which Mr Price relies, I would need powerful reasons to depart from a single decision of the High Court (*Willers v Joyce* (supra) at [9]) and/or would need to be "convinced" that it was wrong: *Huddersfield Police Authority v Watson* [1947] KB 842 DC. The doctrine of *per incuriam* is also a strict one. The court must be satisfied that, had the previous court been aware of the case law or the statutory provisions which failed to take into account, it "must" have reached a different decision (*Duke v Reliance Systems Ltd* [1988] QB 108, 113) and/or that the previous decision was "demonstrably wrong" (*Morelle Ltd v Wakeling* [1955] 2 QB 379, 406). Here, there are several authorities which establish Mr Price's propositions of law including *Rzucek v Vinnicombe* in which the approach in the criminal law was considered, at least by Mr Squires KC. The proposition that they are clearly wrong, even taking account of the criminal law authorities relied on by Mr Callus, is a difficult one to sustain, particularly at first instance.

84. Again without tying the trial judge's hands by finally determining the matter, I do not think that Mr Callus is right that harassment may be established without it being experienced by the claimant in the proceedings or, indeed, anyone else. This is contrary to Supreme Court and numerous other authorities, as I have noted. This part of Mr Callus' argument seems to me to be based on a misreading of what Baroness Hale said at [66] of *Majrowski*. As I read this paragraph, she was making the point that under section 7(2) of the 1997 Act it is not necessary that alarm or distress, in particular, are caused by the harassing behaviour because the word "include" is used in the sentence "References to harassing a person include alarming the person or causing the person distress". She was not suggesting that there can be harassment of the victim without the victim being aware that they are being harassed (and see, further, *Gerrard v Eurasian Natural Resources Corp* [2020] EWHC 4341, [2021] EMLR 8 at [94]). In any event, this issue did not arise for determination in *Majrowski* and [66] is therefore, at best, obiter.

85. Mr Callus' reliance on *Sayn-Wittgenstein-Sayn v Juan Carlos I* (supra) EWHC 2478 (KB) also appears misplaced. At [84] to [87] Collins-Rice J in fact acknowledged that the authorities suggest that the conduct must have an effect on the putative victim albeit she said that there was a (moot) question whether this was one of the ingredients of the tort or merely relevant to remedy. Nor did she question the correctness of *Shakil-Ur-*

Rahman (see e.g. [286], and [116] albeit in a different context). In any event, the relevant parts of the judgment were principally concerned with the fact that a significant number of the acts of the defendant which were complained of had taken place outside the jurisdiction, which is not the issue here.

86. This part of Mr Callus' argument also seems to me to be contrary to various features of the 1997 Act. Without undertaking an exhaustive analysis, these include the fact that, at every turn, harassment is referred to in relation to another person. As noted above (see [44]-[52]) the Preamble states that the aim of the Act is to make provision for "protecting persons from harassment". Section 1(1)(a) and 1(1A)(a) prohibit harassment "of another" or others, and the "mens rea" is actual or constructive knowledge that the course of conduct involves harassment "of the other" or others (sections 1(1)(b) and 1(1A)(b)). Section 3(1) provides for a claim in civil proceedings "by the person who is or may be the victim of the course of conduct in question". In the interpretation section, 7(2) explains references to "harassing a person" by reference to the impact of the conduct on another, albeit this is not an exhaustive definition. And section 7(3) provides that a "course of conduct" must involve "conduct in relation to" a person or persons.

87. Notwithstanding these points, however, I accept that the Claimants have a real (in the sense explained in *Easyair Ltd* at [41], above) prospect of establishing that the authorities relied on by Mr Price were decided on an incorrect legal basis, albeit this may well require an appeal to the Court of Appeal. The more cogent argument, it seems to me, is that under the criminal law it is not necessary, in the case of all offences, for the crime to be completed within the jurisdiction before a prosecution can take place under an English statute in the Crown Court. That is what *Laskowski* illustrates given that the Court of Appeal held that the offence was committed in the Netherlands.

88. In the present case, the Defendant accepts that it is necessary for the course of conduct amounting to harassment to take place in the United Kingdom. Arguably, the "substantial measure of the activities constituting the crime" approach should or would be adopted if a person were to be *prosecuted* for an offence of harassment which involved electronic communications generated in England or Wales and targeted at a person who is abroad. And, arguably, if this approach were adopted the test would be satisfied. I put it no higher than this because, as the authorities make clear, the question whether this approach should be applied, and with what result, would turn on the construction of the 1997 Act, taking into account its language and its aims as well as any issues of comity. There are powerful arguments that, even on this approach, the "substantial measure of the activities" test would not be satisfied. These include that the title to the 1997 Act and its preamble and provisions indicate that it is principally concerned with "protection" of persons against harassment, and that section 14(1) of the 1997 Act shows that Parliament did not intend the territorial effect of sections 1 to 7 to go beyond protecting those who are within the jurisdiction. Moreover, the fact that the harm is experienced abroad, in itself, weighs in favour of the conclusion that it is not a matter for the courts of this country.

89. However, if the court were to conclude that, in a criminal prosecution for harassment, Parliament intended that it is sufficient that the requisite course of conduct takes place here, the question would arise as to how the same statutory provisions (sections 1(1) and 1(1A) of the 1997 Act) could, at one and the same time, have different territorial scope depending on whether the court was concerned with a prosecution for harassment

or with a civil claim. I do not suggest that this question is unanswerable (given that the offence is enacted in section 2, and the right to civil remedies in sections 3 and 3A) but I note that, in *Lawal*, Mr Spearman KC appeared to consider that the same approach would apply whether the case was a prosecution or a civil claim, albeit he took a different view as to the consequence of this approach.

90. In my view, the *Shakil-Ur-Rahman* line of authorities focuses on the point that the tort of harassment requires the course of conduct complained of to be experienced by the putative victim. Arguably, in those cases the court effectively assumed that the tort must also be completed in England and Wales if a court in this jurisdiction is to entertain the claim or, at least, to uphold it. As I have noted, that view may well be correct but in my view it is realistically arguable, in the light of the criminal law authorities, that the position may be more nuanced than this. Arguably, *Bukhari* demonstrates this, albeit whilst purporting to apply the line of authorities relied on by Mr Price. Whether or not this is a jurisdictional issue, as it is described in *Lawal*, *Laskowski* and *NS,* or a question of the territorial effect of the statute (as Lord Diplock said it was in *Treacy* (supra) at page 559, particularly at 559G) may or may not also require further consideration. As Mr Callus points out, there is no suggestion that the Defendant in the present case is not subject to the laws of this jurisdiction or is not properly before the court.

91. As far as the civil law is concerned (again, I was not addressed on this), broadly the same approach to the territorial effect of statutes applies, in the sense that the question is one of construction of the particular statute under consideration, albeit the general presumption is that legislation is prima facie territorial i.e. it regulates the conduct of individuals within the area to which it applies. In *Clark v Oceanic Contractors Inc* [1983] 2 AC 130, 152, Lord Wilberforce said the question:

> "requires an inquiry to be made as to the person with respect to whom Parliament is presumed, in the particular case, to be legislating. Who, it is to be asked, is within the legislative grasp, or intendment, of the statute under consideration?"

92. Counsel were not able to refer me to any authority which deals with the specific situation which arises in this case, namely where a line of first instance authorities establishes a given proposition of law, but there is a respectable argument, based on authority, that that proposition is wrong. However, having regard to the principle that the appellate courts generally decline to decide hypothetical points of law or give advisory opinions, I consider that, in the exercise of my discretion, this issue should go through to trial rather than me determine it before the facts are established. I accept that it may well be a "hard edged" point of law which turns on facts as to the location of the parties which are not disputed, but I have taken into account the point that the issue of law may not arise if the conclusion at trial is that the evidence does not establish a course of conduct of sufficient seriousness on the part of the Defendant to be capable of amounting to harassment. This seems to me to be another reason for not deciding the point and thereby potentially causing an appeal at this stage of the litigation which ultimately proves academic. Moreover, the defamation and causing loss by unlawful means claims, which overlap to a degree with the harassment claim, appear (as matters stand) likely to be going to trial in any event. The preferable course, in my view, is for all of the facts to be found and all of the claims determined at first instance so that the Court of Appeal only need be troubled once if either party wishes to appeal.

93. For completeness, I note that my approach is permissible under CPR Rule 3.4 given that, even if grounds to strike out are established, it does not follow that the court must take this course (see [39] and [42]-[43], above). Under CPR Rule 24.3 I am not obliged to give summary judgment, even in a case which has no real prospect of success, and may only do so if "there is no other compelling reason why the case or issue should be disposed of at trial" (Rule 24.3(b)). I think it can also be said that it is not uncommon for the territorial effect issue to arise. If the matter reaches the Court of Appeal, a determination of the law at that level will be of assistance more generally but it would be better for it to be based on facts which are established.

The challenge to the First Claimant's case in defamation

Failure to plead/inability to prove a trading reputation in the United Kingdom

The issue/the submissions of the parties

94. Mr Price's contention was that the First Claimant has not pleaded a case that it had a trading reputation within the jurisdiction at the date of publication. The evidence also suggested that it did not. In addition to the Claimant's own pleaded case, he relied on the 27 April 2026 witness statement of Mr Cowper-Coles, the solicitor for the Defendant, in which he says that it appears from the Ideasoft website that the First Claimant does not have any employees or any offices in this country. Its profile on Clutch also states that it operates in five locations which do not include the United Kingdom, and none of its reviews on that website is provided by a reviewer who identifies as being based within this jurisdiction. Mr Price also made various submissions to the effect that the evidence of the Second Claimant and Ms Datsenko on this issue was thin and unconvincing.

95. Mr Price relied on *Atlantis World Group v Gruppo Editoriale L'Espresso SPA* [2008] EWHC 1323 (QB), [2009] EMLR 15 at [42(i)] and [49] as supporting the requirement that corporate entities must plead that they have a trading or business reputation in the relevant jurisdiction. At [42(i)] Sir Charles Gray said:

> "(1) A corporate claimant, unlike an individual, is not presumed to have a reputation. It must prove that it has a reputation which is capable of being damaged by the alleged libel…"

96. And at [49] he said:

> "49. I readily accept that it is not fatal to the first claimant's claim to be entitled to damages that it does not and never has traded in this jurisdiction. That is not a condition of such entitlement. However, it is clear that what must be shown is that the first claimant had a trading or business reputation in this country at the date of publication…"

97. Mr Price also relied on *Eurasian Natural Resources Corporation v Burgis & others* [2022] EWHC 487 (QB) at [16] as confirming that a company can only sue in respect of an imputation that caused damage to its trading or business reputation and is therefore liable to cause it financial loss. The requirement under section 1(2) of the

2013 Act is an additional requirement. He submitted that a company must therefore plead and prove such a reputation and he noted that in *Liberty Fashion Wears Ltd v Primark Stores Ltd* [2015] EWHC 415 (QB) the company's failure to do so was one of the matters which the court noted when deciding to strike out the claim under the principle in *Jameel v Dow Jones Inc* [2005] EWCA Civ 75, [2005] QB 946 at [55].

98. Mr Callus' position was that there is no separate requirement to show a trading reputation in England and Wales unless this is necessary in order to establish the jurisdiction of the English court, or England and Wales is the place of the publication sued upon. For the second possibility he relied on *Multigroup Bulgaria Ltd v Oxford Analytica Ltd* [2001] EMLR 28 at [42]. In the present case, there is no issue in relation to the former, given that the Defendant is resident in England and has been served (see, for example, *Okungami v Chia* [2026] EWCA Civ 588 at [27] and [28] for the relevant principles). Mr Callus accepted, however, that the First Claimant would need to establish a trading reputation in England and Wales insofar as it was bringing a claim in defamation based on publication here. His position was that, whether or not the First Claimant was required to plead a trading reputation in this jurisdiction, there is sufficient evidence that it did have such a reputation. In this connection, he relied on the second witness statement of the Second Claimant and the first witness statement of Ms Datsenko, both dated 6 May 2026.

99. The evidence of the Second Claimant and Ms Datsenko is that:

i) The First and Third Claimants are the operational companies of the Ideasoft Group. The different corporate entities within the Group are purely for internal purposes as the Group is marketed as "Ideasoft" and is seen by the market as one entity of which the Second Claimant is the public face.

ii) The Ideasoft business is global but its marketing and business development activities have been directed primarily at clients in the European Union, the United Kingdom and the United States. There is a single website for the business which is written in English, as are all of its published marketing materials.

iii) Around 10% of the traffic which comes to the website is from the United Kingdom. There is also engagement from the UK with the Ideasoft LinkedIn account which shows that there is a substantial and consistent interest in the business from the United Kingdom.

iv) "UK based clients and prospects have always been a strategic priority". The Second Claimant says that he has regularly visited the United Kingdom to conduct business development and to network on behalf of Ideasoft. He has attended events, including the London Blockchain conference and he exhibits an Ideasoft Instagram post which advertises his attendance at the 2023 conference. He says that this conference is one of the most important conferences in the sector and is attended by many local prospective clients. He and Ms Datsenko say that other senior staff have similarly attended events in the United Kingdom. The Second Claimant's evidence is that this reflects the importance of the United Kingdom market to Ideasoft and the consistent, sustained, nature of his own business engagement in this jurisdiction.

v) The Second Claimant has also visited the UK to see clients and prospective clients directly. At [17] Ms Datsenko says that since 2020:

> "Ideasoft has both serviced clients based or operating in the United Kingdom and pursued a substantial number of UK-based prospects through both inbound enquiries and our own business development activity. Some of those engagements have resulted in contractual relationships of varying duration; others have proceeded to active commercial discussions. UK clients and prospects have therefore been a continuous and material part of Ideasoft's business pipeline,…"

vi) At [8] of his witness statement the Second Claimant says:

> "In our industry Ideasoft is well-known and the UK is one country which has a significant presence in the software development, fintech, blockchain sectors meaning that both Ideasoft and I have a significant profile and following…Ideasoft has had a continuous engagement with UK-based clients and prospects throughout the period in question, which confirms that we have an active client base in the jurisdiction; that we have a substantial reputation to protect; and that it is important to Ideasoft that it does protect its reputation from unjustified assaults on it."

vii) The Defendant was resident in the United Kingdom at the time of the Social Media Post. His professional network was built, in substantial part, in his capacity as Chief Business Development Officer of the First Claimant. It therefore included many of the founders and decision-makers of the First Claimant's existing and prospective clients, as well as of its industry peers and competitors, a significant proportion of whom are based in the United Kingdom. His LinkedIn, Facebook and Instagram followers included many who are based in the United Kingdom.

viii) Those posts were understood as insider disclosures by a former senior manager and co-founder of Ideasoft which were alleging that the management had sabotaged a charitable fund providing humanitarian assistance to people in Ukraine during wartime. However, the harm did not arise solely from the damaging nature of that allegation. In the professional services market, clients and prospective clients are highly sensitive to any sign of internal conflict at founder or senior-management level. The mere existence of a public dispute between a company's leadership and a person publicly understood to be an ex co-founder is treated by the market as a serious "red flag".

ix) After the Defendant made his "social media posts", the Second Claimant, Ms Datsenko and other senior managers received multiple contacts from contacts, prospective clients and partners, including from the United Kingdom, asking whether the allegations were true, to which they had to respond. They took steps to mitigate the harm caused by the posts, but there remains a high likelihood that that the Defendant's posts have led, or will lead, to a loss of business and therefore serious financial loss including ongoing loss of business opportunities within England and Wales amounting to serious financial loss.

x) As there is no distinction made between the Ideasoft companies by external parties, the Defendant's allegations are likely to cause serious financial loss to the First Claimant as they did to the Third Claimant.

100. Following the hearing, the Defendant's lawyers drew my attention to the decision of the Court of Appeal in *Okungami v Chia* (supra), which was handed down on 13 May 2026, the day after the hearing. I gave permission to make written submissions as to the effect of this decision on the Defendant's application and they duly did so on 26 June 2026. Mr Price's submitted that:

i) There is no plea of double actionability in respect of the First Claimant's claim based on either the Warning Email or the Social Media Post.

ii) It follows from this that the First Claimant's claim based on these publications must be taken to relate to publication in England and Wales: *Okungami* [32(i)].

iii) Yet there is no plea of publication in England and Wales in respect of the Warning Email and no plea, in relation to either of the publications complained of, that the First Claimant has any trading reputation here.

iv) The First Claimant's reliance on the evidence of the Second Claimant and Ms Datsenko should be rejected when there has been a complete failure to plead a case at all and, in any event, their evidence is woefully inadequate to sustain such a plea.

101. In his email submissions, Mr Callus accepted that I must apply *Okungami*, albeit he reserved his right to challenge the formulation of the principles at [32] of the judgment of Warby LJ should the matter reach the Court of Appeal. He argued that:

i) *Okungami* has no effect at all on the First Claimant's libel claim based on the Warning Email, which was relies on publication in Israel. Double actionability is pleaded at [39.7] POC. Trading reputation and serious harm only need be established in the jurisdictions in respect of which publication is sued over. It was therefore accepted that the First Claimant must satisfy section 1(2) of the 2013 Act (implicit in which is a 'trading reputation' capable of sustaining harm) *in Israel* but contended that the case was adequately pleaded and there was a real prospect of success on this issue.

ii) The *Okungami* principles do materially affect the First Claimant's libel claim based on the Social Media Post. Although the jurisdiction over a defendant domiciled here is unlimited, and all claims globally could be brought against the Defendant, the pleaded claim in respect of the Social Media Post does not specify the different territories of publication, and so must be taken to be limited to publication in England and Wales (*Okungami* [32(1)]). Mr Callus therefore accepted that the issue in relation to serious financial loss (and implicit within that, whether the First Claimant has a trading reputation here) must be approached on the basis of publication within England and Wales alone and not include publication overseas.

Decision: trading reputation in England and Wales

102. The parties appeared to be in agreement as to the law which I am required to apply. The issue on the Defendant's application as framed was therefore ultimately whether the First Claimant had pleaded, and/or had a real prospect of proving, that at the time of the publication of the Social Medial Post it had a trading reputation in England and Wales for the purposes of its claim based on that publication. In my view, the answer to the former question is that it has not pleaded any such case. The issue is not addressed in the POC despite the fact that none of the Claimants is located here. But the answer to the latter is that the evidence which is currently before the court suggests that the First Claimant is able to plead a case which, at least, has a real prospect of success on this issue.

103. Subject to this being the case, the Second Claimant and Ms Datsenko's evidence, which I have summarised at [99] above, is sufficient to satisfy the test under CPR Rule 24.3(a). I agree with Mr Price that it is in somewhat general terms and that there are signs (e.g. the only specific example of a visit to England or Wales by the Second Claimant is a conference in 2023 and the lack of any detail as to the clients and prospective clients which they have here) that they may be making the best of a somewhat thin case, but there was no basis presented to me on which I could go behind their evidence in the context of an application for summary disposal.

104. In these circumstances, at this stage I decline to strike out the defamation claim based on the Social Media Post on the first ground contended for by Mr Price. However, in view of the location of the Claimants and the fact that this issue has been raised by the Defendant, it does seem to me that the First Claimant should plead its case that it has a trading reputation in England and Wales so that the evidential issues can be clearly identified for the purposes of the management of the proceedings. I have considered whether that should be by way of amendment to the POC or in the Reply. As noted above, the First Claimant will need to apply to amend [39.7] of the POC to plead double actionability as part of its case on the Warning Email. At the moment, the First Claimant's claim does not make sense because its failure to do so implies that it is suing on the basis of publication in England and Wales but its express case is based on publication in Israel. It seems to me that it would be preferable, at the same time, for the First Claimant to set out its case on trading reputation here.

105. I therefore propose to direct that the First Claimant applies to amend its POC to plead its case on double actionability and trading reputation in this jurisdiction.

<u>Serious harm</u>

The applicable rules and principles

106. Under section 1 of the Defamation Act 2013:

> "**Serious harm**
>
> (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body serious financial loss."

107. In *Lachaux v Independent Print Limited* [2020] AC 612 at [12] the Supreme Court confirmed that section 1 of the 2013 Act requires to be satisfied by the claimant and by reference to the actual impact of the words complained of. At [15] Lord Sumption explained section 1(2) as follows:

> "….The financial loss envisaged here is not the same as special damage, in the sense in which that term is used in the law of defamation. Section 1 is concerned with harm to reputation, whereas…..special damage represents pecuniary loss to interests other than reputation. What is clear, however, is that section 1(2) must refer not to the harm done to the claimant's reputation, but to the loss which that harm has caused or is likely to cause. The financial loss is the measure of the harm and must exceed the threshold of seriousness. As applied to harm which the defamatory statement "has caused", this necessarily calls for an investigation of the actual impact of the statement. A given statement said to be defamatory may cause greater or lesser financial loss to the claimant, depending on his or her particular circumstances and the reaction of those to whom it is published. Whether that financial loss has occurred and whether it is "serious" are questions which cannot be answered by reference only to the inherent tendency of the words. The draftsman must have intended that the question what harm it was "likely to cause" should be decided on the same basis."

108. I note that, albeit in the context of the issue being under section 1(1) of the 2013 Act, Lord Sumption said this at [21]:

> "the judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind.

109. In *Gubarev v Orbis Business Intelligence Limited* [2020] EWHC 2912(QB), [2021] EMLR 5 at [42] Warby J (as he then was) emphasised that the serious financial loss must result from the reputational harm caused by the actionable component of the publication:

> "It is not hard to envisage cases in which a publication demonstrably causes a business serious financial loss, but the defamatory (or actionable) component of the publication is not serious, or cannot be shown to be causative of that loss."

110. At [44] Warby J accepted that:

> "There is room for inference rather than strict proof. As ever, the Court is entitled - if not bound - to draw sensible conclusions from evidence which it accepts…"

111. However, he went on to say, at [45], that:

> "But inference is not the same thing as speculation; there must be a sound evidential basis on which to infer that the publication is more likely than not to have caused serious financial loss. Proof that a statement with a seriously defamatory tendency was widely published in the relevant jurisdiction(s) is not likely to be enough. More evidence, and a more detailed examination of the context, will normally be

> required. The claimant also bears the burden of showing that any loss it proves is more likely than not to be a result of the publication complained of, rather than some other cause or causes …".

112. Mr Price also pointed out, in connection with evidence of the likelihood of serious harm, that Lord Sumption said this at [18] *Lachaux*, rejecting a submission that the effect of section 1 is to postpone the accrual of the cause of action for defamation actionable per se:

> "The impact of the publication on the claimant's reputation will in practice occur at that moment in almost all cases, and the cause of action is then complete. If for some reason it does not occur at that moment, the subsequent events will be evidence of the likelihood of its occurring. In either case, subsequent events may serve to demonstrate the seriousness of the statement's impact including, in the case of a body trading for profit, its financial implications. It does not follow that those events must have occurred before the claimant's cause of action can be said to have accrued. Their relevance is purely evidential. The position is different where a statement is not actionable per se, because the interest protected by the law in that case is purely pecuniary. The pecuniary loss must therefore have occurred."

113. Mr Price relied on *BW Legal Services v Trustpilot A/S* [2024] EWHC 1449 (KB), [2024] EMLR 10 as an example of a case where the court had taken into account the absence of evidence of harm actually occurring in the time which had elapsed since the publication in coming to the conclusion that there was no real prospect of section 1(2) of the 2013 Act being satisfied: see [54] and [85] in particular.

114. He also relied on *Dyson Technology Ltd v Channel Four Television Corporation* [2023] EWCA Civ 884, [2023] 4 WLR 67 at [46] in support of the proposition that it will need to be established that the Social Media Post would be understood to be referring to the First Claimant and this, in turn, would be relevant to the issue of serious harm. And he emphasised the dictum of Warby J in *Undre v Harrow LBC* [2017] EMLR 3 at [40] that:

> "Parliament clearly did not intend to change the rule that B cannot recover damages for loss suffered as a result of a libel of A….The issue is therefore whether the claimant company can show serious financial loss consequent on serious harm to its reputation caused by a defamatory imputation about the company, contained in the publication complained of..".

The Defendant's contentions

115. Mr Price's submission was that in the case of both publications complained of by the First Claimant its pleaded case argued for an inference to be drawn but it was, in reality, inviting speculation. The First Claimant was relying on precisely the sorts of factors which Warby J said, in *Gubarev*, would not be likely to be enough. In the case of the Warning Email, the email went to Mr Aharoni only and there was no evidence of onward distribution by him. In the case of the Social Media Post, the evidence of harm was generic in nature, rather than specific about who raised what concerns. Moreover, there is a mismatch between the pleaded case and the evidence of the Second Claimant and Ms Datsenko, who said that there were concerns that management had sabotaged a charitable fund providing humanitarian assistance to people in Ukraine during wartime

(rather than a venture capital fund), and that harm had resulted from the "red flag" of a public dispute between the company's leader (rather than the alleged defamatory imputation). This went directly to Warby J's point about causation at *Gubarev* [42] and *Undre* [40].

116. More generally, Mr Price argued that the lack of any specific evidence of financial loss sustained by either of the corporate Claimants since the publications (other than the loss of a single contract by the Third Claimant) should be regarded as evidence that no such loss was or is "likely" (at whatever point this question is addressed, as to which see the conflicting views of Bean J (as he then was) in *Cooke v MGN* [2014] EWHC 2831, [2015] 1 WLR 895 at [31]-[32] and Warby J in *Lachaux* at [2015] EWHC 2252 (QB), [2016] 2 WLR 437 at [67]), as it was in *BW Legal Services*.

117. Nor did the evidence that Ideasoft is seen by the market as a group avail the First Claimant. What it needed was specific evidence to show that the reputation of the First Claimant in particular had been harmed, as a result of which it had suffered or was likely suffer serious financial loss (see *Undre* [40]). There is no evidence that Mr Aharoni understood the Warning Email to refer to the First Claimant and nor is there any evidence that this is what any reader of the Social Media Post understood it to mean.

Decision: the Warning Email

118. Taking the Warning Email first, the question of meaning has not yet been determined. However, in my view there is a real prospect of establishing that the Warning Email referred to the First (and, for that matter, the Third Claimant). For example, the pleaded case is that "the company" to which the Defendant introduced Browzwear (see the first paragraph of the email) was the First Claimant and the original contract was with that company. It was the First Claimant which was in negotiations with the UAE investors (see the second paragraph of the email). The Second Claimant was the CEO of both the First and the Third Claimants (see the third).

119. I also note that the Defendant has not raised any issue as to the First Claimant's trading reputation in Israel. Nor has he challenged, in his application, the pleaded case of the Second and Third Claimants on sections 1(1) and (2) of the 2013 Act respectively. Although the factual position in relation to these Claimants is not identical to that of the First Claimant for the purposes of the claim based on the Warning Email this, and the evidence of the Second Claimant and Ms Datsenko that the market does not distinguish between the First and the Third Claimants, suggests that the court should be cautious in attempting to determine (on a summary basis) whether, in the mind of Mr Aharoni, for example, a distinction would be drawn between the Third Claimant and the First Claimant in terms of damage to reputation. There seems to me to be a real prospect of the court concluding that the Warning Email caused or would be likely to cause harm to the reputation of both.

120. As to whether such harm would be serious, again, it is not disputed that there is a real prospect of this being established in the case of the Second and Third Claimants. If it is accepted that there is a real prospect of the Warning Email being understood also to refer to the First Claimant, I have difficulty with the proposition that there is no real prospect of the harm to the First Claimant's reputation also being shown to be serious or likely to be serious. The reasons which are applicable to the Second and Third

Claimants seem to me to be applicable to the First. In any event, I accept Ms Marzec's submission that, for the reasons pleaded in the POC and summarised above at [21], it is realistically arguable that the damage to the reputation of the First Claimant would be serious and that the appropriate stage for the competing arguments as to circulation and effect etc to be examined is at trial.

121. Mr Price's arguments as to whether the Warning Email caused or was likely to cause the First Claimant, in particular, serious financial loss as a result of damage to its reputation seemed to me to have considerably more traction. The First Claimant's pleaded case on this question is not compelling. Although there was a contract between Browzwear and the First Claimant which took effect in 2023, this was for less than a year and there does not appear to have been any such contract from March 2024 to May 2025 when the Stylezone contract was terminated. Very little context is pleaded or provided in the Claimants' evidence. It is not pleaded, for example, that there was an expectation of further business from Browzwear/Stylezone which was frustrated by the Warning Email, still less an expectation that such business would result in a profit by the First Claimant (or, for that matter, the Third) which it will not now make. It may also be telling that double actionability is only pleaded in respect of the Second and Third Claimants: the overall impression which one gains is that the claim by the First Claimant was "tacked on" to the claims of the other Claimants. The evidence of the Second Claimant and Ms Datsenko on this issue does not take the matter a great deal further.

122. Having said this, I note that Ms Datsenko's evidence is that:

> "We lost a long-term client, Browzwear, directly as a result of Peter sending them defamatory messages. This client had been working with us for years…"

123. This begs the question as to who "We" refers to, and I note that reference is made to more than one message. However, on balance, I have concluded that I should not strike out the First Claimant's case at this stage. Instead, I should give them an opportunity to clarify their pleaded case in relation to the First and the Third Claimant in the light of the concerns which I have raised. The position can then be considered further, if necessary, in the light of what the First Claimant is able to plead. This seems to me to be consistent with the overriding objective and proportionate given the "fuzziness" in the Claimants' evidence, given that it is conceded that there is a real prospect of the statutory tests being satisfied in the case of the Second and Third Claimants and given that, as a result, their claims based on broadly the same subject matter are going to trial anyway. It also seems to me that it will be beneficial for the Claimants to give more attention to this aspect of the case and to identify the basis for their case clearly, so that the real issues are identified. Again, I propose to direct that this is done by way of an application to amend the POC.

Decision: the Social Media Post

124. On the assumption that, as appears to be the case, the First Claimant is able to plead that it has a trading or business reputation in England and Wales, I am not minded to strike out the claim in defamation based on the Social Media Post.

125. It seems to me that the POC, supplemented by the evidence of the Second Claimant and Ms Datsenko does establish a case, with a real prospect of success, that the Social

Media Post was published to a significant number of clients or potential clients of the First Claimant in England and Wales and what the Defendant said was likely to be taken seriously by them. Again, meaning has not been determined but it is realistically arguable that the pleaded meaning of what the Defendant said would be highly impactful and damaging to the reputation of the First Claimant, and would significantly affect the willingness of clients and potential clients to have dealings with this company, for the reasons pleaded at [49] of the POC (see [29], above). The evidence of the Second Claimant and Ms Datsenko is also that the Social Media Post did in fact have an impact: multiple contacts, prospective clients and partners, including from the United Kingdom, got in touch to ask whether the allegations were true, and it was necessary to reassure them. So this is not a case based purely on the defamatory tendency of the words used and the wide circulation of the statement complained of (*Gubarev* [45]).

126. I agree with Mr Price that it may well be significant that the Social Media Post was only up for 5 months and no evidence of any loss of a contract or a prospective contract has been put before the court. I also agree that there is a lack of precision in the Claimants' evidence and that the evidence which they give indicates real issues with the First Claimant's case on causation. As I have noted (see [99] and [115] above) their evidence is at odds with the pleaded case as to meaning and they also suggest that a key concern of those who made contact following the Social Media Post was the fact that there appeared to have been a falling out with a key senior manager rather than the imputation complained of in the POC. These considerations may well mean that this aspect of the First Claimant's pleaded case falls apart on closer examination in the course of the trial process. But issues of causation are notoriously fact sensitive. The pleaded case is clear enough and, it seems to me, ought to be tested at trial rather than determined summarily on the basis of such evidence as there is at this stage of the proceedings.

Conclusion

127. For the reasons given above, I therefore refuse the Defendant's strike out application at this stage and propose to direct that the First Claimant plead its case that it had a trading reputation in England and Wales and that it, in particular, has suffered or is likely to suffer serious financial loss by reason of the imputation in the Warning Email. I invite the parties to agree the terms of an order accordingly.