Case No: 1LS50081

IN THE LEEDS COUNTY COURT

Combined Court Centre, Oxford Row Leeds

Date: 07/06/2012

Before:

HIS HONOUR JUDGE GOSNELL

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Between:

Melvyn Stuart Levi (1) **Carole Mary Levi (2)**	**Claimants**
- and -	
Kenneth William Bates (1) **Leeds United Football Club Limited (2)** **Yorkshire Radio Limited (3)**	**Defendants**

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Mr Simon Myerson QC (instructed by Ford and Warren) for the Claimant
Mr Jacob Dean (instructed by Carter Ruck) for the Defendants

Hearing dates: 23rd, 24th, 25th and 26th April 2012

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JUDGMENT

His Honour Judge Gosnell:

1. This claim is brought by the First and Second Claimants who are a married couple against the Defendants. They claim damages and an injunction for harassment. The circumstances are somewhat unusual and there is a complicated commercial background to the case which will require some explanation. I intend however to adopt a relatively neutral and simple explanation as to the background history before setting out the Claimants` specific allegations of harassment against the Defendants. The situation is further complicated by the fact that the First Claimant sued the First Defendant for libel in respect of some alleged acts of harassment and recovered damages of £50,000 in 2009. It is accepted that he cannot be compensated twice for the same acts.

2. **The Background**

The First Claimant is a businessman and in 2004 he decided to get involved in the management of a football club, Leeds United. At the time they were in the Premier League but were in serious financial difficulty. He joined with other businessmen known as the Yorkshire Consortium to take over the club through a company known as Adulant Force Limited (Adulant). The Yorkshire Consortium was successful in reducing the club's debts but eventually a financial crisis occurred when the Inland Revenue demanded over £ 3 million in unpaid tax. The club needed an urgent injection of capital and the First Defendant who is also a businessman put together a consortium of investors to take over the football club. The takeover deal was complicated by an embarrassment clause in a previous contract which meant that the shares had to be transferred in two tranches with half of the shares in Adulant being transferred in January 2005 with the remaining half subject to a call option exercisable by 31st May 2005. The Bates consortium sought to exercise the call option but there was a dispute as to whether certain contractual conditions had been complied with to make the call option valid. The First Claimant was on one side of this dispute and the First Defendant was on the other.

3. When the First Claimant originally invested in the club he did so for and on behalf of Cope Industrial Holdings Limited (Cope) of which he was a director and a 25 % shareholder. The other shareholder was Mr Robert Weston a friend and colleague of the First Claimant who lived in Jersey. Mr Weston had another business which traded as Admatch which had credit and debit card facilities. In May 2004 the company which previously owned Leeds United entered into a contract with Admatch to process credit and debit card payments for tickets as they were having difficulties obtaining this facility from the usual sources due to their parlous financial position. The terms of the agreement are in dispute. The First Claimant and Mr Weston contend that the terms are set out in a document known as the "fourth draft" which included a term that monies owed by the club or any associated company to Admatch or any associated company could be set-off against any debt owed by Admatch to the club. The First Defendant contends that the "fourth draft" is not a bona fide document which was validly executed by the football club and so the agreement is regulated by the previous draft which did not contain the set-off clause.

4. Before the takeover Admatch had owed the football club £190,400 in unpaid payments but sought to set off this debt against the debt of £ 1,439,734 owed to Cope by the football club. It would of course only be permitted to do this if the fourth draft was the agreement which in law governed the contract. This is the second major dispute between the First Claimant and the First Defendant. Whilst the First Claimant has no interest in Admatch the First Defendant feels that Mr Weston has, with the support and help of the First Claimant, dishonestly retained the £190,400 which was owed to the football club. The financial difficulties of the football club continued and eventually it was placed into administration. The First Defendant set up a new company to run the football club and he now owns 76% of the shares. This company is the Second Defendant which was incorporated in May 2007. The right to pursue the contractual claim against Admatch was assigned by the Administrators of the old company to the Second Defendant. The Third Defendant is the owner of a radio station known as Yorkshire Radio which effectively acts as the club's radio station and is beneficially owned by Leeds City Holdings which also owns the Second Defendant.

5. **The Jersey Proceedings**

Proceedings were started by the club against Admatch in Jersey in December 2005 to attempt to recover the £190,400 which was admittedly owed and in December 2009 the club were granted permission to amend its claim to allege that the "fourth draft" of the agreement was a fabrication. Mr Weston did not instruct lawyers to deal with these proceedings and Admatch failed to comply with a number of unless orders which eventually resulted in Judgement being entered in favour of the Second Defendant on 19th May 2011. The Second Defendant had concerns that Admatch would not have sufficient assets to meet the judgement and those concerns have proved correct. There are currently proceedings against Mr Weston for contempt of court. The Second Defendant then decided to issue a second set of proceedings in Jersey personally against Mr Weston and the First Claimant. The Order of Justice which is the equivalent of a Claim Form and Particulars of Claim in Jersey was issued on 15th December 2010. It is alleged that the First Claimant and Mr Weston have fabricated the "fourth draft" to enable Admatch to set off the debt owed by the club to Cope against the debt owed by Admatch to the club. Breaches of fiduciary duty have also been alleged against the First Claimant in relation to his duty to the club as director of the company which then owned it. These proceedings are defended and I understand they have been stayed in Jersey on forum grounds. An appeal by the Second Defendants against this decision has been dismissed. New proceedings have been commenced in the Chancery Division in London which will no doubt also be defended. I indicated during the trial and in a previous hearing that I was not prepared to rule on who was likely to be the successful party in these proceedings and that the issue of the proceedings per se against the First Claimant could not be treated as harassment.

6 **The Libel Proceedings**

As chairman of the Second Defendant, the First Defendant writes a regular column in the match programme for each home game. Some of his columns referred to the First and Second Claimants in terms which the First Claimant considered were defamatory of him. He issued proceedings against the First Defendant for libel in respect of certain contents of three of these columns and in respect of a separate letter to Leeds Club members. After a contested trial before Sir Charles Gray in 2009 the First Claimant succeeded against the First Defendant in respect of the three columns and was awarded damages of £50,000 plus costs. The First Defendant also gave undertakings effectively not to repeat the particular libels which all parties agree he has kept. The only real significance of this is that I have previously ruled that the First Claimant may only claim damages in respect of any harassment proved to have taken place after 2009 in order to avoid double recovery.

7 **The allegations of harassment**

There are a number of allegations of harassment pleaded by the Claimants. The fact that the particular words were used is not disputed by the Defendants as they are mainly recorded in documents. It is fair to say that the Defendants deny that the words used are capable of amounting to harassment and have a number of other technical arguments in respect of the same which I will deal with later. I will accordingly set out all the allegations of harassment made by the Claimants so that in due course I can decide whether any or each of them are capable of amounting to harassment. Where I have set out an article written by the First Defendant this is an extract from his column in the match programme unless stipulated otherwise:

a) In an article entitled "This *is The Story Behind the Recent Headlines*" published in the programme on 25th September 2006 the First Defendant claimed that the First Claimant was claiming that he "*was going to get the club back"*. He also stated that the First Claimant and another were acting like a "*pair of money grabbing spivs*".

b) In an article entitled "*Making Steady Progress But There is Still A Long Way to Go"* published in the programme on 28th September 2005 the First Defendant wrote *" we are saving Melvyn Levi's free tickets which reduces our attendance by 3*". He concluded the article: *"on a final note, what exactly was Melvyn Levi's involvement in the Bramley League Club? I hear all sorts of stories and understand that their ground is now covered in housing. How did that come about?"*

c) In an article entitled "Just *to Bring You Up To Speed*" published in the programme on 17th October 2006 the First Defendant called the First Claimant a "*shyster*" and claimed the First Claimant was trying to blackmail him. This was the first of the successful defamatory allegations.

d) In an article entitled "The *Enemy Within*" published in the programme on 3rd March 2007 the First Defendant wrote that the First Claimant's father must be "*turning in his grave at his antics*". The First Defendant wrote that the First Claimant's demands were "*little short of blackmail";* that his behaviour was "*totally scurrilous*"; and described the First Claimant's behaviour as

unpleasant and dishonourable. The First Defendant suggested that readers should put questions to the First Claimant to justify his behaviour, publishing the Claimants' home address. This was the second of the successful defamatory allegations.

e) In an article entitled "Why *Mr Levi Why*" published in the programme on 10th March 2007 the First Defendant accused the First Claimant of trying to frighten off would-be investors and trying to blackmail him personally into paying the First Claimant money to go away. The First Defendant wrote: "*Thanks Melvyn. By the way, you do know that your phone number is in the book don't you*". This last sentence was blanked out in most programmes but the Claimants allege that it could still be read clearly from both the front and behind the page. The phone number was clearly that of both Claimants. This was the third successful defamatory article.

f) In an article entitled "*Progress on Many Fronts*" published in the programme on 11th April 2008 the First Defendant wrote "*we have now decided to refer the matter [the Yorkshire Consortium's running of the club] to the appropriate authorities and call for a full investigation into the circumstances surrounding the original takeover of Leeds United …..PS On Wednesday I received a telephone call from Charlie Sale, a sport gossip columnist at a daily tabloid. He had received a phone call from Melvyn Levi, anxious to tell about his forthcoming libel action against me which will be heard in the High Court in June. This should be hilarious. Levi will be asked to explain the allegation that Roman Abramovich has blacklisted me with English banks. All documented of course. Don't miss the Melvyn Levi Comedy Show in the High Court available across all the British Media, including Yorkshire Radio*". It is the Claimants` case that the matter was not referred to the appropriate authorities and no documents have been produced to support the fact that the First Claimant made these allegations against the First Defendant.

g) On 21st December 2010 a process server employed by a company instructed by the Second Defendant's Jersey lawyers attempted to personally serve the First Claimant with court papers at his home. At the time of his visit only the Second Claimant was present and so service was not effected. The First and Second Defendants were aware that the Claimants` solicitors were Ford and Warren of Leeds and service could have been arranged through them. The Claimants allege that the decision to attempt personal service at the Claimant's home without warning was a further act of harassment.

h) On 26th December 2010 Leeds United were playing Leicester City away and the match was being broadcast live by the Third Defendant. During the match two announcements were made. The first at around 1420 said :

"Leeds United are currently searching for the whereabouts of Melvyn Levy to serve him some papers in relation to a High Court action in Jersey. Now , if you've seen the former Leeds United director , you're being asked to get in touch with Yorkshire Radio and let us know where and when you saw him"

The message was substantially repeated again at 1605 hours. It emerged quite late in the trial that a similar message had been broadcast three times on 22nd and at least once on23rd December 2010.

i) In an article entitled "*Onwards and Upwards*" published in the programme on 1st January 2011 the First Defendant wrote:

> "*On another topic, after five years, we have issued a writ against Robert Weston in Jersey. We are claiming that he personally misappropriated £190,400 of season ticket holder's money in May 2005.*
>
> *In parallel we have issued a writ against Melvyn Levy (a former Leeds United director) on grounds that he aided and abetted Weston. As I write, we have not served Mr Levi with his writ as his wife said he was away until New Year which makes me speculate as to why they split for the festive season. No matter, the procedure will be processed in 2011.Watch this space for continuing exciting news of a saga which will soon challenge Coronation Street as a long running soap"*

j) In an article entitled "*Our Destiny is in Our Hands"* published on 2nd April 2011 the First Defendant wrote as follows:

> "We *had a good week in the courts ……In a separate case we are suing Robert Weston and Melvyn Levy personally in respect of matters pertaining to the Admatch affair in the Jersey High Court and we expect the matter to be heard in the next twelve months …we will stick to the facts and hopefully win through on all counts, reclaim our costs and teach the Defendants a lesson*"

. Although the Defendants deny that his article constitutes harassment they admit it was published in breach of a contractual undertaking given in these proceedings not to publish matters concerning the First Claimant without giving at least seven day's notice to his solicitors.

8 The Law

The relevant provisions of the Protection from Harassment Act 1997 are as follows:

1. — *Prohibition of harassment.*

(1) A person must not pursue a course of conduct—

(a) which amounts to harassment of another, and

(b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other.

(3) Subsection (1) or (1A) does not apply to a course of conduct if the person who

pursued it shows—

> *(a) that it was pursued for the purpose of preventing or detecting crime,*
>
> *(b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment, or*
>
> *(c) that in the particular circumstances the pursuit of the course of conduct was reasonable.*

2. — Offence of harassment.

(1) A person who pursues a course of conduct in breach of section 1(1) or (1A) is guilty of an offence.

(2) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.

3. — Civil remedy.

(1) An actual or apprehended breach of section 1(1) may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where—

> *(a) in such proceedings the High Court or a county court grants an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment, and*
>
> *(b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,*
>
> *the plaintiff may apply for the issue of a warrant for the arrest of the defendant.*

(4) An application under subsection (3) may be made—

> *(a) where the injunction was granted by the High Court, to a judge of that court, and*
>
> *(b) where the injunction was granted by a county court, to a judge or district judge of that or any other county court.*

(5) The judge or district judge to whom an application under subsection (3) is made may only issue a warrant if—

> *(a) the application is substantiated on oath, and*
>
> *(b) the judge or district judge has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.*

(6) Where—

(a) the High Court or a county court grants an injunction for the purpose mentioned in subsection (3)(a), and

(b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(7) Where a person is convicted of an offence under subsection (6) in respect of any conduct, that conduct is not punishable as a contempt of court.

(8) A person cannot be convicted of an offence under subsection (6) in respect of any conduct which has been punished as a contempt of court.

(9) A person guilty of an offence under subsection (6) is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.

7. — Interpretation of this group of sections.

(1) This section applies for the interpretation of sections 1 to 5A.

(2) References to harassing a person include alarming the person or causing the person distress.

(3) A "course of conduct" must involve—(a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person, or
(b) in the case of conduct in relation to two or more persons conduct on at least one occasion in relation to each of those persons.
....

(4) "Conduct" includes speech.

8 Counsel for both parties have helpfully agreed the burden of proof is on the Claimants to establish the elements of harassment and only on the Defendants, if necessary, to establish a defence under s 1(3)(c). The standard of proof is to the civil standard .In deciding what the Defendants knew or ought to have known at the relevant time the court applies, on the basis of the information known to them, an objective standard.

9 The nature of harassment

The only statutory reference to this subject is s 7(2) shown above which states that references to harassing a person include alarming the person or causing the person distress. No assistance is given in relation to the gravity of the allegation

sufficient to constitute harassment. Some assistance in relation to this issue was given in the leading case of *Majrowkski v Guys, St Thomas NHS Trust [2005] EWCA Civ 251 and [2006] UKHL 34.* In the Court of Appeal Lord Justice May addressed this issue as follows:

> *Thus, in my view, although section 7(2) provides that harassing a person includes causing the person distress, the fact that a person suffers distress is not by itself enough to show that the cause of the distress was harassment. The conduct has also to be calculated, in an objective sense, to cause distress and has to be oppressive and unreasonable. What amounts to harassment is, as Lord Phillips of Worth Matravers MR said, generally understood. Such general understanding would not lead to a conclusion that all forms of conduct, however reasonable, would amount to harassment simply because they cause distress. Employees may be distressed, and understandably so, by managerial conduct which, for instance, being properly and reasonably critical of an employee's poor performance, is entirely within the proper and reasonable scope of the manager's functions and duties.*

In the House of Lords Lord Nicholls said:

> *Where...the quality of the conduct said to constitute the harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."*

In *Dowson and others v Chief Constable of Northumbria Police [2010] EWHC 2612* Mr Justice Simon reviewed the relevant authorities and said the following:

> *I turn then to a summary of what must be proved as a matter of law in order for the claim in harassment to succeed.*
>
> *(1) There must be conduct which occurs on at least two occasions,*
> *(2) which is targeted at the claimant,*
> *(3) which is calculated in an objective sense to cause alarm or distress, and*
> *(4) which is objectively judged to be oppressive and unacceptable.*
> *(5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.*
> *(6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'.*

It seems to me that this is a very useful summary of the way in which a court should approach allegations of harassment.

10 A Course of Conduct

Statutory guidance is given in s 7(3) of the Act that a course of conduct must involve conduct on at least two occasions in relation to that person. In *Sai Lau v DPP [2000] 1 FLR 799* the Magistrate convicted the defendant having found two of five alleged acts of harassment proved. On appeal to the Queens Bench Division Mr. Justice Schieman (with whom Silber J agreed) said the following:

14. As it seems to me the root question on which the Magistrate ought to have concentrated is whether or no, bearing in mind that he only found two of the incidents proved, separated as they were by some four months (one being a slap of the complainant and the other being a threat directed at the complainant's boyfriend in her presence) and in the absence of any other relevant finding that can reasonably be described "as a course of conduct" by the Defendant. If that had been the question posed to us, for my part I would have answered it in the negative.

15. I fully accept that the incidents which need to be proved in relation to harassment need not exceed two incidents, but, as it seems to me, the fewer the occasions and the wider they are spread the less likely it would be that a finding of harassment can reasonably be made. One can conceive of circumstances where incidents, as far apart as a year, could constitute a course of conduct and harassment. In argument Mr Laddie put the context of racial harassment taking place outside a synagogue on a religious holiday, such as the Day of Atonement, and being repeated each year as the Day of Atonement came round. Another example might be a threat to do something once a year on a person's birthday. Nonetheless the broad position must be that if one is left with only two incidents you have to see whether what happened on those two occasions can be described as a course of conduct.

In *Pratt v Director of Public Prosecutions [2002] ACD 2* the magistrates found proved two incidents, one on December 25, 1999, and one on March 17, 2000. Lord Justice Latham (with whom Forbes J agreed) set out the passages quoted above and said the following (at [10] and [12]):

10. In my view these propositions accurately set out the law and the cautious approach that any court should adopt where the allegation of harassment is based upon either two incidents or any other series of incidents, if few in number and widely spaced in time. The issue for the court is whether or not the incidents, however many they may be, can properly be said to be so connected in type and in context as to justify the conclusion that they can amount to a course of conduct."

12. I would, however, say one word of caution. This case is one which is close to the borderline; and it seems to me that prosecuting authorities should be hesitant about using this particular offence in circumstances such as this where there are only a small number of incidents. They should ensure that what they are seeking the court to adjudicate upon can properly fall within the category of behaviour which is behaviour causing harassment of the other, not merely that there have been two or more incidents. This mischief which this Act is intended to meet is that persons should not be put in a state of alarm or distress by repetitious behaviour.

11 The Right to Free Speech and the European dimension

Both parties adopted different approaches to the law in this area which I will attempt to outline. The Defendant understandably relied very heavily on the right to free speech and Article 10 of the European Convention on Human Rights. Under s3 of the Human Rights Act 1998 (HRA) the court is required, so far as it is possible to do so, to interpret and give effect to legislation in a manner which is compatible with convention rights. Section 12(4) of the HRA provides that where the court is considering whether to grant any relief which might affect the Convention right to freedom of expression:

"The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to-

(a) the extent to which-

(i)the material has, or is about to, become available to the public; or

(ii)it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code."

Article 10 of the Convention provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

12 The Defendants place particular reliance on the speech of Lord Phillips MR in *Thomas v News Group Newspapers Ltd[2001]EWCA Civ 1233* which is one of the few cases which has considered the issue of harassment by the press. The case involved a series of articles by the Sun Newspaper complaining of political correctness where two police officers had been reported for making a racist remark, overheard and reported by a black colleague. At first instance it had been argued that the meaning of harassment in the 1997 Act could not extend to a series of articles in a newspaper. On appeal counsel for the Newspaper put their case in this way:

"Whilst it is just possible to imagine circumstances in which newspaper articles could constitute a course of conduct amounting to harassment - in the same way that people can harass others by unwanted, unsolicited or vitriolic correspondence - such conduct would have to be extreme and be devoid of any true desire either to exercise freedom of speech or to fulfil the newspaper's responsibility to inform the public."

Lord Phillips dealt with the issues in the following way:

24. Section 3 of the HRA requires the court, so far as it is possible to do so, to interpret and give effect to legislation in a manner which is compatible with Convention rights. Section 12 of the HRA emphasises the care which the court must take not to interfere with journalistic freedom unless satisfied that this is necessary according to the principles to which I have referred. Both these sections are important when considering the ambit of the criminal offence and the civil tort of harassment created by the 1997 Act in the context of publications by the media. Harassment must not be given an interpretation which restricts the right of freedom of expression, save in so far as this is necessary in order to achieve a legitimate aim. When considering that question, the court is required by section 2 of the HRA to have regard to the Strasbourg jurisprudence.

The nature of reasonable conduct.

32. Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.

33. Prior to the 1997 Act, the freedom with which the press could publish facts or opinions about individuals was circumscribed by the law of defamation. Protection of reputation is a legitimate reason to restrict freedom of expression. Subject to the law of defamation, the press was entitled to publish an article, or series of articles, about an individual, notwithstanding that it could be foreseen that such conduct was likely to cause distress to the subject of the article.

34. The 1997 Act has not rendered such conduct unlawful. In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading, which does no more than allege that the defendant newspaper has published a series of articles that have foreseeably caused distress to an individual, will be susceptible to a strike-out on the ground that it discloses no arguable case of harassment.

35. It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. It is also common ground that such circumstances will be rare.

36. Mr Pannick QC, for the respondent, offered the example of the editor who uses his newspaper to conduct a campaign of vilification against a lover with whom he has broken off a relationship. Mr Browne rightly submitted that this unlikely scenario was miles away from the facts of this case. He submitted that editorial comment would only amount to harassment if it incited, provoked or encouraged harassment of an individual.

37. It is not necessary for this court to rule on Mr Pannick's example, nor to attempt any categorisation of the types of abuse of freedom of the press which may amount to harassment. That is because the parties are agreed that the publication of press articles calculated to incite racial hatred of an individual provides an example of conduct which is capable of amounting to harassment under the 1997 Act. In so agreeing, Mr Browne recognises that the Convention right of freedom of expression does not extend to protect remarks directly against the Convention's underlying values (see Jersild v Denmark (1994) 19 EHRR paragraph 35 and Lehideux and Isorni v France (1998) 30 EHRR paragraph 53.

The court found that it was arguable that the Newspaper had published racist criticism of the Claimant which was foreseeably likely to stimulate a racist reaction on the part of their readers and cause her distress.

13 By way of an analogy the Defendant also relies on the dicta of the Divisional Court in *Percy v Director of Public Prosecutions [2001]EWHC Admin 1125* . In this case a protestor had burnt an American flag in front of American servicemen and their families whilst making a protest against the "Star Wars "project. She was charged with a public order offence and relied on her right to free speech. In the leading judgement Mrs Justice Hallett as she then was, said as follows:

27 *Where the right to freedom of expression under Article 10 is engaged, as in my view is undoubtedly the case here, it is clear from the European authorities put before us that the justification for any interference with that right must be convincingly established. Article 10(1) protects in substance and in form a right to freedom of expression which others may find insulting. Restrictions under Article 10(2) must be narrowly construed. In this case, therefore, the court had to presume that the appellant's conduct in relation to the American flag was protected by Article 10 unless and until it was established that a restriction on her freedom of expression was strictly necessary.*

31. The fact that the appellant could have demonstrated her message in a way which did not involve the use of a national flag of symbolic significance to her target audience was undoubtedly a factor to be taken into account when determining the overall reasonableness and proportionality of her behaviour and the state's response to it. But, in my view, it was only one factor.

32. Relevant factors in a case such as this, depending on the court's findings, might include the fact that the accused's behaviour went beyond legitimate protest; that the behaviour had not formed part of an open expression of opinion on a matter of public interest, but had become disproportionate and unreasonable; that an accused knew full well the likely effect of their conduct upon witnesses; that the accused deliberately chose to desecrate the national flag of those witnesses, a symbol of very considerable importance to many, particularly those who are in the armed forces; the fact that an accused targeted such people, for whom it became a very personal matter; the fact that an accused was well aware of the likely effect of their conduct; the fact that an accused's use of a flag had nothing, in effect, to do with conveying a message or the expression of opinion; that it amounted to a gratuitous and calculated insult, which a number people at whom it was directed found deeply distressing.

33. In my judgment, at the crucial stage of a balancing exercise under Article 10 the learned District Judge appears to have placed either sole or too much reliance on just the one factor, namely that the appellant's insulting behaviour could have been avoided. This seems to me to give insufficient weight to the presumption in the appellant's favour, to which I have already referred. On the face of it, this approach fails to address adequately the question of proportionality which should have been, and may well have been, uppermost in the District Judge's mind. Merely stating that interference is proportionate is not sufficient. It is not clear to me from the District Judge's reasons, given in relation to his findings under Article 10, that he has in fact applied the appropriate test. Accordingly, in my view, it appears that the learned judge inadvertently, in the course of a very careful and thorough examination of the facts and the law, has fallen into error. I am driven to the conclusion, therefore, that this conviction is incompatible with the appellant's rights under the European Convention on Human Rights and I would answer the first question posed in the case stated: "No".

14 The only other case which either counsel was able to bring to the court's attention about the relationship between harassment and the freedom of the press was *King v Sunday Newspapers Limited [2011] NICA 8* . In this case the Sunday World had published 29 Articles about the Claimant since 2002. It was alleged the Claimant was a leading member of the Loyalist Volunteer Force, had either taken part or was complicit in sectarian murder, and was a drug dealer. The court appeared to accept that broadly these allegations were true but was concerned about the inclusion of private information about his partner (who was a catholic) and his child. Having reviewed the authorities Lord Justice Girvan came to the following conclusion:

35 The appellant has not sought to challenge the central truth of the allegations against him. The fact that the articles have caused him distress does not of itself establish harassment. It would have to be shown that the respondent knew or ought to have known that it was harassing the appellant. While the articles contain some factual errors and misuses some private information that does not of itself show the respondents set out to harass the appellant as opposed to printing a story in which it was intended to expose those aspects of the appellant's life which the respondent regarded as justifying exposure in the public interest in the exercise of its right of free expression.

[37] The judge concluded that the present case was not attended by exceptional circumstances justifying sanctions and restrictions on the freedom of expression. The articles did not constitute an abuse of freedom of the press which the pressing social needs of a democratic society required should be curbed.

[38] Particularly in light of the fact that the appellant declined to institute defamation proceedings to challenge the correctness of the thrust of the robust allegations of serious criminality made in the articles we conclude that the judge was correct to conclude that the appellant had not made out a case of harassment.

15 Counsel for the Claimant adopts a different approach when considering the right to free speech and the European dimension. In the first place he submits that the right to free speech should be considered when the court is considering the Defendants defence of reasonable conduct under section 1(3)(c) of the Act . Counsel for the Defendant submits that it should be considered with all the other factors when deciding whether the conduct is in fact harassment (i.e. oppressive and unreasonable). There is no determining authority on this topic and it seems to me the distinction will only be important if the court cannot reach a conclusion on whether the Defendants` conduct is unreasonable and then has to fall back on the burden of proof. I intend to consider it in the round along with all the other issues relating to harassment but I doubt whether who holds the burden will be determinative in any event.

16 Counsel for the Claimant accepts that the right to free speech is engaged but in the context of the First Defendant writing his own personal views in his column some of which have been proven to be defamatory of the First Claimant. It is submitted that this is not the same as a newspaper attempting to report on a topic of genuine public interest. The issue of how to balance the competing rights of freedom of speech and the right to a private life is one with which the courts have had to grapple regularly in privacy cases and the balancing exercise is similar . In *A v B plc and another [2002] EWCA Civ 337* Lord Woolf sought to give guidelines to Judges dealing with privacy cases which included the following dicta:

11. The fact that if the injunction is granted it will interfere with the freedom of expression of others and in particular the freedom of the press is a matter of particular importance. This well-established common law principle is underlined by section 12 (4). Any interference with the press has to be justified because it inevitably has some effect on the ability of the press to perform its role in society. This is the position irrespective of whether a particular publication is desirable in the public interest. The existence of a free press is in itself desirable and so any interference with it has to be justified. Here we would endorse the approach of Hoffmann LJ in R v Central Independent Television PLC [1994] Fam 192 at p.201-204, where he said:

> *"Publication may cause needless pain, distress and damage to individuals or harm to other aspects of the public interest. But a freedom which is restricted to what Judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which Government and Judges, however well motivated, think should not be published. It means the right to say things which "right thinking people" regard as dangerous or irresponsible. This freedom is subject only to clearly defined exceptions laid down by common law or statute… the principle that the press is free from both Government and judicial control is more important than the particular case."*

v) The fact that under section 12 (4) the court is required to have particular regard to whether it would be in the public interest for the material to be published does not mean that the court is justified in interfering with the freedom of the press where there is no identifiable special public interest in any particular material being published. Such an approach would turn section 12 (4) upside down. Regardless of the quality of the material which it is intended to publish prima facie the court should not interfere with its publication. Any interference with publication must be justified.

Whilst both parties rely on these dicta the Claimant asserts that it is obvious from the context that they are intended to imply to a free press, that is, newspapers.

17 The correct approach according to counsel for the Claimant is to be found in *In re S (A Child) (Identification ; Restriction on Publication) [2004] UKHL 47.* The facts of the case were very different to this case and are not important but the issue in the case raised an interaction between Article 10 which deals with freedom of expression and Article 8 which deals with the right to respect of private and family life . I have already quoted the contents of Article 10 but Article 8 provides as follows:

Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Having set out the contents of both articles Lord Steyn said as follows:

The interplay between articles 8 and 10 has been illuminated by the opinions in the House of Lords in Campbell v MGN Ltd [2004] 2 WLR 1232. For present purposes the

decision of the House on the facts of Campbell and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test. This is how I will approach the present case.

It seems to me that the current case requires the application of the ultimate balancing test if both Articles can be said to be engaged. So far as Article 8 is concerned the ambit of private life was explained by Lord Nicholls in *Campbell* (at paragraph 21):

"Essentially, the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy"

18 The evidence in this case

This is an unusual case because all of the acts alleged to constitute harassment are either in writing or are recorded in writing. There is no dispute about whether the words were actually used or whether they were communicated to the public. There are very few findings of fact I need to make. The two main issues in the case are what effect the communications had on the Claimants and what the Defendants` reasons were for the words used. I will therefore only deal in this judgement with the facts so far as they relate to these issues. It will be necessary to deal with the events which occurred in December 2010 but only as part of the exercise of examining the Defendants' reasons for their actions and making an objective assessment of them.

19 The First Claimant made two witnesses statements and gave oral evidence at the trial. His witness statements were lengthy and dealt with all the history of the case. The important issues appear to be however that he is a local man who has lived in Leeds and been a Leeds United supporter all his life. He became involved in Leeds United in 2004 when they were in a difficult financial situation and his motives were to get the club back on its feet and to make a profit if things went well. He enjoyed his time at Leeds and initially got on well with Mr Bates. In relation to the two issues about which Mr Bates criticises him he feels he was justified in refusing the exercise the call option as the contractual conditions were not fulfilled and he denies fabricating the "fourth draft "of the contract with Admatch. He has gained nothing personally from Admatch retaining £190,400 whereas he has lost 25% of the £1.6 million pounds lost by Cope when the Adulant shares became worthless.

20 He described being upset when he was banned from the ground and then becoming increasingly concerned and upset when the First Defendant began to make unfair and untrue criticism of him in the match programme. He records each of the articles in his statement which are not disputed by the Defendants. He said he tried to ignore them but eventually there were three articles in particular which he considered defamatory and which had serious consequences for him and his family. In particular in the article entitled "the enemy within" dated 3rd March 2007 the First Defendant made a number of criticisms of the First Claimant and encouraged Leeds United supporters to ask him some questions to justify his behaviour and published his home address. Only a week late in the article entitled "Why Mr Levi Why" he reminded fans that the First

Claimant's phone number was "in the book". He commenced defamation proceedings to clear his name and was successful with an award of £50,000 damages. He thought that the harassment of him in print had stopped as a result of the libel award and the undertakings given by the First Defendant not to repeat the libels.

21 He was aware of the proceedings against Admatch and was annoyed with Mr Weston for attempting to conduct the proceedings without a lawyer. In late December 2010 he became aware that new proceedings were going to be brought against him and Mr Weston and was annoyed about the accusations which were akin to fraud. On 21st December 2010 he said he left home at about 8.30 am with his son to help in his son's new business in Harrogate. He had arranged with his wife that she would pick him up that afternoon from Harrogate where they would both travel to Cumbria to stay with Mrs Levi's aunt Kathleen Bull MBE over Christmas and New Year. His evidence was that if all had gone well they would have returned to Leeds after the New Year. On Boxing Day a friend rang him and told him that there had been an announcement on Yorkshire Radio asking about his whereabouts. He said he was angry and upset by this and when he mentioned it to his wife she told him that a man had called at their home on 21st December 2010 asking about leaving some papers for him. This ruined their holiday and therefore they returned to Leeds on 30th December 2010. He denied that he had been dining in Leeds with his wife on 21st or 22nd December as they had by then been in Cumbria.

22 He found a letter on his return to Leeds from the process server's firm suggesting an appointment on 7th January 2011. He contacted his solicitors as soon as they were back after the New Year break to advise them that he would be abroad on a pre-planned holiday. Arrangements were made for him to be served on his return at his solicitors' office on 17th January 2011 which passed without difficulty. He said everything was done through the lawyers and he was not aware of any urgency. He denied doing anything to delay or evade service. He was also upset when he saw the programme notes for 4th April 2011. Not only did it say that the Defendants (which included him) would be taught a lesson but it had been written in breach of the contractual undertaking which had been given.

23 I formed the view that the events of December 2010 to April 2011 were a considerable blow to the First Claimant. He described how he had become very anxious before every home game never knowing when he would be referred to in the programme. He said this fear abated somewhat after the libel proceedings when he thought the problem had ended. He said it was a shock and very upsetting to find that the problem had started again and there seemed to be no end to it. This was then made worse when he read the programme on 1st January 2011 with its veiled reference to the state of his marriage and he again felt upset and angry about that. The breach of the undertaking was particularly troubling to him as he felt they had a deal not to publish anything without seven days notice and the Defendants had breached this with impunity.

24 The First Claimant described a number of symptoms which have arisen since the harassment started. He has low mood and anxiety, constantly ruminates on why the First Defendant has such a grudge against him for so long, he has sleep disturbance a sense of fear and is on edge. He was cross-examined about the various competing causes of his anxiety and he says the thing he fears most is being accosted or attacked

as a result of the things which have been said about him. Whilst the Jersey proceedings cause him some anger and concern he is much less worried about them than what might appear in the programme at the next home game. It was obvious from his demeanour in the witness box that he was genuinely exasperated and upset and at one point appeared genuinely overcome. I also witnessed a sense of helplessness which sounded with the diagnosis of "learned helplessness "which Dr Britto described in his report. I formed the view that he was a truthful witness who had been genuinely upset by the articles written, in particular the more recent history, and that his life had been very significantly affected for the worse by the whole experience.

25 The Second Claimant made two witness statements and gave oral evidence at the trial. She confirmed she agreed with her husband's description of the various articles about him and was upset and angry on his behalf. She was particularly concerned when the First Defendant published their home address in the programme and that their phone number was in the book. It caused them both a huge amount of worry, she said, and concerns that disgruntled Leeds supporters might appear at their home. The Police advised them to take precautions and a special response alarm was fitted at their home. They were supplied with personal radio activated alarms to wear around their necks and they were advised not to leave the house unless they had to. This evidence was contained in her statement at the libel trial and was therefore known to the First Defendant. Although she was mentioned in some of the articles, it was only in context that she had previously been married to Mr Weston. She remained upset about this however as she had married Mr Weston 43 years ago and she had been with the First Claimant for almost 30 years and they had a son . She was entitled not to be reminded about that in print she felt.

26 She like her husband felt and hoped that the harassment they had endured had stopped after the libel trial and she felt devastated when it returned in 2010. On 21st December 2010 she confirmed her husband had left with their son to go to Harrogate in the morning. She said that Mr Pinkney the process server arrived at about 2pm. The bell rang but the house has large electric gates and she never opens the gates unless she recognises who the caller is. She has been like this since the events of March 2007. She opened the front door and the man, who was not in uniform and who she did not know, asked if Mr Levi was there and she replied that he was not. She said he was away. She was asked whether he would be back before or after the New Year and she said after. Mr Pinkney said he would make a call to see if he could leave the papers and he did not return. He did not ask whether Mrs Levi would be accompanying her husband but she said she would not have told a stranger the house was unoccupied over the holiday which is why she did not volunteer the information. She said the whole conversation took no more than a minute and she didn't mention it to her husband either then or on the journey to Cumbria as it did not seem important.

27 She accepted that she had psychological problems in the past but had been well again until her husband was banned from Leeds United by the First Defendant. She then became anxious and depressed but accepted that there had been an improvement after the libel proceedings until December 2010. She says that this worry is a constant thing with them all the time. They never know when it is going to happen. She says her home is her refuge and her sanity but she was badly affected when she thought others would call at their home to confront her husband. She accepted that these proceedings and the Jersey proceedings had caused some stress but the problem is always to do

with Leeds United and the programme notes. She became very upset and animated in her evidence but I felt her upset and anger were genuine. Somewhat poignantly, she said she had suffered cancer twice in the past but this had been worse. At least when she had cancer she had her husband to support her, but with this problem they were both suffering as a result of it. She said the First Defendant had stolen six and a half years of their lives and that they were very small fry compared with him. Like her husband, she seemed resigned and helpless. I was impressed with her as a truthful witness.

28 It is convenient to deal next with the evidence of Simon Pinkney the process server. He works for Eclipse Legal Services and was asked by them on the instructions of Sinels, Jersey Lawyers, to serve the First Claimant at his home. He attended at the property at about 1405 hours on 21st December 2010 without appointment. He pressed a buzzer on the gates outside the property and a lady who he now knows to be the Second Claimant opened the front door and talked to him from there. He asked if he could speak to the First Claimant and he was told that the First Claimant was away. He asked the Second Claimant whether the First Claimant would be back after Christmas or after New Year and she replied that it would be after New Year. He thanked her and said he would see if the documents he had could be left for him at the address and he returned to his car. He discovered later from Eclipse the documents could not be left at the property and so he did not return. He accepted that he had not asked the Second Claimant whether she would be going away with the First Claimant. He emailed a report to his employers which included the fact that he thought the Second Claimant was evasive as he thought it was strange that the First Claimant was away as most families would want to spend Christmas together. He accepted that his employers had written to the First Claimant on 22nd December 2010 suggesting an appointment to serve the papers at the property on 7th January 2011. He confirmed he had served the papers without difficulty on 17th January 2011. He confirmed that if he had been asked by Eclipse to return to the property at any stage to attempt service again he would have done so. I felt he was an honest and straightforward witness and his evidence was his genuine recollection.

29 Mr Hiren Mistry gave evidence by video-link although he had signed a witness statement which was relied on by the Defendants. At the time of these events he was an Associate Solicitor with Sinels who represented the Second Defendant in the Jersey proceedings. He applied for and obtained an order from the Royal Court of Jersey for permission to serve the Order of Justice on the First Claimant out of the jurisdiction. Whilst he had asked for an order for service by registered post the court had ordered personal service. He had instructed a firm of process servers Eclipse Legal Services to personally serve the First Claimant at his home address which he provided. On 22nd December 2010 he was contacted by Victoria Young of Eclipse who told him that the Second Claimant had told the process server that the First Claimant was on holiday until at least 4th January 2011. He was also told she was being evasive about his whereabouts. It was agreed that Eclipse would send the First Claimant an appointment for service on 7th January 2011. Mr Mistry then spoke to Shaun Harvey the Chief Executive of the Second Defendant to update him and told him that the First Claimant was being evasive and asked for any other addresses where the First Claimant could be served. He was asked if he had told Mr Harvey that a letter had been sent arranging an appointment for 7th January 2011 and at first he

thought he had not told him then changed his mind and said it was more likely that he had. Mr Harvey said he would ring back.

30 In the event the First Defendant rang him back and was clearly aware of the earlier conversation. The First Defendant said that he had been told by Mr Harvey that the First Claimant had been spotted having dinner in a restaurant in Leeds with his wife. He stated that the Second Defendant had therefore put out a radio advertisement on Yorkshire Radio asking members of the public to call in if they had seen the First Claimant to facilitate service. Although it was not in his statement a file note made by Mr Mistry was shown to him which said the radio station would offer dinner for two for such information. He confirmed that this was what he had been told.

31 It was put to him that there was no real urgency to serve these documents given that the initial hearing which had been listed for 14th January 2011 could ,and indeed was , so far as the First Claimant was concerned, adjourned. He replied that there was urgency in that an adjournment might cost another £500-£1000 in costs and they did want to progress the proceedings. He was asked why he had requested a written copy of the process server's report. He replied that it might be useful if at some stage he had to make an order for substituted service. He was asked why he had not done that when he had been told that the First Claimant was evading service and he said he would not draft such an application when the evidence was insufficient. He had no details which restaurant the First Claimant had been at and when and felt that was not "concrete evidence" as he phrased it. He conceded that if he had thought that the First Claimant was still in Leeds he could have sent the process server back to the property but he did not do so because of cost. I felt he was overall, a helpful and truthful witness.

32 Shaun Harvey is the Chief Executive of the Second Defendant and has worked for the football club since 2004. He prepared two statements, one of which was served during the course of the trial. He confirmed that the Third Defendant runs Yorkshire Radio which has about 93,000 listeners per week with 10,000 additional listeners tuning in for match commentary. He gave evidence as to the historical background to the dispute with Mr Levi, the Admatch proceedings, and the second Jersey proceedings. In essence his evidence was that these were genuine proceedings brought to recover a debt due to the football club which have real prospects of success. He confirmed the First Claimant had brought libel proceedings against the First Defendant which had succeeded and the First Defendant had given and kept undertakings not to repeat the libels. He also dealt with the two programme articles in March 2007. He said they were not directed at the Second Claimant as she is not referred to in either article and that efforts were made to delete reference to the First Claimant's phone number although some efforts at deletion may have been less successful than others. He also reminded the court that the Second Defendant was not incorporated until 1st May 2007.

33 Mr Harvey was aware that in December 2010 efforts were going to be made to serve the First Claimant with court proceedings personally. He spoke to Mr Mistry on 21st December 2010 who related the process server's comments that the Second Claimant had been evasive in her answers as to the First Claimant's whereabouts. He decided to make informal and discrete enquiries with several individuals and one of them telephoned him on 22nd December 2012 and told him that the Claimants had been

seen having dinner in a restaurant in Leeds the previous evening. He formed the view that the First Claimant was trying to evade service and he discussed the matter with the First Defendant and they decided to ask the Third Defendant whom they effectively control to broadcast a message seeking further information as to the Claimant's whereabouts. Mr Harvey did not see the programme notes for 1st January 2011 before they were printed as he was on holiday.

34 He confirmed that the Defendants had given an undertaking early in the proceedings not to publish anything about the Claimants without giving them 7 days prior written notice of the same. He accepted that the programme notes for 2nd April 2011 breached the undertaking. He said that he had met the First Defendant in Norway on business and although the article was not offensive or inflammatory he had not checked with their solicitors whether it would breach the undertaking. He accepted in cross-examination that he could have checked and should have done.

35 In cross-examination he was asked what editorial control he exercised over the programme notes. He said the column was written by Mr Bates and represented his views. He said since the libel litigation and this litigation he had taken more notice of the contents. This however amounted to no more than to check that the article did not breach either the undertakings in the libel proceedings or these proceedings. He had not, he admitted, acquainted himself with the law concerning harassment or checked whether the articles might constitute harassment. He confirmed that nothing had ever been written about the circumstances surrounding Mr Bate`s purchase of the football club. He also confirmed that nothing had been written about the Jersey proceedings being stayed or about Mr Bates losing the libel appeal.

36 He confirmed that other than players and managers, Mr Levi had probably had more references in the programme than any other person. He was not aware of anyone's spouse and child being referred to. He was not aware that anyone else had their address published or reference to their phone number. He confirmed that no-one had the state of their marriage referred to in the programme. He stated that it was not their intention to question the Claimants` marriage; the intention was to suggest that the Second Claimant had not been truthful. He accepted that no-one had asked her where she would be spending Christmas and New Year. When asked who had told him about the Claimants dining in Leeds on the 21st December he sought permission to avoid answering the question. I thought this somewhat odd as the information was relied on by him. He did give the name of his contact Mr Michaelson but it then transpired that Mr Michaelson had not seen the Claimants; someone else had and then told Mr Michaelson. It became clear that this second hand hearsay did not extend to exactly which restaurant they had been at and what time. Mr Harvey had the good grace to accept that the Claimants had not been in Leeds on 21st December although he did appear embarrassed by the admission.

37 He was shown an email he had received from the Sports Correspondent of Yorkshire Radio suggesting that perhaps the "Crimewatch Theme" could be used in the radio broadcast. Again he seemed embarrassed and said it had not in fact been used. His embarrassment increased during the course of the trial when he had to serve a second statement to confirm that the radio message had been broadcast two or three times on 22nd December 2010 again on 23rd December 2010 and twice on 26th December 2010. The provision of a reward of dinner for two for information received was not included

in the broadcast. He accepted he had not attempted to contact Ford and Warren who had previously acted for the First Claimant. He accepted also that Eclipse had made an appointment to serve the First Claimant on 7th January by sending a letter to that effect although he was not aware of it at the time he said.

38 Mr Harvey confirmed that there have never been any discussions about what effect the programme notes are likely to have had on the Claimants. He accepted from the medical evidence that they have in fact been made ill by the experience and with the benefit of hindsight felt they could have done more. In a telling exchange at the end of his evidence, he was asked whether he ever felt a conflict of interest could arise as Chief Executive Officer of the Second Defendant if the First Defendant chose to publish something which was not in the Second Defendant's interests. His reply was that as the First Defendant is a 76% shareholder there could be no conflict. This of course was rather missing the point but spoke volumes as to what influence or control if any the Second Defendant could exercise over the First Defendant. I gained the impression that Mr Harvey was a somewhat defensive witness who was very reluctant to concede anything which was against the interests of the Defendants. As a human being however, he had the decency to look embarrassed at some of the positions he was being forced to defend.

39 The First Defendant gave evidence and has served two witness statements during the course of the proceedings. He is also chairman of the Second and Third Defendants. He deals with the two articles in March 2007 by submitting that they cannot be said to target the Second Claimant as she has not been mentioned. He also relies on the Second Defendants` efforts to delete reference to the phone number which could only be read through close examination. He expresses regret that the Second Claimant has been caused distress but feels his own wife was distressed during a confrontation between the First Claimant and First Defendant in a restaurant in 2007. As regards his programme notes as a whole he says the factual claims are true and the comments represent his honest opinions. He relies on the fact that the First Claimant has not pleaded malice in his reply but given these are harassment proceedings I cannot see the relevance of that. He gave a detailed explanation of both the Admatch and the second Jersey action to explain why he believes the club have fraudulently deprived on the £190,400 by Mr Weston and the First Claimant.

40 During his evidence at trial an issue emerged about what the Second Claimant had told Mr Pinkney when he visited her home on 21st December 2010. The First Defendant said that the Second Defendant had told Mr Pinkney she didn't know where her husband was. The First Defendant gave evidence that he had been told this by Mr Sinel a senior partner at Sinels in Jersey. I asked the First Defendant to repeat this assertion as it seemed odd to me at the time, as no other witness for the Defendants had suggested that the Second Claimant had said she didn't know where her husband was. She said he was away but no-one else suggested she had said she didn't know where he was. I felt this evidence was unreliable as Mr Pinkney did not say this to the court and it did not appear his report would have contained this information. In addition Mr Mistry had given evidence that he had a conversation with the First Defendant on 22nd December about service and it seemed unlikely to me that a partner who did not have day to day conduct of the case would also speak to the First Defendant about it and include an assertion that no-one else seemed to support. The First Defendant confirmed his conversation with Mr Harvey when a decision was

made to place the radio announcement with the Third Defendant and this also informed his programme column for 1st January 2011.

41 He said that he wrote the article on 1st January 2011 because he thought the fans should be made aware of the issue of the second set of Jersey proceedings. He had not intended it to be a reference to the state of the Claimants` marriage. His intention was to suggest that the Second Claimant had not been truthful with the process server which he believed to be the case at the time. Unlike Mr Harvey he was not prepared to concede that the Second Claimant was being truthful in hindsight. He accepted he had referred to the Second Claimant twice before in his programme notes but only "en passant" as she had been previously married to Mr Weston.

42 He confirmed that he writes articles about the First Claimant because he chooses to do so and he has never been asked or encouraged to write them by anyone else. He said this topic had never been the subject of a discussion at board level of the Second Defendant. He accepted that he had probably written more articles about the First Claimant than anyone else other than managers or players. When asked why he said because he was in dispute with the First Claimant. He could not recall having referred to anyone else's wife or child in the programme before but he said he had referred to the Claimant's son Oliver because he had turned up to a football match and attempted to enter the Chairman's Suite which the First Defendant said was an act of provocation. He confirmed he had not mentioned anyone else's home address or phone number in his articles. He said fans were asking him questions and he merely was suggesting they write to the First Claimant. I have to record however that the article does not suggest that they merely corresponded. He was asked what the First Defendant had done to warrant all these articles. His evidence was that the First Defendant did not honour the contract to allow the call option and had conspired to defraud the club of the money which was the subject of the second Jersey action.

43 It was suggested in cross-examination that he only tells the fans what he wants them to hear and does not impart bad news. He denied this. He said he could not remember whether he had told the fans when his libel appeal was dismissed and has not told them how much it has cost the Second Defendant to pursue Admatch even though Mr Harvey had conceded they were spending "a fortune "in legal fees. He said he did not tell the fans that the Admatch proceedings had been stayed as he was advised not to do so by his solicitors.

44 The First Defendant was asked whether he considered what effect these articles would have on the Second Claimant particularly when she had given evidence in the libel claim how much it was upsetting her. He said when he writes the articles the Second Claimant doesn't come into his calculations at all. He said the First Claimant was a big boy and big enough to look after himself. I felt his lack of concern, particularly as he must have read the medical evidence on both Claimants was chilling. He maintained a robust denial in relation to everything which he had written and said he was merely trying to recover money which has been stolen. It was a combative performance in the witness box with several bad tempered exchanges with leading counsel for the Claimants. At times he seemed more concerned with belittling and criticising Mr Myerson than giving convincing evidence to the court. Describing the questions as pathetic and answering "rubbish" on several occasions did nothing to advance his case.

45 This brings me to the few findings of fact that I need to make. It is unnecessary for me to make any findings of fact about the origin of the dispute between the First Claimant and First Defendant. I have said throughout this case that the dispute about the £190,400 will be determined by another trial or court and I must adopt a neutral position in relation to the same. As far as the call option is concerned and whether the First Claimant should have allowed the First Defendant to exercise it, this issue was determined by Sir Charles Gray in his judgement in the libel trial when he determined that in his view the call option had lapsed.

46 The only real issues that need to be determined are the events surrounding the Claimants trip to Cumbria in late 2010. I have listened carefully to the evidence which both the Second Claimant and Mr Pinkney gave about their conversation. They both agree about what was said. Neither of them said the Second Claimant had said she didn't know where her husband was and I therefore find she did not say this. I also find that Mr Pinkney did not tell his line manager she said it. It difficult to conceive how this information could have reached Mr Bates. I accept Mr Pinkney believed she was being evasive by saying her husband was away (even though I find it was true). Her explanation however that she was not likely to tell a stranger the house would be unattended for several days was an understandable one and justifiable in the circumstances. I therefore find she was not in fact being evasive. In so far as it is necessary for me to do so, I find that the Claimants explanation for their motives and movements over the whole of the Christmas and New Year period is true. I find that the First Claimant was not in fact attempting to evade service in any way. His behaviour seemed to me to be entirely justifiable and sensible. I find on the balance of probability that Mr Harvey was told by Mr Mistry that a letter of appointment had been sent to the First Claimant by Eclipse. Mr Mistry thought he would have been likely to tell Mr Harvey that as it was clearly relevant to the issue of service and I accept he was likely to have done so also. Mr Harvey must be mistaken in this respect. I obviously find that each of the articles were written or broadcast as indeed it is admitted they were.

47 Analysis

The Claimants characterise this case as the First Defendant harassing them as a consequence of a business dispute arising in 2004/5. The Claimants claim that the First Defendant has used his column in the programme to criticise and humiliate then and has done so out of personal animosity arising from the business dispute. The Claimants contend that he knew or must have known that he was harassing them and that he has involved the Second and Third Defendants in this course of conduct. The Claimants contend that the First Defendant hides behind his right to freedom of expression when his column is partial, selective and inaccurate and only includes information which he thinks the fans want to hear, excluding other information which may not show him in a good light. They submit that the events around Christmas and New Year of 2010/11 were further examples of harassment and the contention that they were genuine efforts to effect service on an evasive litigant is not borne out by the facts.

48 The Defendants deny harassing the Claimants and contend that the programme notes represent the honestly held views of the First Defendant. The First Defendant genuinely believes that the club has been defrauded of the £190,400 which are the

subject of the Jersey proceedings and that his recent remarks have been an accurate report of the legal proceedings which he feels the fans of the Second Defendant have a right to know about. He feels that all his comments are on topics of interest to the fans and he has a right to express his genuinely held opinions on these topics. The Defendants contend that they genuinely believed that the First Claimant was evading service and the radio broadcast and programme note which followed it were merely an effort to effect service of the proceedings as promptly as they could.

49 There is of course an unusual aspect to this case as the claims of the First and Second Claimant have to be approached differently in terms of the incidents which are alleged to constitute harassment. The First Claimant is prevented by court order from making a claim for damages in respect of the incidents which occurred before December 2010. He relies on those incidents as factual background to support his allegation that what happened thereafter is harassment. The Second Claimant relies to some extent on all the incidents pleaded and set out earlier in this Judgement although it is fair to say that the Defendants contend that only the articles on 3rd and 10th March 2007 and 1st January and 2nd April 2011 are actually pleaded against them as examples of harassment. There are two articles on 25th September and 17th October 2006 which the Second Claimant contends are pleaded against the First Defendant which are the subject of this dispute which on balance I have decided to include in my overall assessment as they are clearly pleaded in general terms and I was adequately addressed by counsel for the Defendant about them at trial. The fact that the statements were made is not of course disputed.

50 I have decided that the right way to approach this case is to consider the claims of the two Claimants separately as the factual basis of both claims is different although the latter incidents may overlap. I have previously summarised the law which should apply to these claims and I intend to test each claim against the useful summary provided by Mr Justice Simon in _Dowson_ and then add an additional consideration which the balancing of the relevant articles under the ECHR. I have decided to add this as an additional evidential hurdle to be overcome by the Claimant at this stage rather than as part of the Defendants` potential defence under s 1(3)(c). I will finally consider whether the Defendants have a defence under that section the burden of proving which will rest on them.

51 The summary referred to above states as follows:

I turn then to a summary of what must be proved as a matter of law in order for the claim in harassment to succeed.

(1) There must be conduct which occurs on at least two occasions,
(2) which is targeted at the claimant,
(3) which is calculated in an objective sense to cause alarm or distress, and
(4) which is objectively judged to be oppressive and unacceptable.
(5) What is oppressive and unacceptable may depend on the social or working context in which the conduct occurs.
(6) A line is to be drawn between conduct which is unattractive and unreasonable, and conduct which has been described in various ways: 'torment' of the victim, 'of an order which would sustain criminal liability'.

Dealing firstly with the claim of the Second Claimant, it is first necessary to analyse the individual allegations made by her and decide whether they are capable of

amounting to harassment in law bearing in mind the test which is summarised above. The main thrust of the Defendants objection to her claim is the conduct has not been targeted at her. To decide whether the articles have been targeted at her it is necessary to look at what has actually been said about her in each article. In the articles dated 25th September 2006 and 17th October 2006 she is mentioned but only in the context of having previously been married to Mr Weston. Whilst there is a comment in one of the articles "What lovely people they must all be" this cannot really be said to be oppressive and unacceptable. Whilst I am sure she would have preferred not being mentioned at all the content of the articles is not sufficiently serious to be able to constitute harassment of her.

52 In the article dated 3rd March 2007 it states:

> "*Perhaps you would like to ask Mr Levi some questions and ask him to justify his behaviour which is damaging Leeds prospect of advancement. Mr Levi lives at Wike Ridge House, 3 Wike Ridge Gardens, Leeds LS17 9NJ*"

Whilst leading counsel for the Claimants submits that this is targeted at the Second Claimant as it is also her address which is revealed I am not convinced that she is actually the target of this invitation to the fans to confront the First Claimant. I have little doubt that if anyone were to consider whether she might be affected by the suggested confrontations the answer would certainly be yes but that is not the test. When football stars have their private lives exposed their family are almost always badly affected but this is just an unfortunate consequence of the media intrusion. At one point when cross-examining the First Defendant leading counsel for the Claimants suggested that the Second Claimant was merely "collateral damage" to him. He was seeking to criticise the First Defendant's lack of consideration for her position but it seems to me this is an apt, if somewhat brutal, description of how the Second Claimant has been affected by these articles. They are not targeted at her but she is affected by it both out of concern for her husband and in this example out of concern for her own safety too.

53 In the article dated 10th March 2007 she is mentioned in passing but only to remind readers that Mr Weston was her first husband. The passage which is pleaded as harassment however is: "Thanks Melvyn. By the way, you do know that your phone number is in the book don't you ". The Claimants contend that as the number in question is their own home number then the harassment applies to both of them. For the same reasons enunciated in the preceding paragraph I do not accept this. The offending words specifically refer to the First Claimant by his first name and that being the case your number must be taken to be the singular form of that word rather than the plural. Again it seems the First Claimant was encouraging fans to contact the First Claimant to complain about his conduct. No doubt the Second Claimant would have been affected by this if it had happened but in my judgement it was not the intention of the First Defendant that she be harassed by it. He was asked in cross-examination why he didn't give more consideration to the Second Claimant's feelings and health. He replied that she didn't come into his calculations at all. This may not make him an attractive character but it does tend to support his argument that he has not targeted the Second Claimant. I accept there may be an objective element where a Defendant does not intend to target a victim but ought to know that he is targeting her.

I do not think that even objectively these articles can be construed as targeting the Second Claimant.

54 The next pleaded allegation relied on by the Second Claimant is the programme article on 1st January 2011. I accept that this article was targeted at the Second Claimant and given its contents could well be considered to constitute an act of harassment however I do not need to go into further detail for reasons which will become apparent. The article dated 2nd April 2011 does not mention the Second Claimant at all and consists in a somewhat partial summary of the first and second Jersey proceedings. It cannot amount to harassment of the Second Claimant as she is not a party to those proceedings and it is clearly not targeted at her. It is my understanding the radio broadcast is not relied on by the Second Claimant but even if it were I would find that she is not mentioned in it and it is clearly not targeted against her.

55 These findings create an insuperable problem for the Second Claimant in that only one incident which can be said to be harassment is in fact targeted or objected could be construed as targeted at her. The statute makes it clear that a course of conduct must be conduct on at least two occasions. I cannot accept an assertion that harassment of the First Claimant must inevitably be harassment of her because of their close emotional connection and relationship. If that were the case every spouse of a victim of public harassment could also make a claim.

56 This brings me to the claim of the First Claimant. I have no need to go into the events prior to 2010 in any detail and do not need to determine whether they can constitute acts of harassment in law. I can however briefly summarise the history as follows: five articles are written by the First Defendant between September 2005 and March 2007 which accuse the First Claimant of being devious, dishonourable and dishonest; he is accused of being a "money-grabbing spiv "and a "shyster"; it is said his father must be turning in his grave at his son's antics; he is accused of being a blackmailer ; his home address is revealed to the fans with a view to them questioning his behaviour; and his telephone number is revealed to be in the phone book presumably for the same purpose. Three of these allegations are found to be defamatory in previous proceedings. In April 2009 a further article implies that the sale of the training ground by the Yorkshire Consortium is to be reported to the authorities (the implication being that it was sold for dishonest reasons). The First Claimant is not entitled to claim for any of these events but later events must be considered in context.

57 On 21st December 2010 Mr Pinkney attempted to serve the First Claimant at his home with the Order of Justice from Jersey. It is alleged at paragraph 25.4 of the Particulars of Claim that to attempt to serve the First Claimant at his home address was a further act of harassment. I am satisfied from the evidence of Mr Mistry that the court in Jersey ordered personal service when the Second Defendant's solicitors had asked for service by registered post. Whilst it may have been discourteous to arrange for service without an appointment it cannot be said to be harassment.

58 This brings me to the series of radio announcements and whether they can be said to be acts of harassment. The background of course arises from the failed attempt by Mr Pinkney to serve the First Claimant on 21st December 2010. I have found as a fact that the Second Claimant was not evasive but that Mr Pinkney thought that she was

because she said her husband was away and wouldn't be back until New Year. He accepted however that he had not asked her where she would be so I am not convinced his conclusion was reasonably reached. That however is not the point. It is the motives of the Defendants which count, objectively assessed. The second piece of information they had was that the Claimants had been seen in a restaurant in Leeds on 21st December dining out. This information had come from Mr Michaelson who himself had got it from an unnamed source who could not say which restaurant they were dining at. Whether the Defendants` response to this information was a reasonable one or whether it was harassment of the First Claimant can only be assessed by looking at what they were trying to achieve and what their options were at the time.

59 They wanted to achieve service of the Order of Justice. There was some urgency in that a preliminary hearing had been fixed for 14th January 2011 but it could easily have been adjourned and they would have known this was the case if they had asked. The fact that a party to proceedings is away from home between 21st December and New Year would not normally ring alarm bells. This potential Defendant is a man in his sixties who has lived in Leeds all his life, is well known, and who has a family home based in Leeds where he lives with his wife. The fact that his co-defendant who lives in Jersey appears to have used delaying tactics in other proceedings cannot possibly have any relevance when considering whether this particular Defendant is likely to try to evade service. His prospects of evading service appear to be slim to none given this background. Where an initial attempt at service without appointment has failed the usual next step is to make a further attempt either with or without appointment. In this case Eclipse wrote to the First Claimant to make an appointment for the 7th January 2011 which was deferred by arrangement and succeeded in effecting service. Where repeated attempts fail the usual next step is to obtain an order for service by another method.

60 The decision to broadcast a message, potentially to 103,000 people, to indicate that Leeds United are currently searching for the whereabouts of Melvyn Levy and to encourage people to ring in and disclose where and when they saw him was an extreme and bizarre response to this problem. Before taking such an extreme step any reasonable person would consider the quality of the information they had to justify the suggestion that the First Claimant was evading service. They had the view of the process server expressed through Miss Young at Eclipse and Mr Mistry that the Second Claimant was being evasive. No-one seems to have asked what led the process server to this view and if they knew whether he had asked her where she was to be over the holiday. I have already found that he did not. Similarly, the crucial evidence that the Claimants had been seen dining in Leeds on 21st December 2010 turned out to be based on vague and unreliable second hand hearsay. Mr Harvey looked particularly embarrassed in the witness box when he had to explain how vague and unreliable the information seemed to be. It was interesting that Mr Mistry said that he would not have used the same evidence to apply for an order for substituted service as he was not convinced it was reliable enough.

61 What therefore was the motive for broadcasting the message? I am prepared to accept that one of the motives was to provide information to assist in the service of the First Claimant with the proceedings. I am however convinced that another motive was to harass the First Claimant. I reach this decision firstly because the decision to

broadcast the message was an entirely unreasonable decision and one which was disproportionate to the problem trying to be solved. There are also two other factors which persuades me that the mischief behind this decision was to "wind up" the First Claimant. Firstly, the fact that when Mr Harvey asked Mr Kirwan to broadcast the message Mr Kirwan suggested he could use the "Crimewatch theme". If the litigation with the First Claimant was being treated seriously by the Defendants it seems to me unlikely that this suggestion would be made. Secondly, the First Defendant's suggestion (which was not put into effect) that anyone providing information would win a free meal for two again suggests a less than serious attitude to the issue more in keeping with a motive to upset the butt of the joke. The fact that the message was broadcast over three days at least six times supports the fact that this was a disproportionate response.

62 The potential consequences for the First Claimant were of course serious. Each football club has a small minority of unreasonable and sometimes violent fans. Although the message only sought information as to his whereabouts it is not inconceivable that a listener would actually accost him to enquire why the football club were looking for him. This risk ought to have occurred to the Defendants.

63 Much of what I have said in the preceding paragraphs applies to the programme notes of 1st January 2011. It read as follows:

> *"in parallel we have issue a writ against Melvyn Levi (a former Leeds United director) on grounds that he aided and abetted Weston. As I write, we have not served Mr Levi with his writ as his wife said he was away until the New Year which makes me speculate as to why they split for the festive season. No matter, the procedure will be processed in 2011. "*

The content is partly factual and partly comment. It is factually inaccurate in that the Claimants did not in fact spend the festive season apart as I have found. The First Defendant and Mr Harvey say it was not intended in any way to be a comment on the state of the Claimants` marriage. The intention was to suggest that the Second Claimant had not been truthful when she told the process server that the First Claimant was away. I have to say objectively it does not read that way. Most people reading the programme would have wondered why a married couple would spend the festive season apart and the word "split " is one which is often used to describe marital separation and one which would not naturally fall in that sentence when drafted by other authors. The secondary interpretation, which in my view is not the natural reading, is not a justified or pleasant accusation either. It was of course a piece of gratuitous information which was not necessary to the thrust of the article. Again, before suggesting that a couple who had been together for almost 30 years were in marital difficulty one would expect a journalist (which I accept the First Defendant is not) to carefully check his or her sources. I have already said in the preceding paragraphs that the factual foundation for such an assertion is very unreliable as indeed would be the assertion that the Second Claimant had lied. Again this was not a reasonable response to the problem that the Defendants faced. Service of the Order of Justice had been slightly delayed but there was never any real risk that they would fail to serve the document shortly after New Year. The fact that this was a grossly disproportionate response to the problem persuades me that the motive for the article was not the need to genuinely report matters of interest to Leeds United fans but to

turn up the pressure on the Claimants , and in particular the First Claimant. It would have been obvious to the Defendants that this would upset the Claimants or if it was not, it ought to have been.

64 The latest pleaded allegation against the Defendants is the article dated 2nd April 2011 entitled "Our Destiny in Our Hands". The content of this article is set out in paragraph 7 (j) above and consists mainly in a factual report about the second Jersey proceedings. The only real comment is the hope that the Second Defendants would win and teach Mr Weston and the First Claimant a lesson. It would be hard to define this comment as oppressive and unacceptable and would seem to me that to prevent this type of comment would be a disproportionate restriction on the First Defendant's right to freedom of expression. The fact that mention of the First Claimant breached the Defendant's undertaking to the Claimants is not significant save perhaps as to future remedy as the terms of the undertaking were not phrased in a way to make a breach automatically harassment.

65 There is no doubt that the First Defendant has a right to freedom of expression both at common law and under Article 10 of the ECHR. That right however is circumscribed in Article 10(2) in that it may be subject to such restrictions as are prescribed by law and are necessary in a democratic society for the protection of health or morals and for the protection of the reputation or rights of others. Parliament has determined the right of freedom of speech may be restricted to prevent harassment by the passing of the Prevention from Harassment Act 1997. In addition where Article 8 is engaged a balancing exercise may be necessary between the competing rights of freedom of speech and the right to respect for private and family life. This is what Lord Bingham called the ultimate balancing test in *Re S (A Child).*

66 It is hard to see how Article 8 is engaged in the article dated 2nd April 2011 as it merely contains a report of the second Jersey proceedings and a wish to succeed. It would however be difficult to argue that Article 8 was not engaged in the article dated 1st January 2011 where on an objective reading it was being suggested that the First and Second Claimant's marriage was in difficulty. It seems to me that Article 8 is also engaged in the radio broadcasts. Whilst the Defendants argue that they were merely seeking information about the First Claimant's whereabouts it could be construed as an invitation to search for the First Claimant which would be a lack of respect to his right to a private life. The balancing exercise envisaged by Lord Bingham can only be carried out with reference to the facts of the case under review. An example of how this should be done in an individual case is provided in paragraph 32 of the judgement of Mrs Justice Hallett as she then was in *Percy v Director of Public Prosecutions* quoted earlier in this judgement. One of the potential findings in that case was that the protest had not formed part of an open expression of opinion on a matter of public interest but had become disproportionate and unreasonable.

67 This brings me to an important issue in relation to the case as a whole. Are the First Defendants programme notes a reflection of his genuinely held views of interest to the fans of Leeds United? Or are they, as the Claimant contends, a vehicle for the First Defendant to pursue his personal animosity against the First Claimant by publishing partial, inaccurate and damaging comments about the First Claimant under the guise of freedom of speech. Clearly the fact that in the past, three of them have been found to be defamatory in relation to the First Claimant is relevant. The fact that the First

Defendant accepted that, other than managers and players, he had written more about the First Claimant than any other person is also relevant. He also accepted that he had not mentioned anyone else's wife, son, home address or phone number.

68 Is the dispute with the First Claimant of genuine interest to the fans of Leeds United or does the First Defendant publish information embarrassing to the First Claimant irrespective of whether there is any genuine interest in the story? I find it difficult to accept that genuine fans have any interest in this dispute. It arose in 2004 over a disputed debt of £190,400. The dispute about the call option can be of no interest to the fans as the First Defendant succeeded in taking over the club without having to exercise it. Whilst £190,400 would seem like a lot of money to most of the fans of the club it is a very modest amount in modern day football when, even in the Championship, players are paid £20,000-£30,000 per week. When the fact that the debt was actually owed to the limited company who previously owned the club, (and was subsequently assigned by the administrator), is taken into account and the fact that the club has gone through two relegations, one promotion and an administration since then, it is hard to see how the fans would regard this issue as significant. Some support for this assessment is found in the fact that no fans appear to have either telephoned the First Claimant or accosted him at his home despite the invitation to do so in the programme. In addition it would appear that the First Claimant's potential involvement in this dispute only seems to stem from 2009 when the allegation was first made that the "fourth draft" was a fabrication.

69 I have reached the conclusion that the motivation to report matters which are derogatory about the First Claimant is founded in a personal grudge which the First Defendant has arising from the original business dealings in 2004. I find this is not a genuine attempt to report matters of interest to the fans of the club. Whilst I accept that the column may well contain such information, when mention is made of the First Claimant it is always derogatory and often inaccurate. No attempt at balance is made and when setbacks occur in the legal process which is supposedly of interest to the fans no attempt is made to report them. It is against this background that the ultimate balancing exercise must take place.

70 Bearing in mind that the First Defendant has a right to freedom of expression and the First Claimant has a right to privacy an intense focus on the comparative importance of the specific rights being claimed is necessary. Reported cases have confirmed that a free press is a desirable outcome in itself but I have found that the First Defendant is not publishing a newspaper, he is publishing a partial account of his own opinions which from time to time include information the sole intention of which appears to be to upset the First Claimant. Would it be an unreasonable interference with the First Defendant's right to freedom of expression to prevent him publishing these oppressive and unreasonable opinions? The radio broadcast and the article on 1st January 2011 are both occasions where the First Claimant's right to privacy has been seriously breached without any objectively reasonable need for the information to be published at all. If the First Defendant had been prevented from publishing both these items it does not seem to me that it would have been an unreasonable interference with his right to free speech. It would also appear to be a proportionate response to prevent repetition of gratuitous comment which has no value other than to harass.

71 I am conscious of the dicta of Lord Phillips in *Thomas v News Group Newspapers Limited* that before press publications are capable of constituting harassment , they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. The programme notes are not however press publications in the same sense. In *Thomas* the Sun Newspaper were attempting to expose a situation which they thought was "political correctness gone mad" a topic which although popular with their readers, is not necessarily shared by others. Had they not mentioned the ethnicity of the Claimant the court would have ruled that it could not amount to harassment, even though some people would vehemently disagree with the tone of the article. The point is however that there was no personal animosity against Ms Thomas; she was merely part of the story, which was one which suited their campaign against political correctness. In my view this case has more in common with the example posed by Mr Pannick QC in *Thomas* of the editor who uses his newspaper to conduct a campaign of vilification against a lover with whom he has broken off a relationship. The court did not rule on this example but I can see comparisons with the present case where the motive behind the story is not the dissemination of information of interest to the readership but the pursuit of a personal grudge. In my view this is capable of providing the exceptional circumstance envisaged by Lord Phillips.

72 In my view the decision in *King v Sunday Newspapers Limited* can also be distinguished on its facts. In that case there were a number of articles about the Claimant who was alleged to have been a member of the Loyalist Volunteer Force, an accomplice to murder and a drug dealer. There were a number of articles some of which revealed details of his private life including his partner and child. In that case it figured very heavily that it was in the public interest for the readers to be told of his criminal past and the relevance of his partner was that she was a catholic , which given his membership of a sectarian organisation , smacked of hypocrisy. The underlying truth of the allegations was not contested by the Claimant and the fact that he had declined to issue defamation proceedings was seen as significant. It was not difficult to see when balancing the conflicting rights under Article 10 and Article 8 the court was of the view that it was in the public interest to be told about the truth. This was a case about a reputable newspaper campaigning on an issue of public importance. The current situation is very different with no real public interest in the subject matter and an underlying motive of revenge behind the stories. In addition some of the past articles are said to have been "riddled with inaccuracy "by the Judge in the libel case and I have found the article on 1st January 2012 was based on false information.

73 The question appears to be whether there is a pressing social need for a restriction on the freedom of expression in a democratic society. Parliament has ruled that this may be required when the expression constitutes harassment of another and European Jurisprudence points to a balancing of competing rights of expression and privacy. It all depends on the context of course and even in this case the answer may vary depended what is being expressed. Where unwarranted speculation is made about the Claimant's marriage it is easy to see why preventing that speculation may be a proportionate response and a justified restriction on freedom of expression. Where the progress of civil proceedings is reported without describing the First Claimant as a "fraudster " or something similar then the balance would clearly favour the right to report those proceedings , even if there was no genuine interest in them.

74 Standing back from the situation for a moment therefore and taking everything into account I find that radio broadcasts and article dated 1st January 2011 constitute acts of harassment. They were targeted at the First Claimant, and were calculated in an objective sense to cause alarm or distress; I find them to be oppressive and unacceptable when viewed objectively; I find them to be more than unattractive and boorish and are serious enough to sustain criminal liability in the event of breach. The previous articles have relevance to the issue as they provide the context to these events and go some way to explain why the First Claimant would in fact suffer alarm and distress and why the Defendants ought to have known that they would.

75 I find that there has been a course of conduct in that there were at least six occasions when the radio message was broadcast which together with the article on 1st January 2011 constitutes seven occasions in total. Authority for the proposition that each individual broadcast should count can be found in the case of *Kelly v Director of Public Prosecutions [2002] EWHC 1428.* Whilst the earlier incidents cannot count towards the number of acts of harassment they again provide background to show this is either a continuation of a previous course of conduct or a resumption of it by broadly the same modus operandi. I have carried out, I believe, the ultimate balancing exercise of competing convention rights and I find in relation to these incidents that any interference of the First Defendants right of freedom of expression is justified in a democratic society by a proportionate response of this nature in preventing the publication of gratuitous insults about the First Claimant which have no objective value. It follows from my finding about the Defendants conduct that none of them can sustain a defence of reasonableness under s 1(1)(c).

76 Although I suspect it is likely to be irrelevant I find the First Claimant succeeds in his claim against all three Defendants. Whilst the Third Defendant has no responsibility for the programme article on 1st January 2011 it was responsible for all six broadcasts which are sufficient to constitute a course of conduct. The First and Second Defendants both procured the radio broadcast and are accordingly jointly liable with the Third Defendant in relation to the radio broadcast and jointly liable themselves in respect of the programme article.

77 Quantum

Both counsel have made submissions to the court in relation to the quantum of the Claimants` claims should either of them be successful. Leading counsel for the First Claimant suggests a figure of £20,000 and counsel for the Defendants suggests a bracket of £7500-10,000. Helpfully both counsel have agreed that in this case the court should make one award to compensate the First Claimant for both personal injury and injury to feelings. As the award for injury to feelings includes any aggravating features of the Defendants` conduct then both are agreed that aggravated damages would not be appropriate. I warn myself of the risk to award double recovery by overlap. Whilst I intend to make one award it is helpful at least to consider the elements separately to get some idea what the total should be.

78 The joint report of the psychiatrists found that the First Claimant had shown mixed anxiety and depressive symptoms since December 2010/ January 2011 amounting to

an adjustment disorder. The symptoms include intermittent low mood, anxiety with mental rumination, sleep disturbance and a sense of fear and feeling on edge. He is independent in terms of self care and has been able to continue with his business interests. There is some avoidance of other people, anxiety of coming to harm in public places and an adverse effect on his relationship with his wife as a consequence of a decreased threshold for irritability and anger. Both experts agreed that the main cause of the adjustment disorder was the alleged harassment that the First Claimant perceived had occurred from the Defendants. Both felt the Jersey proceedings might have resulted in a less severe and briefer period of anxiety but the radio announcements and programme notes were the primary cause. They agreed that once the alleged harassment case is settled then the First Claimant will likely improve in his mental health and he would then not require further treatment. If he did not recover as expected they recommended cognitive behavioural therapy at a cost of £2500. They anticipate a full and complete recovery of the adjustment disorder at the end of the current harassment case unless the harassment continued.

79 It is clear that the First Claimant is experiencing symptoms virtually on a daily basis but overall he functions well apart from his anxiety and the social effects alluded to. The Guidelines for the Assessment of General Damages in Personal Injury Cases state as follows about psychiatric damage:

(A) Psychiatric Damage Generally

The factors to be taken into account in valuing claims of this nature are as follows:

(i) the injured person's ability to cope with life and work;

(ii) the effect on the injured person's relationships with family, friends and those with whom he or she comes into contact;

(iii) the extent to which treatment would be successful;

(iv) future vulnerability;

(v) prognosis;

(vi) whether medical help has been sought;

(vii) (a) whether the injury results from sexual and/or physical abuse and/or breach of trust;

(b) if so, the nature of the relationship between victim and abuser, the nature of the abuse, its duration and the symptoms caused by it.

(a) Severe *In these cases the injured person will have marked problems with respect to factors (i) to (iv) above and the prognosis will be very poor.*	***£36,000 to £76,000***
(b) Moderately Severe *In these cases there will be significant problems associated with factors (i) to (iv) above but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases of work-related stress resulting in a*	***£12,500 to £36,000***

permanent or long-standing disability preventing a return to comparable employment would appear to come within this category.

(c) Moderate *While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good.*	***£3,875 to £12,500***
(d) Minor *The level of the award will take into consideration the length of the period of disability and the extent to which daily activities and sleep were affected. Awards have been made below this bracket in cases of temporary 'anxiety'.*	***£1000 to £3875***

80 Taking into account the relatively short duration of the First Claimant's condition and the good prognosis expected once the harassment ceases it seems to me that the First Claimants case is in the moderate category. Dr Britto did not categorise the severity of the First Claimants condition but Dr Kehoe described it of "mild to moderate "severity. This supports my view that the case falls in the moderate category somewhat less than the midpoint. It would also be right to make a slight downward adjustment to reflect the stress of the Jersey proceedings which, although not significant, cannot form part of this assessment. The current proceedings and Jersey proceedings are conducted with the benefit of a conditional fee agreement so he is not concerned about having to pay legal fees.

81 Guidance on the award for injury to feelings can be found in the decision of Lord Justice Mummery in *Vento v Chief Constable of West Yorkshire Police [2002] EWCA 1871.* Although this was an employment case he gave the following guidance about compensation for injury to feelings:

Guidance

65. Employment Tribunals and those who practise in them might find it helpful if this Court were to identify three broad bands of compensation for injury to feelings, as distinct from compensation for psychiatric or similar personal injury.

i) The top band should normally be between £15,000 and £25,000. Sums in this range should be awarded in the most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the ground of sex or race. This case falls within that band. Only in the most exceptional case should an award of compensation for injury to feelings exceed £25,000.

ii) The middle band of between £5,000 and £15,000 should be used for serious cases, which do not merit an award in the highest band.

iii) Awards of between £500 and £5,000 are appropriate for less serious cases, such as where the act of discrimination is an isolated or one off occurrence. In general, awards of less than £500 are to be avoided altogether, as they risk being regarded as so low as not to be a proper recognition of injury to feelings.

66. *There is, of course, within each band considerable flexibility, allowing tribunals to fix what is considered to be fair, reasonable and just compensation in the particular circumstances of the case.*

67. *The decision whether or not to award aggravated damages and, if so, in what amount must depend on the particular circumstances of the discrimination and on the way in which the complaint of discrimination has been handled.*

68. *Common sense requires that regard should also be had to the overall magnitude of the sum total of the awards of compensation for non-pecuniary loss made under the various headings of injury to feelings, psychiatric damage and aggravated damage. In particular, double recovery should be avoided by taking appropriate account of the overlap between the individual heads of damage. The extent of overlap will depend on the facts of each particular case.*

82 These figures have been updated in *Da`Bell v NSPCC UKEAT/0227/09/CEA* to £6000, £18,000 and £30,000 respectively. In this case the First Claimant suffered a further course of harassment from 22nd December 2010 to 1st January 2011. Shortly after that he obtained an injunction and the harassment ceased. He has however suffered significant injury to feelings as he is a Leeds resident and considers he has a good reputation amongst the people of Leeds. To know that he has been subject to unwarranted accusations on the radio and in a football programme read by several thousand Leeds supporters has upset him greatly. The figures outlined above are not directly comparable as they are intended to compensate for discrimination. I find it hard to describe this case as "serious "although it is clearly more than one incident, as it must be under the act. It seems to me it would fall towards the top end of the bottom bracket.

83 Doing the best I can to award compensation for both elements of the claim and discounting the personal injury award for other causes and the overall award to prevent double recovery by overlap I award the First Claimant £10,000. Given that the prognosis is that a full recovery is likely I make no award of special damages as on balance of probability cognitive behavioural therapy will not be required. I have to assume the harassment will stop as I will make whatever orders are appropriate to prevent it. The issue of what remedy is required to prevent further acts of harassment will be determined at a hearing following the handing down of this judgement.