Neutral Citation Number: [2021] EWHC 2542 (QB)

Case No: QB-2020-602526

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 September 2021

Before :

Mr DARYL ALLEN QC
(Sitting as a Deputy Judge of the High Court)

- -

Between :

(1) ASHFORD BOROUGH COUNCIL (for and on behalf of itself, its current and former officers, employees, councillors and agents) **(2) Mrs TRACEY KERLY (for and on behalf of the current and former officers, employees, councillors and agents of the First Claimant (pursuant to CPR 19.6))**	**Claimant**
- and -	
MR FERGUS WILSON	**Defendant**

- -
- -

Mr Adam Solomon QC and Mr Samuel Davis
(instructed by **the First Claimant**) for the **Claimants**
Mr Alexander Deakin (instructed under the Direct Access Scheme) for the **Defendant**

Hearing dates: 1 and 2 February 2021

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Approved Judgment

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Mr Daryl Allen QC :

1. The First Claimant ["**ABC**"] is the local authority for the borough of Ashford in Kent. The Second Claimant is ABC's Chief Executive. They seek, on their own behalf and on behalf of the current and former officers, employees, councillors and agents of ABC, a final anti-harassment injunction against the Defendant.

2. The Defendant is a large-scale landlord in Kent. Together with his wife, he owns a very large number of residential rental properties in Kent. The precise ownership of those properties is not an issue in these proceedings. It would appear that some/all of the properties are in Mrs Wilson's name. Whatever the precise ownership arrangements, the Defendant certainly was and remains a driving force in the management of the properties and the Wilsons' dealings with ABC, its officers, councillors, employees and agents. Any reference to "the Defendant's properties" or similar in this judgment is simply a short-hand reference to the properties owned by the Defendant and/or his wife.

3. The Claimants' complaint is that over recent years the Defendant "*has developed, launched and escalated a campaign of harassment and intimidation against ABC and its current and former employees, officers, councillors and agents*", and that campaign "*has been intense and escalating since 17 January 2017, and especially recently*." [**C Skel §11**].

4. The Defendant denies that he has harassed the Claimant as a matter of law or in fact. His case is that whilst some of his correspondence and communications might be characterised as offensive or even "*abhorrent*", his behaviour has not crossed the threshold required for it to be characterised as harassment within the terms of the Protection From Harassment Act 1997 ["**the 1997 Act**"].

5. I am grateful to Mr Solomon QC [assisted by Mr Davis] and Mr Deakin for the clarity and efficiency of the submissions.

Background

6. As stated, ABC is a local authority. It employs over 470 people. Pursuant to Section 2(3) of the Local Government Act 1972, ABC is a body corporate being the council for the district. Pursuant to Section 1(1) of the **Localism Act 2011**, ABC's general power of competence includes the *"power to do anything that individuals generally may do*". The authorities make it plain that ABC is able to bring a claim in its own right as an individual victim under the 1997 Act or, as it does in this case, as a corporate claimant seeking an anti-harassment injunction to protect individuals who are its employees (in this case extending to its employees, officers, councillors and agents). No issue was taken as to ABC's locus or ability to bring these proceedings.

7. The Second Claimant is ABC's Chief Executive. She is also its head of Paid Services. She brings these proceedings in a representative capacity pursuant to CPR 19.6. Again, there was no objection to her locus or ability to bring these proceedings.

8. The Defendant's dealings with ABC extend back over the last two decades. As the relevant local authority, ABC has statutory responsibilities and powers in relation to

rented housing within its boundaries. As a result the Defendant has dealt with ABC in relation to his property portfolio.

9. The Claimants' complaints relate, principally, to letters and emails sent by the Defendant.

10. The Second Claimant states, and I accept, that between February 2016 and July 2020, ABC's legal department recorded 454 pieces of correspondence from the Defendant [C2 W/S §21 @ **TB 97**]. Much of that correspondence has been included in the Trial Bundle. Whilst I do not propose to set out all of that correspondence, in the circumstances it is important that I set out the significant items relied upon by the Claimant. For the avoidance of doubt I have reviewed all of the correspondence and evidence in the bundles.

Correspondence prior to commencement of proceedings

11. The Defendant's dealings with ABC extend as far back as 2005. The relevant events for the purpose of these proceedings commence in late 2016 and I propose to pick up the chronology from there. At that time, the Defendant was writing and complaining to ABC in relation to his property portfolio. I do not have the correspondence setting out the detail of those complaints. However, they were summarised in a letter of response from Sharon Williams, ABC's then Head of Housing, to the Defendant dated 21st October 2016 [**TB147**],

> "In recent weeks you have been repeatedly contacting the council (by letter, e-mail and telephone) over various matters where the council has had some involvement with your properties.
>
> As a summary, it would appear the issues you raise relate to:
>
> - Your belief that council officers advise your tenants facing eviction to 'sit tight.'
> - That council officers enter your properties without following the formal processes of notifying you and arranging permission.
> - That officers have a lack of detailed knowledge in certain areas, specifically plumbing and boiler maintenance; and
> - Your personal opinions of various council officers.
> - Your assertion that it is the officers' actions which are causing you to evict your tenants.
> - That once the Council contacts you, you deem that the repair issues becomes the council's responsibility."

12. Ms Williams provided a substantive response to each complaint. Her letter concluded with the following observations [**TB148-149**],

> "Despite the volume and nature of your complaints, we consider a good deal of your concerns are without foundation …. and also expressing your personal opinion of officers ….
>
> It is not for you to dictate who this council employs, on what terms or what their qualifications or suitability for a role should be. In addition we believe that you have received appropriate responses to the matters you are repeatedly writing to the Housing department about.
>
> We have therefore reached the conclusion that your contact with this council is largely of a vexatious nature and as such we will not enter into any further correspondence with you on matters pertaining to your personal opinions of staff, your views on advice given to tenants, the matters covered above or historical cases. Such contact will merely be noted.
>
> If you have any new issues you wish to raise in connection with matters relating to your tenants that require our involvement we will happily meet our obligations, but we will not engage on responding to your each and every personal, sometimes vitriolic opinion.
>
> In addition, all future contact you have with the council on housing matters is to be made to myself in writing (either hard copy or e-mail). Colleagues have been advised not to engage in e-mail or written correspondence with you, and if you telephone they will politely but firmly remind you of the need to write to me. I will ensure appropriate action is taken with each new case or query you raise. Notwithstanding any legal proceedings that may be underway, in which case, you will be in contact with our legal services department and in this regard may continue to do so."

13. On 2nd March 2017, the Defendant wrote to Mr Mortimer, ABC's Director of Law and Governance and a qualified solicitor, to complain about Samantha Clarke [**TB171**]. Ms Clarke is a member of ABC's legal department. Her name appears in much of the Defendant's correspondence. She is the subject of extensive professional and personal criticism by the Defendant. This letter is the Defendant's first documented complaint about Ms Clarke that is before me. In that letter he wrote,

> "I have concerns about Samantha Clarke and give you the opportunity of resolving it before I refer it to the Law Society to determine which body deals with it. It is probably the Institute of Legal Executives.
>
> …. …
>
> It is clear to me that Ms Clarke does not understand the legal requirements of bundles, chronology, Case summary and papers on which you wish to rely."

14. On 30th September 2017, the Defendant wrote to Mr Gary Clarke, a Technical Officer, in ABC's Private Sector Housing Department. That letter [**TB199**] includes the following paragraph,

> "Firstly I am sorry that Public Sector workers get paid so little! I must tell you that you are not the most intelligent man I have ever met in my life!!"

15. That second sentence may or may not be correct. It is difficult to understand why it was included in the letter other than to cause offence to Mr Clarke. It a surprising remark to include when one considers the tone and content of the perfectly proper email sent by Mr Clarke to the Defendant and his wife on 29th September 2017 [**TB200**].

16. On 1st October 2017, the Defendant wrote to Sharon Williams [**TB205**]. Although that letter seeks to challenge two Environmental Protection Act Notices signed by Ms Williams and issued to the Defendant/his wife, it is in reality a personal attack on one of ABC's employees, "**W**". The letter is headed with that person's name and includes the following,

> "Again I must write about W. W is a man of low intellectual ability and certainly in the 50th to 70th percentile. Local Government Officers, like Policemen, tend to be in the 30 to 70 percentile.
>
> W tells me has a NVQ Level II in plumbing which is a qualification for the less academic students. To be blunt he is a thickie in Teacher Speak. There is no disputing he is a very nice chap. However he is a square peg in a round hole. He is useless.
>
> … …
>
> It is clear he has Petit Mal as his eyes glaze over and he looks through you! Of course we must make allowances."

17. On 6th October 2017, the Defendant turned his attention to one of ABC's Councillors, Paul Clokie. On that day he wrote to Mr Clokie at his home address. The letter [**TB212**] is headed "**TIME TO GO**" and includes the following,

> "I see from the ABC website that you are no longer the Portfolio Holder for Housing.
>
> You have sat too long here for any good you have been doing. Depart, I say, and let us have done with you. In the name of God, go!
>
> It is you alone that has resulted in my not taking children 0-5 years. I do take them 5 to 17 years and appear to be the only Private Sector Landlord who will.

> That should be you [sic] epitaph. Here lies the man who lost children their home.
>
> You are too old and no longer think clearly.
>
> When you resign from the Council I will once more take children from 0 to 5 years.
>
> I acknowledge all of the good you have done in the past but Go!"

18. On 13th October 2017, the Defendant wrote to Mr Mortimer to make a "*formal complaint*" about Ms Clarke [**TB215**], stating,

> "I write to complain about Samantha Clarke. I appreciate she is a Legal Executive but continues to refer to herself as a Litigation locum.
>
> I am far from happy about this and before reporting her to ICLEX [sic] I am giving you 14 days to respond to my Complaint.
>
> I do not expect to receive your normal nonsense letter about all of my staff are fully supported by you. If you do then it will result in my raising an issue about yourself.
>
> I have never before had cause to complain to ICLEX [sic] before and do use Legal Executives for Conveyancing. For Litigation I use a properly qualified Solicitor unless I act in person or as a Lay Representative.
>
> The CILEX are unable to find any record of Samantha Clarke this morning. Can you help with a Membership Number?"

19. That is the totality of the letter. It does not set out the facts giving rise to the complaint or what the allegation(s) against Ms Clarke is. Given the threat of reporting to CILEX then it must have been an allegation of some form of misconduct. That misconduct is not particularised at all.

20. Although the Defendant gave Mr Mortimer 14 days to respond to his complaint, the very next day he wrote to Ms Clarke personally [**TB216**]. That letter was equally uninformative in terms of what complaint or allegations he was making against Ms Clarke. What was clear was the threat of reporting Ms Clarke to CILEX,

> "It is my intention to refer you to the Chartered Institute of Legal Executives. I did speak to them yesterday and they can find no record of you. I was unable to provide a number.
>
> I am assuming that the CILEX Code of Conduct is similar to the SRA Code of Conduct.

> You must not take advantage of Non Professionals. That is what you are doing in your letter of 11th October, 2017.
>
> **I am not going to make reference to your Appearance and Size** in the same way I did not in regard to Mr Holmes save he is a man of about my height and quite capable of reaching the Consumer Unit.
>
> On 12th December 2016 at Thanet Magistrates Court you went up and started cuddling Mrs Holmes and now you tell me you do not represent her and she was a Witness!!" [**emphasis** added]

21. I have not seen Ms Clarke and have no idea what her appearance or size are. Later correspondence shows the Defendant refer to Ms Clarke as "*Michelin Man*" and "*Big Sam*", the clear implication being that the Defendant considers her to be large and/or overweight. Whatever Ms Clarke's appearance or size, they have absolutely no relevance whatsoever to her competence as a lawyer or the issues purportedly raised in the Defendant's letter. Further, as Mr Solomon QC observed, the Defendant's *"I am not going to make reference to your Appearance and Size …*" does precisely that which the Defendant pretends to seek to avoid. I have no doubt that the Defendant intentionally and purposefully used those words to insult and/or upset Ms Clarke. There is no reasonable explanation for their inclusion in that letter.

22. Later in October 2017, the Defendant wrote to Mr Mortimer to expand upon his "*formal complaint*" about Ms Clarke [**TB203**]. The complaint related to proceedings between ABC and the Defendant's wife and daughter regarding one of their properties. The Defendant's letter included the following,

> "… I write to further expand my complaint. I appreciate Ms Clarke is a Legal Executive and not a Solicitor like yourself, albeit I am unsure of what grade of membership she holds. Perhaps she can help.
>
> … …
>
> You have a Competence Issue with Samantha Clarke over the £1200. She gave an inclusive figure and now says it was exclusive. You should sack her!
>
> … …
>
> On 26th July, 2017 I asked Ms Clarke how much money we owed and she tallied it up and indeed we paid that amount you sent a receipt. Effectively a **Certificate of Satisfaction** albeit not in the prescribed form!
>
> Now she says the £1200 compensation was missed out. Well whose fault was that? A rather plumb lady.
>
> The £1200 was to be compensation not witness expenses as previously described which as included in the figure.

> …. …. If I succeed in showing Mr and Mrs …. Had hot water all along then simply put the Council will have to refund the entire costs plus the £1200. It will then be for the Council to recover the £1200 from Mr and Mrs ….
>
> You have a Competence Issue with Samantha Clarke over the £1200. She gave an inclusive figure and now says it was exclusive. You should sack her!"

23. This is the first articulation of the complaint about Ms Clarke. It appears to be that Ms Clarke had omitted a sum of £1,200 from the total sum which the Defendant's wife and/or daughter owed to ABC/the tenants at the conclusion of the proceedings. There is no suggestion in the letter that Ms Clarke acted dishonestly or with any intent to mislead; at its highest it appears to be an allegation of incompetence. Whatever the precise terms of the allegation/complaint, it is striking that the Defendant considered it appropriate to advise Mr Mortimer that he should sack Ms Clarke in response to his first complaint about her.

24. Further, we have another reference to Ms Clarke's size. I find as a fact that "*A rather plumb lady!*" [**TB204**] was intended to read "*A rather plump lady!*" and was a reference to Ms Clarke. Once again, an irrelevant, unnecessary and offensive comment about Ms Clarke's physical appearance.

25. On 9th July 2018, the Defendant wrote to Sharon Williams to express concern about W's performance [**TB228**],

> "I am asking the Council to consider giving some mentoring to W. That is precisely what it did in the case of … who did precisely the same thing.
>
> Please confirm what action the Council intends to take to enable W to improve!"

26. By later dated 5th August 2018, the Defendant wrote to Councillor Gerald White, Portfolio Holder Housing, in relation to one of the Defendant's properties [**TB229**]. That letter included a complaint about W,

> "W attended the house without myself. He should not have done so. Sharon Williams had said he will in the future. It is a matter of Tort. There was wrongdoing by W which I say lost the family their home. That Sharon Williams said he will in the future amounts to an admission it would have done so to start with!
>
> Had he done so the matter would have been sorted out by me immediately. The Council needs to take Disciplinary Action against W. I know my Onions. W does not!
>
> …. …

> I am afraid I blame totally W. Sharon Williams attempts to protect him by closing ranks and saying we do not expect him to know. The Council buys in expertise!
>
> I reject this. It is a waste of public funds. W does not exhibit the level of knowledge of the man in the street! I will be blunt. He is not up to it. He does not have the knowledge of the man in the street. He lacks the knowledge of previous EHOs I have dealt with. I could not even employ him as a handyman. I am not suggesting he is not anything other than a real nice guy.
>
> He should be moved to an alternative post within the Council! I am not suggesting he should be sacked."

27. On the very same day he wrote a second letter to Councillor White [**TB236**]. Whereas the first letter complimented W as not being "*anything other than a real nice guy*", the second letter accused him of lying and demanded that he be sacked. In a letter headed, "**W TELLING LIES**", the Defendant wrote,

> "W has been complicit in giving False Evidence! I can only suggest that you sack him!
>
> It brings the Council into disrepute."

28. On 10th August 2018, the Defendant wrote to the Second Claimant to allege "*gross misconduct*" against W and another individual, "**S**". In that letter he stated [**TB225**],

> "I must raise with you the gross misconduct of W and S.
>
> It is crystal clear from the non-sensitive papers disclosed by …. that W committed Gross Misconduct (Misfeasance in Public Office). He has been complicit in passing off S as the person who did the work but in fact it was S.
>
> Hence we have a False Statement from S but behind it was W. Please read the non-sensitive papers.
>
> The Court has been misled. What W has, prima facie, done is an extremely serious matter and brings the Council into disrepute.
>
> In the circumstances does Ashford Borough Council intend to proceed with the prosecution or withdraw it."

29. It is clear from that letter that ABC had issued proceedings against the Defendant and/or his wife and/or his daughter. In that context the Defendant accused W of misfeasance in public office and invited ABC to consider withdrawing the prosecution. Misfeasance, or rather misconduct, in public office is a criminal offence which carries a maximum sentence of life imprisonment. It is a very serious allegation to make against anybody. It was an allegation against W, about whom the Defendant had previously made offensive remarks.

30. In the space of less than five weeks, the Defendant had accused W of (i) incompetence, (ii) dishonesty, (iii) complicity in seeking to pervert the course of justice or perjury[1], (iv) gross misconduct, and (v) misfeasance in public office. Allegations of serous criminality were levelled at W without any real particulars and without providing any evidence in support. Those allegations were presented to an elected Councillor. They were presented against the backdrop of the personally abusive comments the Defendant had previously made about W's intellect and abilities.

31. On 10th August 2018, Vivien Williams, ABC's then Head of Legal and Democracy, wrote to the Defendant [**TB249**]. The opening sentence of her letter gives a clear indication of the volume of correspondence coming from the Defendant,

> "I write further to correspondence sent to Ms Estelle Cunningham dated 30th July, 3rd, 5th, 8th August and Ms Tracey Kerly dated 31st July, 5th, 6th, 10th August."

That is in addition to the two letters to Councillor White already referred to.

32. Ms Williams wrote,

> "You have previously been informed and I would remind you that you are to address all correspondence to me. Please do not send any further correspondence marked for the attention of either Ms Estelle Cunningham, Ms Tracey Kerly or any other Officer. I am your point of contact.
>
> … …
>
> Your allegation in respect of any intention to 'Pervert the Course of Justice' is completely unfounded. I repeat, there has been no fault or foul play on the part of any Council Officer who have followed due process at all times. I am putting this 'remark' down to the fact that you are a litigant in person, who lacks the benefit of legal advice. However, any further spurious allegations made against either Legal Services staff or other Council Officers/persons carrying out their duties for and on behalf of the Ashford Borough Council will not be tolerated.
>
> Your letter of 6th August in respect of Hilary Plant is a case in point. "Ms Plant needs to know her place which is that of a lowly Local Government Officer. I suggest you sack her!". Such persistent unacceptable behaviour by the use of inappropriate words and spurious allegations or behaviour likely to cause alarm, distress and/or constituting harassment must immediately cease.
>
> Ashford Borough Council has a duty of care towards all their workers and liability under common law arising out of the

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1 Giving false evidence [see **TB236**].

> Employment Rights Act 1996 and the Health and Safety at Work Act 1974. In light of this I respectfully remind you once again, that derogatory and insulting remarks about any persons carrying out their duties for and on behalf of Ashford Borough Council will not be tolerated. Please be advised, that should such action on your part continue, then the Council will be forced to consider taking measures to protect such persons.
>
> In respect of the final letter to Ms Tracey Kerly dated 10th August, these points have been raised and addressed in past lengthy correspondence with Mr Terry Mortimer previously, I will not duplicate it . However, it is noted that you have no objection to Ms Clarke presenting the Council's case and have nothing further to say on the matters contained within."

33. Ms Williams' letter made it absolutely plain that ABC considered that some of the language used by the Defendant in his correspondence to demean ABC Officers/employees and his demands for their dismissal was "*unacceptable behaviour*" which was "*likely to cause alarm, distress and/or constituting harassment*" and should cease immediately [**TB250**].

34. On 11th August 2018, the Defendant wrote to the Second Claimant commenting, once again, on W's performance,

> "[The Council] should never have appointed W. There is a competence issue.
>
> … …
>
> W is not the sharpest tool in the box …
>
> …. …
>
> W is a man of low intellect and does not seem to understand that you cannot always believe what tenants tell you!
>
> … …
>
> W claimed to have two Degrees but when pressed he had one degree! The other was a Certificate. Additionally a NVQ level II in plumbing. He really is not up to the job! To be frank he is hopeless.
>
> … …
>
> I have been reading up George Carman QC and Jonathan Aitken on the subject of a False Witness Statement. It would suggest that W is looking at 18 months in Prison!"

35. Vivien Williams replied to that letter on 15the August 2018 [**TB258**]. Her reply was short and to the point,

> "I write further to correspondence to Ms Tracey Kerly dated 9th, 10th, 11th and 12th August and to Ms S Williams dated 13th August 2018.
>
> I would remind you again that you are to address all correspondence to me. Please do not send any further correspondence marked for the attention of either Ms Estelle Culligan [sic], Ms Tracey Kerly or any other Officer. I am your point of contact.
>
> I note that your latest correspondence covers matters that have been previously addressed. Therefore, I have nothing further to add to my letter to you dated 10th August 2018."

36. I observe that the Defendant had sent five separate letters to ABC in five days. None of them complied with the single point of contact approach that Vivien Williams had instructed the Defendant to follow.

37. On 16th August 2018, Vivien Williams responded to further correspondence from the Defendant [**TB259**]. The substantive points addressed in the letter matter little. What is important is the warning given to the Defendant as to his future communications with ABC Officers and employees,

> "I remind you once again, that derogatory and insulting remarks about any persons carrying out their duties for and on behalf of the Ashford Borough Council will not be tolerated. Further letters that contain the same will simply not be answered."

38. On 5th November 2018, the Defendant wrote to the Second Claimant in the following terms [**TB271**]

> **"MISFEASANCE IN PUBLIC OFFICE**
>
> … to set up an Independent Inquiry to determine whether Misfeasance has taken place in relation to:-
>
> [a list of the Defendant's properties]
>
> In particular I believe that you should ask that the role of the following be examined:-
>
> 1) Tracey Kerly
>
> 2) Terry Mortimer
>
> 3) Sharon Williams"

39. No particulars of the alleged misfeasance are given. Indeed, no individuals are expressly accused of misfeasance although, by implication, the allegations appears to be directed towards Ms Kerly, Mr Mortimer and Ms Williams. No evidence in support of the allegation or request for the "*Independent Inquiry*" was supplied.

40. That was not the end of the Defendant's allegations of misfeasance. On 14th December 2018, he wrote a "**LETTER BEFORE ACTION**" to the Second Claimant [TB283], stating,

> "It is my intention to bring a case in Tort in relation to 1 Bradbridge Green from 2013 to 2014. The approximate date this took place was June 2013. It is therefore within the Limitation Period of six years.
>
> If you wish to have any meeting regarding this please let me know. The meeting should take place before 20th January, 2019 at Ashford Borough Council's Office. I have no objection to Gerald White attending.
>
> The three officers I hold to have committed Malfeasance are Terry Mortimer, Sharon Williams and Tracey Kerly."

41. The Defendant had now made it clear that he was accusing those named individuals of misfeasance in public office. At least one of them is a solicitor. As previously set out, that is an extremely serious allegation to make. No particulars were given. Notwithstanding the Defendant's statement of intent, no proceedings followed. The Defendant's threat of civil proceedings subsequently proved to be a hollow one. However, that would not have been known to Mr Mortimer, Ms Williams or Ms Kerly at the time.

42. On 26th December 2018, the Defendant makes a new complaint against Samantha Clarke [**TB285**]. Writing to Vivien Williams, he stated,

> "Ms Samantha Clarke failed to make full disclosure to the Magistrates Court. This is particularly worrying as I specifically asked her to send two items. Ms Clarke has brought the Council into disrepute.
>
> Ms Clarke (or indeed ABC) has a duty to disclose anything which might assist the Defendant's Case. Ms Clarke refused to do so saying it was not relevant. I felt it was relevant.
>
> If Ms Clarke were a qualified Solicitor then she would be in severe difficulty with the SRA.
>
> I am unsure of her qualification, if any, and therefore do not know who to refer this to.
>
> Can you tell me what Samantha Clarke's qualification is?
>
> I appreciate you will tell me I can raise this with the appeal Judge and I shall do so."

43. Not only does that letter contain a complaint about Ms Clarke, it intimates a threat of referral to Ms Clarke's regulator. It is of note that the Defendant was not only aware of his ability to raise the disclosure issue with a Judge, but it was his intention to do so. There is no evidence or suggestion that he did raise the issue with a Judge. If he

did, there is no evidence that the Judge found that there was any failure or misconduct by Ms Clarke; had there been such a finding I have no doubt that it would have formed part of the Defendant's response to these proceedings; it is conspicuous by its absence.

44. On 8th January 2019, the Defendant returned to criticism of W, writing to Vivien Williams [**TB286**],

> "W has failed to do his job properly and has landed the Council in the Soup over eight more houses where the Council may have to well pay out another £40,000 a house.
>
> …. …. He is a low ability officer.
>
> When he receives a report he should attend! He does not! He tries to do it from the armchair. He just forwards it to the Landlord who takes it at face value and acts accordingly. That means ending the tenancy!
>
> He is losing tenants their homes!"

45. It appears that on or about 27th January 19, the Defendant submitted an "**OVERVIEW**" document to ABC. It sets out some of the history between the Defendant, his wife and ABC. Of note, it includes the following [**TB289**],

> "I have reported Samantha Clarke to the Institute of Chartered Legal Executives for withholding evidence. It is a matter I will return to at Appeal but it is difficult to believe the appeal will now fail given the Police Investigation."

46. It is clear that the Defendant did make that referral. On 4th February 2019, Francine Allgood, a CILEX Investigations Manager, wrote to the Defendant's wife to inform her that Ms Clarke was not a member of CILEX [**TB298**]. It is to be noted that neither ABC nor Ms Clarke herself ever claimed that she was a Legal Executive or a member or CILEX.

47. On 17th February 2019, the Defendant wrote to the Defendant threatening a Judicial Review against ABC regarding 1 Bradbridge [**TB301**]. No Judicial Review proceedings were issued.

48. On 24th May 2019, the Defendant wrote to Mr Mortimer, once again accusing Ms Clarke of withholding disclosure that should have been given [**TB317**].

49. On 10th July 2019, the Defendant wrote to Mr Clarkson at his home address [**TB341**]. The heading of that letter was "**GROSS DERELICTION OF DUTY**" and the text was as follows,

> "Another tenant has been evicted by the County Court Bailiff this morning in Ashford. That brings the total to five.
>
> All five could and should have been avoided.

> You are the Council Leader and you must accept full responsibility!
>
> Can I suggest you resign?"

50. In fact, the decision to terminate the tenancy was the landlord's, **in this case the Defendant and/or his wife**. ABC did not force them to take that step; they elected to do so; they could have allowed the tenancy to continue. Notwithstanding that, the Defendant sought to attach personal responsibility to Mr Clarkson, Leader of ABC, and suggest that it was grounds for him to resign.

51. Distribution of that letter was not limited to Mr Clarkson. The Defendant emailed it to 45 other email address, all professional or personal email addresses of ABC Councillors [**TB342**]. No explanation whatsoever has been provided as to the Defendant's purpose or motivation in sending that email to so many other recipients. It is difficult to escape the conclusion that it was simply to publicise his criticism of Mr Clarkson.

52. Eleven days later, on 21st July 2019, the Defendant sent a further letter to Mr Clarkson demanding his resignation [**TB343**],

> "Let us not mince words Officers and certain Members have been involved in a Vendetta against myself and if mothers with children are not housed, when they would otherwise have been housed, then the vendetta has adversely impacted on mothers and children! Officers are more interested in putting the boot into me than they are in seeing mothers and children housed in Ashford. You are the Leader now and were the Leader at the time. As the Captain of the Ship you must accept Full Responsibility!
>
> You are a Liability to Ashford and I call upon you to Resign! There are people still on the Housing List because of you who otherwise would have been housed! Indeed 1500 and the Housing List and 500 in temporary shanty town like accommodation. ABC cannot house people in the level of accommodation of myself can they? The standard of temporary accommodation shown on Kent Live is a Disgrace and brings Ashford into ill repute."

53. On 25th July 2019, Vivien Williams wrote to the Defendant. Once again it was a response to a number of letters and emails from the Defendant. This is an important letter [**TB358**] as it sets out ABC's concerns about the tone, content and frequency of the Defendant's correspondence and explains that (i) all future correspondence should be addressed to Ms Williams, and (ii) all emails to ABC Councillors or the Second Claimant will be automatically diverted to an email Inbox within ABC's Legal Services department. It is worth setting out a substantial proportion of that letter,

> "I have written to you and subsequently reminded you on numerous occasions to indicate that you are to address all correspondence to myself, unless agreed otherwise. However,

you repeatedly send correspondence to numerous officers and have started to be prolific in forwarding unsolicited correspondence to Ashford Borough Council Councillors.

The unsolicited correspondence to councillors, has been forwarded to Legal Services and is quite substantial. Often it is duplication of what has been sent to officers.

Having reviewed your email communication with Ashford Borough Council and its Councillors, it is at best, voicing unsolicited opinions and at worst, a form of harassment and distressing for the recipient. It has become unacceptable and unreasonably persistent communication, which has built up for some considerable time. This unreasonable persistence in your contact and submission of information, impedes investigating any legitimate complaint that may arise, has significant resource issues further to it being time consuming to manage and interferes with proper consideration of any matters that are pertinent.

As you are aware, Ashford Borough Council has a duty of care towards all their workers and liability under common law arising out of the Employment Rights Act 1996 and the Health and Safety at Work Act 1974. **You have been advised in respect of your communications on numerous occasions, that such persistent unacceptable behaviour by the use of inappropriate words and spurious allegations or behaviour likely to cause alarm, distress and/or constituting harassment must immediately cease. You have been advised that derogatory and insulting remarks about any persons carrying out their duties for and on behalf of Ashford Borough Council will not be tolerated.** You have been advised, that should such action on your part continue, then the Council will be forced to consider taking measures to protect such persons.

In light of your persistent flouting of the arrangements we put in place and our failed attempts to seek your compliance with these arrangement above and the content of the same, we have now taken the following steps -

- All emails that you send to Ashford Borough Council Councillors or to Ms Tracey Kerly will be automatically diverted to an inbox within Legal Services;

- Legal Services will keep a watching brief on what is being sent; and

- Future correspondence will not be acknowledged, unless it contains material new information, is legitimately being sent and requires action.

> This action is the next measure that Ashford Borough Council are taking, following the implementation of a 'single point of contact' that has been ineffective for a great many years, to protect workers and councillors.
>
> In respect of the following letters to Ms Tracey Kerly dated 24th April, 13th July and 17th and Cllr Gerry Clarkson dated 9th July, 10th July and 21st, there is nothing further to say on these matters than has been communicated to you already. Naturally, should a Judicial Review be received, it will be attended to accordingly.
>
> Please be advised as stated above, future correspondence will not be acknowledged, unless it contains material new information, is legitimately being sent and requires action." [**emphasis** added]

54. It is plain that ABC was not seeking to prevent the Defendant from corresponding with it or from raising any legitimate queries or concerns. What it was seeking to do was to manage the volume of repetitive correspondence from the Defendant and protect its Officers and staff from what it considered to be offensive, distressing and harassing communications from the Defendant. ABC's position was clearly explained and its proposal was a proportionate and considered response to the Defendant's conduct.

55. Although ABC's instructions and objectives were clear, they were not followed by the Defendant. On 28th July 2019, he wrote to the Second Claimant direct [**TB362**], ignoring the request/instruction to send all correspondence to Vivien Williams. This is notwithstanding the fact that he was responding to Ms Williams' letter. The Defendant's letter included the following [**TB363**],

> "You may have some power under repetitive and vexatious complainants legislation but these are not vexatious. There is no personal attack. It is pointing out certain things for example how the Ella Payne situation has progressed!
>
> … …"

Contrary to the Defendant's assertion, a review of the previous correspondence clearly shows that it does contain personal attacks on W, Samantha Clarke, Mr Clarkson and others.

56. The Defendant also stated [**TB363**],

> "In Autumn 2019 it is my intention to bring a Case against yourself for Misfeasance. The Particulars of Claim (POC) will be drafted professionally by Counsel."

No such proceedings were issued. Once again, the Defendant threatened proceedings against ABC but appears to have taken no further action to progress them.

57. On 31st July 2019, the Defendant sent an email to over 40 Councillors [**TB374**]. That email had nine attachments, including letters to the Second Claimant, Mr Clarkson and Councillor Barrett. The response from one of those Councillors, with whom the Defendant appears to have had no direct dealings whatsoever, is informative [**TB374**],

> "This is getting ridiculous I have never met this man and I object to him filling up my private and council email inboxes."

58. On 14th August 2019, the Defendant wrote to the Second Claimant asking her to "*arrange for an inquiry to be held into the Council's Wrongdoing in respect of*" 32 Dove Close and the former tenants of that property [**TB397**]. He attached seven pages of submissions supporting his request for an inquiry. Those submissions raised issues going as far back as 2011 and 2012. It included criticism of W [**TB401-403**]. The "*focus*" of the submissions was the Defendant's disputes with ABC regarding three of his properties. In my judgment there were no legitimate grounds whatsoever to suggest an inquiry or any form of investigation was required.

59. On 26th August 2019, the Defendant expanded the range of correspondence he was sending to ABC and the Second Claimant. On that date he started forwarding to the Second Claimant emails setting out his/his wife's exchanges with their tenants. The first appears at [**TB411**] and relates to 36 Bryony Drive. The messages to the Second Claimant simply states, "*Another one loves me!*". On the same day he sent a letter to the Second Claimant [**TB413**],

> "Can you make a note on the Case File for 32 Dove Close that I have all the email traffic from all tenants including Mr and Mrs Holmes?
>
> There is traffic from the next tenant saying the water from the immersion heater is too hot! There is traffic from Evolution confirming no immersion heater has been installed at any point! It seems, Prima Facia, that Mr Watts did not turn on the Consumer Unit!"

60. By way of reminder, the Second Claimant is the Chief Executive of ABC. It is inconceivable that the Defendant genuinely believed that she was responsible for maintaining a "*Case File*" for 32 Dove Close. Further, the Defendant had been instructed not to write to the Second Claimant but to send all correspondence to Vivien Williams. He deliberately ignored that instruction to send a pointless letter to the Second Claimant.

61. On the very same day he forwarded an email to the Second Claimant regarding 89 Wood Lane with the message "*SOMEONE LOVES ME!*" [**TB414**]. Similar emails appear at [**TB422 and TB434**]

62. In my judgment there was no reasonable justification for sending these letters or emails. The Defendant's sole purpose was to bombard ABC and the Second Claimant with pointless correspondence.

63. There is then the Defendant's letter to Mr Clarkson of 12th September 2019 [**TB447**]. This is a particularly important letter and I will set out its contents [***emphasis*** added],

> "TIME TO GO
>
> I wrote to you four months ago. It is now time to reflect on the adverse effect on the housing of young families that you have caused.
>
> You are a silly old man! Your comments on 20th December 2016 resulted in my ceasing to let properties to children under five. That it turned out the tenant had hot water all along is now clear from email traffic from the next tenant.
>
> You will go to the grave in the knowledge that you were entirely responsible for my decision not to let to young families!
>
> Do you honestly think that a young family seeking a house is at all concerned with what you had to say in December 2016?
>
> **Can I suggest that you will serve the people of Ashford best by committing suicide?"**

64. That is an incredible letter to write to a public official. It was sent to Mr Clokie's home address. Mr Solomon QC set Mr Deakin and the Defendant the challenge of explaining the basis upon which it was said to be reasonable to suggest that Mr Clokie should take his own life. Mr Deakin submitted that whilst the words were "*abhorrent*", those taking up public office had to be thick skinned and accept that they would be the subject of complaint and criticism, sometimes in extreme terms.

65. I accept, as the Claimants accept, that public officials must accept some degree of public criticism, whether justified or not. What they do not have to accept is correspondence sent to their home address suggesting that they should kill themselves. Mr Deakin's response fell far short of justifying the contents of that letter or the Defendant's conduct.

66. The very next day, the Defendant sent a similar letter to Mr Clarkson [**TB453**]. It included the following [***emphasis*** added],

> "TIME TO RESIGN
>
> Now the … case is over it is time for you to go. You do the people of Ashford no good at all.
>
> You are a Baffoon! [sic] Do all the young people in Ashford a service and commit suicide!
>
> You are the Council Leader and have resulted in young people being homeless when, in fact, it could all have been avoided.
>
> … …
>
> You are complete arsehole!

> You are more interested in putting the boot into myself than in helping young people be housed.
>
> You have not improved matters but made them worse for young people with a baby seeking a roof over their heads, for 6 months, over Christmas 2019.
>
> You are a bag of shit!"

67. That letter was sent to Mr Clarkson's home address, was personally abusive, sought to blame Mr Clarkson personally for the homelessness of young people in the Ashford area and suggested he commit suicide. Once again Mr Deakin sought to persuade me that that was legitimate criticism of a public official and represented a reasonable course of conduct within the terms of s.1(3)(c) of the 1997 Act. I reject those submissions.

68. The letter to Mr Clarkson's home address was swiftly followed by a letter to the Second Claimant [**TB458**], which was distributed to numerous other Councillors [**TB457**]. That letter set out that the Defendant wished to make a complaint about Mr Clarkson and asked for the contact details of Mrs Carol Vant, the "Independent Person" to whom complaints about Councillors could be made.

69. In the space of four days the Defendant had registered his intention to make a formal complaint about Mr Clarkson, had sent personally abusive correspondence to his home address and suggested that he commit suicide. Without hesitation I conclude that the Defendant's sole purpose was to cause maximum distress and anxiety to Mr Clarkson, who has confirmed the impact of the Defendant's correspondence upon himself and his wife [Clarkson W/S §13 @ **TB961**],

> "Mr Wilson's actions have personally caused me significant alarm and distress and have significantly impacted my quality of life both at home and in the workplace. My wife has been deeply upset at having read some of the offensive and abusive letters he has sent to my home, particularly ones calling for me to commit suicide, and I have had to ask her to stop opening the post in order to safeguard her from distress. I believe that my wife and I have had our ability to enjoy a quiet and peaceful life intolerably infringed and restricted. It is not acceptable that we can no longer behave as we would like within the walls of our own home."

70. On 12th October 2019, the Defendant wrote to Mr Clarkson at his home address, again calling for his resignation [**TB492**]. On the same day he wrote two letters to the Second Claimant: the first seeking an Independent Inquiry, this time focussing his attention on W, whom he accused of "*Gross Dereliction of Duty*" [**TB502**]; the second suggesting that she should resign [**TB511**].

71. On 3rd February 2020, the Defendant wrote to Mr Clarkson threatening another set of Judicial Review proceedings, which did not materialise [**TB554**]. He sent a similar letter to the Second Claimant on 6th February 2020 [**TB557**]. On the same day he also

sent a letter to Mr Clarkson accusing the Second Claimant of "*Gross Misconduct, Malfeasance or Misfeasance*" [**TB560**].

72. On 18th February 2020, Mr Mortimer wrote to the Defendant [**TB585**]. That letter informed him, amongst other things, that Mr Mortimer was replacing Ms Williams as the Defendants "*single point of contact*". The letter header advised the Defendant to ask for Ms Clarke when responding and gave her email address and direct line. That is of note when one comes to the Defendant's response dated 23rd May 2020, which appears at [**TB587**]. The Defendant wrote,

> "My Ref Michelin Lady
>
> … …
>
> Dear Terry,
>
> MICHELIN LADY
>
> This objectionable fat lady drafted your letter dated 18th February, 2020 copy attached!
>
> … …
>
> I think it must be the weight om her shoulders, or her chair preventing her from acting in the best interests of such tenants. I had such properties standing empty which could have taken these tenants this Christmas.
>
> I can only suggest that you terminate this lady's employment!"

73. Not only did he send that letter to Mr Mortimer, he forwarded it by email to 45 Councillors [**TB588**]. As previously stated, Ms Clarke's size or appearance have no relevance whatsoever to her capacity to do her job. They had no relevance to the contents of Mr Mortimer's letter dated 18th February 2020, or the Defendant's response. The Defendant's comments were gratuitously offensive. He has offered no explanation for them, whether by way of admissible evidence or submissions from Mr Deakin. In my judgment his sole purpose in forwarding his letter to the Councillors was to humiliate and cause distress to Ms Clarke. There can be no other explanation for including those comments or forwarding them to Councillors, the vast majority of whom had no dealings whatsoever with the Defendant or his disputes with ABC.

74. The next day, the Defendant wrote to Ms Clarke apparently in relation to proceedings between the Defendant [and/or his wife] and ABC [**TB595**]. That letter concluded with a suggestion that Ms Clarke/ABC "*consider settling this claim*." In my judgment it was no coincidence that the Defendant was sending abusive correspondence about Ms Clarke to Mr Mortimer and the ABC Councillors when Ms Clarke was representing ABC in litigation against the Defendant. That conclusion is strengthened by the fact that two days later, on 26th February 2020, the Defendant submitted a Freedom Of Information request to ABC seeking details of the number of Legal Executives employed by ABC [**TB597**]. That was evidently a precursor to pursuing further allegations about Ms Clarke's qualifications and/or standing to represent ABC in legal proceedings.

75. On 28th February 2020, Mr Mortimer responded to the Defendant's letter or 23rd February 2020 [**TB599**],

> "Your most recent letter to me dated 23 February regarding Ms Clarke is obnoxious. Would you please withdraw the personal remarks by return.
>
> In the meantime I will correspond with you only in relation to ongoing legal proceedings or legitimate queries or requests expressed in a business-like and civil tone.
>
> You should be aware that I am now in the process of considering what further formal steps should be taken in relation to your harassing letters about Council staff and members."

76. Rather than withdraw the remarks or offer an apology or even an explanation, on 8th March 2020, remarkably the Defendant elected to present a formal complaint against Ms Clarke [**TB604**],

> "I wish to make a Formal Complaint about Samantha Clarke who drafted a letter for Terry Mortimer dated 18th February, 2020 (copy attached).
>
> I find Samantha Clarke's reference to a **Plethora of unsolicited emails to Ashford Borough Council past and present** to be grossly offensive!"

77. It is difficult to imagine that the Defendant could conceivably have found Ms Clarke's reference to a "*plethora of unsolicited emails*" to be remotely offensive. That is to be contrasted with his own offensive remarks about her size and weight.

78. Having failed or refused to withdraw his previous remarks about Ms Clarke, the Defendant chose to make further personal comment about her. On 17th March 2020, he wrote to Mr Mortimer, again under his reference "**MICHELIN LADY**" [**TB612**],

> "The origin was a comment from my workman in reference to a large officer who accompanied W to visit 12 Bluebell Close. That same workman saw Ms Samantha Clarke in Canterbury Crown Court and referred to her as Michelin Lady.
>
> She was sitting in a row behind Sophie Gray and leaned forward to show her skirt rising up exposing legs, rump buttocks!
>
> I try to be helpful. The only comment I would make is that perhaps she should consider wearing ankle length dresses!
>
> Ms Clarke cannot be so naïve that she does not understand that men and women Tee Hee behind her back. If it spurs Ms Clarke to lose weight, then perhaps it is something she will thank me for!"

79. I have no doubt that the Defendant's suggestion that Ms Clarke might thank him for his remarks was wholly insincere. In fact, Ms Clarke described to the Second Claimant the impact of his letters upon her [C2 W/S §48.6 @ **TB121**],

> "Over the months and years in my dealings with Mr Fergus Wilson, I feel that he has gone on a deliberate journey to belittle me, diminish my abilities and capabilities with the attitude of a playground bully. He uses my appearance as his justification to relentlessly attack and humiliate. Further, he uses the fact that I work for a Local Authority to question my professional acumen and intellectual ability.
>
> I feel that he has attempted and continues to attempt to draw division between myself and close work colleagues by this continued harassment and relentless attacks on my character, appearance, professionalism and integrity.
>
> I am dealing with correspondence on a near daily basis that displays an unhealthy interest in how I look, how he thinks I should look, my professional status, ability and professionalism. I am constantly being subjected to spurious allegations in respect of professional misconduct, allegations which have been very publicly made and caused upset, not least because they prevent me from doing my job.
>
> I have in spite of the harassment that I have been subjected to, continued to undertake my role with the due diligence and integrity required and have always treated Mr Fergus Wilson with respect, but this is put under constant strain by the harassment that I have endured by one who I can only describe as exhibiting the most depraved hubris that I have ever had the professional misfortune to encounter.
>
> Having to endure such sustained professional dealings with Mr Fergus Wilson can do nothing but affect one's metal health and wellbeing, the knock on affect being that one's general health starts to suffer.
>
> I have suffered enough – this needs to stop forthwith."

80. In my judgment the Defendant's correspondence with and comments about Ms Clarke were intended to cause her embarrassment, humiliation and distress. That is precisely how they were understood by Ms Clarke and the effect that they had upon her. I accept Ms Clarke's description of the impact of the Defendant's conduct.

81. On 7th May 2020, the Defendant wrote to Mr Clarkson alleging that Ms Clarke did not enjoy rights of audience to appear in Court and had committed a breach of s.1 of the Legal Services Act 2007, which carries a maximum custodial sentence of two years [**TB655**].

82. On 12th May 2020, the Defendant wrote to Mr Mortimer on the subject of "**REPETITIVE PAPERWORK**" [**TB649**]. Whilst the title of the letter might suggest some insight on the part of the Defendant as to the volume of his own correspondence, the body of the letter showed otherwise,

> "You have sent to me the same Court Order three times on 6th May, 2020. What is the point you are trying to make?
>
> Is it that I do not get it first time? No doubt the SRA would take a dim view!
>
> You are an arsehole! You personally ruined ….'s life leaving her with a bill of over £12,000 which is [sic] never going to be able to pay off!
>
> You really should resign. You are an absolute disgrace!"

83. On 15th May 2020, he wrote to Mr Mortimer accusing Ms Clarke of passing herself off as a solicitor and committing a criminal offence of practising law which, according to the Defendant, she was not permitted to do [**TB657**]. He repeated that allegation in two further letters to Mr Clarkson dated 23rd May 2020 [**TB672 and TB681**]. In the second of those letters he stated,

> "I am intending to ask the High Court (Queens Bench) to consider whether the Decision of the High Court on 8th July, 2019 should be quashed.
>
> Before I do so I should give the Council the opportunity to consider the matter. Can you let me know within 14 days whether the Council agrees to the matter being Set Aside?
>
> The Grounds Are that Ms Samantha Clarke was actively involved in this litigation when she was not qualified to do so."

84. As before, no Judicial Review proceedings were ever issued by the Defendant.

85. The allegation against Ms Clarke was repeated again in a letter to Mr Mortimer dated 29th May 2020 [**TB705**].

86. On 12th June 2020, the Defendant wrote to Mr Mortimer under his own reference "**BIG SAM**" [**TB721**]. The main heading for his letter was "**SAMANTHA CLARKE**". His use of that reference was facile and insulting to Ms Clarke. He once again alleged that Ms Clarke appeared to have acted unlawfully and asked,

> "Please confirm what disciplinary action the Council intends to take."

87. The allegation was repeated in another letter from the Defendant to Mr Mortimer dated 15th June 2020 [**TB746**]. By letter dated 26th June 2020, he accused Ms Clarke of overcharging when claiming £217/hour as her charge-out rate. Once again he accused her of the criminal offence of practising law "*which is a reserved activity*" [**TB759**]. He concluded his letter with,

> "…. I hope not to have to take this to the High Court but be assured that I will if necessary. …"

88. It appears that on or about 19th June 2020, Mrs Wilson issued Judicial Review proceedings against ABC [**TB814**]. The substance of the application is not revealed in the papers before me but it was refused in writing by Mr Justice Freedman on 7th July 2020. Mrs Wilson was ordered to pay ABC's costs in the sum of £780 [**TB819**]. The Defendant and/or his wife requested an oral hearing to renew the application for permission [**TB815**]. I have no information as to the outcome of that application although it does not appear that permission was granted – had it been, I have no doubt that one or both parties would have informed me of that.

89. On 28th June 2020, the Defendant wrote two further letters to Mr Mortimer. The first is at [**TB776**] and relates to Ms Clarke,

> "Since writing yesterday, I have read up on Misconduct in Public Office. It does seem to me that there is a case to answer.
>
> If Samantha Clarke wishes to avoid this then let me know what remedy you propose by 10th July, 2020.
>
> It carries a custodial sentence and Samantha Clarke should be aware of it!
>
> Be clear if I do not hear from you by 19th July, 2020 I shall instruct Council to prepare papers to lay before Magistrates for a Private Prosecution.
>
> Further, I will refer the matter of overcharging to the High Court."

90. The second letter is at [**TB778**] and relates to Mr Mortimer personally,

> "I am asking Counsel to consider whether there is a case to be answered by yourself in relation to Misconduct in Public office in relation to my reporting of Cllr Paul Bartlett in your letter of 24th June 2020 …
>
> …. …
>
> I will be blunt. You are more concerned with putting the boot into myself than housing Romanian People whom the Council should be housing.
>
> In particular, I refer to a 27 year old Downs Syndrome Romanian Lady at …. You should hang your head in shame! I suggest you resign."

91. By letter dated 2nd July 2020, the Defendant claimed that he had given instructions for Counsel to draw up papers to be placed before Magistrates regarding Ms Clarke if he did not hear from Mr Mortimer before 19th July 2020 [**TB783**]. On 6th July 2020, he

wrote to Mr Mortimer accusing Ms Clarke of misconduct in public office [**TB784**]. That letter concluded with the following,

> "The Courts now have a backlog for years. To save us all time would you care to indicate how Ms Clarke intends to plead?
>
> Does she wish the easy way out?"

92. Mr Solomon QC invites me to conclude that, in the context of earlier letters to Mr Clarkson and Mr Clokie, this was an implied suggestion that Ms Clarke should commit suicide. Mr Deakin suggests that it is equally consistent with the suggestion that Ms Clarke should resign. On balance, I am not persuaded that it was a suggestion that Ms Clarke should take her own life. Whilst the Defendant had previously suggested that Mr Clokie and Mr Clarkson should take their own lives, his usual demand/threat was that people should resign. From the Defendant's perspective, resignation would have been an "*easy way out*" for Ms Clarke to avoid the threatened prosecution.

93. However, although less offensive than Mr Solomon's interpretation, Mr Deakin's interpretation, which I accept, does not assist the Defendant. It was another display of the Defendant threatening criminal proceedings against an ABC employee personally in order to (i) force her to resign, (ii) cause her distress and anxiety, and (iii) seek advantage for himself/his family in their disputes with ABC.

94. On 11th July 2020, the Defendant wrote to Mr Mortimer informing him that [**TB821**],

> "Papers have been laid before Magistrates for Samantha Clarke to issue a Private Prosecution for Misconduct in Public Office."

95. Mr Solomon QC informed me that ABC and Ms Clarke had not been served with any papers and were not aware of any proceedings having been issued. On instructions, Mr Deakin informed me that papers had been laid before magistrates as per the Defendant's letter but could not tell me which Magistrates Court or when. Had papers actually been laid before the Magistrates Court then I would have expected the Defendant to (i) exhibit them to his witness statement and/or disclose them for the purpose of these proceedings, (ii) to be able to identify the Court that they were presented to/issued at, and (iii) have taken some steps to pursue/advance proceedings. On balance I am not persuaded that the Defendant laid papers before the Magistrates Court as he claims.

96. On 12th July 2020, the Defendant presented a formal complain to the Solicitors Regulation Authority in relation to Mr Mortimer [**TB829**]. The letter bears Mrs Wilson's name but not her signature. I have no doubt that it was drafted and sent by the Defendant. The allegation was as follows,

> "I complain about Terry Mortimer, Solicitor of Ashford Borough Council who is "Double Accounting". Can I ask you to investigate?

> I was convicted in the Magistrates Court and lost my Appeal. I paid the fine of £10,000 and costs of £29,746.67 immediately to the Crown. The cheque was presented and cashed.
>
> Now Mr Mortimer is after it again. He is double accounting!"

97. A number of points emerge from that letter:

    i) ABC brought proceedings against Mrs Wilson in the Magistrates Court.

    ii) Those proceedings were well founded: Mrs Wilson was convicted and her conviction was upheld on appeal.

    iii) ABC's presentation of the prosecution and its response to the appeal were lawful and accepted by the magistrates and the Crown Court on appeal.

    iv) Mrs Wilson was ordered to pay ABC's costs of the proceedings [see **TB794**]. That can only reflect a conclusion that the proceedings were properly brought and appropriately pursued.

    v) As at 8th July 2020, Mrs Wilson had not paid those costs to ABC [see **TB794**].

    vi) Assuming that the letter of 12th July 2020 is accurate, Mrs Wilson paid the figure for costs to HMCTS but not to ABC. Whilst the fine was payable to HMCTS, the costs were payable to ABC.

    vii) Mr Mortimer was entirely correct and justified to chase payment of ABC's costs.

98. In contrast, the Defendant's allegations against Mr Mortimer and the referral to the SRA were, in my judgment, spurious.

99. On 13th July 2020, the Defendant wrote to Mr Mortimer making a further complaint against Ms Clarke, this time alleging that [**TB929**],

> "She lied to the Court and gave Counsel incorrect instructions. As a result of her lies many would be tenants, with small children, who would have been housed are not. Big Sam has to live with that! Who is the most important to Ashford, Fergus Wilson or Big Sam?"

100. Once again, the Defendant used the reference "**BIG SAM**".

101. On 17th July 2020, the Defendant presented a "**FORMAL COMPLAINT**" about ABC to the Local Government Ombudsman [**TB947**].

102. These proceedings were issued on 20th July 2020 [**TB007**].

The interim injunction

103. On 27th July 2020, HHJ Auerbach, sitting as a Judge of the High Court, issued an interim injunction [**TB0077**]. The Claimants were represented by Mr Solomon QC

and Mr Davis. The Defendant appeared in person. The injunction restrained the Defendant from pursuing a course of conduct which amounted to harassment withing the meaning of the 1997 Act. It also included the following,

> "4. In particular the Defendant be restrained from doing, causing, permitting, encouraging or assisting any of the following:
>
> …. …
>
> 4.3 Knowingly making:
>
> 4.3.1 any communication to any Protected Person whether orally, by telephone, in writing, by facsimile, by email or other electronic means, which shall include for the avoidance of doubt any emails, texts, communications through social media or telephone calls to a Protected Person(s);
>
> ….
>
> **SAVE THAT** nothing in this Order shall prevent the Defendant from communicating in writing, and in a manner which does not harass the Protected Persons, with Mr Terry Mortimer of the First Claimant (or any other person designated in writing buy the First Claimant to the Defendant) by post …. or email
>
> **AND SAVE THAT** nothing in this Order shall prevent the Defendant from communicating in respect of this litigation, in writing, and in a manner which does not harass the Protected Persons, with Mr Terry Mortimer of the First Claimant (or any other person designated in writing buy the First Claimant to the Defendant) by post …. or email …."

104. "**Protected Persons**" were identified and defined as (i) the Second Claimant, and (ii) the current and former officers, employees, councillors and agents of the First Claimant.

The Defendant's conduct following the interim injunction

105. On 1st August 2020, the Defendant sent an email to W. W is an employee of the First Claimant and therefore a Protected Person within the terms of the interim injunction. That was a breach of the injunction.

The Defendant's conduct since the trial

106. On 8th March 2021, I received by email a witness statement from Mr Mortimer dated 23rd February 2021. That witness statement describes and exhibits correspondence to/from the Defendant. It is said that the correspondence constitutes further harassment by the Defendant and this conduct will continue unless restrained by an injunction.

107. On 10th February 2021, the Defendant emailed Mr Watts. He was responding to an email sent to him earlier that day by Mr Watts. Mr Watts had emailed the Defendant to inform him [and his wife] that ABC had been notified that one of their properties had no heating. Mr Watts' email included the following [**Exh TM5/009**],

> "Please can you notify Ashford Borough Council as a matter of urgency what your intentions are to address this problem. If you fail to rectify this situation the council will be considering further action."

108. Mr Watts' email did not make it clear that the Defendant should not reply to him or that he should only respond to Mr Mortimer. There was no reference to the terms of the injunction. In the circumstances, although technically a breach of the terms of the interim injunction, I have some sympathy with the Defendant replying to Mr Watts as Mr Watts had emailed him asking for an urgent response.

109. Similarly, the Defendant's follow up email to Mr Watts on 11th February 2021 [**Exh TM5/114**] was a short email confirming that the heating problem had been addressed. Although the interim injunction prohibited the Defendant sending an email to Mr Watts, the Defendant was responding to an urgent query that Mr Watts had raised him. Again, I have some sympathy with the Defendant sending that email to Mr Watts.

110. Both emails to Mr Watts were copied to Mr Mortimer, just as Mr Watts' original email had been copied to Mr Mortimer.

111. I do not regard the emails sent by the Defendant to Mr Watts as constituting acts of harassment: they were simply replies to queries raised by Mr Watts.

112. Much of the exhibited correspondence relates to the Defendant's application for permission to appeal an earlier order of Mr Justice Spencer. Correspondence dealing with that issue does not, in my judgment, constitute harassment. It is all addressed to Mr Mortimer. It does not contravene the interim injunction.

113. The Defendant also sent to Mr Mortimer a printed download of public "Comments" on the Mail Online website which had reported on these proceedings [**Exh TM5/071-113**]. Many of the comments were critical of the Defendant. In my judgment, sending that article and those comments does not constitute an act of harassment.

114. There is, however, correspondence which represents a continuation of the Defendant's earlier approach of sending emails and attachments to the First Claimant which have no relevance to the First Claimant. For example, he sent copies of numerous emails between himself and Maidstone Borough Council and Tonbridge and Malling Borough Council [**Exh TM5/013-033**]. Sending large volumes of documentation which does not relate to properties within the Ashford area and which have no relevance to or bearing upon the First Claimant's dealings with the Defendant is, in my judgment, unreasonable and oppressive behaviour, designed to frustrate or annoy the First Claimant and/or Mr Mortimer.

The legislation

115. Section 1 of the **Protection From Harassment Act 1997** provides as follows,

> "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.
>
> (2) For the purposes of this section or section 2A(2)(c), the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.
>
> (3) Subsection (1) or (1A) does not apply to a course of conduct if the person who pursued it shows—
>
> (a) that it was pursued for the purpose of preventing or detecting crime,
>
> (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or
>
> (c) that in the particular circumstances the pursuit of the course of conduct was reasonable."

116. Section 2 of the 1997 Act provides,

> "***2 Offence of harassment.***
>
> *(1) A person who pursues a course of conduct in breach of section 1(1) or (1A) is guilty of an offence.*
>
> *(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.*"

117. Section 3 of the 1997 Act provides,

> "***3 Civil remedy.***
>
> *(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.*"

118. Section 7 of the 1997 Act provides,

> "7 Interpretation of this group of sections.
>
> (1) This section applies for the interpretation of sections 1 to 5A.
>
> (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."

The authorities

119. There is no statutory definition of harassment. As Baroness Hale observed in ***Majrowski v Guy's and Thomas's NHS Trust* [2006] ICR 1199**, the definition "*was left deliberately wide and open-ended*" [§66].

120. For conduct to amount to harassment it must attain a certain level of severity. Mere annoyance or irritation is insufficient to amount to harassment; what must be shown is

conduct which crosses "*the boundary from the regrettable to the unacceptable*" [Lord Nicholls in **Majrowski** §30]. One has to put up with a certain amount of annoyance in everyday life. However, where conduct goes beyond annoyance and irritation and is oppressive or genuinely offensive then that may amount to harassment such that the provisions of the 1997 Act apply.

121. A course of conduct may amount to harassment even where the defendant's initial conduct was legitimate and lawful. As Lord Justice Pill stated in ***DPP v Hardy* [2008] All ER (D) 315 (Oct)** [§21],

> "Conduct which may begin with what is or may be a legitimate inquiry may become harassment within the meaning of s.1 of the 1997 by reason of the manner of its being pursued and its persistence. …."

122. By way of example, in ***Roberts v Bank of Scotland PLC* [2013] All ER (D) 88 (Jun)**, the Court of Appeal held that the defendant bank was guilty of harassment where bank staff made 547 calls or attempted calls to an overdrawn customer over a 14 month period. It was perfectly legitimate and appropriate for the bank to write to the claimant and to telephone her initially. Indeed, any creditor would be expected to make contact before embarking upon formal legal proceedings. However, that did not entitle the bank to bombard the claimant with "*endless and repeated telephone calls*". All of the circumstances have to be considered and the conduct complained of has to be considered in context. The content and frequency of the phone calls in ***Roberts*** were such that what may have started out as legitimate customer contact progressed to be conduct amounting to harassment.

123. I note that in ***Roberts***, Lord Justice Jackson observed [§48],

> "It is not a defence to intimidation that the culprit couched the intimidatory words in polite language, if that is how one characterises extracts of the kind which I have just read out."

124. It is open to question whether the claimant must establish that alarm and distress has in fact been caused by the conduct alleged [see ***Royal Institute of Chartered Surveyors and Another v. Rushton* [2017] EWCA Civ 1995** @ §7-8]. For the purpose of these proceedings I am prepared to proceed on the basis that it does.

125. The authorities recognise the importance of freedom of speech and the right to freedom of speech conferred by Article 10 of the **European Convention on Human Rights**. In. ***Royal Institute of Chartered Surveyors and Another v. Rushton***, Lord Justice Lewison held,

> "In this jurisdiction, freedom of speech conferred by Article 10 of the European Convention on Human Rights has to be balanced with the respect for private life conferred by Article eight of the same Convention. Article 10 expressly recognises that freedom of speech can be curtailed in so far as is necessary in a democratic society in order to protect the rights of others. Parliament has decided that one such right is the right to be free of harassment. There are many cases, both at first instance and

> in this court, in which speech not amounting to incitement of criminal conduct has been held to amount to harassment. Bombarding a former customer with gas bills and threats to cut off the supply, as in Ferguson v British Gas Ltd [2009] EWCA Civ 46, or bombarding an overdrawn bank customer with phone calls, as in Roberts v Bank of Scotland [2013] EWCA 882, are two examples."

126. It is informative to consider the first instance findings of Mrs Justice May in ***Royal Institute of Chartered Surveyors and Another v. Rushton*** **[2017] All ER (D) 212** which were upheld on appeal and which gave rise to her finding that Mr Rushton was guilty of harassment. In that case, Mr Rushton embarked upon a "*vituperous and persistent correspondence with RICS*" complaining about a charity which had been set up to help RICS members and their families. Mr Rushton was a member of RICS. The charity had provided financial assistance to his wife when they were in the process of divorcing. Mr Rushton "*became incensed at this charitable provision made for his wife*".

127. Mrs Justice May held,

> "60. Having considered the interplay between the Act and Article 10, and taken in the context of this case, I have concluded as follows: In my view, taking into account the content and quantity of communications and publications emanating from Mr. Rushton's desk in France, his activities do cross the boundary into harassment. One or two of the kinds of emails he has written to members of staff, who send him perfectly reasonable responses to an initial enquiry, would not cross the line. They could be dismissed as the ravings of a disappointed man but the remorseless repetition and insistence of the messages and posts making ever wilder allegations of dishonesty, corruption, cover-up and conspiracy amounts, in my view, to more.
>
> 61. The position is similar to that in the cases of Roberts v. The Bank of Scotland [2013] EWCA Civ 882, where there were repeated calls to a debtor, amounting to harassment; the case of DPP v. Hardy [2008] EWHC 2874 (Admin), involving repeated calls pursuing a complaint; and the case of Nursing & Midwifery Council v. Nowak [2014] EWHC 2945 (QB), a nurse who had been conducting a campaign of emails and posts against the Nursing Midwifery Council.
>
> 62. Mr. Rushton may originally, in 2011 to 2013, have had proper grounds to feel aggrieved and sufficient reason for complaint. The terms in which he complained were, from the outset, aggressive and offensive, but that factor alone would probably not have justified an injunction then, particularly not in the context of his successful appeal. However, it is the quality of relentless persistence of wild allegation against anyone at RICS who enters his orbit, that transforms what

> started as a justifiable grievance into abuse to the point of harassment. Any contact, however anodyne, by anyone at RICS appears to inspire reinvigorated rage on the part of Mr. Rushton, combined with renewed attacks against a now wider class of persons at RICS. Moreover, he seeks such contact and presses for it if he is rebuffed or, to use Mr. Beaumont's phrase, "put into the spam folder". If his emails are not answered, he simply publishes them online with abusive comment directed against existing names, adding to that list the persons who have not answered.
>
> 63. Mr. Rushton is indiscriminate in whom he names and in what he says about them. Any justifiable complaint arising out of disciplinary proceedings in 2011 has long since passed and, in any event, the things that Mr. Rushton now says and writes to and about RICS officers and employees are not so focussed. Nothing stops him or moderates his approach. Indeed, he several times has said that he will continue, "whilst there is breath in my body".
>
> 64. Mr. Beaumont says that what Mr. Rushton writes now is mixed with legitimate complaint or comment. I disagree. There is no possible justification for repeatedly calling RICS Presidents past or present, heads of departments, in-house lawyers, external solicitors, corrupt and dishonest and calling their integrity into question. There is not one iota of evidence produced by Mr. Rushton to support such allegations nor does he even attempt to do so. He does not try to bring himself within any of the defences afforded by section 1(3). The stance he takes in his witness statement is that he is entitled to say what he likes pursuant to his right under Article 10.
>
> 65. However, with rights, come responsibilities. In my view, the correspondence and postings have passed the bounds of that which is acceptable, albeit nasty. Even in the absence of the anonymised schedule of reactions, I would have inferred from the relentlessly indiscriminate targeting of persons at RICS and the repetition of very serious allegations made against professional people, that alarm and distress had been and was likely to be caused. Further, that any reasonable person would think that the conduct amount to or involved harassment."

128. In my judgment, those observations and findings are apposite to the circumstances of this case.

129. I also note the observations of Lord Justice Rix in ***Iqbal v. Dean Manson Solicitors*** **[2011] IRLR 428**. In that case the conduct complained of consisted of three letters written by the defendant to the claimant, a solicitor advocate, where they were each acting for opposing parties in civil proceedings. The first letter questioned the claimant's integrity and whether it was permissible for him to continue to act for his

client. That letter included a threat that it would be presented to the County Court "*if needed*". The second letter alleged "*serious conflict and conduct issues*" on the part of the claimant. The third letter alleged conduct "*unbefitting of the legal profession*". The second and third letters were copied to the County Court.

130. The Court of Appeal held that each of the letters was capable of being described as harassment. Of particular note were Lord Justice Rix's observations as to the seriousness of allegations made against legal professionals,

> "41. The judge was perhaps concerned, and rightly so, not to set up every complaint between lawyers as to the conduct of litigation as arguably a matter of harassment within the Act. It must be rare indeed that such complaints, even if in the heat of battle they go too far, could arguably fall foul of the Act. However, in my judgment, these three letters, particularly when viewed in the light of each other, and especially the last two, arguably amount to a deliberate attack on the professional and personal integrity of Mr Iqbal, in an attempt to pressurise him, by his exposure to his client and/or the court, into declining to act for Mr Butt or else into advising Mr Butt to meet the demands of Dean Manson. It cannot, at any rate arguably, assist Dean Manson that such letters were written in the context of litigation and in an attempt to improve their position in that litigation, or in an attempt to raise even serious and proper questions as to possible conflicts of interest. Arguably, the letters go way beyond such concerns. Indeed, Mr Brown conceded in argument that if the above was, even arguably, the view which could be taken of these letters, as distinct from the view of them which he submitted was the correct one, namely that they were simply and solely raising legitimate queries as to conflicts of interest between Mr Iqbal and his client and as to breach of confidence between Mr Iqbal and Dean Manson, then Mr Iqbal's claim could not be struck out, at any rate subject to issue (iv).
>
> 42. In sum, in my judgment, each of these letters does, when considered side by side, arguably evidence a campaign of harassment against Mr Iqbal. They are arguably capable of causing alarm or distress. They are arguably unreasonable, or oppressive and unreasonable, or oppressive and unacceptable, or genuinely offensive and unacceptable. Arguably, they go beyond annoyances or irritations, and beyond the ordinary banter and badinage of life. Arguably, the conduct alleged is of a gravity which could be characterised as criminal. **A professional man's integrity is the lifeblood of his vocation. If it is deliberately and wrongly attacked, whether out of personal self-interest or malice, a potential claim lies under the Act.**" [**emphasis** added]

The Claimants' Case

131. As set out, the Claimants allege that the Defendant has engaged in [POC §8 @ **TB11**],

> "…. … an intensive campaign of harassment and intimidation against and/or about ABC and its employees, officers, councillors and agents. The campaign has broadly taken the form of repeated accusations of wrongdoing, dishonesty and incompetence together with personal attacks on specific individuals. The Defendant's conduct has taken six principle forms:
>
> 8.1 Unsolicited and / or offensive emails to ABC employees, officers and counsellors;
>
> 8.2 Unsolicited and / or offensive letters to ABC employees, officers and counsellors;
>
> 8.3 Unsolicited phone calls to ABC employees, officers and counsellors;
>
> 8.4 Letters and Emails to third parties repeating the harassing or offensive comments about ABC, its employees, officer and counsellors;
>
> 8.5 Spurious formal complaints both to ABC's internal legal department and external regulators;
>
> 8.6 High volumes of correspondence."

132. Particulars of that harassment were set out in a Schedule to the Particulars of Claim, starting at [**TB15**].

133. In his Skeleton Argument and oral submissions, Mr Solomon QC took me through the correspondence and highlighted those passages which he said supported the Claimants' case. He addressed six topics which he said demonstrated that the Defendant was guilty of harassing the Claimants, ABC Councillors, Officers, staff and others as alleged:

i) the number and frequency of communications from the Defendant;

ii) the Defendant's suggestions that Councillors and staff should take their own lives;

iii) his baseless allegations of criminality and dishonesty;

iv) his grossly offensive comments about ABC Councillors, Officers and employees;

v) that he sought to blame individuals for the suffering of his tenants;

vi) his repeated unfounded aggressive and/or offensive complaints about individuals.

134. Mr Solomon QC submitted that the Defendant had engaged in a course of conduct which contravened s.1(1) and s.1(1A) of the 1997 Act and that there was no reasonable justification for his conduct within the terms of s.1(3). He further submitted that a final injunction was required in order to prevent the Defendant from continuing his campaign of harassment.

135. Mr Solomon QC emphasised that the Claimants did not seek an injunction that would prevent the Defendant from communicating with ABC completely. It was accepted that in the future he might have legitimate reason to write to ABC. In those circumstances it was suggested that the injunction should provide for the Defendant to only communicate with a named point of contact. Mr Solomon QC also emphasised that the Claimants were not seeking any financial compensation: the sole purpose of the proceedings was to stop the harassment and to control communications from the Defendant in the future.

136. He argued that the final injunction should be wider than the interim injunction and should include a provision which required the Defendant to seek the permission of a High Court Judge before issuing any private prosecution against ABC, its Councillors, Officers or staff. He submitted that the High Court has jurisdiction to make such an order under its inherent jurisdiction in that it enjoys the power to regulate proceedings in inferior Courts which would include the Magistrates' Court. At my request he provided a draft form of words for the proposed extension to the injunction, namely,

> "The Defendant is restrained from laying an information before a Justice of the Peace under Section 1 of the Magistrates Court Act 1980 or otherwise seeking to commence proceedings in the Magistrates' Court against a Protected Person(s) without first obtaining the permission of the applications Judge in the Queen's Bench Division."

137. In support of that final submission Mr Solomon QC relied upon ***Nursing & Midwifery Council and another v. Harold*** **[No.2] [2016] IRLR 497**.

The Defendant's Response

138. Mr Deakin submitted that the Defendant's correspondence fell into four broad categories:

i) First category - Correspondence to an individual where the Defendant raises a legitimate complaint about that individual;

ii) Second category - Correspondence to an individual, where the Defendant raises a legitimate complaint about another individual/s;

iii) Third category - Correspondence where the Defendant seeks to inform/lobby elected officials;

iv) Fourth category - Communications with external individuals/agents where the Defendant shares a legitimate complaint regarding the First Claimant, its employees, officers, councillors, and/or agents.

139. As to the first category, he submitted that the correspondence "*cannot be considered harassment since the complaint raised was genuine in nature*." [D Skeleton §6]. He also argued that in the circumstances the course of conduct pursued by the Defendant was reasonable and therefore came within defence under s.1(3)(c) of the 1997 Act. He argued that the test under s.1(3)(c) was not a test of reasonableness but was a test of rationality. In that regard he relied upon the judgment of Lord Sumption in ***Hayes v Willoughby* [2013] 1 WLR 935**, a case dealing with s.§1(3)(a) not s.1(3)(c). He submitted the Defendant's complaints, "*when viewed from the standard of rationality, were genuine.*" [D Skeleton §8].

140. As to the second category, Mr Deakin submitted, again, that it could not be considered harassment. His first reason was that intended recipient would not "*experience*" the oppressive/unreasonable/unacceptable conduct as they were not the subject of the complaint. His second reason was that raising a genuine complaint fell within the terms of s.1(3)(c) of the 1997 Act.

141. As to the third category, he submitted that the Defendant "*has a right, as an individual who pays council tax to the First Claimant, to lobby elected officials within the Council.*" [D Skeleton §10].

142. As to the fourth category, he submitted that these cannot be relied upon as being harassment against the Claimants given that the communications were not addressed to the Claimants or agents/employees/Councillors of ABC.

143. In his oral submissions, Mr Deakin volunteered that the contents of some of the Defendant's correspondence might be regarded as "*abhorrent*", specifically the suggestion that Councillors should commit suicide. However, as set out above, he sought to argue that it did not amount to harassment as those holding public office had to accept public criticism, no matter how offensive the contents of that criticism.

Findings of fact

144. I find as a fact that the Defendant sent all of the correspondence attributed to him and produced before me.

145. On the totality of the evidence I also make the following findings of fact:

i) The Defendant engaged in a campaign of repetitive, frequent, oppressive and offensive correspondence with the Claimants. On occasion he has sent multiple letters in a day or over a short period of days. He has continued with correspondence seeking to resurrect complaints and events from many years earlier. The contents of his letters are repetitive and ignore reasoned responses provided by the Claimants.

ii) The Defendant's correspondence has included frequent personal insults directed at ABC Councillors and employees. Ms Clarke and W have been the most obvious targets.

iii) The Defendant's correspondence includes:

a) two suggestions that an ABC Councillor should commit suicide;

b) numerous examples of personally offensive comments about appearance, weight, intelligence and capability;

c) unfounded accusations of criminal conduct including allegations of misfeasance in public office, perverting the course of justice, perjury and conducting restricted legal activities without lawful authority to do so;

d) unfounded allegations of professional misconduct;

e) frequent hollow threats of reporting an individual to CILEX or some other regulator;

f) frequent hollow threats of judicial review or other legal proceedings;

g) requests that ABC Councillors or employees should resign or should be dismissed.

iv) The volume of correspondence was at the level described by the Second Claimant, namely 454 pieces between February 2016 and July 2020.

v) The Defendant elected to ignore the Claimants' reasonable, proportionate and clearly explained proposals/requests to adopt a single point of contact system.

vi) The Defendant elected to ignore the Claimants' reasonable, proportionate and clearly explained proposals/requests to adopt an email divert system.

vii) The Defendant sent multiple emails to many Councillors in the full knowledge that those Councillors had no responsibility for/involvement in the issue he was seeking to raise. There was no legitimate or reasonable justification for sending those emails to those Councillors.

viii) The Defendant's intention when suggesting that a Councillor or employee should commit suicide was to cause maximum distress, offence and upset.

ix) The Defendant's intention when sending personally offensive/insulting correspondence was to cause distress, offence, humiliation and upset to the named individual.

x) The Defendant's intention when requesting that a Councillor or employee should resign or should be dismissed was to cause distress and upset to the named individual.

xi) The Defendant's intentions when threatening criminal prosecution of a named individual was (i) to cause distress and upset to the named individual, (ii) to pressure ABC and/or the named individual into doing what he wanted them to do, and (iii) to influence ABC to take action/not take action to the Defendant's advantage.

xii) The Defendant's intention when making hollow threats of judicial review or other legal proceedings was (i) to cause distress and upset to the named individual, (ii) to pressure ABC and/or the named individual into doing what he wanted them to do, and (iii) to influence ABC to take action/not take action to the Defendant's advantage.

xiii) In addition to the above, when sending his emails and letters to the Claimants the Defendant was also seeking to frustrate and to occupy ABC Councillors and employees with extensive and repetitive correspondence.

xiv) If and insofar as the Defendant had a legitimate concern or complaint which he wished to raise, that concern or complaint was properly addressed by the Claimants. Any such concern or complaint did not justify the volume, frequency, tone or content of the Defendant's correspondence.

xv) Whilst the Defendant's correspondence may have commenced with legitimate queries as to steps taken by ABC, its Officers or staff, those queries were superseded by the repetitive, offensive and unacceptable correspondence described.

xvi) On a number of occasions, the Claimants clearly and expressly informed the Defendant that they considered that his correspondence and conduct (i) was causing alarm and distress to ABC employees, and (ii) amounted to harassment. Notwithstanding those warnings and warnings that the First Claimant would be forced to take legal action, the Defendant deliberately persisted with, and on occasions escalated, his correspondence and conduct.

Does the Defendant's conduct amount to harassment?

146. In the light of my findings I have no hesitation in finding that the Defendant's conduct was harassment in breach of section 1 of the 1997 Act.

147. The Defendant's conduct repeatedly went far beyond merely irritating and annoying. It was deliberately offensive. It included numerous unfounded allegations of professional misconduct and criminal conduct. It included multiple threats of criminal or other legal proceedings which were never pursued. The Defendant's conduct amounted to harassment within the terms of s.1(1)(a).

148. The Defendant knew or ought to have known that his conduct amounted to harassment [see s.1(1)(b)]. He had been informed on numerous occasions by the Claimants that it amounted to harassment. Any reasonable person in possession of the same information would recognise that the Defendant's conduct amounted to harassment [see s.1(2)].

149. The Claimant's conduct was intended to cause alarm, upset and distress. It did cause alarm, upset and distress.

150. A significant proportion of the Defendant's correspondence was intended to persuade the Claimants [and the officers/employees they represent in these proceedings] not to do something they were entitled to do or to do something they were not under an obligation to do [s.1(1A)(c)]. The most obvious and significant examples are (i) his

attempts to have Councillors or council employees disciplined or sacked on the basis of unfounded allegations, and (ii) his attempts to pressure the First Claimant into abandoning/withdrawing legal proceedings against him/his wife.

151. The Defendant argues that in the particular circumstances his pursuit of the course of conduct was reasonable. He therefore argues that the conduct does not come within subsections (1) or (1A) of section 1 and therefore does not amount to harassment. I reject that argument.

152. First, I reject Mr Deakin's argument that the test under s.1(3)(c) is a test of "*rationality*" as opposed to "*reasonableness*". His reliance upon the observations of Lord Sumption in ***Hayes v Willoughby*** is completely misplaced. Those observations were made in relation to s.1(3)(a), which provides that conduct does not amount to harassment if pursued "*for the purpose of preventing or detecting crime*". A defendant's purpose in those circumstances is his subjective state of mind. It is therefore completely understandable that in order to make out the s.1(3)(a) defence a defendant must show that his belief that he was preventing or detecting crime was rational, not necessarily reasonable. Section 1(3)(a) does not refer anywhere to a test of reasonableness. The same cannot be said of s.1(3)(c), which specifically provides that the defendant must show that pursuit of the course of conduct "*was reasonable.*" The suggestion that s.1(3)(c) is governed by a test of rationality and not reasonableness is in complete contradiction to the words of the Act.

153. I also reject Mr Deakin's argument that the Defendant's complaints and correspondence were simply the reflection of genuine and legitimate complaints and cannot amount to harassment. The authorities make it clear that that is not a sound proposition as a matter of law: conduct which may commence as lawful and legitimate may become harassing as a result of its frequency and content [see ***DPP v Hardy*** and ***Roberts v Bank of Scotland PLC***]. Even if I accept that the Defendant's correspondence and conduct initially arose of out a legitimate grievance, the frequency and content of his subsequent correspondence, for the reasons already given, was oppressive, offensive and unacceptable. In my view it amounted to harassment.

154. I reject the suggestion that the Defendant believed that he was pursuing a legitimate objective or that he believed that he was passing legitimate comment on elected officials. Many of those who were the subject of the Defendant's offensive comments and threats were not elected officials: they were public sector employees seeking to do the job that they were paid to do. In any event, his comments and his correspondence went far beyond legitimate comment. They were gratuitously offensive, intimidating and threatening. They were not "*legitimate lobbying*" of public officials.

155. I also reject Mr Deakin's argument that correspondence sent to person A complaining about/making allegations against person B cannot amount to harassment of person B:

i) The 1997 Act does not limit or specify the type of conduct which can amount to harassment.

ii) The only definition of "*Conduct*" is that it includes speech [see s.7(5)].

iii) The 1997 Act provides that "*References to harassing a person include alarming the person or causing the person distress.*" [s.7(2)].

iv) A campaign of writing to an employer [person A] to complain about/make allegations against an employee [person B] is precisely the sort of conduct which could cause distress to that employee. There is no reason to exclude it from conduct which could amount to harassment within the terms of the Act.

v) In ***Levi and another v Bates and others*** **[2016] 1 All ER 625** the Court of Appeal held,

> "It was not a requirement of the statutory tort of harassment that the claimant be the (or even a) target of the perpetrator's conduct. Provided that it was targeted at someone, the conduct complained of need not be targeted at the claimant, if he or she was foreseeably likely to be directly alarmed or distressed by it. However, the ability to bring a harassment claim extended beyond the targeted individual only to those other persons who were foreseeably, and directly, harmed by the course of targeted conduct of which complaint was made, to the extent that they could properly be described as victims of it."

vi) As observed by Baroness Hale in ***Majrowski*** [§66],

> "All sorts of conduct may amount to harassment."

156. In my judgment, the Defendant's intention was to cause alarm or distress to those individuals he complained about and against whom he made serious but unfounded allegations. Those individuals were the actual target of his conduct. In any event, it was foreseeable, and the Defendant foresaw, that they would probably be caused alarm and distress as a result of his conduct. In my judgment it makes no difference that the manner in which he sought to cause that alarm and distress was by making unfounded complaints and allegations to third parties.

Relief

157. Mr Deakin's submissions were limited to the issue of whether the Claimants had made out their case under the 1997 Act. He did not argue that I should not go on to make a permanent injunction in the event that I was satisfied that the Defendant was guilty of harassment. He was right not to do so. It is self-evident that the Defendant will continue his campaign of harassment unless restrained by an injunction. The interim injunction ordered by HHJ Auerbach has seen a reduction in but no cessation of correspondence from the Claimant. I am satisfied that a permanent injunction is required to prevent further acts of harassment.

158. Mr Deakin did not address me as to the terms of the injunction.

159. I am satisfied that the interim injunction should be continued and converted to a permanent injunction.

160. However, I am not persuaded that I should extend the terms of the injunction to require the Claimant to seek the permission of a High Court Judge before "*laying an*

information before a Justice of the Peace under Section 1 of the Magistrates' Court Act 1980 or otherwise seeking to commence proceedings in the Magistrates' Court". My reasons are as follows:

i) There is no evidence that the Defendant has abused the process of the Magistrates' Court in order to commence vexatious proceedings.

ii) I have found as a fact that the Defendant has not commenced any proceedings against the Claimants or those that they represent in the Magistrates' Court.

iii) I have not made a finding [and have no evidence to allow me to make a finding] that the Defendant has used/abused the Magistrates' Courts process to harass the Claimants.

iv) There is no history of the Defendant issuing vexatious or abusive Court proceedings.

v) I am not satisfied on the evidence before me that the Defendant is likely to use/abuse the Magistrates' Courts process to harass the Claimants.

vi) Commencing or pursuing proceedings in the Magistrates' Court **to harass the Claimants** would be a breach of the existing injunction which I propose to make a permanent injunction. The extension which Mr Solomon QC seeks is not required to restrain/prevent the Defendant from committing acts of harassment via Magistrates Court proceedings.

vii) If the Defendant commenced proceedings in the Magistrates' Court and those proceedings amounted to harassment of the Claimants then the Claimants could commence proceedings for breach of the injunction.

viii) The issuing of a summons in the Magistrates' Court is a judicial function not an administrative act [see ***R v Brentford Justices ex parte Catlin* [1975] QB 455**]. The Magistrate or Magistrate's Clerk has the power to refuse to issue a summons if to issue a summons would be vexatious, improper or an abuse of the Magistrates Court process [see ***R v West London Stipendiary Magistrate ex parte Klahn* [1979] 1 WLR 933**].

ix) Whilst the High Court's inherent jurisdiction extends to restraining a party from commencing proceedings in an inferior Court, which would include the Magistrates' Court, that jurisdiction is to be exercised consistently with the principles and practices set out in Practice Direction 3C of the Civil Procedure Rules, the Practice Direction dealing with Civil Restraint Orders [see Hamblen J in in ***NMC and another v Harold***].

x) The Claimants seek, in effect, a General Civil Restraint Order ["**a GCRO**"] restricting the Defendant's ability to lay *any* information relating to *any* issue in the Magistrates' Courts. Such an order can only be made by a Judge of the Court of Appeal, "*a judge of the High Court*", or a Designated Civil Judge or their appointed deputy in the County Court [see CPR PD 3C §4.1]. Assuming that a Deputy High Court Judge qualifies as a judge of the High Court for this purpose, there are further requirements which must be satisfied before the

discretionary power to issue an GCRO is engaged. Those include, *inter alia*, that it has to be shown that the Defendant "*persists in issuing claims or making applications which are totally without merit*" [see CPR PD 3C §4.1]. It must also be shown that an Extended Civil Restrain Order ["**an ECRO**"] would not be sufficient.

xi) As held by Mrs Justice Elisabeth Laing in ***NMC and another v Harold*** **[2016] EWHC 1078 (QB)**, the Court must first be satisfied that the Defendant has persisted in issuing claims and making applications which are totally without merit [§108].

xii) The Defendant has made two applications in these proceedings which were totally without merit – see: (i) the Order and Judgment of Master Cook [**TB88** and **TB1030**]; and (ii) the judgment of Mr Justice Martin Spencer [**ABC v. Wilson [2021] EWHC 419 (QB)**]. He has made a number of other applications that have not been certified as totally without merit [see Orders @ [**AB1 and AB4**]. Indeed, one of those applications was successful.

xiii) Two totally without merit application meets the threshold, just, for the Court to issue an LCRO. However, "*persistence*" in respect of GCROs has been held to require at least three or more such claims or applications [see **Ladbrokes Coral Group Ltd v Terence Edwards [2018] EWHC 1463 (QB)** §4]. That threshold has not been met in this case.

xiv) Further, given the seriousness and implications of issuing a GCRO which restricts a litigant's access to the Courts, such an application should be made properly, on notice, setting out clearly the precise terms of the order sought and providing evidence addressing the specific requirements of CPR PD 3C.

xv) The Claimants' "*reques*t" for this order was included for the first time in their Skeleton Argument served shortly before trial. It was not included in the relief sought in the Particulars of Claim and was made in the face of the Court without issuing a Notice of Application. That approach falls far short of the procedure which should be followed when seeking such a draconian order.

161. For all of those reasons I refuse the Claimants' application to extend the terms of the injunction to prevent the Defendant from laying an information or otherwise seeking to commence proceedings in the Magistrates' Court without permission of a High Court Judge.

Next steps

162. In the light of my decision the terms of the interim injunction are to be converted to a final injunction.

163. The parties are to file and serve written submissions [limited to 10 pages] in relation to all costs issues by 4:00pm on 29th September 2021.