Neutral Citation Number:

Case No: HQ14D04882

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/05/2016

Before :

MR JUSTICE WARBY

- -

Between :

(1) SIR KEVIN BARRON MP **(2) RT HON JOHN HEALEY MP** **(3) SARAH CHAMPION**	**Claimants**
- and –	
JANE COLLINS MEP	**Defendant**

- -
- -

Gavin Millar QC and Sara Mansoori (instructed by **Steel & Shamash**) for the **Claimants**
The **Defendant** in person, assisted by **Mr Mullen** as "McKenzie" Friend

Hearing date: 16 May 2016

- -

Judgment Approved by the court for handing down (subject to editorial corrections)

Mr Justice Warby :

Introduction

1. Listed for hearing before me today are two applications in this action for damages for slander and libel. However, the defendant has recently applied to stay further proceedings against her until after the European Parliament has expressed an opinion on whether the proceedings violate the immunities enjoyed by the defendant in her capacity as a Member of the European Parliament. It is clear that where a request for the Parliament to defend an MEP's immunity is made by the MEP, and the court is notified that the procedure to defend immunity is under way the Court is bound to stay its own process. In this case the grant of such a stay would risk a considerable waste of time and costs. That would not deter me from carrying out the duty imposed by European law, if I was convinced that it applied on the facts of the case. After argument however I have concluded, for the reasons which follow, that the point has not yet been reached at which I am duty bound to grant such a stay.

The factual and procedural background

2. The claimants are all Labour Party MPs for constituencies in the Rotherham area. The defendant is the MEP for Rotherham, a member of the UK Independence Party. The claim arises from a speech the defendant made at the UKIP Conference on 26 September 2014. The speech was broadcast live on the BBC Parliament channel, and republished in whole or in part on the UKIP website, Twitter, and the Press Association Mediapoint wire service.

3. The main theme of the speech was the then notorious sexual exploitation of children in the Rotherham area. The speech focused on the role of the Labour Party and referred to "the three Labour MPs for the Rotherham area".

4. On 20 April 2015 I tried two preliminary issues in the action: the meaning of the words complained of and whether they were a statement of fact, or an expression of opinion. At that time the defendant was represented by solicitors, RMPI LLP ("RMPI"), and Counsel, Ms Kate Wilson. I gave judgment on those issues on 29 April 2015: [2015] EWHC 1125 (QB). I held that the words bore three defamatory meanings about each of the claimants:

   (1) That they knew many of the details of the scandalous child sexual exploitation that took place in Rotherham over a period of sixteen years, in the course of which an estimated 1,400 children were raped, beaten, plied with alcohol and drugs, and threatened with violence by men of Asian origin, yet deliberately chose not to intervene but to allow the abuse to continue. I held this to be an allegation of fact.

   (2) That they acted in this way for motives of political correctness, political cowardice, or political selfishness. I held this to be an expression of opinion.

   (3) That each was thereby guilty of misconduct so grave that it was or should be criminal, as it aided and abetted the perpetrators and made the Claimants just as culpable as the perpetrators. This too I held to be an expression of opinion.

5. The claimant made no application for permission to appeal against these conclusions.

6. On 26 May 2015 RMPI wrote to the claimants' solicitors in the following terms:

> "OFFER TO MAKE AMENDS
>
> IN ACCORDANCE WITH S 2 OF THE DEFAMATION ACT 1996
>
> Dear Sirs
>
> **Barron and others v Jane Collins**
>
> The Defendant has instructed us to make an unqualified offer to make amends under section 2 of the Defamation Act 1996 to each of the Claimants.
>
> The Defendant offers to
>
> Make a suitable correction of the statement complained of and a sufficient apology to the Claimants
>
> Publish the correction and apology in a manner that is reasonable and practicable in the circumstances and
>
> Pay to the Claimants damages and their reasonable legal costs to be assessed if not agreed.
>
> The Defendant intends to rely upon this offer in the event she needs to file and serve a defence."

7. This is a standard form of offer of amends. Section 3 of the Defamation Act 1996 ("the 1996 Act") sets out the consequences of accepting such an offer. In summary, no proceedings can be brought or continued by the claimant other than for the purposes of enforcing the offer of amends. For that purpose, if the parties cannot agree, the claimant can apply to the court for the determination of what sums should be paid by way of compensation and costs. The assessment is made on the same principles as the assessment of damages and costs in a defamation action.

8. By s 4 of the 1996 Act, an offer of amends is a defence to a defamation claim, if it is not accepted by the claimant, unless the claimant proves that the defendant "knew or had good reason to believe that the statement complained of" referred to the claimant, defamed him, and was false. These provisions have been held to impose, in substance, a requirement to prove malice. Claimants rarely decline an offer of amends.

9. On 27 May 2015 RMPI filed and served a Defence, settled by Ms Wilson. This relied on the offer of amends as a defence, asserting that it had been made and not withdrawn. At paragraph 9 it stated that "It is accepted that the claimants and each of them are entitled to compensation pursuant to the above offer of amends."

10. A number of points were made in the Defence relation to the assessment of compensation. Paragraph 11 asserted in mitigation of damages that most of the publishees were political opponents of the claimants, whose standing in their eyes was

of little importance to the claimants. It was said that the publication complained of "did little damage to [the claimants' reputations in the eyes of the public at large."

11. The Defence contained a statement of truth signed by Ms Rowland, solicitor for the defendant, as follows: "The defendant believes that the facts stated in the Defence are true. I am duly authorised by the defendant to sign this statement of truth."

12. By letter dated 28 May 2015 the claimants' solicitors wrote to RMPI stating that "our three clients accept your offer to make amends". They asked for proposals as to the steps to be taken by way of correction, apology and publication and sought "a realistic offer of compensation."

13. The parties did not agree on the amount to be paid by way of compensation. On 9 September 2015, therefore, the Claimants issued an application for the court to assess what was due ("the Assessment Application"). Statements from each claimant, made on 14 and 18 September 2015, were served in support of their damages claims. A hearing was listed for 18 December 2015. On 27 November 2015 the defendant made three witness statements in response, one in respect of each claimant. By this time the defendant had parted company with her solicitors and was acting as a litigant in person.

14. By letter dated 9 December 2015 the defendant made an application to "vacate the offer of amends" ("the Application to Vacate"). She stated that she had not instructed her solicitors to make any offer of amends; and that it was only after becoming a litigant in person that she had realised the effect of an offer of amends. She asked for her application to be dealt with on paper, without a hearing. On 15 December, however, Dingemans J directed that her application be listed for hearing on 18 December, before the claimants' application for the assessment of compensation.

15. On 16 December 2015 the defendant's PA emailed the claimant's solicitors to state that the Defendant was unwell and would not be able to attend the hearing. She then applied for an adjournment. On 18 December 2015, in the defendant's absence, HHJ Moloney QC granted her application to adjourn. He did so on conditions relating to service of medical reports. He also gave directions for the service by her of evidence in support of the Application to Vacate, and required her to give instructions to her former lawyers, waiving privilege in respect of the advice they gave her about the offer of amends and its consequences.

16. On 6 January 2016 the defendant made a witness statement in support of the Application to Vacate. In it she mentioned a number of defences which she stated would have been available to her had she contested the proceedings. One of these was immunity, on which she said this at [23-24]:

> "The protocol on the Privileges and Immunities of the European Communities 8 April 1965. Article 9 makes provision that "members of the Assembly shall not be subject to any form of inquiry, detention, or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties." At all times the claimants have acknowledged that I was speaking in a political forum and in my capacity as an MEP. It is abundantly clear that I was acting

> in accordance with my duties as an elected representative for the people of Rotherham, which falls within my constituency. The trafficking and abuse of children has been debated by the Assembly and the rights of the child are enshrined throughout the European Union under Article 3 of the Treaty of Lisbon [2012]. As an MEP for Yorkshire and the Humber it remains my duty to demonstrate leadership within my constituency. To actively promote the welfare and interests of all my constituents, to scrutinise the performance of all those holding public office in my constituency and to challenge the poor behaviour and abject failure of anyone claiming to represent these people.
>
> "24. … The nature of my immunity was raised with RMPI LLP however they were under the impression that it operated exactly as Parliamentary Privilege in Westminster. It required a junior researcher who joined my team in July 2015 to demonstrate enough initiative to contact and harangue the Director of the European Parliament's Legal Service for clarification of this matter. Monsieur Passos confirmed that the immunity afforded to members of the Assembly was not subject to member state legislation and operated wherever that member is carrying out their duties. It would be utterly ridiculous if an MEP were only able to robustly and candidly represent the views of their constituents in a foreign country."

17. It was not said at that stage, however, that the defendant intended to assert her immunity by making a formal request for that purpose in the European Parliament, in the way that I shall describe. The defendant has told me today that she did not at that time have in mind that she could take such a step. She only became aware of that in the course of later, protracted discussions with officials at the Parliament. The existence of such discussions was not made known to the claimants. Through Mr Millar QC the claimants have made clear that they do not accept there were such discussions.

18. When granting the adjournment Judge Moloney also ordered the parties to notify the court of the dates on which they would be unavailable in the period 15 February to 15 May 2016. There is a dispute about the process by which a hearing date was fixed, and the reasonableness or otherwise of the parties' conduct in that respect. It is enough for present purposes to say that the process was protracted and that in the event, a hearing period outside that three month window was fixed: 16 – 19 May 2016. As a result, the Application to Vacate and the Assessment Application were listed for trial before me with a time estimate of 1 ½ - 2 days commencing today, Monday 16 May 2016.

The Stay Application

19. On Wednesday 4 May 2016 the defendant wrote and her PA sent by email to the Master's Support Unit at the Royal Courts of Justice a letter headed "Request for the European Parliament to Defend the Immunity of Members Initiated - Protocol of Sincere Cooperation Triggered" ("the 4 May letter"). The 4 May letter stated that the

defendant had "formally initiated the process for the European Parliament to defend her immunity under article 8, absolute immunity" by writing to the President, Mr Schulz.

20. Two issues were identified in the 4 May letter. The first was put in this way: "the application of parliamentary immunity for Members of the Parliament under EU law in relation to the ongoing proceedings that have been brought against me". The second issue raised was a suggestion that the claimants had "considered attempting to restrict my freedom of movement to and from the Parliament's buildings". It was these matters which were said to have triggered a request to Mr Schulz for him and the Parliament to defend the defendant's right to free movement, and put a stop to "attempts by the Claimants to abuse the court".

21. Enclosed with the 4 May letter was a copy of a letter from the defendant to President Schulz, dated 3 May 2016. The copy before the court bears a stamp of the President's Office and a manuscript notation "Received 03/05/16". This letter read as follows:

> "Dear President Schultz
>
> **Request for the Defence of Parliamentary Privileges and Immunities**
>
> I am writing to you in accordance with Rule 7 of the Rules of Procedures of the European Parliament. I respectfully submit that proceedings which are being brought against me in the English Courts are a breach of the privileges and immunities that are accorded to Members of the European Parliament.
>
> I respectfully request Parliament to defend:
>
> l. **My immunity under Article 8 (absolute immunity) and**
>
> **2. My freedom of movement to attend Parliament and carry out my duties.**
>
> Legal proceedings have been brought against me for expressing an opinion made in my capacity as a Member of this Parliament and made in the performance of my duties. Measures taken against a Member for expressing opinions which are in the public interest and in the performance of their duties undermine the Parliament's integrity as a democratic legislative assembly.
>
> No application to waive that privileges and immunities of a Member of this Parliament has been made by the competent authority.
>
> I have done by utmost throughout these legal proceedings to co-operate with the English Courts and make them aware of my role as a servant of the European Parliament and my constituents. However, the parties involved refused to acknowledge my responsibilities and duty to attend the

> Parliament and Plenary Sessions. This has been even been presented as an aggravating factor in the current proceedings.
>
> In addition attempts have been made to restrict my movements to and from the Parliament in Brussels and Strasbourg under threat of a court order.
>
> I would also request your personal clarification on the application of immunity under articles 9 for a UK Member of the Parliament. Article 9 grants Members the same privileges and immunities as those accorded by parliaments of member states. In the case of the UK this privilege applies only to the grounds of the Palace of Westminster. Members of the European Parliament are not afforded the right to carry out their duties in the Palace of Westminster. In my case Westminster is many miles away from the parliamentary constituency I represent.
>
> In the legal proceedings brought against me it has been acknowledged that the opinion I expressed while carrying out my duties as a Member of the European Parliament were broadcast by the UK Parliament Channel into the grounds of the Palace of Westminster.
>
> The crux of the legal proceeding being brought against me are that the opinion I expressed in that broadcast allegedly damaged the reputation of the claimants within the grounds of Westminster.
>
> Please could you clarify:
>
> 1. The status of a broadcast into an area protected under article 9, and
>
> 2. What is the status for UK Members of the European Parliament who are effectively denied the right to exercise this privilege?
>
> I thank you in advance for your attention on this urgent matter …"

22. The 4 May letter stated that the defendant was acting under the guidance of the Legal Department of the European Parliament and the President's Office. It asserted that the fact that these steps had been taken meant that "the proceedings that are being brought against me must be stayed until the Parliament has determined whether or not it will defend my immunity."

23. The 4 May letter concluded "I will be writing separately to Steel & Shamash the claimant's legal advisers to inform them of this development…" The covering email from the defendant's PA also stated that Steel & Shamash would be informed. It appears, however, that no such communication was in fact made. Moreover, since the

defendant's application for a stay was not made by means of an application notice pursuant to CPR 23, and was sent to an inappropriate address, no action was taken by the court at that time.

24. At 3:29pm on 10 May 2016, two working days before the date fixed for hearing the Application to Vacate and the Assessment Application, the defendant sent a further email to the court. This one was one addressed correctly, to the Queen's Bench Listing Office, which is the office responsible. The 10 May email said as follows.

> "Dear Sirs
>
> As a matter of great urgency can you please reply to this email.
>
> On my behalf
>
> The European Parliament has accepted the initiation of The Protocol of Sincere Cooperation and the announcement will be made in Strasbourg. The 'triggering' documents were attached to the original email dated 4th May 2016.
>
> The court hearing scheduled for Monday and Tuesday next week should therefore be 'stayed'. To avoid expensive travel arrangements, wasted costs orders and legal fees, please confirm, in writing, to all parties, that a 'stay of proceedings' has been granted until the European Commission has appointed a Rapporteur and a committee to study the evidence and decide on their defence"

25. This email was not copied to the claimants' solicitors either. It was drawn to my attention later that afternoon. It did not attach or copy in the 'original' email of 4 May or any of its enclosures. But it was possible for staff at my request to locate those documents.

26. On the morning of 11 May 2016 I made an order directing that the court should notify the claimants of the Stay Application, and send them copies of the defendant's communications with the court. I set a timetable for the submission of a written Response on behalf of the claimants by 2pm on 12 May and a reply by the defendant by 9am on Friday 13 May. My order explained the reasoning behind this procedure:

> "Procedural fairness and the overriding objective both require that the claimants should be given notice of this application. The defendant appears to have acknowledged that in her correspondence. She has not made clear, however, that notice has been given.
>
> The fact that the hearing date is imminent is not a good enough reason for the court to act without notice, or without assuring itself that the claimants have had a fair opportunity to respond."

27. I duly received the written submissions of the parties. The claimants' Response made clear that they had been unaware of the Stay Application until they received copies of

the documents from the court. The claimants resisted the stay on the grounds that the application is "clearly another procedural tactic by the defendant to avoid the damages hearing". It was asserted that the defendant had waited until just before that hearing to take this step and had failed to take the right procedural steps. It was submitted that there was no proper basis in fact or in law for a stay to be imposed.

28. The defendant's reply took issue with the claimants' criticisms of her conduct. She said that it had been apparent from as long ago as January 2016 that she had it in mind to assert her immunity. She complained that the claimants have made a number of false claims about her behaviour, and themselves behaved unreasonably. Her position was that no valid objection had been raised on the claimants' behalf. Her request for immunity had been announced in Parliament and referred to JURI (the Committee on Legal Affairs). The Protocol of Sincere Co-operation requires this court to stay its proceedings whilst the European Parliamentary bodies assess the evidence, it was said.

29. In the meantime I had received copies of further emails sent to the court by the defendant and her assistant on 11 May 2016, and their enclosures, to which I shall refer below. These were not copied to the claimants either. I ensured that copies were sent to the claimants' solicitors by the court.

30. I had contemplated that it might be possible to deal with the Stay Application without a hearing, at least in the first instance. However, having received and considered the parties' submissions, I decided that in all the circumstances it was necessary to hold a hearing. Doing so would incur further costs, but a stay would involve further delay and risked a greater waste of costs. The matter had been raised in haste, and in a way that was less than satisfactory both procedurally and evidentially. I concluded it was best to examine the issues more fully, at a hearing, with the benefit of clearer evidence and fuller argument.

31. By a further order made on the morning of Friday 13th I therefore directed a hearing on the morning Monday 16 May. I directed the filing of a formal application notice and the service of evidence to ensure that an up-to-date picture was obtained of the procedural position in Strasbourg, where the Parliament is presently in session. An application notice and short witness statement were duly made and filed by the defendant. In the meantime, in the late morning of Friday 13 May, the defendant's assistant emailed the court with copies of some further correspondence that had passed between Parliamentary officials and the defendant's team on the Wednesday, 11 May.

32. At the hearing today the claimants have been represented by Mr Millar QC and Ms Mansoori. The defendant has represented herself. After hearing them I have reached the conclusion that the point has not been reached at which this Court is obliged to grant the stay which the defendant seeks.

Assessment

The Legal framework

33. The Privileges and Immunities of the European Union are defined in a Protocol ("the Protocol"), the current version of which is published in the Official Journal of the European Union, C/326/1, 26.10.2012. It contains the following relevant provisions:

> "*Article 7* (ex Article 8)
>
> No administrative or other restriction shall be imposed on the free movement of Members of the European Parliament travelling to or from the place of meeting of the European Parliament.
>
> …
>
> *Article 8* (ex Article 9)
>
> Members of the European Parliament shall not be subject to any form of inquiry, detention or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties.
>
> *Article 9* (ex Article 10)
>
> During the sessions of the European Parliament, its Members shall enjoy:
>
> (a) in the territory of their own State, the immunities accorded to members of their parliament;
>
> (b) in the territory of any other Member State, immunity from any measure of detention and from legal proceedings.
>
> Immunity shall likewise apply to Members while they are travelling to and from the place of meeting of the European Parliament. …"

34. The current version of the European Parliament Rules of Procedure ("the Procedure Rules") contains the following relevant provisions:

(1) Rule 5 provides:

> "1. Members shall enjoy privileges and immunities in accordance with the Protocol on the Privileges and Immunities of the European Union.
>
> 2. Parliamentary immunity is not a Member's personal privilege but a guarantee of the independence of Parliament as a whole and of its Members. …"

(2) Rule 7 provides:

> 1. In cases where the privileges and immunities of a Member or former Member are alleged to have been breached by the authorities of a Member State, a request for a Parliament decision as to whether there has, in fact, been a breach of those privileges and immunities may be made in accordance with Rule 9(1).
>
> 2. In particular, such a request for the defence of privileges and immunities may be made if it is considered that the circumstances constitute an administrative or other restriction on the free movement of Members travelling to or from the place of meeting of Parliament or on an opinion expressed or a vote cast in the performance of their duties, or that they fall within the scope of Article 9 of the Protocol on the Privileges and Immunities of the European Union.

(3) Rule 9 relates to "Procedures on immunity" and provides that:

> 1. Any request addressed to the President by a competent authority of a Member State that the immunity of a Member be waived, or by a Member or a former Member that privileges and immunities be defended, shall be announced in Parliament and referred to the committee responsible. The Member or former Member may be represented by another Member. The request may not be made by another Member without the agreement of the Member concerned.
>
> 2. The committee shall consider without delay, but having regard to their relative complexity, requests for the waiver of immunity or requests for the defence of privileges and immunities.
>
> 3. The committee shall make a proposal for a reasoned decision which recommends the adoption or rejection of the request for the waiver of immunity or for the defence of privileges and immunities.
>
> 4. The committee may ask the authority concerned to provide any information or explanation which the committee deems necessary in order for it to form an opinion on whether immunity should be waived or defended.
>
> …"

35. EU law has for some time recognised a duty of sincere co-operation. This is an important principle, the essence of which is that Member States have a duty of sincere cooperation with the EU institutions and are accordingly asked to support EU activities and not to hinder their proper functioning. The duty is now reflected in Article 4(3) of the 2009 Treaty on European Union: "Pursuant to the principle of sincere co-operation the Union and the Member states shall in full mutual respect assist each other in carrying out the tasks which flow from the Treaty".

36. The CJEU has made preliminary rulings on the interpretation and application of the EU rules on the immunity of MEPs in two cases to which I have been referred by Mr Millar QC and Ms Mansoori.

37. In *Marra v De Gregorio* (Joined Cases C-200/07 and C0210/07), the Grand Chamber addressed questions posed by the Italian Supreme Court, arising from a defamation claim against a former MEP. In a judgment of 26 June 2008 at [31] the Grand Chamber interpreted the questions as giving rise to three issues:

> "… first, whether, where the national court which has to rule on an action for damages brought against a Member of the European Parliament in respect of opinions expressed by him has received no information regarding a request from that member to the Parliament seeking defence of his immunity, that court may itself rule on whether the immunity provided for in Article 9 of the Protocol applies with regard to the factors in the particular case; second, whether, where the national court is informed of the fact that that member has made such a request to Parliament, that court must await the decision of the Parliament before continuing with the proceedings against that member; and, third, whether, where the national court finds that that immunity does apply, it must request the waiver of that immunity for the purposes of continuing with the legal proceedings.

38. As this wording indicates, the provisions in question were those of the predecessor of the current Protocol, a protocol of 8 April 1965. The case was also concerned with an earlier version of the Procedure Rules, dating from 2005.

39. In summary, the Grand Chamber's answers to the three questions specified above were yes, yes, and no. The core of the reasoning behind those conclusions is contained in the following passages:

> "32 In order to establish whether the conditions for the absolute immunity provided for in Article 9 of the Protocol are met, the national court is not obliged to refer that question to the Parliament. The Protocol does not confer on the Parliament the power to determine, in cases of legal proceedings against one of its Members in respect of opinions expressed or votes cast by him, whether the conditions for applying that immunity are met.
>
> 33 Therefore, such an assessment is within the exclusive jurisdiction of the national courts which are called on to apply such a provision, and which have no choice but to give due effect to that immunity if they find that the opinions or votes at issue were expressed or cast in the exercise of parliamentary duties.
>
> 34 If, in applying Article 9 of the Protocol, those courts have doubts concerning the interpretation of that article, they may

refer a question to the Court under Article 234 EC on the interpretation of that article of the Protocol, courts of final instance being, in such circumstances, obliged to make such a reference to the Court.

35 Furthermore, it cannot be inferred, even implicitly, from Rules 6 and 7 of the Rules of Procedure – which contain the internal rules concerning the procedure for waiving parliamentary immunity – that the national courts are obliged to refer to the Parliament the decision on whether the conditions for recognising that immunity are met, before ruling on the opinions and votes of Members of the Parliament.

36 Rule 6(2) of the Rules of Procedure is limited to establishing the procedure for the waiver of parliamentary immunity provided for in Article 10 of the Protocol.

37 Rule 6(3) of the Rules of Procedure sets down a procedure for defence of immunity and privileges which can be triggered by the Member of the European Parliament. That procedure also concerns immunity for opinions expressed and votes cast in the exercise of parliamentary duties. Rule 7(6) of those rules provides that the Parliament is to 'state' whether legal proceedings brought against a Member of the European Parliament constitute a restriction on the expression of an opinion or the casting of a vote, and to 'make a proposal to invite the authority concerned to draw the necessary conclusions'.

38 As has been emphasised out by the Parliament and the Commission of the European Communities, the Rules of Procedure are rules of internal organisation and cannot grant powers to the Parliament which are not expressly acknowledged by a legislative measure, in this case by the Protocol.

39 It follows that, even if the Parliament, pursuant to a request from the Member concerned, adopts, on the basis of those rules, a decision to defend immunity, that constitutes an opinion which does not have binding effect with regard to national judicial authorities.

40 In addition, the fact that the law of a Member State provides for a procedure in defence of members of the national parliament – enabling that parliament to intervene where the national court does not recognise that immunity – does not imply that the same powers are conferred on the European Parliament in relation to its Members coming from that Member State, since, as has been held in paragraph 32 above, Article 9 of the Protocol does not expressly grant the

> Parliament such power and does not refer to the rules of national law.
>
> 41 However, according to settled case-law, the duty of sincere cooperation between the European institutions and the national authorities, enshrined in Article 10 EC and reiterated in Article 19 of the Protocol, which applies both to the national judicial authorities of Member States acting within their jurisdictions and to the Community institutions, is of particular importance where that cooperation involves the judicial authorities of a Member State who are responsible for ensuring that Community law is applied and respected in the national legal system (see, in particular, order in Case C-2/88 IMM *Zwartveld and Others* v *Commission*[1990] ECR I-3365, paragraph 17, and Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraph 93).
>
> 42 It must be held that that duty of cooperation applies in the context of disputes such as those in the main proceedings. The European Parliament and the national judicial authorities must therefore cooperate in order to avoid any conflict in the interpretation and application of the provisions of the Protocol.
>
> 43 Therefore, where an action has been brought against a Member of the European Parliament before a national court and that court is informed that a procedure for defence of the privileges and immunities of that Member, as provided for in Article 6(3) of the Rules of Procedure, has been initiated, that court must stay the judicial proceedings and request the Parliament to issue its opinion as soon as possible.
>
> 44 Once the national court has established that the conditions for the absolute immunity, provided for in Article 9 of the Protocol are met, the court is bound to respect that immunity, as is the Parliament. It follows that such immunity cannot be waived by the Parliament and that, as a result, that court is bound to dismiss the action brought against the Member concerned."

40. For reasons I shall come to it is paragraph [43] which is of critical importance for present purposes and, in particular, the sense to be given to the word "informed" in its context.

41. In the later case of *Aldo Patriciello* [2012] 1 CMLR 11 on a reference by an Italian court in criminal proceedings against an MEP the Court reaffirmed at [38]-[40] some of its earlier conclusions. The case related to the current provisions of the Protocol and Procedure Rules. The Court held that it is for the national court to determine the issue of immunity. If it determines the issue in the MEP's favour it should give effect to the immunity by dismissing the action. If it finds that the immunity is not made out it would have to continue hearing the case. Any decision by the European Parliament at the request of an MEP to defend their immunity is no more than an opinion, with no

binding effect on national courts. The Court further held that the duty to cooperate does not oblige the national courts to give any reasons if it decides not to follow the opinion of the European Parliament.

42. The Court did not have to consider whether the national court is bound to stay its proceedings where an MEP invokes the procedure under Rule 6 (as it then was), which did not arise on the facts of the *Patriciello* case. It did give guidance on the scope and application of the immunity. At [29-30] it observed that while Article 8 is intended to apply to statements made by MEPs within the very precincts of the European Parliament, it is not impossible that a statement made by an MEP outside the precincts may amount to an opinion expressed in the performance of their duties within Art 8 because this depends on the character and content of the opinion rather than the place where it was made. But it held at [35] that there must be a "direct and obvious connection" between the opinion expressed and the parliamentary duties and, at [41], that a statement made outside the precincts of the Parliament:

> ".. does not constitute an opinion expressed in the performance of his parliamentary duties covered by the immunity afforded by that provision unless that statement amounts to a subjective appraisal having a direct, obvious connection with the performance of those duties…."

Evidence

43. The picture so far as proceedings in the European Parliament are concerned has been progressively elaborated since 10 May 2016.

44. In the emails of 11 May 2016 to which I have referred above:

(1) At 10:07 (the times are BST) the defendant informed the court at 10:17 that "my Protocol of Sincere Cooperation will be announced before the Members of this House today, prior to voting at 1200 CET".

(2) At 15:39 the defendant's assistant Mick Burchill sent a link to a video of such an announcement. He did so as part of a notice that the defendant's request for the EP "to defend her and implement the Protocol of Sincere Cooperation at Strasbourg's Plenary Session today" had been accepted by the Parliament. He stated that "the Chairman of the Plenary Session has now referred the matter to JURI which will appoint a Rapporteur and a committee to decide on the matter." He further stated that a request had been made to the President at the Chair of JURI to write to the Court and The Attorney General confirming the "Stay of Proceedings" in the case.

(3) At 17:45 Mr Burchill emailed to say that "We have received documentation from Strasbourg" which he would forward once he had had "the opportunity to digest it".

45. On Friday 13 May 2016, in emails which were copied to the claimants' solicitors, those assisting the defendant made the following known (attaching copies of the correspondence):

(1) On Wednesday 11 May at 17:51 Robert Bray, Head of Unit at the Secretariat of the Committee on Legal Affairs emailed the defendant's PA stating

> "As soon as we have the particulars of the case, we will arrange for an official letter to be sent to the Queen's Bench Division informing them of the need for them to stay proceedings in accordance with the case-law of the Court of Justice."

(2) At 11:13 on Friday 13 May 2016 Alexander Keys an Administrator of the Parliament wrote to the defendant stating that

> "the letter concerning your request for defence of immunity has been prepared for signature by Pavel Svoboda, Chair of the Committee on Legal Affairs, as we are aware of the urgency of the case. However, we have not been able to reach him or any of his private staff today. It will therefore have to be submitted to him for signature on Monday."

46. In fact, the defendant has told me, today is a Bank Holiday in Brussels. The defendant has told me that the Parliamentary session concluded on Thursday, and officials were not at work on Friday 13th given the impending Bank Holiday. Evidently, Mr Keys was working then. It does appear however that others were not. The defendant has suggested that Mr Keys, in suggesting the letter would be put before Mr Svoboda on Monday, had overlooked the Bank Holiday. At all events, no letter has been produced.

Submissions

47. The defendant's case is straightforward. By her letter of 3 May 2016 to President Schulz she has initiated the procedure laid down by Rule 7 of the Procedure Rules. On the evidence before the court that request has been received in the President's office, announced in the Parliament Chamber, and has resulted in the preparation of a letter for signature by the President o JURI, informing the national court of the process and seeking a stay of the present proceedings.

48. The defendant submits that there is no procedural flaw in the process. The jurisprudence of the CJEU, in the form of the *Marra* decision is clear: the national court is obliged under these circumstances to stay its proceedings. This follows inexorably from the duty of sincere co-operation. The facts that the decision on whether the conditions for the application of the immunity are met is one within the exclusive province of the national court, and that the national court is not bound by Parliament's opinion, are nothing to the point. The court is bound to refrain from adjudicating on the issue until it has Parliament's opinion.

49. On behalf of the claimants Mr Millar QC, in his written submissions, first advanced procedural objections based on domestic procedural law. These were well-founded. In breach of CPR 23 the application was made late, informally, and without evidence in support. There is nothing in European law or procedure which exempts the defendant from these requirements. However, once I had required the filing of an application notice, and the facts relied on had become clearer over the three working days preceding this hearing, their force rather fell away. It would have been quite inappropriate to dismiss an application of this kind on procedural grounds alone.

50. Next, Mr Millar took a point about the procedural position in Strasbourg, maintaining that the defendant had not complied with the EC Rules of Procedure. That was a fair point to take, in the circumstances and in the light of the information available to the claimants, at the time the point was made, which was only just over a day after the claimants first learned of the Stay Application. But it is now clear enough that so far as the defendant is concerned, the necessary procedural steps have been taken.

51. Thirdly, Mr Millar has challenged the defendant's good faith. He asserts that her claim to immunity is unfounded, and that her sole intention in referring these issues to the Parliament is to avoid the damages hearing. He goes further, inviting me to conclude that the 3 May letter is a "knowingly distorted one which misstates the facts of this case in order to suggest that they meet the criteria" for immunity, when in truth they plainly do not do so.

52. Mr Millar submits as follows:

(1) On the true facts there has been no "administrative or other restriction on the free movement" of the Defendant on the part of the state, or even on the part of the other parties to the proceedings.

(2) The claim in these proceedings does not relate to an opinion expressed in the performance of the defendant's duties as an MEP. The main allegations about which complaint is made are extremely grave allegations of *fact* made by the defendant and not opinion.

(3) Nor was there any connection between what the defendant said and her parliamentary duties, let alone the "direct and obvious connection" required by the authorities. The speech was not made for the purposes of the European elections, which took place 5 months earlier, nor was it about European matters, nor was it made in the precincts of the Parliament of the UK or the EU.

(4) The letter of 3 May fails to set out the true factual position, or the correct procedural history, as detailed above. It does not disclose that the proceedings are not recent but date back to late 2014; or that the defendant made an offer of amends, which she later sought to withdraw; or that her request for immunity was sent just before this hearing to decide the Application to Vacate and the Assessment Application.

(5) The letter is not a bona fide request for Parliamentary immunity but "a dishonest and improper attempt to avoid these proceedings". Mr Millar points to "the decision not to copy the correspondence to the claimants or their legal advisers or even to inform them of it" as further evidence of tactical motives.

53. All of this, needless to say, is hotly disputed by the defendant.

Discussion and conclusions

54. There is therefore a live and serious dispute about the defendant's motives and good faith. That, however, would probably not be an obstacle to resolving the issues raised. What is really at stake is not why the defendant is asserting immunity but whether she is right to do so and, in particular, whether the court's proceedings must be stayed

pending an opinion on that issue by the Parliament. A decision on that issue could be arrived at without the need for findings as to motive or intention.

55. On reading the papers in the case the main difficulty I had with Mr Millar's submissions was that the jurisprudence of the CJEU appeared to be against them. If no request had been made for the European Parliament to express an opinion I would be free, indeed obliged, to reach my own view about the claim for immunity. If the Parliament had expressed an opinion I would be bound to take account of it, but not bound to follow it if I took a different view. In the intermediate position which appeared to obtain in this case, however, it seemed to be clear law that I was not entitled to adjudicate on the issue but instead duty bound to stay the proceedings until after Parliament has expressed a view.

56. However, in his submissions this morning Mr Millar has persuaded me that the point at which the court is "informed" within the meaning of the *Marra* decision and therefore bound to grant a stay has not yet arrived. The position is that the defendant has written to the President, Parliamentary officials have prepared a letter and submitted it to the President of JURI for signature. Those officials anticipate that the letter will be signed. No draft of the letter is before the court. In any event, the Parliament has not communicated with this court at all. There has been no notification by the Parliament that the process has been initiated or is under way. It may be that such a notification will be made. If so, the duty to stay may well come into force and effect. But I am most reluctant to stay these proceedings unless I am obliged to, and I am not satisfied that I am so obliged.

57. It has been submitted by Ms Collins that the Court has been "informed" of the process by virtue of the announcement in the European Parliament that she had written to President Schulz, because that is a public statement of the position. Mr Millar points out that the announcement appears to have been misleading, in that it referred to criminal proceedings. That however would not affect its status as "notification", if it would otherwise have that status. I do not consider that it does.

58. In my judgment the right approach to the decision in *Marra* is to treat the term "informed" as requiring a formal communication to the court from the Parliament. There is good reason for that approach, as it gives effect to the underlying principle which is one of co-operation between the Parliament and the national bodies, in their capacities as institutions. Further, this approach allows the Parliament a role in assessing a request for the defence of privilege before it decides to communicate with a national court.

59. I am also mindful of the fact that to continue with these applications today will not offend the underlying rationale of the duty of sincere co-operation which is, as *Marra* [42] makes, clear, to co-operate with a view to avoiding or at least minimising the risk of interpretations and applications of the immunities which are inconsistent with one another.

60. I have prepared this written judgment because it appeared to me that the Parliament would be assisted in any deliberations it may undertake by the account which I have given of these proceedings to date. I note that Rule 18 of the Procedure Rules provides for co-operation by the Parliament with the national institutions, and would hope the court would learn of the Parliament's position on the issue shortly.