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Appeal Nos: CA-2025-001573

Case No: KB-2024-001820

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST
[2025] EWHC 1411 (KB)
Mr Justice Swift

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/7/2026

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE WARBY
and
LADY JUSTICE WHIPPLE

Between:

DALE VINCE

Claimant/Appellant

-and-

ASSOCIATED NEWSPAPERS LIMITED

Defendant/Respondent

Aidan Eardley KC and Greg Callus (instructed by **Brett Wilson LLP**) for the
Claimant (Mr Vince)

Antony White KC and Ben Gallop (instructed by **RPC LLP**) for the **Defendant**
(Associated Newspapers)

Hearing date: 24 June 2026

JUDGMENT

This judgment was handed down remotely at 10:00am on 15 July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

SIR GEOFFREY VOS, MASTER OF THE ROLLS:Introduction

1. This case raises the circumstances in which a claim for unfair processing can be made against a newspaper under articles 5 and 82 of the UK GDPR.¹ Article 5(1)(a) of the UK GDPR provides that “Personal data shall be ... processed lawfully, fairly and in a transparent manner in relation to the data subject”. Article 82(1) of the UK GDPR grants “[a]ny person who has suffered material or non-material damage” as a result of an infringement: “the right to receive compensation from the controller ... for the damage suffered”.
2. In this case, the data subject is Mr Vince and the data controller is Associated Newspapers.
3. Associated Newspapers published newsprint and online articles in the Daily Mail and Mail+ about Mr Vince on 8 and 9 June 2023 (the articles). The Daily Mail article is attached as annex A to this judgment. The essence of Mr Vince’s complaint is that some of the articles unfairly juxtaposed the headline “Labour repays £100,000 to sex pest [or sex harassment] donor” alongside pictures of Mr Vince, when the “sex pest donor” referred to was **not** Mr Vince, but another Labour Party donor. Mr Vince claims that the unfair processing of his personal data caused him both material and non-material damage.
4. It is not disputed that such a claim under the UK GDPR is theoretically open to a data subject in the position of Mr Vince, but the parties were unable to point to any previous case, here or in Europe, in which such a claim had succeeded.
5. Mr Vince has previously brought defamation proceedings against Associated Newspapers in respect of the articles. Those proceedings were struck out by HHJ Lewis, sitting as a judge of the High Court, as disclosing no reasonable cause of action on 15 July 2024 ([2024] EWHC 1806 (KB)). He applied the principles enunciated in *Charleston v. News Group Newspapers Ltd* [1995] 2 AC 65 (*Charleston*) to the effect that a claim in libel may only be founded on the whole of an article, rather than headlines or selected parts. HHJ Lewis held at [41] that: “[t]he principle in *Charleston* is binding on this court, meaning that the headline, photos and caption must be read together with the article. Taken together, it is agreed that the article was not defamatory of the claimant at common law, and so the claim must fail”.
6. In the present action, Mr Justice Swift (the judge) struck out Mr Vince’s claim for unfair processing as an abuse of process [J40] under CPR Part 3.4(2)(b) on the grounds that “what [had] happened in this case [was] a significant departure from any ordinary or proper use of the court’s process” [J29]. The judge also entered summary judgment for Associated Newspapers on the grounds that he summarised at [J39] as follows:

¹ Section 3(10) of the Data Protection Act 2018 (the DPA 2018) provides that: “‘The UK GDPR’ means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 (and see section 205(4))”.

Approaching the present case on that basis, the fairness of the data processing must be assessed taking account of all that was published on the occasions complained of. There is no real prospect that Mr Vince will succeed on his claim. As in the defamation proceedings, it is accepted that on reading the text of [the articles] any ordinary reader would very quickly realise that Mr Vince was not being accused of sexual harassment. Considered on this basis the personal data relating to Mr Vince was processed fairly. The submission for Mr Vince to the contrary focuses on his “reasonable expectation” not to be the subject of unfounded suggestions of sexual misconduct. However, if each publication is considered as a whole, that suggestion was not made.

7. Mr Vince now appeals against both of the judge’s decisions. He appeals the strike out on the ground that the judge had been right to say that the principles in *Henderson v. Henderson* (1843) 3 Hare 100 (*Henderson*) were not applicable because there was no relevant prior determination: the data processing claim was issued **before** HHJ Lewis decided to strike out the defamation claim. *Orji v. Nagra* [2023] EWCA Civ 1289 per Coulson LJ at [47] and Nugee LJ at [84] (*Orji*) was a binding decision that *Henderson* principles could **not** be applied where there had been no prior determination. It was not open to the judge to mix and match abuse of process principles to strike out the claim, where only some of the *Henderson* criteria were satisfied (see *Mueen-Uddin v. Secretary of State for the Home Department* [2024] UKSC 21, [2025] AC 945 per Lord Reed at [121]-[122]).
8. Mr Vince contended that he ought to have been awarded summary judgment in respect of his unfair processing claim. The judge had been wrong to import the “wholly alien and inapplicable common law” *Charleston* principles for the purpose of assessing the autonomous concept of the fairness of data processing under the UK GDPR. Instead, a three-stage test ought to have been applied asking: (i) whether the processing fell within what the data subject might reasonably have expected, (ii) if it did not, what rights or interests of the data controller or processor or members of public were engaged, and (iii) whether those rights outweighed the reasonable expectations of the data subject, having regard to the harm caused by the data processing in question (see *Johnson v. Medical Defence Union Ltd* [2007] EWCA Civ 262, [2008] Bus LR 503 at [137]-[150] per Arden LJ dissenting (*Johnson*), and [5.1]-[5.7] of the Information Commissioner’s Office’s Data Protection and Journalism Code of Practice 2024 (ICO’s 2024 Code). Had that three-stage process been adopted, it would have been obvious that there was no real prospect of Associated Newspapers successfully defending Mr Vince’s unfair processing claim. Millions of people had been misled and Mr Vince had been caused financial loss (the costs of securing the correction of the articles) and distress, and his reputation had been severely damaged.
9. In response to the strike out arguments, Associated Newspapers’ primary contention was, supported by its Respondent’s Notice, that the judge had been wrong to hold that the *Henderson* principles were inapplicable. *Orji* had only decided that *Henderson* principles could not be applied if there were **no** prior determination at all, not that the relevant prior decision had to have been in place before the second set of proceedings was issued. In this case, the unfair processing claim was issued whilst HHJ Lewis’s decision was awaited, but was heard after the defamation claim had been struck out. Accordingly, *Henderson* principles were applicable and should have been given effect, because the unfair processing claim truly sought to vex Associated Newspapers twice

with another claim based on identical facts, which could and should have been brought at the same time as the defamation claim (as the judge found at [J23]-[J28]). Holding the unfair processing claim in reserve, when it was known about and advanced at the outset, was an abuse of process.

10. In response to the unfair processing arguments, Associated Newspapers contended that Mr Vince has repackaged his claim that the articles were inaccurate as a claim that his data has been unfairly processed. It submits, however, that there is no substantive distinction between the two claims. Mr Vince accepts that he has no claim under the UK GDPR for inaccuracy under article 5(1)(d) (see, for example, [50] and [54] of Mr Vince's skeleton). Article 5(1)(d) requires personal data to be "accurate" and "every reasonable step [to be] taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay". In substance, however, Mr Vince's unfair processing claim is founded only on the inaccurate and misleading juxtaposition of his photo alongside the "sex pest" headline (which is epitomised by his complaint to the Independent Press Standards Organisation (IPSO)). The judge was right to think that the question of fairness could only be evaluated by reference to the entirety of the article concerned. He did not, as Mr Vince contended, import *Charleston* or the single meaning rule into the UK GDPR.
11. I have decided that the judge was wrong to strike out Mr Vince's unfair processing claim. Whilst Associated Newspapers is right to say that the *Henderson* principles were theoretically applicable, it would not be just to strike out a claim which was intimated from the outset and which was advanced as a back-up in case the defamation claim failed. Applying the well-known *dictum* of Lord Bingham in *Johnson v. Gore-Wood & Co* [2002] 2 AC 1 at page 31 (*Johnson v. Gore-Wood*), it was not "necessarily abusive" to fail to raise a matter that could have been raised in prior proceedings. A "broad, merits-based judgment" was called for taking account of "the public and private interests involved", "all the facts of the case", and "focusing attention on the crucial question whether, in all the circumstances, a party [was] misusing or abusing the process of the court". Applying that approach, Mr Vince's unfair processing claim was not abusive.
12. As regards the questions of whether the judge was right to think that Associated Newspapers was entitled to summary judgment on Mr Vince's unfair processing claim (and whether that claim has any real prospect of success or should itself be granted summary judgment), I have decided that the judge was wrong to grant summary judgment to Associated Newspapers. Instead, he ought to have granted summary judgment for damages to be assessed to Mr Vince.
13. My reasoning as to unfair processing may be summarised very briefly as follows. It is unnecessary and undesirable to lay down any generally applicable unfair processing test, since what is meant by fair processing may be significantly affected by the context. The outcome in this case is affected by the existence and provisions of the Editors' Code of Practice, enforced by IPSO, which is a relevant privacy code to which we are bound by section 12 of the Human Rights Act 1998 (the HRA 1998) to have regard (see *Sicri v. Associated Newspapers Limited* [2021] 4 WLR 9 (*Sicri*) at [74]). The Editors' Code of Practice makes clear that newspapers must "take care not to publish ... misleading ... information or images, including headlines not supported by the text", which goes beyond the accuracy obligation. Associated Newspapers, in this case, failed to take care not to publish misleading information and images in the articles. The

information in the headline juxtaposed next to the images of Mr Vince would have misled many casual readers into thinking that Mr Vince was the “sex harassment donor” referred to. The view expressed in some authorities that the *Charleston* principle is applicable to a claim for **inaccurate** data processing cannot be read across to a claim for **unfair** processing. Whether or not the headline and images were “inaccurate” by reason of the *Charleston* rule, they were certainly “misleading”. It is conceded that Mr Vince sustained some material harm, so summary judgment for damages to be assessed is appropriate, even if there may be argument about the existence and extent of non-material harm.

14. I will now deal with (i) the essential factual background, (ii) the judge’s judgment, (iii) relevant statutory provisions and the Editors’ Code of Practice, (iv) the strike out ground of appeal, and (v) the unfair processing ground of appeal, and (vi) my conclusions.

The essential factual background

15. I have taken much of what follows in this section from [J1]-[J18] of the judge’s judgment.

The articles

16. The article complained about was first published online in Mail+ at 10.00pm on 8 June 2023, and then in much the same form in the paper edition of the Daily Mail on 9 June 2023. The original headline in Mail+ was “Labour repays £100,000 to sex pest donor”. The headline in the Daily Mail was “Labour repays £100,000 to “sex harassment” donor”. Two photographs of Mr Vince at Just Stop Oil demonstrations were immediately underneath the headlines. One showed Mr Vince speaking into a megaphone. The other showed Mr Vince holding a Just Stop Oil banner. The caption under the photographs was: “Road blockers: Dale Vince in London yesterday, and circled as he holds up traffic with Just Stop Oil”. As the article explained, the Labour donor, who was repaid £100,000 and was referred to as a “sex pest” or having been guilty of “sex harassment”, was Mr Davide Serra (i.e. **not** Mr Vince).
17. The article read as follows (with paragraph numbers added):
1. Sir Keir Starmer was left embarrassed yesterday after repaying a £100,000 donation to a high-flying City financier accused of sex harassment.
 2. The Labour leader was forced into a humiliating climbdown after being accused of ‘hypocrisy’ for accepting the cash despite the allegations against Davide Serra.
 3. Mr Serra, the boss of a multi-billion-pound asset management firm in London, made four £25,000 donations to Labour during the first quarter of this year, it emerged in official figures released yesterday.
 4. And Labour faced further embarrassment yesterday when businessman Dale Vince, who has donated £1.5 million to the party, joined an eco-protest in London with Just Stop Oil, the group he is helping bankroll.

5. The party pocketed Mr Serra's money despite accusations that the 52-year-old married chief executive made 'wholly inappropriate' comments on the size of a female colleague's breasts.
6. A tribunal also heard he told clients that Jolanda Niccolini, his now former head of business development and investor relations, would do anything for them – 'including prostitute herself'.
7. Mr Serra's firm was ordered to pay £32,000 in compensation by a tribunal judge last month after Ms Niccolini successfully sued for sex harassment and victimisation. Labour has decided to repay the £100,000 donation after the Daily Mail highlighted the case. It is understood it did not know about it before being alerted to it by this newspaper.
8. Earlier, Tory MP Craig Mackinlay said 'if [Sir Keir] had principles he would hand the money back, otherwise it's hypocrisy.'
9. In central London yesterday, Mr Vince joined JSO activists who were blocking traffic around Parliament and Trafalgar Square.
10. Some suspect he may have influenced Sir Keir's pledge to block new North Sea oil and gas exploration if he wins the next election.
11. Mr Vince said 'I'm here to support the incredibly brave people of Just Stop Oil. I can't imagine it will make much difference to Keir Starmer, he's his own man and so am I.'
12. Tory Party deputy chairman Nickie Aiken said: 'As if it wasn't already clear enough, Labour's big bankrollers and policy paymasters are the eco-fanatics themselves.'
18. The photographs of Mr Vince were removed from the Mail+ article at 10.47pm on 8 June 2023. They were replaced by a photograph of Mr Serra. The Daily Mail article was, however, never changed and remained available to the public until October 2023 on the PressReader platform.

Mr Vince's unfair processing claim

19. Mr Vince's pleaded complaint is that the publication of the headline next to the photographs of him suggested that he had been accused of sexual harassment and was therefore unfair because it was "unexpected and unduly detrimental and without justification for the adverse impact" and "created a misleading impression in the minds of those receiving the personal data". His pleading continues as follows:
 16. The Claimant reasonably expected that the Defendant would not publish serious falsehoods or connect his name and photograph to serious allegations by juxtaposing the photograph and caption with the headline as the Article did, and that it would not use his personal data in ways that would have an unjustified adverse effect on him.

17. In respect of the *Mail+* version of the Article, the unfairness of the Defendant's processing of the Claimant's personal data continued until the *Mail+* article was edited to separate the headline from the Claimant's photograph and his name in the photograph caption. The unfairness was not remediated in the print edition of the newspaper or the facsimile published under licence by *PressReader*, although the latter was deleted at the Claimant's request on 17 October 2023. ...

18. By reason of the unfair processing of personal data by the Defendant, the Claimant has suffered damage in the form of non-material harm, including non-material harm to reputation.

19. Further, the Claimant has suffered material harm by reason of the publication of the statement complained of, namely the costs incurred by his solicitors, Brett Wilson LLP, in attempting reasonably to mitigate the Claimant's loss by seeking to persuade PRIL to take down the statement complained of from the *PressReader* platform. The material harm incurred to date [is] £903.50 ...

20. Mr Vince does not criticise the accuracy of anything in the articles save the juxtaposition of the headline to the photographs.

Associated Newspapers' response to the unfair processing claim

21. When Associated Newspapers responded to Mr Vince's original letter before action on 14 July 2023, it described the UK GDPR claim as misconceived. It said that: (i) its processing of Mr Vince's data was lawful, fair and accurate, (ii) the articles accurately reported Mr Vince's donations to the Labour Party and his Just Stop Oil activism, (iii) it was entitled to rely on the journalism exemption in paragraph 26(3) of Part 5 of Schedule 2 to the Data Protection Act 2018, (iv) in assessing whether continued publication was in the public interest, Associated Newspapers had to "take account of the "special importance of the public interest of the freedom of expression in information" and [IPSO's] Editor's Code Practice", (v) Mr Vince's accuracy complaint to IPSO was rejected, so that the articles did not constitute a breach of Editors' Code of Practice, and (vi) the articles reported matters of clear public interest.
22. In support of its application for summary judgment, Associated Newspapers filed a statement from its night editor, Mr Andrew Gregory, giving a detailed explanation of how the articles came to be published. It has not been suggested that that explanation is contested.
23. Mr Gregory explained that he combined two stories about Mr Serra and Mr Vince because of "the constraints of space in the paper" and because he "did not want two articles about two Labour donors on two different pages in the paper". He instructed his deputy to combine the stories leading with what he considered to be the "better news story" about Mr Serra. Mr Gregory decided to use the photographs of Mr Vince and requested that "the story be edited to remove any ambiguity surrounding why [Mr Vince] was pertinent". Mr Gregory was "conscious that the headline should avoid confusing the reader". It was Mr Gregory who decided that the headline should refer to only one of the donors (namely Mr Serra).
24. Mr Gregory's evidence makes clear that he was aware that the IPSO Editors' Code of Practice provided that "headlines must be supported by the text". He explained:

In this case, a reading of the text would show the heading was indeed accurate and, early in the story, it distinguishes between the individual referred to in the headline and the one in the photographs. When it came to the body of the Article, I felt it was vital – and legally essential – to make that distinction between the two different characters unambiguously, which we took care to do. Legal considerations are always paramount and in the forefront of my thinking. Every journalist is rigorously taught from the start of their career to bear such issues in mind constantly and takes law exams as part of their training. My experience over many years has taught me to be aware of the risks of legal pitfalls. For this reason, as well as for absolute clarity, the story sets out [Mr Vince’s] role high up so the reader knows why he is pictured and to distinguish between him and the other Labour Party donor in the story.

25. Mr Gregory justified the use of the photographs of Mr Vince under the headline “Labour repays £100,000 to ‘sex harassment’ donor” by explaining that Mr Vince had only attended the Just Stop Oil March “that very day”: “[Mr Vince] put himself in the public eye by attending a protest on the streets and taking a prominent role. It would be astonishing had he not expected some focus on him as a result. After all, that’s why he did it – to promote the Just Stop Oil cause”. Mr Gregory said that, bearing in mind Mr Vince’s own posting of a video of himself at the protest: “it seems perverse for [Mr Vince] to take issue with his name and photograph appearing in the newspaper and on Mail+ when he was plainly happy to have his presence at the demo brought into the public eye by his own hand”. Mr Gregory concluded as follows:

As Night Editor of the Daily Mail, if I had a picture of a key Labour donor (and a £1.5m donation no less) on the streets with Just Stop Oil actively disrupting people’s daily routine, I would feel I had not done my job had I not used it.

My view is that, having decided to run the stories together, with the photographs in question, it was very important to make the distinction between the two donors, which we did. In my suggestion as to how to treat these two Labour donor stories, I was in no way attempting to mislead the reader into thinking the donor pictured was the “sex harassment” individual. Indeed the text of the story very carefully sets out that he wasn’t. My job is to serve the interests of the readers of the Daily Mail, and that is what I consider myself to have done with the treatment of this information.

26. Associated Newspapers also produced detailed evidence about how the articles came to be prepared and amended from its Group Legal Adviser, Ms Lindsay Warwick. Her evidence concluded by saying that her preliminary investigations had revealed that there were at least 15 people involved in the articles, including reporters, desk editors, and sub-editors. Whilst she had been able to provide an outline account of the precise events, “memories of some of those I have spoken to have understandably faded and it is difficult to present a comprehensive chronology of how the Articles came to be without a detailed review of relevant emails and messages and collecting proofs of evidence”. She took the view that “[f]air determination of the issues arising on this application would require a proper exploration at trial of what these individuals did and their decision-making processes” and “disclosure and the exchange of witness evidence in the ordinary way”.

Procedural chronology

27. The procedural chronology of both the libel claim and the unfair processing claim is important because of the appeal against the strike out of the latter claim.
28. On 19 June 2023, Mr Vince complained to IPSO about the Daily Mail article. The essence of the complaint was that “the headline bears absolutely no relation to the images or the caption beneath them ... it clearly gives the impression ... that the headline relates to [Mr Vince] and that [Mr Vince] is a “sex harassment” donor to Labour”.
29. On 3 July 2023, IPSO rejected Mr Vince’s “inaccuracy” complaint saying that:

... the article made clear the basis for the article’s headline, where it reported on the Party repaying a donation from Davide Serra following allegations of sexual harassment. We also considered that the article made clear Mr Vince’s actions in relation to the article – which also reported on his leading a Just Stop Oil march in Central London, and why this had also supposedly caused the Party “embarrassment”. ... We therefore considered that the article supported and clarified the headline, and, in such circumstances, we did not consider the headline to be inaccurate in the manner you suggested. We did not identify grounds to investigate a possible breach of Clause 1 [of the Editors’ Code of Practice].
30. On 26 June 2023 (2½ weeks after publication), Mr Vince’s solicitors wrote a letter before action intimating claims for both libel and unfair processing.
31. On 2 October 2023, Mr Vince issued his claim form in respect only of the libel claim. On 10 November 2023, Associated Newspapers applied to strike out the libel claim on the main ground that the claim infringed the *Charleston* principle. On 19 February 2024, HHJ Lewis heard the strike out application and reserved judgment.
32. On 9 May 2024, Mr Vince instructed new counsel, Mr Greg Callus. It is to be inferred from the evidence filed on Mr Vince’s behalf that it was Mr Callus’s advice that led to the issue of the unfair processing claim on 5 June 2024. On 6 June 2024, Mr Vince provided an unsealed copy of the claim form to Associated Newspapers. HHJ Lewis delivered judgment striking out the libel claim on 15 July 2024. Mr Vince applied for permission to appeal HHJ Lewis’s decision, but Warby LJ refused him permission to appeal on 18 October 2024. Before that happened, on 18 September 2024, Mr Vince served his claim form and particulars of claim in the unfair processing claim. Associated Newspapers then issued its application to strike out and/or for summary judgment, and Mr Vince responded with his application for summary judgment.

The judge’s judgment

The judge’s reasoning on the strike out

33. The judge’s reasoning on the strike out application is at [J19]-[J28]. He accepted at [J20]-[J22] that the circumstances did not fall within the *Henderson* principle on the basis that *Orji* had decided that a claim could not be struck out on those grounds unless there had already been a court determination. There had not been such a determination in this case, because the unfair processing claim was issued on 5 June 2024, and the libel claim was not determined until HHJ Lewis handed down judgment on 15 July 2024.

34. The judge then said at [J23] that the *Henderson* principle was only one aspect of the court's power under CPR Part 3.4(2)(b) (an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings). The unfair processing claim **could** have been brought as part of the libel claim issued on 2 October 2023, and there was every reason why it **should** have been. The two claims arose out of the same event. Neither claim was legally or factually complex. At [J27]-[J28], the judge said that whichever of two inferences from the 6 June 2024 letter (see [32] above) was correct, no sufficient reason had been provided for holding the unfair processing claim in reserve. The suggested inferences were that, by the time the libel claim was issued, either: (i) it had been decided to pursue that claim while holding the UK GDPR in reserve, to be deployed only if the libel claim failed, or (ii) a decision had been taken not to pursue the unfair processing claim.
35. The judge said at [J28] that Mr Vince's solicitor's evidence that they had taken the view that it would be "more convenient" to raise the unfair processing claim in separate proceedings, rather than by amendment, referred only to Mr Vince's convenience "to pursue a cause of action that is attritional". The judge concluded at [J29], as I have said at [6] above, that what had happened was a significant departure from any ordinary or proper use of the court's process. Accordingly, he struck out the unfair processing claim.

The judge's reasoning on unfair processing

36. As the judge recorded at [J30] both parties had submitted to him that the issue of whether the articles complied with the fair processing requirement in article 5(1)(a) of the UK GDPR could be decided on the information available and that no trial was necessary. Those submissions were apparently made notwithstanding Ms Warwick's evidence (see [26] above).
37. The judge recorded at [J30]-[J33] that the matter in issue between the parties was whether or not an "assessment of the fairness of the processing" should be made adopting the *Charleston* approach. In other words, he asked himself whether the fair processing claim was bound to fail if the article, read as a whole, was not inaccurate. In support of that approach, the judge took into account a decision of Warby J (as he then was) in *NTI v. Google LLC* [2018] EWHC 799(QB), [2019] QB 344 at [83] and [87] (*NTI*), where he held that the *Charleston* principle was relevant to an inaccurate processing claim under article 5(1)(d) of the UK GDPR. He referred also at [J35]-[J36] to *Pacini v. Dow Jones and Company Inc* [2024] EWHC 2714 (KB) at [64]-[65] and [74] (*Pacini*), where Richard Spearman KC, sitting as a deputy High Court judge, had said that data claims involve not only considerations of accuracy but also considerations of fairness, and a defamation approach could not be applied indiscriminately to both.
38. At [J37], the judge said this, with which I respectfully agree:

To state the obvious, fairness must depend on context. What must be considered will, for example, depend on what form the processing has taken, the context in which it has occurred, and the reason it has taken place, as well as the impact the processing has had on the data subject. In the context of the UKGDPR fairness must also be assessed objectively reflecting a balance of the interests of the processor, the data subject, and the public interest.

39. In that context, the judge referred to the fourth recital to the UK GDPR (see [42] below), and section 2 of the Data Protection Act 2018 which, when referring to the role of the Information Commissioner, requires him to have regard to all matters of general public interest.
40. The judge's conclusions on fair processing were at [J38]-[J39]. Based on the context of: (a) data processing by publication, (b) misleading readers, and (c) the primary harm alleged being reputational damage, the judge said that it was: "correct to determine whether personal data was processed fairly taking an approach that, like the rule in *Charleston*, takes account of the entirety of the publication", because the approach was not artificial and the *Charleston* rule represented a balance struck in the public interest between competing considerations (referring to Lord Nicholls at pages 73-4 in *Charleston*, and to Warby J's *dictum* at [158] in *Sicri* to the effect that there was much to be said for the proposition that reputational damages should only be available in defamation). It was, on that basis, that the judge concluded that the *Charleston* principles were applicable to the fair processing claim in this case, and that "[c]onsidered on [that] basis the personal data relating to Mr Vince was processed fairly". Looking at the articles as a whole, they did not make suggestions of sexual misconduct against Mr Vince.

Relevant statutory provisions and the Editors' Code of Practice

UK GDPR

41. The first recital to the UK GDPR provides that: "[t]he protection of natural persons in relation to the processing of personal data is a fundamental right".
42. The fourth recital to the UK GDPR provides that:
- The processing of personal data should be designed to serve mankind. The right to the protection of personal data is not an absolute right; it must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. This Regulation respects all fundamental rights ... in particular the respect for private and family life, home and communications, the protection of personal data, freedom of thought, conscience and religion, freedom of expression and information, freedom to conduct a business, the right to an effective remedy and to a fair trial, and cultural, religious and linguistic diversity.
43. The 47th recital to the UK GDPR includes the following:
- The legitimate interests of a controller, including those of a controller to which the personal data may be disclosed, or of a third party, may provide a legal basis for processing, provided that the interests or the fundamental rights and freedoms of the data subject are not overriding, taking into consideration the reasonable expectations of data subjects based on their relationship with the controller.
44. Article 5 of the UK GDPR provides as follows under the heading "Principles relating to processing of personal data":

Personal data shall be:

(a) processed lawfully, fairly and in a transparent manner in relation to the data subject ('lawfulness, fairness and transparency'); ...

(d) accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay ('accuracy'); ...

45. Article 82 of the UK GDPR provides as follows under the heading: "Right to compensation and liability":

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.

Editors' Code of Practice Published by IPSO

46. The Editors' Code of Practice is written by the Editors' Code Committee, comprising lay and editorial members, and enforced by IPSO. Paragraph 1 of the Editors' Code of Practice has provided as follows since 2015 under the heading: "Accuracy":

(i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.

(ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.

47. The Preamble to the Editors' Code of Practice includes the following:

The Code – including this preamble and the public interest exceptions below – sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to maintain. It is the cornerstone of the system of voluntary self-regulation to which they have made a binding contractual commitment. It balances both the rights of the individual and the public's right to know.

To achieve that balance, it is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.

It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of their publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.

48. The online version of the Editors' Code of Practice refers the reader to the Editors' Code Book, a document prepared and published by the Committee. At the time, this was accessed by clicking on a link entitled: "Click here to see what the Editors'

Codebook says about Accuracy”. The extensive notes and guidance (the Accuracy Notes) repay study in their entirety. They include the following passages:

There is no Public Interest defence under Clause 1. Key questions an editor should ask about a story include: • Can I demonstrate that the story is accurate? • Can I demonstrate that we have taken care? ... • Is the headline supported by the text of the story?

49. The Accuracy Notes of the Editors’ Code of Practice say under the heading “Headlines” that: “Eye-catching headlines won’t necessarily summarise everything in the story beneath, but Clause 1(i) requires any claim made in the headline to be supported by the text of the article”. The first example concerns a complaint made by Buckingham Palace over a Sun front page headline claiming that the “Queen Backs Brexit”. The complaint was upheld, as the Accuracy Notes explain because:

The headline – both in print and online – was not supported by the text and was significantly misleading. The headline contained a serious and unsupported allegation that the Queen had fundamentally breached her constitutional obligations ... Furthermore, it did not follow from the comments the article reported that the Queen wanted the UK to leave the EU as a result of the referendum: that suggestion was conjecture and the Committee noted that none of those quoted in the story were reported as making such a claim. Publication of the headline represented a failure to take care not to publish inaccurate, misleading or distorted information in breach of Clause 1(i). The complaint under Clause 1 was upheld.

The strike out ground of appeal

50. The first question under this heading is whether the judge was right to say that *Henderson* principles were not applicable in this case. In my judgment, he was not for one simple reason. There is nothing in *Orji* that imposes an arbitrary rule that *Henderson* principles are somehow excluded just because the determination in question is made **after**, rather than **before**, the issue of new allegedly abusive proceedings. In *Orji*, the Court of Appeal explained that, where, as in that case, there had been **no** determination at all, the principles in *Henderson* could not be applicable because they (*Henderson* principles) were a species of *res judicata*. As Nugee LJ explained in *Orji* at [81] (cited by the judge at [21]):

As this label (“a thing adjudicated on”) indicates, the essence of the principle, like other aspects of *res judicata*, is that once a particular matter has been determined by a court, that may preclude a party from having a second go. Or to put it in colloquial terms a litigant is entitled to their day in court, but once they have had it, is not in general entitled to a second bite at the cherry.

51. In this case, the second set of proceedings alleging unfair processing were an attempt to have a “second bite at the cherry” in the event that HHJ Lewis decided against Mr Vince, which is precisely what he did. It would be absurd if the principles enunciated in *Henderson* could be circumvented by the simple device of issuing precautionary proceedings a few days or weeks before an expected adverse determination. That being the case, Associated Newspapers must, in my judgment, succeed on the point made in their Respondent’s Notice. That is not, however, determinative of Mr Vince’s appeal

on the strike out point. The question is whether, in all the circumstances of this case, the *Henderson* principles, properly applied, (or other grounds under CPR Part 3.4(2)(b)) lead to the conclusion that the judge was right to strike out the fair processing claim.

52. At [45] in *Orji*, Coulson LJ cited the classic passage from Lord Bingham's speech in *Johnson v. Gore-Wood* at page 30H-31F, where he said this:

The underlying public interest is the same: that there should be finality in litigation and that a party should not be twice vexed in the same matter. This public interest is reinforced by the public interest in the current emphasis on efficiency and economy in the conduct of litigation, in the interests of the parties and the public as a whole. The bringing of a claim or the raising of a defence in later proceedings, may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before.

53. As I have explained at [34]-[35] above the judge thought that the fair processing claim was abusive, because: (i) the two claims arose out of the same event, (ii) neither claim was legally or factually complex, and (iii) no sufficient reason had been provided for holding the unfair processing claim in reserve. With great respect to the judge, I take the view that he was being rather too harsh on Mr Vince. Adopting a broad, merits-based judgment and taking account of the public and private interests involved and all the facts of the case, and focusing on whether, in all the circumstances, Mr Vince was misusing or abusing the process of the court, I have concluded that he was not.
54. I can summarise my reasons for this conclusion as follows: (i) Mr Vince had advanced the fair processing claim from his first contact with Associated Newspapers, (ii) Associated Newspapers' responses had been (as my decision below will explain) inappropriately dismissive of the fair processing claim (see [J13]-[J14]), (iii) it is true that Mr Vince failed to advance his fair processing claim in his first set of proceedings, but he obviously did so as a result of legal advice, (iv) Mr Vince did not delay in intimating his intention to pursue the fair processing claim if the libel claim was lost, (v) the fair processing claim is novel and, if not legally complex, certainly one that (according to counsel) is never known to have succeeded in these courts before, (vi) it is clear that Mr Vince changed horses (without lengthy delay and before HHJ Lewis's final judgment) to the fair processing claim on the basis of legal advice from newly instructed counsel, (vii) Associated Newspapers is a seasoned litigant (with access to highly specialised solicitors and counsel) and can hardly be regarded as being oppressed by the need to defend consecutive sets of proceedings, for which it can be compensated in costs if it wins, (viii) there is no substantive difference in this case between applying to amend the first set of proceedings and bringing a second set of proceedings in this case, and (ix) adopting the necessary broad merits-based approach, Mr Vince was simply trying to obtain a remedy for what, as I will shortly explain, was an obvious

injustice perpetrated by a wrongdoer who was taking every possible legal point against him.

55. For those reasons, I would allow Mr Vince's appeal against the strike out of his claim.

The unfair processing ground of appeal

56. As I have already said at [54] above, this claim is novel in that no such claim has ever, to the parties' knowledge, succeeded before.

A word about the facts

57. Before turning to the law, I should say something about the facts. As will be all too clear by now, the articles published by Associated Newspapers juxtaposed photographs of Mr Vince alongside headlines referring to a "sex pest donor" or "sex harassment donor". The irresistible conclusion that must have been reached by anyone who read no further was that Mr Vince was the "sex pest" concerned. That was not the case. It seems to me that what I have just described was an obvious breach of Clause 1 of the Editors' Code of Practice which provided, as I have said, that newspapers "must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text". In this case, the juxtaposition of the photographs of Mr Vince to the headline was unfair to him and misleading to anyone who did not read the entire article. We can, I think, take judicial notice of the fact that many readers do not read further than headlines and pictures, so that there must have been many readers who did not read further and many people who will have been actually misled. For these reasons, the applicability (or otherwise) of the *Charleston* principle in this case is of great importance.
58. I have carefully considered Mr Gregory's explanation of how the juxtaposition of which Mr Vince complains occurred (see [22]-[25] above). I can understand that mistakes occur in a hard-pressed newsroom. But his explanation is not that a mistake was made that was quickly rectified (though it was rectified online). His explanation is that the juxtaposition was, in some way, justified by the fact that Mr Vince had that day attended a Just Stop Oil demonstration. In my judgment, it was not so justified. Mr Vince was, until it is shown that he acted unlawfully (which has not occurred), entitled to exercise his rights of freedom of speech and freedom of assembly under articles 10 and 11 of the European Convention on Human Rights (the Convention), just as those who hold an opposite opinion are so entitled.
59. In other words, I find Mr Gregory's explanation of the juxtaposition unconvincing to say the least. The Daily Mail is fully entitled to criticise Mr Vince's opinions, but that is not the point of which he complains. I emphasise immediately that the fact that Mr Gregory has not provided a convincing excuse or explanation for what happened does not mean that there is a cause of action in law. That is a quite different question to which I now turn. Before reaching the *Charleston* principle, I will deal with the concept of fair processing.

The concept of fair processing

60. Arden LJ's dissenting judgment in *Johnson* at [137]-[150] considered the meaning of fairness in the Data Protection Directive 95/46/EC and the domestic implementing

legislation, the Data Protection Act 1998. At [141], she said that “the very word “fairness” suggests a balancing of interests. In this case the interests to be taken into account would be those of the data subject and the data user ...”. I agree, adding only the public interest.

61. In addition, the ICO’s 2024 Code explains at [5.1]-[5.7] the concept of fairness, by saying at [5.2] that “[t]o use personal information fairly, you should use it in ways people reasonably expect”, and at [5.3] that “[y]ou should consider all the circumstances to decide whether using personal information is within someone’s reasonable expectations”. [5.7] provides that “[y]ou should act proportionately, taking into account the public interest in using the personal information and any harm to the person concerned. You should be able to justify any harm in view of the person’s reasonable expectations”.
62. These indications are to be taken alongside the 47th recital to the UK GDPR (see [43] above) which indicates a balance between the “legitimate interests of a controller ... provided that the interests or the fundamental rights and freedoms of the data subject are not overriding taking into consideration the reasonable expectations of data subjects based on their relationship with the controller”. This focuses on the reasonable expectations of a data subject who actually has a relationship with the data controller, which is not this case.
63. The materials I have mentioned do, however, provide modest support for the three-stage fairness test proposed by Mr Vince asking: (i) whether the processing fell within what the data subject might reasonably have expected, (ii) if not, what rights or interests of the data controller or processor or members of public were engaged, and (iii) whether those rights outweighed the reasonable expectations of the data subject, having regard to the harm caused by the data processing.
64. In my judgment, however, it is unnecessary and undesirable to lay down any generally applicable test, since article 5(1)(a) of the UK GDPR is a very general provision requiring “[p]ersonal data [to be] ... processed lawfully, fairly and in a transparent manner in relation to the data subject”. What is meant by fair processing may be significantly affected by the context. As will appear below, my decision in this case has been very significantly affected by the media context and by the existence and provisions of the Editors’ Code of Practice.
65. Undoubtedly, it can be said that fairness is an autonomous concept under the UK GDPR, and the data controller ought not to deal with a data subject’s data in a way that is unfair to the data subject. The data subject’s reasonable expectations will be relevant at least when they have a relationship with the data controller (as, for example, in *Johnson*, or between social media platforms and their users, but see also the ICO Code mentioned at [61] above). Fairness obviously also implies a balance which will be influenced by the circumstances of the data usage, the interests of the data subject and the data controller, the public interest and whether the processing is proportionate to any harm caused.

The applicability of the Charleston principle to a fair processing claim

66. None of what I have said above, however, necessarily determines whether the *Charleston* principle applies to a fair processing claim in the present context.

Associated Newspapers says that it does, in effect, apply here, because Mr Vince's essential unfairness complaint is that the juxtaposition of the headline to the photographs created an inaccurate impression to those who did not read the full article. The judge said (see [40] above) that *Charleston* should apply here based on the context of: (a) data processing by publication, (b) misleading readers, and (c) the primary harm alleged being reputational damage. On that basis, the approach was not artificial and the *Charleston* rule represented a balance struck in the public interest.

67. Warby LJ, whose expertise in this area is extensive, has twice expressed the view that the *Charleston* principle is applicable to a claim for **inaccurate** data processing under article 5(1)(d) of the UK GDPR. He said that in *NTI*, as I have already mentioned at [37] above. He said much the same at [28]-[29] in *Aven v. Orbis Business Intelligence Ltd* [2020] EWHC 1812 (QB). There is, of course, no automatic read across from a claim for **inaccurate** processing to a claim for **unfair** processing, but there would need to be good reasons for a different position to be adopted.
68. In my judgment, the answer to this question can be obtained from the Editors' Code of Practice. It is not in dispute that that Code is a relevant privacy code to which we are bound by section 12 of the HRA 1998 to have regard, because the "court is considering whether to grant any relief which, if granted, might affect the exercise of the [Convention] right to freedom of expression" (see *Sicri* at [74]).
69. The Editors' Code of Practice makes clear that newspapers must "take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text". The obligations to take care not to publish misleading information or images and not to publish distorted information or images undoubtedly go beyond the accuracy obligation. Moreover, as the Preamble and the Accuracy Notes emphasise in the passages quoted above at [46]-[48], Clause 1(i) requires any claim made in the headline to be supported by the text of the article.
70. Associated Newspapers, in this case, failed to take care not to publish misleading information and images in the articles. The information in the headline juxtaposed next to the images of Mr Vince would have misled many casual readers into thinking that Mr Vince was the "sex harassment donor" referred to in the headline. Even if (and I say nothing about the correctness of this proposition) the headline and the images were not "inaccurate" by reason of the *Charleston* rule, they were certainly "misleading". I am quite satisfied that Mr Gregory's supposed explanation for the juxtaposition does not show that he took any adequate care to avoid publishing misleading information and images, taken together. As I have said above at [58], the headline was not justified by the fact that Mr Vince had attended a Just Stop Oil demonstration. It was also, for the reasons I have given, not justified (as Mr Gregory suggested – see [24] and [25] above) by the fact that readers who read all the text carefully would have discovered that Mr Vince was not being referred to in the headline.
71. Finally, in this connection, the rejection of Mr Vince's complaint to IPSO is irrelevant since IPSO only dealt with the allegation of inaccuracy, not with the suggestion that the headline taken together with the photographs were misleading (see [28]-[29] above).

Summary judgment

72. In these circumstances, there are open questions about whether harm must be proved in a claim of this kind, whether compensation for reputational harm is recoverable, and whether Mr Vince has sufficiently made out a claim to compensation for distress. But at the hearing before us, Associated Newspapers accepted that it had no answer to the claim for material harm. For the reasons I have given, therefore, it seems to me that Associated Newspapers has no real prospect of defending Mr Vince's claim for damages for unfair processing of his personal data based on the *Charleston* principle, as the judge incorrectly thought.
73. The parties agreed before the judge that there was no need for a trial of liability and I agree. I should say, however, that I have considered whether Associated Newspapers could rely on the so-called "journalism exemption" in paragraph 26 of Part 5 of Schedule 2 to the Data Protection Act 2018.
74. Paragraph 26(3) provides that article 5(1) of the UK GDPR "[does] not apply to the extent that the controller reasonably believes that the application of those provisions would be incompatible with the [purposes of journalism]". Paragraph 26(2) provides that paragraph 26(3) applies to the processing of personal data carried out for the purposes of journalism if: "(a) the processing is being carried out with a view to the publication by a person of journalistic ... material, and (b) the controller reasonably believes that the publication of the material would be in the public interest". But, in determining whether it is reasonable to believe that publication would be in the public interest, paragraph 26(5) provides that "the controller must have regard to" the Editor's Code of Practice (see paragraph 26(6)(c)).
75. The journalism exemption is not limited to pre-publication activities but is of general application (*Campbell v MGN Ltd* [2003] QB 633, [127]). There is no evidence that anyone at Associated Newspapers thought it would be incompatible with the purposes of journalism to apply the fairness requirement to the preparation of this article. Moreover, in my judgment, Associated Newspapers would be unable to invoke the journalism exemption because, in having regard to the provisions of the Editors' Code of Practice and its Accuracy Notes already mentioned, it would never be able to show, under paragraph 26(2)(b), that it reasonably believed that the publication complained of - the headline juxtaposed to the photographs of Mr Vince - was in the public interest. The publication of that headline juxtaposed to the photographs was, as I have said, misleading. Associated Newspapers, on its own evidence, failed to take care not to publish misleading information and images in the articles. The information in the headline juxtaposed next to the images of Mr Vince would, as I have also said, have misled many casual readers into thinking that Mr Vince was the "sex harassment donor" referred to in the headline.
76. Accordingly, in my judgment, the judge was wrong to think that Associated Newspapers was entitled to summary judgment. Instead, Mr Vince was entitled to summary judgment for damages to be assessed. Associated Newspapers accepted in oral argument, as I have said, that Mr Vince had demonstrated some damage.

Conclusions

77. For the reasons I have given, I would allow the appeal against the judge's decisions: (a) to strike out Mr Vince's unfair processing claim, and (b) that he would, had he not

struck the claim out, have granted Associated Newspapers summary judgment on that claim.

78. I would dismiss Associated Newspapers' application to strike out Mr Vince's unfair processing claim, and grant Mr Vince summary judgment on his unfair processing claim against Associated Newspapers for damages to be assessed.

Lord Justice Warby:

79. I agree.

Lady Justice Whipple:

80. I also agree.

Annex A

Daily Mail Article of 9 June 2023

Labour repays £100,000 to 'sex harassment' donorBy **David Churchill**
Chief Political Correspondent

SIR Keir Starmer was left embarrassed yesterday after repaying a £100,000 donation to a high-flying City financier accused of sex harassment.

The Labour leader was forced into a humiliating climbdown after being accused of 'hypocrisy' for accepting the cash despite the allegations against Davide Serra.

Mr Serra, the boss of a multi-billion pound asset management firm in London, made four £25,000 donations to Labour during the first quarter of this year, it emerged in official figures released yesterday.

And Labour faced further embarrassment yesterday when businessman Dale Vince, who has donated £1.5million to the party, joined an eco-protest in London with Just Stop Oil, the group he is helping to bankroll.

The party pocketed Mr Serra's money despite accusations that



Road blockers: Dale Vince in London yesterday, and circled as he holds up traffic with Just Stop Oil

the 52-year-old married chief executive made 'wholly inappropriate' comments on the size of a female colleague's breasts.

A tribunal also heard he told cli-

ents that Jolanda Niccolini, his now former head of business development and investor relations, would do anything for them - 'including prostitute herself'. Mr Serra's firm

was ordered to pay £32,000 in compensation by a tribunal judge last month after Ms Niccolini successfully sued for sex harassment and victimisation. Labour has decided

to repay the £100,000 donation after the Daily Mail highlighted the case. It is understood it did not know about it before being alerted to it by this newspaper.

Earlier, Tory MP Craig Mackinlay said: 'If [Sir Keir] had principles he would hand the money back, otherwise it's hypocrisy'.

In central London yesterday, Mr Vince joined JSO activists who were blocking traffic around Parliament and Trafalgar Square.

Some suspect he may have influenced Sir Keir's pledge to block new North Sea oil and gas exploration if he wins the next election.

Mr Vince said: 'I'm here to support the incredibly brave people of Just Stop Oil. I can't imagine it will make much difference to Keir Starmer, he's his own man and so am I'.

Tory Party deputy chairman Nickie Aiken said: 'As if it wasn't already clear enough, Labour's big bankrollers and policy paymasters are the eco-fanatics themselves.'