

ENGLAND AND WALES / JUDGMENT

Kasima Whittingham v Sam Jones

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[2026] EWHC 979 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION MEDIA AND COMMUNICATIONS LIST Case No: KB-2025-004567 Royal Courts of Justice Strand, London, WC2A 2LL Date: 29/04/2026 Before : DEPUTY HIGH COURT JUDGE AIDAN EARDLEY KC

- ----- Between : MISS KASIMA WHITTINGHAM
- and - MR SAM JONES Claimant Defendant The Claimant appeared in person Mrs H Andersen, instructed by Browne Jacobson LLP, for the Defendant Hearing date 22 April 2026
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 29 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones Deputy High Court Judge Aidan Eardley KC:

Introduction

1. This is the Defendant's application for a terminating ruling (strike out or summary judgment) in the Claimant's claim for libel. Factual background
2. The Claimant is the parent of two children who attended Kelmscott School in East London (the School). The Defendant is the headteacher of the School. The Claimant's children ceased attending the School in September 2024. I do not need to go into the reasons for present purposes, but relations between the Claimant and the School then became strained (if they had not already been strained previously). She made formal complaints which were dealt with under the School's complaints policy, including escalating them to the Chair of Governors.

Procedural history

3. On 24 November 2025, the Claimant sent a letter of claim to the Defendant and his solicitor in purported compliance with the Pre-Action Protocol for Media and Communications Claims (the PAP).

4. By a Claim Form dated the same day (received by the Court on 26 November 2025 and issued on 11 December 2025) the Claimant brought proceedings for libel. The brief details of claim on the Claim Form state: “on 27/11/2024 and 02/12/2024 the Defendant...published emails to the Chair of Governors and others alleging the Claimant “threatens and intimidates” colleagues, that staff are “very wary” of interactions with her, and expressing “fingers crossed” not to hear further from her...”.
5. The Claimant subsequently filed Particulars of Claim dated 14 January 2026. In section B, headed “Publications complained of” the Claimant states: “[4] On or about 27 November 2024 the Defendant sent one or more emails and/or made other written and/or oral communications concerning the Claimant to colleagues at Kelmscott School (including members of the senior leadership team) about her attendance at the school and her communications with staff (“the First Publication”).
- [5] Without prejudice to disclosure and further particulars, the Claimant will say that in the First Publication the Defendant alleged, in substance, that: The Claimant had behaved in an aggressive, threatening and harassing manner towards members of staff; The Claimant’s conduct represented a safeguarding and security risk on school premises; The Claimant’s behaviour was sufficiently serious to justify the involvement, or threatened involvement, of external agencies, including the police, and formal action against her; and Page 2 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones Staff at the school required protection from the Claimant because of her conduct.
- [6] The Claimant further complains of subsequent repetitions and republications of the same or substantially the same allegations by the Defendant in communications to: Other members of the senior leadership team and staff at Kelmscott School; Governors of the school and/or officers of the local authority; External agencies contacted about the Claimant, including (if applicable()) the police and any safeguarding, early-help or other professional services; and Other third parties involved with the Claimant’s children and family.
- [7] The precise wording, dates and recipients of the publications complained of are presently within the knowledge, possession or control of the Defendant and/or Kelmscott School. The Claimant will seek standard disclosure of those communications (including internal and external emails) and, if necessary, apply to amend these Particulars following such disclosure.
- [8] Insofar as any of the publications were in written form (including emails, letters and records), they constitute libel. Insofar as any were oral they constitute slander.”
6. The address for service on the Defendant is stated on the Claim Form to be the address of the School and that is where the Claim Form and Particulars of Claim were sent by post. An acknowledgment of service filed on 27 January 2026 (not included in the application bundle but which I have seen on the CE File) ticks the box stating “I intend to contest jurisdiction”.

7. By an Application Notice filed on 13 February 2026 and supported by a witness statement of Katherine Langley (of the Defendant's solicitors) the Defendant applies for the claim to be struck out pursuant to CPR 3.4(2), or for summary judgment to be entered for the Defendant. The Claimant filed a Witness Statement in response (albeit more than a month after the date set by the Court). Her Witness Statement exhibits screenshots of two emails from the Defendant to the chair of the governors dated, respectively, 27 November 2024 and 2 December 2024. The headers are not visible. I suspect that the emails have been exhibited in this form because the Claimant obtained them under one of the Freedom of Information Act requests I am told she has made, and was not given full copies.
8. The 27 November email reads: "Thanks Scarlet. My concern also extends to her communicating with other colleagues though, as she threatens and intimidates, hence why I tend to communicate, in order to protect colleagues. Page 3 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones Problematic. Best wishes, Sam..."
9. The 2 December email reads: "Good morning Scarlet, We have a record yes. It is not necessarily what she says, just the feeling that an imminent threat of a complaint or similar, that creates an ill feeling to say the least. Staff are very wary of any interactions with her. We don't expect too many more comms from her though as she is aware of current situation and next steps – fingers crossed. Best wishes, Sam..."
10. Clearly each email was a response to a communication from the Chair of Governors. Those communications were not before the court. The hearing
11. The Claimant is a litigant in person and describes herself as vulnerable. I took this into account and made adjustments. I permitted the Claimant to participate remotely, over a video link, and offered breaks. The Claimant exercised her right to assistance from a McKenzie friend. The fact that a claimant is a litigant in person does not ordinarily relax the requirement that they should comply with rules, orders and practice directions and it did not do so here.
12. The Defendant did not pursue all the points raised in his application at the hearing. His counsel submitted: (1) that he had not been validly served with the proceedings; (2) that the Claimant had not complied with the PAP; (3) that the Claimant has no realistic prospect of proving "serious harm" as required by s1 of the Defamation Act 2013; and (4) that the claim is an abuse of process because the proceedings would tend to undermine adherence to the Teachers' Standards 2012, the statutory guidance Keeping Children Safe in Education (2024) and the statutory guidance Working Together to Safeguard Children (2023), all of which, it is said, encourage the swift and fearless sharing of information for the purposes of safeguarding children.

13. In clear and succinct oral and written submissions, the Claimant responded as follows: (1) she did not know and had no lawful means of ascertaining the Claimant's home address, the papers in fact reached the Defendant, and therefore any defects in service should be regularised by the Court; (2) she did send a PAP letter but was facing a limitation deadline, any non-compliance with the PAP should be reflected in costs, not striking out;
- (3) there is a properly arguable case on serious harm in respect of the two emails; and (4) the safeguarding guidelines were relevant context but cannot create an immunity for communications such as the emails. Legal principles – strike out and summary judgment
14. CPR 3.4 provides: Page 4 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones “[...]”
- (2) The court may strike out a statement of case if it appears to the court –
 - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
 - (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings;
 - (c) that there has been a failure to comply with a rule, practice direction or court order [...]
15. CPR PD 3A gives some guidance on these provisions: “1.2 The following are examples of cases where the court may conclude that particulars of claim (whether contained in a claim form or filed separately) fall within rule 3.4(2)(a):
 - (1) those which set out no facts indicating what the claim is about, for example ‘Money owed £5000’,
 - (2) those which are incoherent and make no sense,
 - (3) those which contain a coherent set of facts but those facts, even if true, do not disclose any legally recognisable claim against the defendant. 1.3 A claim may fall within rule 3.4(2)(b) where it is vexatious, scurrilous or obviously ill-founded.”
16. Further, the White Book (at 3.4.2), citing Harris v Bolt Burdon [2000] CP Rep 70, states that “Statements of case which are suitable for striking out on ground (a) include those which raise an unwinnable case where continuance of the proceedings is without any possible benefit to the respondent and would waste resources on both sides”.
17. Summary judgment can be granted against a claimant under CPR 24 where it is shown that the claim has no real prospect of success and there is no other compelling reason for a trial. I do not need to say much about summary judgment because I think that the present application can be dealt with under CPR 3.4(2). Although a court considering a strike out application will usually confine itself to considering the terms of the statement of case under attack whereas, on a summary judgment application, there may also be consideration of evidence, it is recognised that the two types of application are not mutually exclusive. As

noted in the White Book at 3.4.2, in *Libyan Investment Authority v King* [2021] 1 WLR 2659, at [57](4) Nugee LJ suggested that there is nothing wrong Page 5 Deputy High Court Judge Aidan Eardley KC Approved Judgment *Whittingham v Jones* in the practice of bringing an application under both Part 3 and Part 24 on the basis that the claim is factually hopeless.

18. A finding that a statement of case is defective for one of the reasons set out in CPR 3.4(2) (a)-(c) does not automatically result in it being struck out. Such a response may be disproportionate to the breach, particularly if the defect is capable of being cured. In *Kim v Park* at [40], Tugendhat J put the matter as follows: “40. However, where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right.”
19. “Putting the defect right”, in my view, entails setting out a case that is not only compliant with the rules but one which has a real prospect of success. The overriding objective would not be served by giving a claimant a further chance where, although they might be able to cure some technical infelicities, their underlying case remains hopeless. Ground 1: defective service
20. Service on the Defendant was defective. CPR 6.9(2) required him to be served at his usual or last known residence, not the School. However, I do not propose to strike out the claim on that ground. *Hoddinott v Persimmon Homes (Wessex) Ltd* [2007] EWCA Civ 1203, [2008] 1 WLR 806 would appear to be authority for the proposition that a defendant who files an acknowledgment of service but contends that they have not been validly served must make an application under CPR Part 11 within 14 days to challenge the court’s exercise of its jurisdiction over the claim and, if he does not do so within that time limit, is deemed to accept jurisdiction (see CPR 11(5)). Applications for terminating rulings on the grounds of non-service other than made in accordance with CPR Part 11 would appear to be excluded. I say that this would “appear” to be the meaning and effect of *Hoddinott* because later authorities continue to question its true scope (see e.g. *Hand Held Products, Inc v Zebra Technologies Europe LTS* [2022] EWHC 640 (Ch) at [70]- [84]) and I did not hear full argument on the point.
21. The Defendant did file an acknowledgment of service contesting jurisdiction but did not follow it up with a timely Part 11 application. Given that this may well mean that he is deemed to have waived any challenge to jurisdiction on the basis of defective service, I prefer to determine his application on other grounds. Ground 2: non-compliance with the Pre-Action Protocol for Media and Communication Claims
22. The criticisms made by the Defendant are well founded. PAP paragraph 1.3 states that the courts “will expect parties to have complied with this Protocol in good time before proceedings are issued”. A litigant in person “should still, in so far as reasonably possible, fully comply with the Protocol” (para 1.4).

23. The Claimant did not comply with the PAP in good time. For unexplained reasons she sent her letter right at the end of the 1 year limitation period that applies in libel and on Page 6 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones the same day that she sent her claim to the Court. The letter describes the statements complained of and their publication in vague and unparticularised terms similar to those used in the Claim Form and Particulars of Claim that I have quoted from above, which falls short of the requirements in paragraph 3.2 of the PAP. The Claimant did not offer to delay serving proceedings or propose a standstill agreement to allow the parties to work through the steps required by the PAP.
24. Paragraph 6 of the Practice Direction on Pre-Action Conduct and Protocols requires a party to comply with any relevant pre-action protocol before commencing proceedings. There has thus been a failure to comply with a rule or practice direction within the meaning of CPR 3.4(2)(c), which is a ground for striking out. However, striking out a claim for want of compliance with the PAP is a draconian step that will rarely be proportionate. It will usually be more proportionate to reflect non-compliance when dealing with costs. Had the Claimant formulated a viable claim (or been in a position to do so by amendment), I would therefore not have struck it out on this ground. Ground 3 – no real prospect of proving serious harm
25. Before I deal with this issue, I need to say something about the pleading requirements for a defamation claim. Pleading a defamation claim
26. The requirements are set out in Practice Direction 53B and they are strict. Paragraph 4.1 concerns the claim form. It provides: “4.1(1) In a claim for libel the publication the subject of the claim must be identified in the claim form.
 - (2) In a claim for slander the claim form must so far as practicable identify the person or persons to whom the words were spoken and when.”
27. Paragraph 4.2 concerns the particulars of claim. It relevantly provides: “4.2 The claimant must set out in the particulars of claim –
 - (1) the precise words of the statement complained of...
 - (2) when, how and to whom the statement was published. If the claimant does not know to whom the statement was published or it is impracticable to set out all such persons, then the particulars relied upon must show (a) that such publication took place, and (b) the extent of such publication;
 - (3) The facts and matters relied upon in order to satisfy the requirement of section 1 of the Defamation Act 2013 that the publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant.” Page 7 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones

28. A claimant who is unaware of the precise words of a statement or the identity of publishees is not entirely helpless (and this is reflected in part in para 4.2(2)). In an appropriate case they may obtain an order for pre-action disclosure, or they may plead the best particulars they can and then await disclosure or seek further information from the defendant. But situations in which this approach will be permitted are strictly limited. The court will not permit a claimant to “fish” for a case. If they do not know the identity of the publishee, they must at least establish with uncontradicted evidence the fact that publication by the defendant has taken place (see *Gatley on Libel and Slander* (13th edn) at 28-007) and if they wish to allege publication to others as well as a named publishee, they must establish a strong foundation for alleging that some wider publication has taken place: *ibid* at 33-026. If they do not know the precise words used, they must at least set out, with reasonable precision, their closest approximation of the actual words: *ibid* at 28-016 & 28-017.
29. A statement of case that does not comply with these pleading rules will also be one that fails to disclose reasonable grounds for bringing the claim, given the fundamental importance, in a defamation claim, of the precise words used and the occasion and extent of publication.
30. It is plain and obvious that the parts of the Claim Form and Particulars of Claim that I have set out above fall foul of the pleading rules in multiple ways. They stand to be struck out. Nevertheless, I should not strike out the claim if I consider that it could be cured by amendment. The Claimant has now produced the two emails of 27 November and 2 December 2024 and is in a position to set out the words used and specify that they were published to the Chair of Governors. To that limited extent, she could now comply with paragraphs 4.1 and 4.2(1) & (2) of the Practice Direction. She has not satisfied me that she could be in a position to plead any wider publication of those emails (each of which is addressed just to “Scarlet” and does not read as if it was intended to be read by anyone else) or interrogate the Defendant as to whether wider publication occurred. Neither has the Claimant persuaded me that she could set out a case in respect of any of the various other oral and written communications to which her statements of case vaguely allude (or that she could meet the high threshold required to permit such a claim to proceed without full particulars).
31. So, the Claimant is in a position to plead publication of the two emails to the Chair. That is not the end of the matter however because, before it would be right to allow the Claimant a chance to amend, I would also have to be satisfied that she is in a position to put on record a properly particularised case on “serious harm” that has a realistic prospect of success.
Serious harm - legal principles
32. In *Bukhari v Bukhari* [2025] EWHC 2391 (KB), [2025] EMLR 13, at [91], I summarised the law on serious harm as follows: “Section 1(1) of the Defamation Act 2013 provides that “a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”. “Serious” is an ordinary English word requiring no further gloss: *Lachaux v Independent Print Ltd* [2017] EWCA . Whether serious Civ 1334; [2018] Q. B. 594 at [44] Page 8 Deputy High Court Judge Aidan Eardley KC Approved

Judgment Whittingham v Jones reputational harm has been caused is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had: Lachaux in the Supreme Court [2019] UKSC 27; [2020] A. C. 612 at [14] (Lord Sumption) . Sometimes harm to reputation results in observable consequences: the claimant may be shunned socially, vilified on social media, miss out on a promotion, or lose custom from their business. Where such events occur, a claimant may rely upon them, but the absence of such evidence will not necessarily mean that the claim fails. It is possible for a claimant to prove their case relying only upon "the meaning of the words, the situation of [the claimant], the circumstances of publication and the inherent probabilities": Lachaux at [21] (Lord Sumption) but the exercise is one of inference not speculation: the claimant must establish by evidence facts which cumulatively support the inference that, on the balance of probabilities, serious harm has in fact been caused: see e.g. the comments of Collins Rice J in Sivananthan v Vasikaran

[2023] E. M. L. R. 7 at [53] and Miller v Turner [2023] EWHC 2799 (KB) at [45]."

33. Bukhari was a case involving publication to hundreds of readers and in such circumstances an inferential case on serious harm is easier to establish. There is no minimum number of publishees that is required before a libel claim can be established ("one well-directed arrow [may] hit the bull's eye of reputation and cause more damage than indiscriminate firing": Amersi v Leslie [2023] EWHC 1368 (KB) (Nicklin J) citing Sharp J in King v Grundon [2012] EWHC 2719 (QB)). However, Nicklin J continued: "158. But where a claimant complains of publication of a defamatory statement to either a single publishee or a limited number of publishees, the scope for reliance on inference is likely to be very much reduced, both in relation to the direct harm caused to the claimant's reputation in the eyes of the immediate publishee(s) and any 'percolation' effect. The impact of Lachaux is that such reputational harm must be proved. Where the publishees can be identified, that means that an absence of evidence of the actual impact on the individual publishees may mean that a claimant cannot discharge the evidential burden placed on him/her by s.1. Drawing inferences is not a process of optimistic guesswork; it is a process whereby the court concludes that the evidence adduced enables a further inference of fact to be drawn.
159. Likewise, any reputational harm caused by 'percolation', similarly, must be proved, and proved to have been caused by the original publication sued upon. If, for example, the court were to accept a publishee's evidence that s/he did not pass on the defamatory statement (or its gist), there is simply no 'percolation' effect because there has been no republication. If Page 9 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones the publishee says that s/he sent the defamatory publication to one other identified person, it would be a relevant issue whether the claimant's reputation had been seriously harmed in the eyes of this person. I am deliberately keeping the examples simple to demonstrate the relevant principles. Much will depend upon the nature and extent of the original publication and the nature and extent of any republication that is alleged to have been caused by it."

34. “To similar effect, see *Tattersall v Tattersall* [2025] EWHC 2558 (KB), [2006] EMLR 2 where Collins Rice J struck out a pleading of serious harm in the case of a Facebook post published to 57 individuals: see [10], [34], [37] & [49]. Notably perhaps, the post in that case was published in the context of a divisive family dispute and the allegations complained of were “incidental or secondary allegations about the nature and consequences of the dispute and the Claimant’s conduct of it” [35], such that “Their possible contribution to an inference of serious harm lies in their potential to establish an impact on the Claimant’s reputation beyond the impact of what is said about the simple fact of the underlying dispute...” [36] .
35. Where multiple statements (or multiple imputations within the same statement) are complained of, the question of the harm done by the publication of each of them must be considered in isolation. It is not possible to make out a claim of serious harm by aggregating the (less than seriously harmful) consequences of the publication of each separate statement/imputation: *Sube v News Group Newspapers Ltd (Warby J)* [2018] EWHC 1961 (QB), [2018] 1 WLR 5767 at [34]. The Claimant’s putative case on serious harm
36. I focus on the claim that the Claimant would now like to bring on the two emails as outlined in her Witness Statement, which is somewhat different from what is presently pleaded. I shall set out the relevant passages in full: “D. DEFAMATORY MEANING AND SERIOUSNESS
- [11] In their natural and ordinary meaning, the Defendant’s words mean and were understood to mean that I am a threatening and intimidating parent; that I pose a risk in interactions with staff and that staff require protection from me.
- [12] Allegations of this nature, made within a school governance context and to senior decision-makers, are inherently serious. They were capable of influencing how I was viewed and treated by those responsible for complaint handling, safeguarding decisions, and decisions affecting my children. E. SERIOUS HARM Page 10 Deputy High Court Judge Aidan Eardley KC Approved Judgment *Whittingham v Jones*
- [13] The Defendant’s words were published to the Chair of Governors and were included within, or associated with, complaint investigation materials and/or records. Such allegations are inherently damaging to a parent’s reputation within a professional education and safeguarding environment.
- [14] Publication to the Chair of Governors was particularly serious because she was a person in a position of authority and influence in relation to my complaint, my dealings with the School, and decisions affecting how concerns raised by me would be viewed and handled.
- [15] The publications caused me significant distress and exacerbated anxiety and trauma-related symptoms. I will rely, if necessary, on medical/therapeutic evidence and further particulars in due course.

- [16] Serious harm under section 1 of the Defamation Act 2013 is a triable issue. It is not appropriate for summary disposal without disclosure of the full extent of publication, including onward circulation, record-keeping, and referral and/or recording within safeguarding systems.” Serious harm – discussion and conclusions
37. As can be seen, the Claimant’s intended case is entirely inferential. She does not allege that either email had an impact on the outcome of her complaint, or that the Chair of Governors has treated her less favourably as a result of reading them, or has said or written anything suggesting that her view of the Claimant has been adversely affected. She evinces no intention to call evidence from the Chair to that effect. As the authorities show, this puts a claimant in a very difficult position in a one publishee/small circulation case.
38. In my judgement, the matters the Claimant has identified are incapable of amounting to a case on serious harm that has a realistic prospect of success. I say that for the following

reasons:

- (1) The meaning articulated by the Claimant at paragraph 11 of her Witness Statement is at least arguably one that could be conveyed by the 27 November Email and I assume in her favour that she would establish it at trial as the actual meaning conveyed. Viewed in the abstract, it is clearly quite a serious allegation to make about a parent. But, for the purposes of s1, the Court is concerned about the impact that the publication of the statement had as a matter of fact, and that question is heavily affected not just by the gravity of the allegation but by how it was expressed. An allegation that someone is threatening and intimidating expressed by reference to detailed examples of threats and intimidating behaviour will be much more impactful than the same allegation expressed in vague or general terms: it will be both more memorable and more credible. The 27 November Email is vague and unspecific, saying no more than that “she threatens and intimidates”. It is written in a quick, conversational style; Page 11 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones
- (2) The Claimant accepted in oral argument that the 2 December Email, viewed in isolation, is less serious (or in her words “more indirect”). That concession was rightly made and, as with the 27 November Email, whatever the 2 December Email is alleging, it is alleging it in the vaguest of terms. The Claimant went on to submit that its seriousness needs to be assessed in light of what had already been published on 27 November, and as part of the “same defamatory narrative”. It is not open to the court to take that cumulative approach: see Sube;
- (3) The Claimant’s proposed case based on the fact that the recipient of the emails was the Chair of Governors, who was actively engaged in considering complaints made by the Claimant, has some superficial attractions. It sets it apart from a case involving publication to some random individual with no knowledge of the person referred to and no reason to take an interest in what was being said about them;

- (4) Nevertheless, on further analysis, the fact that the recipient of the emails was the Chair of the Governors, and already engaged in assessing the Claimant's complaints, undermines the Claimant's case. I say that because:
- (a) Governors are routinely required to investigate and resolve disputes between school staff and parents. They will know that tempers can run high and that strong allegations can be made on both sides, but they are expected to keep an open mind. The Claimant does not allege that the Chair was inexperienced or unduly naïve or otherwise unable to keep things in perspective;
 - (b) Rather like the position in Tattersall (though I acknowledge that the analogy is not exact) there was a background dispute going on, to which the allegations in the Defendant's emails were peripheral. It is reasonable to be expected that a Chair of Governors will have been able to concentrate on the matters actually in issue. Again, there is no allegation by the Claimant that this particular Chair lacked that capacity.
- (5) The points made at paragraph 15 of the Claimant's Witness Statement are irrelevant to the issue of serious harm. The emotional impact of a publication on a claimant is compensated for in damages in a libel action if liability is established but it forms no part of the analysis for the purposes of s1, which is exclusively concerned with the impact that publication has on the third parties who read the statement complained of: see Tattersall at [29].
- (6) As to the Claimant's contention that it would be premature to refuse her case on serious harm without disclosure as to the extent of publication or republication:
- (a) As things presently stand, the Claimant is only in a position to advance a case of publication to "Scarlet", the Chair of Governors;
 - (b) I accept that, if the claim were to go forward, the Claimant would probably be entitled to disclosure of the full copy of the emails complained of, including the headers, which might show (contrary to the impression given by the body of the emails) that they were cc'd to others. But there is certainly no reason to suppose that the Defendant would have cc'd anyone beyond those immediately concerned with investigating the Claimant's complaint. For the same reasons given in Page 12 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones respect of the Chair, publication to others immediately concerned in the investigation is unlikely to have materially increased the harm to the Claimant's reputation;
 - (c) Before republication or percolation could become an issue in the case, the Claimant would have to set out a proper basis for inferring that this occurred. I do not consider that she is in a position to do so. The subject matter, tone and content of the emails all make it inherently unlikely that the Chair would have forwarded them, or disclosed their contents orally, save perhaps to others immediately concerned with the investigation of the Claimant's complaints (as to which, see above);

- (d) Accordingly, while I acknowledge that the Claimant does not presently have the full picture, allowing the claim to go forward on the basis that something might emerge that shows a wider and truly damaging dissemination of the Defendant's allegations would be speculative and contrary to principle.
39. For these reasons, the Claimant is not in a position to formulate a case on serious harm that has a realistic prospect of success and the claim should be struck out forthwith. Ground 4 – Teachers' Standards and abuse of process
40. I was unimpressed by this submission.
41. First, on the admittedly partial information I have been given, it is not clear to me that the Defendant's emails were actually sent for the purposes of safeguarding children. They expressed concerns about the Claimant's behaviour towards other staff members, not children.
42. Second, and more fundamentally, the law already provides mechanisms to avoid the chilling effect of libel proceedings on the free and timely sharing of information concerning the safeguarding of children. Communications between complainants, whistleblowers and relevant professionals about such matters are highly likely to be protected by the defence of qualified privilege, which can only be defeated by proof of malice (a notoriously difficult undertaking). In some situations (e.g. complaints to the police) the privilege is absolute. Privilege defences will also often apply to communications made in the course of other disciplinary proceedings, complaints processes and investigations.
43. A privilege defence, once pleaded (or even if clearly articulated before service of a defence), will often result in summary dismissal of the claim. It may well be that the Defendant would have had a strong privilege defence in this case.
44. It therefore seems wrong to me to stigmatise a libel claim as abusive just because it is brought in respect of communications concerning safeguarding or similar. It may be hopeless, because of the availability of strong defences, but that is a different point. Totally without merit?
45. The Defendant invites me to certify the claim as totally without merit. I am not going to do that. My decision that the claim should be struck out without giving the Claimant permission to amend indicates that the claim is bound to fail. However, it was not Page 13 Deputy High Court Judge Aidan Eardley KC Approved Judgment Whittingham v Jones incoherent or wholly irrational. Case law indicates that "totally without merit" certification should usually be reserved to cases that exhibit these additional features: see e.g. *R (Wasif) v Secretary of State for the Home Department* [2016] EWCA Civ 82 at [15]-[17].

Conclusion

46. The claim is struck out because the Claim Form and Particulars of Claim presently disclose no reasonable grounds for bringing the claim and they are incapable of being amended so as to set out a case with a realistic prospect of success. I have invited the parties to agree an order, including provisions as to costs. Page 14
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