Neutral Citation Number: [2025] EWHC 1411 (KB)

Case No: KB-2024-001820

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/06/2025

Before:

MR JUSTICE SWIFT

- -

Between

DALE VINCE **Claimant**

- and –

ASSOCIATED NEWSPAPERS LIMITED **Defendant**

- -
- -

Aidan Eardley KC, Greg Callus (instructed by **Brett Wilson LLP**) for the **Claimant**
Antony White KC (instructed by **RPC (Reynolds Porter Chamberlain LLP**)
for the **Defendant**

Hearing date, 5 March 2025

- -

Approved Judgment

This judgment was handed down at 9:30 on 9 June 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR JUSTICE SWIFT

A. Introduction

1. This claim was issued on 5 June 2024 and was served on the Defendant on 18 September 2024. It is the second claim commenced by Dale Vince against Associated Newspapers Limited in respect of an article published on 8 June 2023 in Mail+, which is a digital edition of the Daily Mail, and on 9 June 2023 in the print edition of the Daily Mail.

(1) The article published

2. The article in Mail+ was first published at 10pm on 8 June 2023 under a headline that read "Labour repays £100,000 to sex pest donor". The article under the headline read as follows (with paragraph numbers added).

> "1. Sir Keir Starmer was left embarrassed yesterday after repaying a £100,000 donation to a high-flying City financier accused of sex harassment.
>
> 2. The Labour leader was forced into a humiliating climbdown after being accused of 'hypocrisy' for accepting the cash despite the allegations against Davide Serra.
>
> 3. Mr Serra, the boss of a multi-billion-pound asset management firm in London, made four £25,000 donations to Labour during the first quarter of this year, it emerged in official figures released yesterday.
>
> 4. And Labour faced further embarrassment yesterday when businessman Dale Vince, who has donated £1.5 million to the party, joined an eco-protest in London with Just Stop Oil, the group he is helping bankroll.
>
> 5. The party pocketed Mr Serra's money despite accusations that the 52-year-old married chief executive made 'wholly inappropriate' comments on the size of a female colleague's breasts.
>
> 6. A tribunal also heard he told clients that Jolanda Niccolini, his now former head of business development and investor relations, would do anything for them – 'including prostitute herself'
>
> 7. Mr Serra's firm was ordered to pay £32,000 in compensation by a tribunal judge last month after Ms Niccolini successfully sued for sex harassment and victimisation. Labour has decided to repay the £100,000 donation after the Daily Mail highlighted the case. It is understood it did not know about it before being alerted to it by this newspaper.

> 8. Earlier, Tory MP Craig Mackinlay said 'if [Sir Keir] had principles he would hand the money back, otherwise it's hypocrisy'
>
> 9. In central London yesterday, Mr Vince joined JSO activists who were blocking traffic around Parliament and Trafalgar Square.
>
> 10. Some suspect he may have influenced Sir Keir's pledge to block new North Sea oil and gas exploration if he wins the next election.
>
> 11. Mr Vince said 'I'm here to support the incredibly brave people of Just Stop Oil. I can't imagine it will make much difference to Keir Starmer, he's his own man and so am I'
>
> 12. Tory Party deputy chairman Nickie Aiken said: 'As if it wasn't already clear enough, Labour's big bankrollers and policy paymasters are the eco-fanatics themselves.'"

3. Printed immediately underneath the headline and above the article were two photographs of Mr Vince. Both showed him at Just Stop Oil demonstrations. In one he was shown speaking into a megaphone; in the other holding a Just Stop Oil banner. The caption under these photographs read.

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

There was no photograph of Mr Serra.

4. At 10:47pm, the photographs of Mr Vince were removed from the Mail+ article and replaced by a photograph of Mr Serra. On 9 June 2023 at 10:18am, the headline above the Mail+ article was changed to read "Labour repays £100,000 to 'sex harassment donor'".

5. The version of the article in the Daily Mail was published on 9 June 2023. The article was the same as published in Mail+. The two photographs of Mr Vince originally published in Mail+ were published in the Daily Mail, with the same caption. There was no photograph of Mr Serra.

(2) Mr Vince's claim in these proceedings

6. Mr Vince's claim in these proceedings is made under the United Kingdom General Data Protection Regulation ("the UKGDPR") – i.e., European Parliament and Council Regulation 2016/679/EU as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019. By section 3 of the European Union (Withdrawal) Act 2018, the UKGDPR forms part of the "direct EU legislation" incorporated into English law with effect from 31 December 2020.

7. The focus of the claim is the juxtaposition in the Mail+ and Daily Mail article of the pictures of Mr Vince, and the headlines (in the Mail+ "Labour repays £100,000 to sex pest donor", and in the Daily Mail "Labour repays £100,000 to 'sex harassment' donor'"). For the purposes of this claim, Associated Newspapers accepts that, notwithstanding that the decision to put the photographs and the headline side by side was made by night editors working on Mail+ and the Daily Mail, the decision to do so comprised an act of processing which is subject to the provisions of the UKGDPR. Further, it is common ground that these actions and the subsequent publication of information involved the processing of personal data concerning Mr Vince.

8. By article 5 of the UKGDPR, personal data must be processed "fairly". In his pleaded case, Mr Vince takes no issue with anything contained in the article but contends that the publication of the headline next to the photographs of him suggested that he had been accused of sexual harassment and was therefore unfair because it was "unexpected and unduly detrimental and without justification". ("the UKGDPR claim"). The material part of the pleaded case is as follows.

> "15. The processing complained of – publishing to a very large readership with a suggestion (particularly to readers who only read part of the Article) that the Claimant was the Labour donor who was accused of sexual harassment – was unfair because it was unexpected and unduly detrimental, without justification for the adverse impact. It created a misleading impression in the minds of those receiving the personal data.
>
> 16. The Claimant reasonably expected that the Defendant would not publish serious falsehoods or connect his name and photograph to serious allegations by juxtaposing the photograph and caption with the headline as the Article did, and that it would not use his personal data in ways that would have an unjustified adverse effect on him.
>
> 17. In respect of the *Mail+* version of the Article, the unfairness of the Defendant's processing of the Claimant's personal data continued until the *Mail+* article was edited to separate the headline from the Claimant's photograph and his name in the photograph caption. The unfairness was not remediated in the print edition of the newspaper or the facsimile published under licence by *PressReader*, although the latter was deleted at the Claimant's request on 17 October 2023.
>
> **Loss & Damage**
>
> 18. By reason of the unfair processing of personal data by the Defendant, the Claimant has suffered damage in the form of non-material harm, including non-material harm to reputation.
>
> 19. Further, the Claimant has suffered material harm by reason of the publication of the statement complained of, namely the costs incurred by his solicitors, Brett Wilson LLP, in

> attempting reasonably to mitigate the Claimant's loss by seeking to persuade PRIL to take down the statement complained of from the *PressReader* platform. The material harm incurred to date [is] £903.50 …"

In these proceedings, therefore, Mr Vince claims damages for financial and non-financial loss.

(3) The applications

9. Associated Newspapers' application was filed on 15 November 2024 and is supported by a witness statement dated 15 November 2024 made by Lindsay Warwick, Associated Newspapers' Group Legal Advisor. It is an application to strike out Mr Vince's claim as an abuse of process, alternatively an application for summary judgment on the claim. The strike out application rests on CPR3.4(2)(b), the court's power to strike out a statement of case which is an abuse of its process, with reference made to the principle stated in *Henderson v Henderson* (1843) 3 Hare 100. On the facts, Associated Newspapers contends that in October 2023 Mr Vince commenced defamation proceedings, proceedings that were struck out by a judgment handed down on 15 July 2024 ("the defamation claim"). Associated Newspapers' submission is that it is an abuse of process for Mr Vince to raise the UKGPDR claim in a second set of proceedings because the claim could and should have been included in the original set of proceedings, either from the outset or by way of amendment in response to the application to strike out the defamation claim. By its application for summary judgment, Associated Newspapers contends there is no reasonable prospect that Mr Vince will succeed on his claim that his personal data was processed unfairly.

10. Mr Vince's cross-application was filed on 5 December 2024 and is an application for summary judgment. This application is the mirror image of the Associated Newspapers' application for summary judgment. Both parties therefore contend that whether the personal data was processed fairly can be decided without a trial.

B. Decision: Associated Newspapers' application to strike out the claim.

(1) The parties' contentions

11. Associated Newspapers' submission is that Mr Vince's UKGPDR claim should and could have been brought in the same proceedings as the defamation claim. The defamation claim, issued on 2 October 2023, was directed to the article published in Mail+ and the Daily Mail. The material part of the pleading was as follows.

> "4. The statement complained of expressly referred to and/or identified the Claimant by name and by photograph. Further, the headline refers to Labour repaying £100,000 to a donor to the party, and as pleaded in paragraph 1 above, the Claimant has made and is widely known to have made substantial financial donations to the Labour Party.
>
> 5. By innuendo, for the purposes of the first sentence of the CPR PD 53B, paragraph 4.2(4)(b), the statement complained of was

> reasonably understood by a substantial but necessarily unquantifiable number of readers of the article to mean that the Claimant was guilty of, or had reasonably been accused of, sexual harassment, such that the Labour Party had repaid the claimant a £100,000 donation he had made to them.
>
> 6. Further, for the purposes of the second sentence of CPR PD 53B, paragraph 4.2(4)(b), the relevant extraneous facts known to the readers referred to in paragraph 5 above by reason of their knowledge of which they were caused to understand the statement complained of to convey the inuendo meaning defamatory of the Claimant identified in that paragraph, were that headlines, prominent photographs, and captions to such photographs appearing in articles published in the mainstream popular UK press summarise and encapsulate in an accurate and informative way what is going to be said in the rest of the article, such that they knew they did not need to read any further than that to understand what the article was saying."

12. Associated Newspapers' submission places particular reliance on the pre-action correspondence. The letter of claim sent on Mr Vince's behalf dated 26 June 2023, expressly referred not only to a claim in defamation but also claims of malicious falsehood and under the UKGDPR. The proposed UKGDPR claim was set out as follows.

> "Finally, our client's name and all information about him (including his image and false allegations of wrongdoing) are his personal data as defined by Article 4(1) of the UK GDPR. By publishing such information, ANL has processed our client's personal data … That processing was and is, unlawful in that:
>
> (a) it constitutes a libel and malicious falsehood (as above); and
>
> (b) none of the lawful grounds for processing set out in Article 6 of the UK GDPR apply, and our client did not, (and does not) consent to the processing.
>
> As a result, the processing is also a breach of article 5(1)(a) of the UK GPDR.
>
> Moreover, the processing is clearly for an illegitimate purpose, and is inaccurate, unfair, and excessive, and is therefore also in breach of Articles 5(1)(b) – (e) of the UK GDPR."

13. Associated Newspapers' response to the letter before claim (dated 14 July 2023) described the purposed UKGPDR claim as "misconceived", and then continued as follows.

> "We make the following points in response:

> - For the reasons set out above the Article did not constitute a libel or a malicious falsehood and as such the processing of your client's data was lawful for that reason.
> - Our processing of your client's data was lawful, fair and accurate. The Article accurately reported your client's donations to the Labour Party and his Just Stop Oil activism. Your client makes no complaint in that regard.
> - We are entitled to rely on the journalistic exemption. We note that in assessing whether continued publication is in the public interest we must take account of the "special importance of the public interest of the freedom of expression in information" and the Editor's Code Practice.
> - We note that your client's accuracy complaint to IPSO was rejected. The Article did not constitute a breach of Editors' Code.
> - The Article reported matters of clear public interest mainly the issue of the Labour party receiving donations from one individual who had been accused of sexual harassment and another (your client) who was joining a protest by the controversial Just Stop Oil group stopping traffic moving in central London.
> - The Article included your client's response."

14. The response to this letter from Mr Vince's solicitors (dated 17 July 2023) maintained his reliance on a claim under UKGPDR, stating as follows.

> "You have not sufficiently engaged with our client's data protection claim. Taking your client's case at its highest, you appear to be suggesting that the juxtaposition of the toxic headline against images of our client and the identifying tagline is fair and a lawful use of our client's personal data. Plainly it is not. Even if what you say about meaning/the accuracy of the publication overall is correct (which is disputed), the libel, malicious falsehood and UK GDPR claims do not stand or fall together (as indicated above). The juxtaposition on its own is an obvious breach of the UK GDPR which is compounded by ANL's decision to circle our client's face in one of the photographs.
>
> You make the bald statement that you are entitled to rely on the journalistic exemption and that "*in assessing whether continued publication is in the public interest we must take account of the further* "*special importance of the public interest*" *in the freedom of expression in information*". This reads like a templated response with no attempt to explain how, in the instant case, the

> exemption is applicable. It is trite law that there is no public interest in false information, and again, putting your case at its highest, ANL cannot seriously be suggesting that it reasonably believed (and still believes) that the juxtaposition is in the public interest."

In a further letter dated 27 July 2023, Associated Newspapers restated its position on the proposed UKGDPR claim.

> "Our position on the UKGDPR complaint is clear. There is no false information. Your client is a major donor to the Labour Party and was photographed in a public place protesting with Just Stop Oil and blocking the traffic in central London. Our firm belief is that the publication of the Article was (and remains) in the public interest and we have no doubt that a court would find that belief to be reasonable. …"

15. The submission for Associated Newspapers is that the claim now made under the UKGDPR was always available to Mr Vince. At the time the defamation claim was commenced, Mr Vince was aware of the claim available to him under UKGDPR and it was fully canvassed in the pre-action correspondence. Thus, Mr Vince could have pursued the claim, but whether for the reasons set out by Associated Newspaper in its responses to the pre-action correspondence or otherwise, and whether in accordance with advice given by his solicitors and counsel or not, he chose not to. Moreover (it is submitted), at any time before the defamation claim was struck out, Mr Vince could have applied to amend to add the UKGDPR claim to the existing proceedings; applications to amend are frequently made in response to applications to strike out, but in this case no steps were taken to add the UKGDPR claim.

16. Next, Associated Newspapers submits that the reason to bring the claims together was all the stronger because the claims share a common target and purpose. Both rest on the premise that the headline was misleading (see paragraph 5 of the Particulars of Claim for the defamation claim, and paragraph 7 of the Particulars of Claim for the UKGDPR claim), and both seek damages for harm to reputation (paragraph 10 of the Particulars of Claim for the defamation claim, and paragraph 18 of the Particulars of Claim for the UKGDPR claim).

17. Finally, Associated Newspapers submits that by reference to the sequence of events between 2 October 2023 when the defamation claim was issued, and 18 September 2024 when the second claim form was served, the timing of the UKGDPR claim was a clear tactical ploy. After the defamation claim was issued and served, Associated Newspapers made an application to strike the claim out. That application was heard (by HHJ Lewis) on 19 February 2024 and judgment on the application was reserved. The Claim Form containing the UKGDPR claim was filed at court on 5 June 2024 and issued the same day. However, the Claim Form was not served on Associated Newspapers at that time. Instead, on 6 June 2024, Mr Vince's solicitors wrote to the solicitors acting for the Associated Newspapers in the defamation claim enclosing an unsealed copy of the Claim Form. The letter then stated:

> "As you will know, this claim was foreshadowed in the Letter of Claim dated 26 June 2023, albeit it is now limited to a claim of unfair data processing contrary to Article 5(a) of the UK GDPR.
>
> Whether the Claim Form is served will likely be influenced by the outcome of your client's extant application in the libel proceedings (Claim No. KB -2023-003818). Accordingly, we do not consider it necessary or proportionate to enter into dialogue about the new claim about this stage."

Thus, the prospect of the UKGDPR claim was raised again only after the strike out application had been heard and judgment reserved. Associated Newspapers submits it is clear from the 6 June 2024 letter that the UKGDPR claim had been held in reserve to be deployed in the event the defamation claim failed. No sufficient explanation to the contrary has been provided in response to this application to strike out. That tactic, drip-feeding claims one after the other, is significantly different from any normal use of the court's process and, in the absence of explanation, is an abuse.

18. Mr Vince's response to the application to strike out is that the principle in *Henderson* does not apply in the circumstances of this case because the UKGDPR claim was commenced before the defamation claim had been decided by the court. Alternatively, if the principle in *Henderson* does apply, or so far as the application to strike out rests generally on CPR3.2(2)(b) (rather than only on the *Henderson* principle), it is submitted: (a) that the issue in the UKGDPR claim concerns whether personal data relating to Mr Vince was fairly processed and is for that reason materially different from the any issue in the defamation proceedings, and would not have been decided in those proceedings; (b) there was good reason for pursuing the UKGDPR claim in separate proceedings and (c) the course of action followed in the respect of the UKGDPR claim, from the pre-action correspondence in June 2023 to date, has caused Associated Newspapers no prejudice.

(2) Conclusion

19. The modern law on the court's power to strike out a statement of case on the grounds it is an abuse of process starts with the decision in the House of Lords in *Johnson v Gore Wood and Co. (a firm)* [2002] 2 AC 1. As explained in the speech of Lord Bingham, the existence of the power protects the public interests in finality in litigation and that litigation should be conducted efficiently and economically. Lord Bingham was careful to emphasise that what these public interests require is sensitive to circumstances. He said the following, at page 31B – D:

> "… The bringing of a claim or the raising of a defence in later proceedings may, without more, amount to abuse if the court is satisfied (the onus being on the party alleging abuse) that the claim or defence should have been raised in the earlier proceedings if it was to be raised at all. I would not accept that it is necessary, before abuse may be found, to identify any additional element such as a collateral attack on a previous decision or some dishonesty, but where those elements are

> present the later proceedings will be much more obviously abusive, and there will rarely be a finding of abuse unless the later proceeding involves what the court regards as unjust harassment of a party. It is, however, wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive. That is to adopt too dogmatic an approach to what should in my opinion be a broad, merits-based judgment which takes account of the public and private interests involved and also takes account of all the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party is misusing or abusing the process of the court by seeking to raise before it the issue which could have been raised before."

The importance attaching not only to whether the later claim "could" have been brought with the earlier one but also to whether it "should" have been so brought was conveniently summarised by Clarke LJ in his judgment in *Dexter Limited v Vlieland-Boddy* [2003] EWCA Civ 14:

> "49. The principles to be derived from the authorities, of which by far the most important is *Johnson v Gore Wood & Co* [2002] 2 AC 1, can be summarised as follows:
>
> > i) Where A has brought an action against B, a later action against B or C may be struck out where the second action is an abuse of process.
> >
> > ii) A later action against B is much more likely to be held to be an abuse of process than a later action against C.
> >
> > iii) The burden of establishing abuse of process is on B or C or as the case may be.
> >
> > iv) It is wrong to hold that because a matter could have been raised in earlier proceedings it should have been, so as to render the raising of it in later proceedings necessarily abusive.
> >
> > v) The question in every case is whether, applying a broad merits-based approach, A's conduct is in all the circumstances an abuse of process.
> >
> > vi) The court will rarely find that the later action is an abuse of process unless the later action involves unjust harassment or oppression of B or C."

It follows that while "could have been raised" is a threshold issue, "should have been raised", the broad merits-based consideration of all circumstances, is the determinative issue.

20. I accept the submission for Mr Vince that the circumstances of this case do not fall within the principle in *Henderson*. In *Orgi v Nagra* [2023] EWCA Civ 1289, the Court of Appeal considered an appeal against a decision to strike out proceedings that had a complex history. In that case, the claimant (a tenant) had commenced proceedings for damages for trespass against his landlord. That claim arose from events that had taken place on 25 and 26 March 2018 when the landlord had attempted to execute a warrant for possession. The proceedings for trespass were then delayed when the claimant was prosecuted and convicted of offences arising out of his actions when the landlord had attempted to repossess the property. Those convictions were, however, overturned on appeal. Thereafter, in early 2020, the claimant prepared an amended pleading that added a claim for damages for malicious prosecution. Notwithstanding that the defendant was aware of the proposed amended claim, and that the proposed amended claim had been before a court on at least two occasions, no application to amend was made. Nevertheless, as Coulson LJ put it in his judgment.

> "29. … these references show that the possibility of a future claim for malicious prosecution hung, like Banquo's ghost, over the hearing, with everyone aware of it to some degree or other but no-one, for whatever reason, prepared to articulate the point expressly. Perhaps both sides saw an advantage in this sort of shadowboxing, although that is not the way to conduct litigation in the twenty-first century."

Then, in October 2020, the claimant commenced a second set of proceedings against the defendant claiming damages for malicious prosecution. That claim was struck out applying the principle in *Henderson*. By that time the claim for damages in trespass remained outstanding; it had not been determined by the court. The Court of Appeal reversed the decision to strike out on the *Henderson* Ground. The leading judgment was given by Coulson LJ; the material part of it is as follows.

> "48. I am in no doubt that the rule in *Henderson v Henderson* has no application to the facts of the present case. That is because there was no relevant determination by DJ Stewart which could legitimately prevent the appellants' subsequent pursuit of the malicious prosecution claim.
>
> 49. At the time of the hearing before DDJ Payne, there was a trespass claim which had not got beyond the pleading stage, and a later malicious prosecution claim, arising out of the same incident (but with many different features), which had also not got beyond the pleading stage. There had been no determination by the court of any substantive issue. The appellants could not be accused of trying to go behind some earlier determination of the court, because there had not been one. The only determination that DJ Stewart made was allowing the appellants

> permission to re-amend the trespass claim. On the face of it, that had nothing to do with the existence or otherwise of the separate malicious prosecution claim, which had not even been commenced.
>
> 50. On that basis, therefore, it is impossible to see how the rule in *Henderson v Henderson* could have any general applicability to this case. It might be different if the trespass claim had been fought through to a trial and been determined by the court by August 2020. In those circumstances, the commencement of the malicious prosecution claim in October 2020 may well have fallen foul of the rule, because it could and should have been raised before the trespass trial. But that was all a long way off in August 2020, when the trespass claim had not got beyond the pleading stage, and the only determination was the permission to make some re-amendments."

21. In his judgment, Nugee LJ added the following:

> "81. … As this label ("a thing adjudicated on") indicates, the essence of the principle, like other aspects of *res judicata*, is that once a particular matter has been determined by a court, that may preclude a party from having a second go. Or to put it in colloquial terms a litigant is entitled to their day in court, but once they have had it, is not in general entitled to a second bite at the cherry.
>
> …
>
> 83. The cases show that the *Henderson v Henderson* principle is a very flexible one. In *Henderson v Henderson* itself the issue was whether a claim could be brought in England for items said to be due on an account where there had already been an account taken in previous proceedings in Newfoundland in which those items could have been raised but were not. In *Yat Tung Investment Co Ltd v Dao Heng Bank Ltd* [1975] AC 581 a mortgagor sought unsuccessfully to avoid the exercise by a mortgagee of a power of sale in two successive actions, contending on the first occasion that the sale was a sham and that there was no real sale, and on the second that the sale was fraudulent. That was undoubtedly a different claim but if it was going to be taken at all it should have been taken in the first set of proceedings. The doctrine can apply even though the second claim is brought by a different party (as was the case in *Johnson v Gore Wood)*, or against a different party (as in *Aldi Stores v WSP Group*), although in fact in each of those cases the second claim was not found to be abusive. Whether in any particular case the second claim is abusive depends on whether it not only could but should have been brought first time round, and that requires a broad merits-based judgment as explained by Lord Bingham in *Johnson v Gore Wood.*

> 84. But what all the cases have in common is that the second claim is an attempt to reopen something that has already been decided. That is where the abuse lies. That does not mean there must have been a trial of the first claim. The principle is capable of applying if the previous proceedings have been settled by agreement. A settlement by the parties is just as much a final resolution of a claim as a judgment by a court, and it can be just as abusive to seek to circumvent it by putting forward a second claim. The principle is also capable of applying where there has been an interlocutory decision in the very same proceedings, as illustrated by the case referred to by Coulson LJ in paragraph 46 above of *Seele v Tokio* (in fact a decision of his own although he modestly does not say so). But if there has not been any previous decision, there is nothing for the principle to bite on. It cannot be said that a litigant is being abusive in seeking to have a second bite at the cherry if they have not yet had their first."

22. Timing of events made the present case a close-run thing. The UKGDPR claim was not commenced until 5 June 2024, almost 4 months after the hearing of the application to strike out defamation claim. Nevertheless, that application had not then been determined; the judgment was not handed down until 15 July 2024; when the UKGDPR claim was commenced the court had reached no conclusion on the defamation claim. While in his judgment in *Orgi*, Nugee LJ emphasised the flexibility of the *Henderson* principle, he made clear that the need for a previous determination by a court was a founding requirement for its application.

23. However, the principle in *Henderson* is only one aspect of the court's power under CPR3.4(2)(b). On consideration of the circumstances of this case, generally, I am satisfied that the UKGDPR claim should be struck out as an abuse of process. There is no question that the UKGDPR claim could have been commenced as part of the claim issued on 2 October 2023. All the matters now relied on in support of the UKGDPR claim were known to Mr Vince and his advisors.

24. There was every reason why the UKGDPR and defamation claims should have been brought in the same proceedings. Both claims arose out of the same event – the publication of the article in Mail+ and the Daily Mail. Both claims rely on the same factual circumstances, namely the juxtaposition of the headline, photographs and caption, and the contention that the combination of the headline and the photograph created the misleading impression that Mr Vince had been accused of sexual harassment. In one claim this was said to be defamatory, in the other the misleading impression created was said to comprise unfair processing of personal data.

25. Neither claim was legally complex, pleading the claims together would not have given rise to any form of difficulty. Some of the cases referred to in submissions (for example *Aldi Stores v WSP* [2008] 1 WLR 748, and *Stuart v Goldberg Linda* [2008] 1 WLR 823) concerned litigation that was complex or had arisen from complex circumstances in which the claimant had prioritised one course of action (and cause of action) over others. In those cases, the courts emphasised that a claimant's freedom of action must be recognised. For example, in *Aldi* Thomas LJ stated:

> "18. First, it is important that Aldi had not behaved in any way that was culpable, let alone improper, even though neither impropriety nor culpability is a necessary finding before a claim can be struck out. Aldi had made a judgment that it would be in its interests to try and make a recovery against excess layer underwriters on the judgment that it had obtained rather than to continue to participate in the action by bringing claims against WSP and Aspinwall. In my view that was a decision which was open to Aldi as a sensible and cost effective way of proceeding in the light of the fact that (a) the trial of the Aldi Part 20 claims and the B&Q and Grantchester actions would last several weeks; (b) the costs would be considerable, given the fact there were 8 separately represented parties; (c) the issues which WSP and Aspinwall were raising on their liability and on quantum were issues that Aldi had not been concerned with in its claim against Holmes; (d) the interest of Aldi in monetary terms was a fraction of that of B&Q. Aldi had been singularly successful in the strategy it had pursued against Holmes and its success was a factor which the judge failed to take into account in judging Aldi's decision on its strategy.
>
> …
>
> 25. Furthermore, there is a real public interest in allowing parties a measure of freedom to choose whom they sue in a complex commercial matter and not to give encouragement to bringing a single set of proceedings against a wide range of defendants or to complicate proceedings by cross-claims against parties to the proceedings. That freedom can and should be restricted by appropriate case management."

26. The present case is far removed from any such considerations. The two causes of action were (in legal terms) straightforward and well-known. Nor was there any factual complexity since both causes of action arose from publication of the same article and concerned the same defendant. Rather than there being any reason to pursue the claims consecutively, there was every reason to pursue them together. At the time of the pre-action correspondence in July, August and September 2023 there was every indication that both causes of action would be pursued in the same proceedings.

27. One inference to be drawn from the 6 June 2024 letter is by the time the defamation claim was issued it had been decided to pursue that claim while holding the UKGDPR in reserve, to be deployed only if the defamation claim failed. The other possible inference is that by the time defamation proceedings were commenced in October 2023 a decision had been taken not to pursue the UKGDPR claim. Then, following the hearing of the application to strike out that claim in February 2024, and perhaps with an eye to which way the wind had blown at the hearing of that application, a different decision was taken, to pursue the UKGDPR claim in the event at the defamation claim was dismissed.

28. But whichever is correct, no sufficient reason for that choice has been provided. The witness statement made in response to the strike out application, made by Tom Double, a partner in the firm of solicitors acting for Mr Vince, refers only to new counsel being instructed (in May 2024, after the hearing before HHJ Lewis which had taken place in February 2024) and the view being taken that it would be "more convenient" to raise the UKGDPR claim in sperate proceedings than by an amendment of the then existing proceeds. There is no suggestion that any technical, evidential or other difficulty prevented the claims being run together, and no suggestion of any lack of resources on Mr Vince's part. The "convenience" that Mr Double refers to is only the convenience of his client to pursue a course of action that is attritional in that it will serve to prolong the litigation against Associated Newspapers causing it to commit more time and resources to its defence of the publication of the article in Mail+ and the Daily Mail, for a second time.

29. While it is accurate to say that Associated Newspapers will not be "twice vexed" in the sense anticipated by the principle in *Henderson*, it will for all practical purposes be required to defend publication of the article for a second time with the additional time and cost that will entail. Taking account of the explanation provided on behalf Mr Vince, such as it is, I accept that what has happened in this case is a significant departure from any ordinary or proper use of the court's process. Rather the course taken serves only to use the court's process in a way that is unnecessary and is oppressive to Associated Newspapers. In the premises, the application to strike out the UKGDPR claim is allowed.

C. Decision: the applications for summary judgment.

30. Associated Newspapers' application for summary judgment and Mr Vince's cross application for the same, rest on the premise that the decisive issue in this case is the application for the requirement at article 5(1)(a) of the UKGDPR that personal data be processed "fairly". For the purposes of its summary judgment application, Associated Newspapers does not rely on the journalistic purposes exemption (at paragraph 26 in Part 5 of Schedule 2 to the Data Protection Act 2018). Both parties contend that in this case, a decision on whether the article published in Mail+ and the Daily Mail complied with the fair processing requirement can be decided on the information now available and that no trial is necessary.

31. The matter in issue between the parties is whether in this case, assessment of the fairness of the processing should be made taking an approach akin to that of the rule restated by the House of Lords in *Charleston v News Group Newspapers* [1995] 2 AC 65, that a claim for libel cannot be founded on a headline or photograph in isolation from any related text (including the article underneath the headline) so that in a libel claim whether an article was defamatory has to be answered by the response of an ordinary and reasonable reader to the entire publication: see per Lord Bridge pages 71E – 73B. In his speech in the same case, Lord Nicholls put the point in this way at pages 73F to 74D.

> "It is precisely the application of the principle so clearly expounded in these passages which, in a libel action where no legal innuendo is alleged, prevents either side from calling witnesses to say what they understood the allegedly defamatory

> publication to mean. But it would surely be even more destructive of the principle that a publication has "the one and only meaning that the readers as reasonable men should have collectively understood the words to bear" to allow the plaintiff, without evidence, to invite the jury to infer that different groups of readers read different parts of the entire publication and for that reason understood it to mean different things, some defamatory, some not.
>
> Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented. But the proposition that the prominent headline, or as here the headlines plus photographs, may found a claim in libel in isolation from its related text, because some readers only read headlines, is to my mind quite unacceptable in the light of the principles discussed above.
>
> I have no doubt that Mr. Craig is right in his assertion that many "News of the World" readers who saw the offending publication would have looked at the headlines and photographs and nothing more. But if these readers, without taking the trouble to discover what the article was all about, carried away the impression that two well-known actors in legitimate television were also involved in making pornographic films, they could hardly be described as ordinary, reasonable, fair-minded readers."

32. So far as concerns the article published in Mail+ and the Daily Mail in this instance, the application of the rule in *Charleston* was considered by HHJ Lewis in his judgment to strike out the defamation claim. The material parts of his judgment are as follows.

> "7. The claimant acknowledges that upon reading the text of the Article, the ordinary reader would appreciate very quickly that he was not the person being accused of sexual harassment.
>
> 8. The claimant does not, therefore, allege in his Particulars of Claim that the words complained of were defamatory of him in their natural and ordinary meaning. He does, however, plead a meaning by way of innuendo.
>
> …
>
> 12. The claimant's innuendo case is pleaded as follows:

> a. The "statement complained of" in the proceedings comprises the headline, two photographs and a caption, but not the text of the article.
>
> b. It is said that a substantial but necessarily unquantifiable number of readers knew certain "extraneous facts", namely that: "headlines, prominent photographs, and captions to such photographs appearing in articles published in the mainstream popular UK press summarise and encapsulate in an accurate and informative way what is going to be said in the rest of the article, such that they knew they did not need to read any further than to understand what the article was saying".
>
> c. A substantial number of readers would have read the "statement complained of" in the knowledge of the 'facts' identified in (b) above. Those readers would have understood that the newspaper was saying that he was "guilty of, or had been reasonably been accused of, sexual harassment, such that the Labour Party had repaid the claimant a £100,000 donation that he had made to them".

…

24. Mr Busuttil says there is no principle in English law, derived from *Charleston* or otherwise, to the effect that innuendo readers of a defamatory article – in contrast to 'natural and ordinary' readers – must be taken to have read the whole article if they are to be regarded as reasonable readers, regardless of their special knowledge or characteristics. He says innuendo readers with special knowledge or characteristics which have caused them to read the text differently must be taken to have read only what they have read, and to have read it reasonably.

25. The claimant's case is, therefore, focussed on what Mr Busuttil says is a special class of readers (owing to their special characteristics and knowledge), how they go about reading defamatory material and whether they read all, or only some, of the material presented to them.

…

40. I cannot see any principled basis for the principles in *Charleston* not being applicable in in this case. The House of Lords considered the position of readers who only look at headlines and photographs, referred to by Lord Bridge at 70C as "limited readers". For the reasons already outlined, the House of Lords established a clear principle which has been applied consistently in the Court of Appeal and the High Court. Whilst Mr Busuttil is correct in highlighting that the House of Lords

> referred in places to innuendo claims, in in each of the examples given, the court was summarising a legal principle that would not apply in the same way to innuendo cases. There is nothing in the judgment to suggest that the Court was saying that the core point under consideration would not apply in an innuendo case.
>
> 41. It follows that I am certain that this claim is bound to fail, even assuming that the claimant can establish that this is a true innuendo claim and prove the key facts upon which the claim is based. The principle in *Charleston* is binding on this court, meaning that the headline, photos and caption must be read together with the article. Taken together, it is agreed that the article was not defamatory of the claimant at common law, and so the claim must fail."

33. The submission now made for Associated Newspapers is that in this claim under the UKGDPR, where the processing relied on is the publication of the article, the fairness of that processing should be assessed taking account of all that was published not just the headline and the photographs. The submission for Mr Vince is that fairness is to be assessed objectively but without reference to any approach like the rule in *Charleston* since there is no necessary correlation between the policy that underlies that rule and any matter that touches on whether personal data has been fairly processed for the purposes of UKGDPR.

34. The rule in *Charleston* has been held to be relevant to claims that personal data has been processed inaccurately, contrary to article 5(1)(d) of the UKGDPR. In *NT1 v Google LLC* [2019] QB 344, Warby J considered such a claim in context of a refusal to remove from internet search results, items that included links to reports of convictions that were spent under the Rehabilitation of Offenders Act 1974. On the application of the rule in *Charleston* and the law of defamation in general, Warby J said this.

> "83. … I do not regard the principles identified in *Charleston* as artificial. Nor do I think them inapposite in the present context. They have been developed over centuries to meet the needs of a cause of action that addresses issues arising from the publication of words and their impact on reputation. Mr White's submissions also have two other virtues. They find support in domestic authority. In *Lord Ashcroft v Attorney-General* [2002] EWHC 1122 (QB) [22] Gray J held it arguable that ostensibly innocent words might convey a secondary, inferential meaning which embodied sensitive personal data about an individual to the effect that he was involved in money laundering (see Tugendhat & Christie, op. cit. at 7.25). In *Quinton v Peirce* [2009] EWHC 912 (QB) [2009] FSR 17 [27]-[29], [92] Eady J applied the single meaning rule when assessing whether data were inaccurate within the meaning of the Fourth Principle. In addition, the defamation rules seem well-adapted to testing whether the words satisfy the Working Party criterion of giving "an inaccurate, inadequate or misleading impression of an individual".

…

> 87. It seems to me legitimate to have regard in this context also to the contours of the English law of defamation, which has always allowed a generous latitude to those reporting proceedings in Court or in Parliament, going so far as to permit reporting which conveys the "impression" of the journalist (see, e.g., *Cook v Alexander* [1974] 2 QB 279, CA). It would be wrong to treat the two branches of the law as co-terminous, as they not only have different origins but also serve different purposes. It is possible to give more weight to literal accuracy in the context of data protection law, with its broader aims and its wider and more flexible range of remedies. It is appropriate, however, to bear in mind domestic principles in order to ensure, as far as possible, that the law has the "coherence" to which Lord Sumption referred in *Khuja*."

Thus, in the context of the claim in that case, principles developed in defamation, including the rule in *Charleston*, had some bearing on assessment of whether the personal data had been processed accurately.

35. The cross-application of defamation law principles to claims under the UKGDPR was also considered by DHCJ Richard Spearman KC in *Pacini v Dow Jones and Company Inc* [2024] EWHC 2714 (KB). There, the Deputy Judge considered preliminary issues in a case in which the claim was that personal data had been processed inaccurately when articles about the claimants (who were investment bankers) were published on the Wall Street Journal's website "WSJ.com". One of the preliminary issues concerned the meaning of the data published. Having referred to the judgment in *NT1*, the Deputy Judge expressed concern that there was a difference between the notion of whether data (including personal data) was "accurate", which was essentially a matter of fact, and the defamation notion of "meaning" which referred instead to the message conveyed by the material in question. Thus, he continued, when deciding claims under the UKGDPR a defamation approach could not be applied "indiscriminately": see his judgment at paragraphs 64 to 65.

36. At paragraph 74 of his judgment the Deputy Judge considered the obligation to process personal data fairly.

> "74. If the single meaning rule is applied for purposes of (i) identifying personal data and/or (ii) interpreting the ambit of that data, a question arises as to how that interrelates with the issue of fairness. In *Slim v Daily Telegraph* [1968] 2 QB 157, at 187 Salmon LJ cited a case in which "It was there held that the words complained of were incapable of meaning to ordinary men that the bank was in financial difficulties, yet they caused a run on the bank, whose customers, presumably, were ordinary men". No doubt, that is an extreme example. However, what if the Court determines for the purposes of the claim of inaccuracy that the natural and ordinary meaning of the data is innocuous, but readers, or some readers, of the data in fact react to it in a manner

> that is very adverse to the data subject? Does that have the effect that when addressing the claim of unfair processing, the Court is tied to the natural and ordinary meaning that it has found in respect of the inaccuracy claim? If so, it seems to me that might produce an unduly fettered approach to the issue of fairness. Or does it have the effect that when addressing the issue of fairness, the Court is not precluded from having regard to the reality of the matter? If so, that would seem to me to be consonant with achieving the correct approach on the issue of fairness, but how comfortably would that sit beside the conclusion on inaccuracy?"

Thus, the suggestion is that to apply a rule such as the one in *Charleston*, that what is published must be considered as a whole, to decide claims under UKGDPR, could produce artificial outcomes. However, whether that might be so rather depends on the substance of the complaint that is being pursued as the complaint under the UKGDPR. Ultimately (at paragraph 79 of his judgment) the Deputy Judge concluded that "fairness is a broad and flexible concept, and it is possible to take account of all the circumstances when determining it".

37. To state the obvious, fairness must depend on context. What must be considered will, for example, depend on what form the processing has taken, the context in which it has occurred, and the reason it has taken place, as well as the impact the processing has had on the data subject. In the context of the UKGDPR fairness must also be assessed objectively reflecting a balance of the interests of the processor, the data subject, and the public interest: see for example the fourth recital to the UKGDPR which refers, very generally, to a wide range of competing interests; and section 2 of the Data Protection Act 2018 which, when referring to the role of the Information Commissioner, requires him to have regard to all matters of general public interest.

38. Mr Vince's complaint is that processing by way of publication was unfair because the headline and the pictures gave a misleading impression. He contends that because of the unfair processing his reputation has been damaged. In this context I consider it is correct to determine whether personal data was processed fairly taking an approach that, like the rule in *Charleston*, takes account of the entirety of the publication. This is in no sense an artificial approach. As is apparent from Lord Nicholls' speech in *Charleston* the rule represents a balance struck in the public interest between competing considerations. While it is in practice obvious both that different people will understand published material in different ways, and that not all readers will pay the same attention to an article than they do to a headline or any picture printed with it, the law, through the rule in *Charleston*, reflects long established public interest in favour of public speech. The law of data protection is not the law of defamation. Yet in the context of this claim where the processing relied on takes the form of publication, the unfairness relied on is that a headline and photographs gave a misleading impression, and the primary harmed caused is said to be reputational damage, the law would be incoherent if the fairness of the processing was assessed other than by considering the entirety of what was published. In his judgment in *Sicri v Associated Newspapers Limited* [2021] 4 WLR 9, Warby J in the context of a claim for damages brought under the Human Rights Act 1998 for breach of article 8 rights, commented (at paragraph 158) of his

judgment that "… there remains a good deal to be said today for the principle … that reputational damages are only available in defamation and limited other torts which are premised on the falsity of the information." Although the persistence of legal ingenuity may mean that ship has already sailed, and other causes of action may be pressed into the same service, there is still every reason to ensure that the approach taken to all such claims, in whatever form they might arise should, so far as needed, is informed by the weight that attaches to established public interests.

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

40. In the premises, had I not already decided to strike out Mr Vince's claim under the UKGDPR as an abuse of process I would have granted Associated Newspapers' application for summary judgment, and refused Mr Vince's application for summary judgment.

D. Disposal

41. For these reasons, the consequence of my decisions on the applications before the court is that Mr Vince's claim is dismissed.