

Case No: HQ11D03791

Neutral Citation Number: [2011] EWHC 3185 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/12/2011

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

Between :

(1) THE LAW SOCIETY

(in a representative capacity on behalf of all the Solicitors and Law Firms in England and Wales and other individuals or organisations that are at serious risk of being named on the Website www.solicitorsfromhell.co.uk)

(2) HINE SOLICITORS (A FIRM)

(on behalf of itself and in a representative capacity for all the solicitors firms and organisations presently listed on the Website www.solicitorsfromhell.co.uk)

(3) KEVIN McGRATH

(on behalf of himself and in a representative capacity for(a) all solicitors and individuals presently listed on the Website www.solicitorsfromhell.co.uk; and (b) all the Solicitors in England and Wales and other individuals that are at serious risk of being named on the Website www.solicitorsfromhell.co.uk)

Claimants

- and -

RICK KORDOWSKI

Defendant

Hugh Tomlinson QC & Sarah Mansoori (instructed by Brett Wilson LLP) for the
Claimants

The Defendant appeared in person

Hearing dates: 15 November 2011

Judgment

Mr Justice Tugendhat :

1. This is a claim for injunctions requiring the Defendant, the publisher of the “Solicitors from Hell” website (“the Website”), to cease publication of the Website in its entirety and to restrain him from publishing any similar website. The causes of action relied upon are libel, harassment under the Protection from Harassment Act 1997 (“the PHA”) and breach of the Data Protection Act 1998 (“the DPA”). The claim is brought as a representative action on behalf of all those currently featuring on the website and those who might, in the future, feature on the website.
2. The law firms and organisations represented by the Second Claimant are referred to as “the Represented Listed Firms”. The presently listed individuals represented by the Third Claimant are referred to as “the Represented Listed Individuals”. The individual solicitors and other individuals represented by the Third Claimant that are at serious risk of being named on the Website will be referred to as “the Represented Individuals”. I shall refer to them collectively as the Represented Parties. The Claimants represented by the First Claimant are referred to as the “Law Society Represented Claimants”.
3. An interim injunction to restrain publication of a libel is granted only if there is no doubt that the words are defamatory, and only if there is no defence put forward which a jury, properly directed, could uphold. This is usually referred to as the rule in *Bonnard v Perryman* [1891] 2 Ch 269. But perpetual injunctions to restrain publication of a libel are commonly granted, either after a trial, or after judgment is entered in default of defence. However, in the case of default judgments, a claimant must make an application for an injunction in accordance with Part 23: see CPR Part 12.4(2).
4. A representative action for harassment under the PHA has been permitted to proceed in a number of cases. Mr Tomlinson was unable to identify any case where a representative action was brought in libel.
5. At the end of the hearing I granted an injunction prohibiting the Defendant from further publishing the Website, in terms to be reviewed on the handing down of the reasons given in this written judgment. These are the reasons.
6. The First Claimant is the Law Society for England and Wales. It is a professional body established by Royal Charter. It represents the interests of every solicitor on the roll in England and Wales, and every law firm registered in England and Wales.
7. The Second Claimant is a large firm of solicitors based in the South of England. The Third Claimant is a partner in the Smith Partnership, one of the largest firms of solicitors based in the East Midlands. The Second Claimant brings the action for the Firm and the Third Claimants brings the action for himself, and all the Claimants claim to be acting in a representative capacity pursuant to CPR Part 19.6, as set out in the title to this action and further explained in paragraphs 143ff below.
8. The Defendant is the founder, operator and publisher of the Website. This appears to have a substantial readership within this jurisdiction. It has been in existence since late 2005.

9. The Defendant purported to serve a Defence out of time. I shall refer to this as his Defence. As the Defendant admits in paragraph 16 of the Defence (admitting para 6.2 of the Particulars of Claim) the Website encourages and invites disgruntled members of the public to “NAME and SHAME your OPPRESSOR” and add names of solicitors to the publicly available list of “Solicitors from Hell”. A fee of between £1 and £100 (depending upon the size and prominence of the posting) is charged by the Defendant. In the vast majority of cases the author of the posting is anonymous.
10. The Defendant claims that the Website provides a public service by publishing a “blacklist” of law firms and solicitors that should be avoided. It purports to encourage members of the public to “expose wrongdoing” within the profession.
11. It is the Claimants’ case that being listed and named on a website purporting to list “solicitors from hell” is defamatory of itself. The Website causes serious damage to the reputations of the solicitors, firms and others who are listed on it, causing them financial loss, embarrassment, anxiety and distress. By publishing and republishing such material on the Website, knowing that it will be widely disseminated to clients and others via search engines, the Defendant is harassing those listed on it. Far from providing a public service, the Defendant is doing the public a disservice by encouraging them to refer to his Website when selecting a lawyer, since he is encouraging them to use inaccurate information to choose a solicitor.
12. The Defendant disputes the entitlement of the Claimants to bring proceedings under CPR Part 19.6. But subject to that, he has not raised any defence to the claims in libel. There is no suggestion by him that the words complained of are true, or that they are honest opinion. Although he claims to be providing a public service, he does not attempt to raise any of the defences recognised in the law of libel for defendants claiming that publications are in the public interest. There is no plea of qualified privilege of any kind. The Defendant does dispute that some of the words complained of refer to all solicitors represented by the Claimants. And he pleads Art 10(1) of the ECHR (Freedom of Expression) in an answer to the claims for injunctions in libel, as if the right granted by Art 10(1) were not qualified by the responsibilities and other provisions of Art 10(2). As to the claims under the PHA, the Defendant again invokes an unqualified Art 10(1) right. And although he himself does not raise any affirmative defence recognised by the law of libel, he asserts that the Claimants must bring their claims, if at all, under the law of libel, and that they cannot circumvent that requirement by relying on the PHA. He makes no specific response to any of the particulars pleaded by the Claimants in support of the claims under the PHA. The Defendant adopts a similar response to the claims under the DPA. He states that the Claimants must bring their claims, if at all, under the law of libel, and relies on Art 10(1).
13. Art 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...
 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, ... 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."

14. In his witness statement signed on 8 November 2011, the Defendant does not suggest that he intends to justify the allegations complained of. Nor does he suggest that he intends to defend the claims under the PHA or the DPA. Instead the Defendant explains how he set up the Website. He explains that he posted the first comment about a firm of solicitors who had advised him, but that all other submissions to date were from members of the public. He states that the Website works in 'publisher mode' whereby he reviews the comments prior to publication. He now claims that "approximately 80%" are intercepted and deleted by him. Mr Tomlinson submits that this is at odds with other statements he has made claiming he does not seek to verify the accuracy of the content of the submissions (see *Awdry Bailey Douglas v Rick Kordowski* [2011] EWHC 785 (QB)).
15. Mr Tomlinson states that the Claimants and in particular, the First Claimant, have no objection to proper criticism of the legal profession or debate about whether a particular solicitor has failed to provide service of appropriate quality in a particular case. Informed debate on these issues is clearly in the public interest and a proper exercise of the right to freedom of expression. But he submits that the Website makes no contribution whatever to such debates but instead sets out to and does provide a forum for the publication of malicious and defamatory allegations about solicitors. The Website operates against the public interest and the Claimants have brought this action with the aim of ensuring that it ceases operation. The Law Society is concerned about the enormous reputational damage that is, and can be, done to firms and lawyers as a result of their being listed on the Website. It is also concerned about the disservice to the public. The dissemination of misinformation to members of the public through the Website may deter members of the public from instructing good solicitors.
16. The Defendant has listed a total of 15 libel actions have been brought against him by solicitors named on the Website (see paragraph 120 below). Judgment has been entered against him for damages and costs in many of these and, as a result, he was made bankrupt on 7 September 2011. He has not successfully defended any of them. In *Farrall v Kordowski* [2011] EWHC 2140 (QB) on 28 January 2011 Lloyd Jones J had to assess aggravated damages. In that context malice on the part of a defendant is relevant. He found (at para [21]) that the allegations were without foundation, and that they were made maliciously, for reasons he set out in detail. On the same day Smith LJ refused as "totally without merit" the Defendant's application for permission to appeal from the order of Sharp J made on 3 November 2010 in *Mazzola v Kordowski* (unreported). Sharp J had held that the Defendant was liable for the publication in the Website under the Defamation Act 1996 s.1 (para 16 of the transcript of her first judgment that day). He admitted having no defence to the claim other than on the issue of whether he was the author. So Sharp J entered summary judgment against the Defendant. For reasons given in her second judgment that day, Sharp J also granted a perpetual injunction restraining the Defendant from publishing any reference to Miss

Mazzola on the Website, or from further publishing the words complained of in that action, or words to the same or a similar effect. In the assessment of damages *Mazzola v Kordowski* (unreported 15 December 2010), Gray J also found that the libel was repeated one month after the injunction. I take this to be a finding of malice.

17. Miss Mazzola is one of a number of the Defendant's victims who was near the start of her career, or at least sufficiently so to be described as a "rising star". The Defendant's younger victims are the more vulnerable because they do not have the many years' record of achievement that more senior solicitors, such as the Third Claimant, can demonstrate.

18. On 30 March 2011 in *Robins v Kordowski* [2011] EWHC 981 (QB) Henriques J said at para [35]:

"I would only add this: the time has surely arrived for the Law Society and the Bar Council to consider some effective response to the conduct complained of in this case and other similar cases...."

19. On 28 July 2011 Sir Richard Buxton refused the Defendant permission to appeal in the cases of *Philips v Kordowski* and *Farrall v Kordowski*. In each case Sir Richard Buxton wrote that the applications for permission to appeal were "totally without merit" and ruled in each case that the Defendant was not permitted to request the decision be reconsidered at an oral hearing. In *Farrall* his written reasons included the following (which are similar to the reasons he gave in *Phillips*):

"[The Defendant's] has no legitimate interest in publishing the information that is to be found on his site. It is equally absurd for him to claim that he had no reason to believe that what was posted was defamatory. And his argument that he offered the claimant the alternatives of excusing herself to him or paying a substantial amount of money, in each case to secure removal of the posting, casts a dire light on the way in which he conducts his business. The need to control the applicant's activities has already made considerable demands on the court's time. No further public resources should be devoted to this matter."

20. Art 10 does not replace the law as it was before the Human Rights Act 1998. The general law has been in force before and after that Act, and sets out rights and responsibilities which must be compatible with Art 10. Sir Richard Buxton's remarks make clear that the Defendant's attempt to rely on a supposed unqualified right under Art 10(1), without any attempt to bring himself within the defences available in the law of defamation, is totally without merit.

21. As a result of the Defendant's bankruptcy the intellectual property rights in the Website and its contents are vested in his trustee in bankruptcy, but he has not taken any steps to transfer them. Rather, on 2 November 2011, he announced that he had decided to "give the website away" to "experienced owners who operate overseas". The Claimants successfully applied for an interim injunction to restrain this transfer on the basis that it would constitute unlawful data processing and harassment. An

interim injunction was granted by Langstaff J restraining the transfer (“the Transfer Injunction”), returnable at this hearing.

THE APPLICATIONS BEFORE THE COURT

22. There are three applications before the Court brought by the Claimants:
- i) An Application by Notice issued on 11 October 2011 for an interim injunction pursuant to CPR Part 25. However, there is no occasion for an interim injunction once a final judgment is entered, so this application is subject to the Application of 28 October.
 - ii) An Application by Notice issued on 28 October 2011 for final judgment in default pursuant to CPR Part 12.3(2) and 12.4(2) and a permanent injunction prohibiting the Defendant from further publishing the Website www.solicitorsfromhell.co.uk or any website with a similar name.
 - iii) An Application by Notice issued on 10 November 2011 for a permanent injunction in the terms of the Transfer Injunction granted by Langstaff J on 2 November 2011, that is prohibiting the Defendant from disposing of, selling or transferring any or all of the data on the Website to any third party.
23. Until the start of the hearing there was an issue as to whether the Defendant had lodged an acknowledgment of service, the time limit for which was 25 October 2011. The Defendant states in his witness statement of 9 November 2011 that he filed it on 13 October. If he had filed an acknowledgement of service at the latest date, the time limit for service of a Defence would have been 8 November. The Defendant states that a document he served on the Claimants’ solicitors by email on 13 November 2011 is a valid Defence, and it is accepted that he did send what he asserts to be a Defence to the Claimants on that date. But (assuming that he did file an Acknowledgement of Service) that date is out of time on any view. It follows that the Defendant needs an extension of time. Mr Tomlinson opposes an extension of time on the ground that the Defence discloses no reasonable grounds for defending the claim, so that the Defence would, if served in time, fall to be struck out under CPR Part 3.4(2)(a). So Mr Tomlinson did not ask me to make any findings on whether an Acknowledgement of Service was served in time, or not. I shall assume that it was.
24. On 12 August 2011 Brett Wilson LLP for the Claimants sent a Letter of Claim and Notice (“the Notice”) under s.10 of the Data Protection Act 1998 (see para 78 below) on behalf of the First Claimant to the Defendant asking for undertakings that the Defendant cease publication of the Website and removed and destroyed the data from the Website. The letter set out the relevant history of the Defendant’s conduct in relation to the Website, in particular referring to his removal of postings on the Website for a fee.
25. The letter attached four annexes. Five similar annexes were attached to the Particulars of Claim served with the Claim Form on the 11 October 2011, and in that form they are as follows:
- Annex 1: a Schedule of Complainants which lists 354 individuals and organisations named on the Website who have expressly indicated that they wish to “opt in”

to this litigation and be considered part of the Represented Class. These parties, referred to hereafter as “the Complainants” (or “Individual Complainants” when referring only to the individuals who have “opted in”). They are listed under a number of headings: A Law Firms, which number 146, to which a further list numbered 321 to 357 are added in an Addendum; B Solicitors, that is individuals numbered 147 to 32, to which a further list numbered 332 to 361 are added in an Addendum; C Other Employees of Law Firms, that is individuals numbered from 291 to 159, to which a one numbered 345 is added in an Addendum; D Barristers, a single individual numbered 303; E Foreign Law Firms, four firms numbered 304 to 307, to which a further two numbered 351 to 353 are added in an Addendum; F Other Organisations, Hammersmith and Fulham Law Centre and Quickie Divorce Ltd, numbered 308 and 309; G Other Individuals, three are named, they are said to be from Ireland, Australia and Scotland respectively, and are numbered 310 to 311, to which a further two numbered 352 to 354 are added in an Addendum and they are said to be from Scotland and Australia respectively.

Annex 2: a Schedule in the form of a spreadsheet which details each of the Complainant’s complaints against the Website. There are 245 items identified as Postings, but there are more than one Complainant in respect of most Posting. In addition to the column giving the number of the Posting, there are 16 columns giving details of the Posting and other matters. Annex 2 covers 172 pages.

Annex 3: includes printouts of Postings from the Website. It relates to the Second Claimant and covers 50 pages.

Annex 4: includes printouts of Postings from the Website. It relates to the Third Claimant and covers 50 pages.

Annex 5: includes printouts of Postings from the Website. It relates to the First Claimant and covers 25 pages.

LIBEL - THE WORDS COMPLAINED OF

26. The words complained of by the Second Claimant are set out in the Particulars of Claim at paragraph 11. The Defendant admits in his Defence that these words were published by him. The Second Claimant complains of the words which refer to the Firm and to every other Listed Represented Firm (set out at paragraph 32 below) and also complains about and the specific posting which refers to the Firm as follows:

“HINE & ASSOCIATES SOLICITORS – BEACONSFIELD

51 AMERSHAM ROAD

BEACONSFIELD

BUCKS

HP9 2HB

Solicitor

ALL OF THEM INC TONY HINE 01494 685588

HINE AND ASSOCIATES DON'T CARE ABOUT WHO THEY REPRESENT. THEY JUST WANT THEIR CALL OUT FEE. THEY ADVICE ALL CLIENTS TO SAY NO COMMENT IN ALL INTERVIEWS AND WHEN THEIR CLIENTS ARE CHARGED WITH THE OFFENCE INSTEAD OF HELPING THEM THEY ARE PLEASED BECAUSE THEY FEEL THEY WILL MAKE MORE MONEY WHEN THEY GO TO COURT.

A SIMPLE CASE SUCH AS A COMMON ASSAULT - HAIR PULLING A FIRST OFFENCE IF ADMITTED AND PERSON IS SINCERELY SORRY COULD GET A CAUTION. THEY SAY *NO COMMENT* AND THEN YOU ARE CHARGED WITH THE OFFENCE.

HINE DON'T CARE FOR YOU, THEY CARE ABOUT BEING PAID.

TONY HINE IS EX POLICE AND JUST MAKES MONEY FROM OTHERS MISERY.

HE EMPLOYS SOLICITORS WITH NO EXPERIENCE AND BASIC QUALIFICATIONS AND THEN SENDS THEM TO ACT FOR DETAINED PEOPLE.

HE ADVISES HIS SOLICITORS TO MAKE SURE THEY SAY *NO COMMENT*.

THE FIRM SHOULDN'T BE CALLED HINE BUT CALLED *NO COMMENT*.

Rate this Solicitor:

HINE & ASSOCIATES SOLICITORS - BEACONSFIELD

Have you had a problem with HINE & ASSOCIATES SOLICITORS - BEACONSFIELD or ALL OF THEM INC TONY HINE? Please let others know here: Total who also had problems: 43

“Solicitors from HELL” (featuring an image of a demon skull in a suit surrounded by flames)

“They move slowly and risk your deal if you need to move fast. They don't read the documents carefully. Your phone calls won't be returned. Your questions won't be answered. Your instructions will be ignored. They won't alert you to all potential problems. ... Sounds familiar? Don't let them do it to others!”

27. In para 11 of the Particulars of Claim (the second paragraph so numbered) the Second Claimant attributes to these words the following natural and ordinary meanings:
- “(a) The Second Claimant is a shameless, corrupt, fraudulent, dishonest, incompetent and oppressive firm of solicitors which does not provide competent services, has had a justified complaint made against them and whose wrong doing should be exposed to prevent others from suffering by instructing them
- (b) In a gross and flagrant breach of their professional duties to their clients, the solicitors employed for the Second Claimant put the financial interest of the firm above the interests of their clients and knowingly provides their clients with improper legal advice and representation”.
28. In his Defence at para 24 he pleads that the meaning in para 11(a) is denied “in so far as the wording referred to on the first line is not linked specifically to the Second Claimant”. He admits meaning (b) in that paragraph.
29. The words complained of by the Third Claimant are set out in the Particulars of Claim at paragraph 12. The Defendant admits in his Defence that these words were

published by him. The Third Claimant complains of the words which refer to him and to every other Listed Represented Individual (set out at paragraph 32 below) and the specific posting which refers to the Third Claimant as follows:

“Smith Partnership [sic]

10 Pocklingtons Walk

Leicester

Leicestershire

Leicester

UK

Solicitor

Kevin McGrath

0116 255 6292

He colluded [sic] with the police, tampered with the evidence.

He received large sums of money from the police.

He attempted to put me in prison [sic] for something that I did not do.

He took instructions from the police and the CPS instead of from me.

He failed to discuss my case with me or even receive my phone calls.

He went to the trial unprepared and produced no evidence to support my case.

He did not defend me at all against allegations I was charged with.

He was working with the police and tried his utmost [sic] to put me in prison [sic] for large sums of money.

He bullied me and shouted at me and even laughed at me when he thought he was getting his way.

Rate this Solicitor: Smith Partnership [sic]

Have you had a problem with Smith Partnership [sic] or Kevin McGrath? Please let others know here: Total who also had problems: 10”

[In the left hand under the words “Solicitors from HELL” featuring a demon skull in a suit surrounded by flames, the following words appear:]

“They move slowly and risk your deal if you need to move fast. They don’t read the documents carefully. Your phone calls won’t be returned. Your questions won’t be answered. Your instructions will be ignored. They won’t alert you to all potential problems. ... Sounds familiar? Don’t let them do it to others!”

30. In para 13 of the Particulars of Claim the Third Claimant attributes to these words the following defamatory natural and ordinary meanings:

“(a) The Third Claimant is as shameless, corrupt, fraudulent, dishonest and incompetent solicitor, has had a justified complaint made against him and whose wrong doing should be exposed to prevent others from suffering by instructing him.

(b) In deliberate and flagrant breach of his duties to a client, the Third Claimant colluded with police and tampered with evidence in return for large sums of money with the aim of

having his client imprisoned for a crime which the Third Claimant knew the client had not committed”.

31. In his Defence (para 27) the Defendant admits that the words complained of by the Third Claimant bear the meanings attributed to them by him.
32. The words and images relied upon in relation to the claim by the Represented Listed Firms and the Represented Listed Individuals relate to the following publications on the Website. The Defendant admits in his Defence that these words were published by him, subject to qualifications noted below.
 - (a) (i) Between 10 October 2010 and 9 February 2011 (or later but no later than 22 April 2011) the publication of the name of each solicitor, solicitors firm, individual and organisation on a website known as “Solicitors from Hell”. Until February 2011 the title bar on the home page and almost every page of the website was “*Solicitors from HELL – Corrupt negligent dishonest crooked fraudulent lawyers*”. This is pleaded in paras 7(a), 11(a) and 12(a) of the Particulars of Claim. In his Defence (para 18) the Defendant pleads:

“Paragraph 7(a) is admitted but thereafter the title of the home page was replaced with ‘Solicitors From HELL – Complaints against Solicitors’ but no other page ever contained, in the title bars, the wording ‘Solicitors From HELL – Corrupt negligent dishonest crooked fraudulent lawyers’”.

The Defendant in his Defence (paras 24 and 25) admits paras 11(a) and 12(a) of the Particulars of Claim, subject to the point noted in para 28 above.
 - (ii) From 23 April 2011 (or earlier but no earlier than 10 February 2011) the publication of the name of each solicitor, solicitors firm, individual and organisation on a website known as “Solicitors from Hell”. This is pleaded in para 9(a) of the Particulars of Claim.
 - (b) The express branding of each and every solicitor, solicitors firm and other individual and organisation as a “Solicitor from Hell” and association with the “Solicitors from Hell” image. This is pleaded in the Particulars of Claim at paras 7(b) (10 October 2010 and 9 February 2011 (or later but no later than 22 April 2011)) and 9(b) (from 23 April 2011 (or earlier but no earlier than 10 February 2011)). In his Defence (paras 19 and 22) the Defendant pleads in relation to paragraphs 7(b) and 9(a) and (b) of the Particulars of Claim that they “are admitted in that complainants feel justified in associating the solicitor complained about as one that has given them a hell of a time. The complainant has the right to say which firm the individual solicitor belongs to and the public have a right to know which firm the individual solicitor is a member of”.
 - (c) The following words on the Website home page from 10 October 2010 until 9 February 2011 (or later, but no later than 22 April 2011) which referred to each and every solicitor, solicitors’ firm and other individual and organisation named on the Website during this period (para 7(c) of the Particulars of Claim, which the Defendant admits in para 20 of his Defence):

"NAME and SHAME. Those shady Solicitors. No need to register or even leave your name. Click on the link below and add them to our list of 'Solicitors from Hell' (*No need to Register or make any payments*). Now with over ONE MILLION Hits per month, this website will expose these shameless, corrupt, moneygrabbing, incompetent specimens of humanity! (AND it will make you feel better - Guaranteed!)" "...To check if your scum bag, sorry, solicitor is registered contact the Law Society ..." "Remember: 99% of Solicitors give the rest a bad name." "Corrupt negligent dishonest crooked fraudulent lawyers (But not necessarily ALL listed)"

- (d) The following words on the Website home page since 23 April 2011 (or earlier, but no earlier than 10 February 2011), which continue to be published, which referred to each and every solicitor, solicitors' firm and other individual and organisation listed on the Website during this period (para 9(c) of the Particulars of Claim, which the Defendant admits in para 22 of his Defence):

"Have you been LET DOWN by your Solicitor? Do you feel that there is no recourse when this happens? Well, you may have a point! It seems that today's legal system unfairly protects dubious practitioners. However... under Article 10 of the European Convention on Human Rights, you have the right to freedom of speech and expression to voice your complaint! But it must accurate and truthful. You can complain here. RIGHT NOW! NAME and SHAME your OPPRESSOR Problem Solicitor? No need to register or even leave your name. Click on the link below and add them to our list of 'Solicitors from Hell'."

[In the left hand under the words "Solicitors from HELL" featuring a demon skull in a suit surrounded by flames, the following words appear:]

"They move slowly and risk your deal if you need to move fast. They don't read the documents carefully. Your phone calls won't be returned. Your questions won't be answered. Your instructions will be ignored. They won't alert you to all potential problems.Sounds familiar? Don't let them do it to others!"

33. In para 8 of the Particulars of Claim the Claimants attribute the following defamatory natural and ordinary meaning to the words pleaded in para 7 of the Particulars of Claim, "that each solicitor, solicitors' firm, individual or organisation is shameless, corrupt, fraudulent, dishonest and incompetent whose wrongdoing should be exposed to prevent others from suffering by dealing with them". In his Defence (para 21) the Defendant denies that these words bear this meaning. He pleads that

"it will be plain to any reader of a complaint that it is the individual complained about that is the focus of the review and not the whole firm which that named individual belongs to. Each complaint ultimately turns on the particular wording employed by the complainant. A firm is also vicariously liable for the misconduct of its individual members".

34. In para 10 of the Particulars of Claim the Claimants attribute the following defamatory natural and ordinary meaning to the words pleaded in para 9 of the

Particulars of Claim, “that each solicitor, solicitors’ firm and other individuals and organisations listed acts oppressively, does not provide competent legal services, has been the subject of justified complaints and should not be used or instructed”. In his Defence (para 23) the Defendant pleads that “the final paragraph of para 9(c) of the Particulars of Claim were not meant and should not be understood to apply specifically to all the solicitors listed on the Website. The wording was intended as a general example of what could happen”.

35. As noted above (para 12) the Defendant has not pleaded any defence known to the law of libel. He has not pleaded truth or honest opinion, and although he mentions Art 10 and public service, he has not formulated any defence of qualified privilege on a basis recognised by the law.

EVIDENCE FOR THE SECOND AND THIRD CLAIMANTS

36. The evidence in relation to the claim of the Second Claimant is in a witness statement by Mr Andrew Morris. He is a solicitor and an employee of the Second Defendant. He states the following.
37. The Second Claimant was established in 2001. The firm has eight partners and 102 employees (including 43 duty solicitors) spread over eight offices. These are situated in Beaconsfield, Bracknell, Cheltenham, Gerrards Cross, Oxford, Princes Risborough, Swindon and West Drayton. The firm specialises in criminal law, family law, conveyancing and employment. It is one of the largest criminal law firms in the country. It holds Lexcel accreditation. The firm monitors client satisfaction by selecting each month two closed matters for each department and sending questionnaires to the clients. Feedback is generally very positive and some of the comments are placed on the testimonial section of the firm’s website.
38. In June or July 2010 partners became aware of the postings relating to the firm on the Website. This was as a result of staff conducting Google searches for the name of the firm. Such searches are undertaken occasionally in order to monitor the firm’s online presence from a marketing point of view. It is in this way that the words complained of were discovered. Since the posting is anonymous it has proved impossible for the firm to identify the author.
39. Mr Morris states that the words complained of are false and a fabrication. He sets out at some length the considerations which may lead solicitors who are partners or employees of the firm to advise a client whether or not to comment in interview with the police. Depending upon the circumstances, the client will be advised one way or the other. The advice will be what the solicitor concerned believes to be appropriate and in the best interest of the client. All members of the firm’s staff who advise at police stations have undergone the full police accreditation as required by the Law Society.
40. Since the words complained of allege serious criminal, unethical and dishonest behaviour on the part of the partners and employees of the firm, it is almost inevitable that the posting on the website must have caused significant damage to the firm’s reputation. Integrity is essential when dealing with criminal litigation. Clients place considerable trust in solicitors who advise them.

41. The Website postings have had an effect on staff morale, in that employees are aware of its existence and are alarmed that the firm's reputation is being attacked in such a manner. Members of staff are upset after working hard to protect the interests of clients around the clock (often attending police stations outside normal working hours) to be accused of being involved in a money making conspiracy.
42. It is common practice for clients to undertake research on the internet prior to selecting a lawyer or law firm. This is particularly the case with the type of business crime work which Mr Morris now specialises in.
43. The postings have produced prominent adverse search engine listings for anyone undertaking a search in the firm's name. The listings themselves include snippets of defamatory statements. Over the past year the firm has submitted over half a dozen online requests to Google in relation to the adverse search engine links. This process was frustrated because each time Google agreed to remove a link, the Defendant added a new one. At the present time links to the listings for the posting have been removed from www.google.co.uk but remain in other Google domains. As at 22 September 2011 prominent adverse listings appeared on Bing (fourth on the first page), Yahoo! (fourth on the first page) and Alta Vista (tenth on the first page). It is not practicable for the firm continually to monitor these links and to have to persuade the various different search engine companies to remove them.
44. Mr Morris who has been informed by the partners of the Second Claimant that candidates for vacancies in the firm have raised the posting during interview. Applicants for positions conduct internet searches. It is therefore likely that prospective employees have been deterred from applying for a position with the firm or taking up and offer.
45. The partners of the firm are aware that the Defendant has been willing to remove the postings for a payment of the sum of £299. The firm has been unwilling to pay this fee as it considered it to be extortion. The firm has been reluctant to instigate proceedings against the Defendant because they have been aware of reports in which he states he has no assets.
46. There is no conceivable basis upon which the Defendant could justify the allegations within the posting and no other grounds upon which he could defend a claim for libel.
47. Since the issue of the present proceedings on 11 October 2011 the Defendant has altered the posting relating to the Second Claimant. At some point on or before 17 October 2011 he amended the home page to include the following prominent message:

“Have you been LET DOWN by Hine Solicitors – Beaconsfield or The Smith Partnership – Leicester? Please CONTACT US urgently- click here”.
48. This message has since been removed, but it appears on a print out dated 17 October 2011 exhibited to the witness statement. However, the Defendant added further words which appear on a print out dated 7 November 2011 also exhibited to the witness statement. At the foot of the posting which includes the words complained of by the Second Claimant there appears:

“Have you had a similar problem with this firm? Please contact me using info@SolicitorsFromHell.co.uk or use the CONTACT FORM and tell me all about it. Rick Kordowski”.

49. Mr Morris states that he has checked postings relating to other firms on the website. The only other posting with such a message is the posting that relates to the Third Claimant.
50. The Third Claimant is a solicitor of nineteen years experience and a partner in the firm The Smith Partnership. He joined the firm in 1991 and became a partner in 1997. In 1996 he became head of the crime team in the firm’s Leicester office. He specialises in criminal litigation and undertakes general criminal defence work as well as corporate defence work and regulatory work. He advises individuals, companies and firms of accountant in relation to investigations by Her Majesty’s Revenue and Customs and other bodies.
51. The firm has an excellent entry in Legal 500 and the Third Claimant exhibits an entry referring specifically to himself:

“Kevin McGrath is noted for his recent successes defending local authority prosecutions”.
52. The Smith Partnership was established in 1987. It has 28 partners and over 200 members of staff. It has eight offices: two in Leicester, two in Derby, two in Burton, one in Swadlingcote and one in Stoke on Trent. It is one of the largest firms in the region. It has a number of accreditations, including Lexcel. The Third Claimant’s department, crime, is ranked as “second tier” firm by the Legal 500 and a “band three firm” by Chambers and Partners. The firm monitors client satisfaction by sending out questionnaires. The feedback that the Third Claimant receives is very positive. He has an unblemished disciplinary record and has never been the subject of a complaint from a client.
53. The Third Claimant became aware that he was the subject of a posting on the Website on 15 May 2007. In view of the serious nature of the allegations he immediately disclosed the existence of the posting to the firm’s managing partner. He also felt it necessary to reassure partners that there was no foundation to any of the allegations made in the posting. He found this extremely embarrassing. He was also offended by the terminology used on the homepage an example of which on 12 May 2010 stated:

“With over 60 thousand visitors per month, this website will expose those money grabbing Wankers! (and it will make you feel better – Guaranteed!)”.
54. The Third Claimant states that the allegations within the posting are false. There is no foundation for any of them. He has never engaged in any activity alleged in the posting. It will be quite impossible, he states, for the Defendant to produce any evidence to suggest otherwise. He has always ensured that cases are fully prepared for trial. He has a reputation for criminal defence work and is always polite and courteous to clients. The suggestion that he “bullied” the author or laughed at him or her is nonsensical. He would never behave in such a way toward a client. He does not ignore telephone calls from clients. His firm has a policy that all messages are

returned within 24 hours and he adheres to this policy. He always gives clients advice on their cases. Typically this will be done in a consultation and subsequently at a further consultation or over the telephone. Advice will be confirmed in writing. He has never been the subject of any complaint, let alone one that suggested he was corrupt or negligent or rude.

55. He states that he has found or continues to find the Website very distressing. The posting goes to the very heart of what he does as a defence solicitor. It suggests not only incompetence but also that he cannot be trusted. Integrity and independence are essential characteristics for a criminal lawyer. The posting impacts upon his position in the firm and within the legal community. He is constantly being asked about the posting, and on occasion, when it is raised, he finds it extremely embarrassing and uncomfortable to deal with. The entry is common knowledge within the local legal community. He has been asked about it by prosecutors, court staff and other lawyers. Some clients have even referred to it. He attended a family party last year and one of his brothers in law referred to it. Additionally during this summer he was contacted by an old university friend who had seen the posting.
56. The Third Claimant has conducted his own researches using search engines. He sets out the results of this in some detail in his witness statement. Although the evidence he gives is different in detail from the evidence of Mr Morris, the effect of it is substantially the same. It is not necessary to set out the Third Claimant's evidence further.

HARASSMENT

57. The 1997 Act, so far as material, provides:

"(1) A person must not pursue a course of conduct – (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other

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

(a) which involves harassment of two or more persons, and

(b) which he knows or ought to know involves harassment of those persons, and

(c) by which he intends to persuade any person (whether or not one of those mentioned above)—

(i) not to do something that he is entitled or required to do, or

(ii) to do something that he is not under any obligation to do.

(2) 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. ...

3 (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....

3A Injunctions to protect persons from harassment within section 1(1A)

(1) This section applies where there is an actual or apprehended breach of section 1(1A) by any person (“the relevant person”).

(2) In such a case—

(a) any person who is or may be a victim of the course of conduct in question, or

(b) any person who is or may be a person falling within section 1(1A)(c), may apply to the High Court or a county court for an injunction restraining the relevant person from pursuing any conduct which amounts to harassment in relation to any person or persons mentioned or described in the injunction.

(3) Section 3(3) to (9) apply in relation to an injunction granted under subsection (2) above as they apply in relation to an injunction granted as mentioned in section 3(3)(a).

7(2) References to harassing a person include alarming the person or causing the person distress

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

(4) “Conduct” includes speech”.

58. *Thomas v News Group Newspaper Ltd* [2002] EMLR 78 is an example of speech, in the form of a publication in a newspaper, which was held by the Court of Appeal to be capable of constituting harassment. In that case the publishers of *The Sun* included in that newspaper a number of articles referring to the claimant, who they identified on each occasion as black. She was black. The Court of Appeal held that in their context

it was arguable that the articles were racist, and likely to cause the claimant distress. The fact that it was true that she was black was immaterial, because the test is whether in the circumstances the conduct was reasonable or otherwise within a defence recognised by the PHA.

59. Although passed before the Human Rights Act 1998 (“HRA”), the PHA is (like the law of libel and the DPA) one of the many different laws that give effect to the obligation of the state to prevent interference with the right of individuals to protection of their private lives (ECHR Art 8). In *Wainwright v The Home Office* [2003] UKHL 53 [2004] 2 AC 406 at para 18 Lord Hoffmann explained this as follows:

“There are a number of common law and statutory remedies of which it may be said that one at least of the underlying values they protect is a right of privacy. Sir Brian Neill's well known article "Privacy: a challenge for the next century" in *Protecting Privacy* (ed B Markesinis, 1999) contains a survey. Common law torts include trespass, nuisance, defamation and malicious falsehood; there is the equitable action for breach of confidence and statutory remedies under the Protection from Harassment Act 1997 and the Data Protection Act 1998”.

60. Mr Tomlinson submits as follows.
61. The publication by the Defendant on the Website of the name of the solicitors and individuals, including the Third Claimant, in the knowledge that such publications will inevitably come to their attention on more than one occasion and on each occasion cause them alarm and distress constitutes harassment under the PHA. Listing any of the Represented Individuals would also constitute harassment for the same reason.
62. In relation to the Third Claimant, the Claimants rely on the facts and matters set out in the Particulars of Claim at paragraph 19 and the witness statement of the Third Claimant, which he summarised as follows. The Defendant published allegations on the Website about the Third Claimant set out in para 29 above. The publication has been drawn to the Third Claimant's attention by many people, including prosecutors, court staff, other lawyers, clients. Each time the third Claimant's attention has been drawn to the posting he has found it to be extremely embarrassing. The publication about the Third Claimant has caused him repeated distress and alarm. These matters are set out in the witness statement of Third Claimant made on 10 November 2011 at paras 24, 30 and 34.
63. As far as the Represented Listed Individuals are concerned, the inclusion of each individual on a website stating that they are a “Solicitor from Hell” containing, inter alia, the general statements set out in the words complained of cited above and therefore alleging (at the very least) that they are oppressive, that they do not provide competent services, have had a justified complaint made against them and ought not to be instructed will, in each and every case, cause distress and alarm.
64. The publication is an ongoing one on a prominent website; accordingly the distress and alarm caused by the publication will also be continuous. It is reasonable to infer

in every case that those posted would suffer such distress and alarm on at least two occasions.

65. In support of their case in relation to the Represented Listed Individuals the Claimants rely on:
- i) the example of the Third Claimant for whom the postings caused repeated distress and alarm;
 - ii) the “Summary of Postings” in the Schedule of Complaints annexed to the Particulars of Complaint. An analysis of these complaints is set out in Mr Wilson’s witness statement of 11 October 2011 at para 85. He shows:
 - a) 48% of the postings allege that the solicitor was involved in dishonesty of some form.
 - b) 58% of the postings allege that the solicitor behaved unethically.
 - c) 67% of the postings allege that the solicitor was negligent.
 - d) 84% of the postings allege that the solicitor provided inadequate professional services and/or was incompetent.
 - e) 33% of the postings allege that the solicitor was guilty of overcharging.
66. As explained above, the Defendant has had this Schedule of Complaints since August 2011. Reference to this analysis was also contained in the letter of claim. No response has been received from the Defendant to suggest that this analysis is incorrect.
67. Mr Tomlinson submits that the Court can properly infer that the attention of the Represented Listed Individuals will be drawn to the Website (either directly or via another search engine or by third parties) on two or more occasions. The Website is a prominent one that has featured in the national media and appears to be widely used by members of the public. About half a dozen postings are added to the Website each week, as stated by Mr Wilson in para 22 of his first witness statement. It appeared as the third item in the drop down ‘suggestions’ box when the word “Solicitor” was typed into the Google search engine on 23 August 2011 (Exhibit IMW12 to the witness statement of Mr Wilson). There is evidence to a similar effect the Report of Mr Dilloway, a member of the British Computer Society, whose report is Exhibit IMW13 to the witness statement of Mr Wilson. The Website appears on the results page if a Google search is conducted on the name of an individual listed on the Website. This is a feature that is advertised by the Defendant.
68. Even if the individual themselves did not find the listing, it is inevitable that some third parties would do so and the individual would be notified of it. Any individual named on the Website suffers continuing publication of extremely serious and highly defamatory allegations against them. In the circumstances, and with a view of the facts set out above, it is reasonable to infer that such individuals would suffer alarm and distress on more than one occasion. The Claimants refer to the Schedule of

Complaints which demonstrates that in almost every case where a posting was made about an individual complainant it has caused them anxiety/distress.

69. Mr Tomlinson submits that the Court can also infer that the Defendant knows or ought to know that that this conduct amounts to harassment. In support of this the Claimants will rely upon the following:
- i) The fact that it is obvious that the naming of an individual on a website with the name “solicitors from Hell”, along with the comments made on the general pages, will cause that individual distress and alarm.
 - ii) The claims brought against the Defendant by other parties in respect of the Website in which it is clear that they have suffered considerable distress as a result of being listed on the Website. This is clear from a number of the judgments in relation to quantum that the Defendant is well aware of the impact that the Website has on those listed on it. For example, in *Crawford v Kordowski* (unreported, 16 December 2010) Gray J referred to the upset and anxiety that the publications about Ms Crawford were causing her, (see paragraphs 7-8 of the transcript). She is another young victim, having qualified in July 2009. The judgment recites evidence that Ms Crawford gave, which is similar to the evidence given in this case by Mr Morris and the Third Claimant. Similar comments about the distressing nature of being the subject of allegations on the Website were made in the case of *Mazzola v Kordowski* (unreported 15 December 2010, Gray J) and in *Farrell v Kordowski* [2011] EWHC 2140 (QB) Lloyd Jones J at para 20.
 - iii) The numerous individuals who have (and must have) contacted the Defendant informing him that they are alarmed and/or distressed as a result of being named on the Website. See, for example, the e-mail dated 17 June 2010 exhibited by the Defendant to his witness statement, where a Mr Lloyd informed the Defendant that the posting about a solicitor who was his partner was “just harassment” and asked for the posting to be removed. The Defendant replied the same day stating that “a fee would delete the other entries against your firm”, and, later stating “I am likely (as in most cases of deletion) to be harassed myself by the original complainant”.
70. The burden of proof in raising any defence to the claim of harassment lies on the Defendant. Without prejudice to this, it is clear that no defence exists (and none has been suggested to date by the Defendant), as the course of conduct does not fall into any of the categories set out in section 1(3) of the PHA.
71. The Claimants rely upon, amongst other matters, the fact that there is an existing method for complaining about solicitors via the Solicitors Regulation Authority, which properly allows both sides of the complaint an opportunity to be heard before determining each complaint. In addition, there is a Legal Ombudsman service to which complaints can be made by consumers; as the Defendant points out in paragraph 39 of his Defence, the Legal Ombudsman is in the future going to name and publish the individual lawyers and firms “where there is a pattern of complaints it when it is in the public interest to do so”. By contrast, the Website is a forum that encourages and invites the continuing publication of defamatory, unpleasant and often highly abusive allegations about solicitors and other individuals in a wholly

unverified form; and where it was previously advertised that the publications could be removed upon payment of a fee, a practice that in fact appears to still continue despite no longer being advertised.

72. As to the Represented Individuals, Mr Tomlinson submits that it is clear that there is a serious risk that any one of the Represented Individuals may at any time in future be the subject of a posting on the Website, which actively solicits complaints.
73. Referring in his Skeleton argument to the harassment and DPA claims, the Defendant argues that if the course of conduct complained of is words, and those words can be defended under the laws of libel, then they cannot be harassment. That would be to circumvent the laws of libel.
74. This is a strange argument for him to put forward, since he has made no attempt to defend the words complained of by reference to the law of libel. But even if he had, and had done so successfully, I do not accept that that would preclude a claim in harassment. The different causes of action are directed to protecting different aspects of the right to private life. A claim in libel is directed to protecting the right to reputation. The claim in harassment is to protect persons from being subjected to unjustifiable alarm and distress. The claim under the DPA is wider than the claim under PHA, but includes the aim of protecting persons from being subjected unfairly and unlawfully to distress.
75. I accept the submission of Mr Tomlinson. Even if an allegation posted on the Website were true (or if there is no evidence from a person or firm named on the Website that it is false) the use of the Website as it has been used could not, even arguably, come within the PHA s.1(3). In my judgment it is plain beyond argument that it was not pursued for the purpose of preventing or detecting crime; not pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person under any enactment; and was not reasonable.

DATA PROTECTION

76. The DPA s.1 provides that ‘personal data’ means “data which relate to a living individual who can be identified (a) from that data...” It defines ‘data’ as information which is processed or recorded in a manner specified, and which includes storing and publishing information on a searchable website such as the Website. Where the data relates to the commission or alleged commission of any offence the data will be “sensitive personal data” (s.2).
77. The Data Controller is defined in s.1 of the DPA as the person who, either alone or jointly or in common with other persons, determines the purposes for which and the manner in which any personal data are, or are to be, processed. DPA s.4(4) of the DPA provides that it is the duty of a data controller to comply with the data protection principles in relation to all the personal data with respect to which he is the data controller. These include:
 - i) The First Data Protection Principle: that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met and in the case of sensitive personal data, at least one of the conditions set out in Schedule 3 is met.

- ii) The Fourth Data Protection Principle: that personal data shall be accurate and, where necessary, kept up to date.
 - iii) The Sixth Data Protection Principle: that personal data shall be processed in accordance with the rights of data subjects under the Data Protection Act 1998.
78. The reference to ‘lawfully’ in the First Data Protection Principle applies to any form of conduct that is unlawful, including breach of confidence, libel, and harassment. As Patten J said in *Murray v Express Newspapers Ltd* [2007] EWHC 1908 (Ch) [200] EMLR 22 at para [72]:
- “It seems to me that the reference to lawfully in Schedule 1, Part 1 must be construed by reference to the current state of the law in particular in relation to the misuse of confidential information. The draftsman of the Act has not attempted to give the word any wider or special meaning and it is therefore necessary to apply to the processor of the personal data the same obligations of confidentiality as would otherwise apply but for the Act”
79. The DPA s.10(1) of sets out the right to prevent processing likely to cause damage or distress. It applies save in a case where (a) any of the conditions in paragraphs 1 to 4 of Schedule 2 is met, or (b) in other cases prescribed by Order (neither of which are relevant to the facts of the current case).
80. S.10(1) provides (subject to conditions of which there is no evidence in this case) that:
- “(1) ... an individual is entitled at any time by notice in writing to a data controller to require the data controller at the end of such period as is reasonable in the circumstances to cease, or not to begin, processing, or processing for a specified purpose or in a specified manner, any personal data in respect of which he is the data subject, on the ground that, for specified reasons—
- (a) the processing of those data or their processing for that purpose or in that manner is causing or is likely to cause substantial damage or substantial distress to him or to another, and
- (b) that damage or distress is or would be unwarranted.”
81. The case for the Third Claimant is as follows.
82. The Defendant is the data controller. This is not in dispute: the Defendant has referred to himself as such in the opening paragraph of his witness statement. He processes the data.
83. The data processed by the Defendant about the Third Claimant is personal data, and sensitive personal data, as it included statements (which are false) about the alleged commission of offences by the Third Claimant.

84. In breach of the First Data Protection Principle the Defendant has not processed the personal and sensitive personal data of the Third Claimant fairly and lawfully. The Defendant has processed the said data in a grossly unfair and unlawful way, in particular by, publishing highly offensive defamatory allegations about the Third Claimant on the Website (see paragraph 29 above); and by pursuing a course of conduct against the Third Claimant that amounts to harassment contrary to the PHA.
- None of the conditions in Schedule 2 of the DPA is met by the Defendant in respect of the processing of this data on the Website. In breach of the Fourth Data Protection Principle the personal and sensitive personal data about the Third Claimant processed by the Defendant and published on the Website are false and accordingly wholly inaccurate. In breach of the Sixth Data Protection Principle the Defendant did (and does) not process personal and sensitive data of the Third Claimant in accordance with his rights.
85. As mentioned above, on 12 August 2011 the Claimants' solicitor gave the Defendant formal notice under section 10(1) of the DPA that the individual complainants, who include the Third Claimant, required the Defendant to cease the processing of their personal data (i.e. to remove the offending material from the Website and destroy any copies retained elsewhere) as the processing of this data was (and continues) causing them unwarranted damage and distress. Additionally, the Claimants' solicitor required the Defendant to agree not to process any data in the manner complained of in the future. As a result of the Defendant's failure to comply with the Notice, he has breached the Sixth Data Protection Principle. The Defendant did not state that he considered the notice to be unjustified (as he could have done under section 10(3)(b) of the DPA).
86. Accordingly, the Third Claimant is entitled to and seeks an order under section 10(4) of the Data Protection Act that the Defendant complies with the Notice
87. The case for the Represented Listed Individuals is as follows.
88. The postings about solicitors and other individuals on the Website contain personal data and, in many instances, sensitive personal data (for example, cases such as that of the Third Claimant, where the posting contains allegations about the alleged commission of any offence by the said solicitor or individual).
89. In breach of the First Data Protection Principle the Defendant has not processed the personal data of the solicitors and other individuals named on the Website fairly and lawfully. The Defendant has processed the said personal data in a grossly unfair and unlawful way by, in particular, (a) publishing highly offensive defamatory allegations about these solicitors and other individuals on the Website; (b) pursuing a course of conduct against these solicitors and other individuals that amounts to harassment contrary to the PHA; (c) on numerous occasions refusing to remove the posting about a solicitor or other individual unless the Defendant is paid a fee. This is not permitted by law and is disreputable. (d) None of the conditions in Schedule 2 of the DPA 1998 is met by the Defendant in respect of the processing of the said personal data on the Website.
90. As to condition (c) in the preceding paragraph, the Claimants rely on the Defendant's conduct in the case of *Megan Philips v Kordowski* [2010] EWHC 2803 (QB) paras [10]-[12]: he did not take down the posting but demanded money for them to be taken

down. This practice appears to be ongoing, despite the removal of ‘Administration and Monitoring’ page from the Website. See below.

91. In breach of the Fourth Data Protection Principle the personal and sensitive personal data about solicitors and other individuals processed by the Defendant and published on the Website is not accurate, indeed it is usually seriously inaccurate. The Claimants rely upon the following, amongst other matters: (a) The wholly inaccurate and untrue allegations processed and published by the Defendant via the Website about the Third Claimant; (b) The Schedule of Complaints which sets out and describes how the personal data of solicitors and other individuals processed and published by the Defendant via the Website is inaccurate. (c) The Defendant’s failed attempts to justify defamatory allegations in the many cases brought against him for libel in respect of the defamatory publications on the Website as evidence of inaccurate information; in breach of the Sixth Data Protection Principle the Defendant did (and does) not process personal data of the solicitors and other individuals who are Individual Complainants in accordance with their rights, as he has failed to comply with the request made in the Complaints’ solicitor’s letter dated 12 August 2011.
92. As a result, the Third Claimant, on behalf of the Represented Listed Individuals, is entitled to and seeks an order under section 10(4) of the DPA that the Defendant complies with the Notice.

THE INFORMATION COMMISSIONER

93. Part V of the DPA under the title ‘Enforcement’ and Part VI under the headings ‘Functions of Commissioner’ contain detailed provisions as to how the Commissioner is to promote the observance of the requirements of the DPA by data controllers. These provisions are in addition to the rights conferred on individuals by the DPA.
94. Accordingly on 22 November 2011 the Chief Executive of the Law Society wrote to the Commissioner to complain about the website. On 6 January 2011 the Commissioner replied personally in a three page letter explaining why he felt unable to intervene. The Commissioner has not been in attendance or represented at these proceedings and I have not read the letter of 22 November. I am not conducting a review of his decision. What follows is therefore subject to that important qualification. However, I have to have regard to the contents of the letter because the observations made in it are ones which could be adopted by the Defendant, and which in any event the court should consider coming as they do from such a source.
95. The letter refers to s.36 of the DPA which reads as follows:

“Personal data processed by an individual only for the purposes of that individual’s personal, family or household affairs (including recreational purposes) are exempt from the Data Protection principles under provisions of Parts II and III”.
96. The letter includes the following:

“The inclusion of the “domestic purposes” exemption in the Data Protection Act (s.36) is intended to balance the

individual's rights to respect for his/her private life with the freedom of expression. These rights are equally important and I am strongly of the view that it is not the purpose of the DPA to regulate an individual right to freedom of expression – even where the individual uses a third party website, rather than his own facilities, to exercise this. (The s.36 exemption clearly did not anticipate individuals using third party websites to carry out their 'personal' processing). The situation would clearly be impossible were the Information Commissioner to be expected to rule on what it is acceptable for one individual to say about another be that a solicitor or another individual. This is not what my office is established to do. This is particularly the case where other legal remedies are available – for example, the law of libel or incitement.

There is still a considerable lack of certainty concerning the extent to which website operators are legally responsible for the content they host. Although solicitorsfromhell / Mr Kordowski may well be a data controller, and is indeed is registered as such, the instigators of the website content are generally private individuals expressing their own views. Their activity attracts the s.36 exemption, which emanates ultimately from Article 10 of the European Convention on Human Rights. In giving due weight to freedom of expression in cases like this we have to accept that enforcing the data protection principles in respect of the activities of the website owner is likely to entail a disproportionate level of interference with the rights of the contributors, however unpleasant their contributions might be.

As a matter of good practice we will take up problems, in general terms, with website operators where a significant issue is brought to our attention. For example, we have helped individuals to have their social networking profiles taken down. However, this approach only works with reputable companies with a presence in the UK. ...

There is indeed a growing social problem in individuals posting offensive material about each other, including the providers of legal and other services. There may well be no regulatory solution to this, given the ease of which "ratings" and other websites can be put up and content posted on them...

We will continue to monitor complaints such as yours about websites like Solicitors from Hell. I do sympathise with solicitors and others who may find it extremely difficult, and in many cases impossible, to have offensive material about them removed from the internet. Perhaps this is a case where the law is out of step with technology. However, I am afraid the DPA is simply not designed to deal with the sort of problem that you have brought to my attention. ”

97. I have considerable sympathy with the Commissioner in what he says about the practical difficulties raised by cases such as the present. It is also beyond doubt that the DPA was not designed to deal with the way in which the internet now works. The DPA implemented Directive 95/46/EC [1995] OJ L281/31. The purpose of the Directive was to give effect in the context of data protection to the Art 8 rights of the ECHR (right to respect for private life). See Recitals (8) to (12). It is a privacy statute, although its scope is limited by a number of provisions, including the definition of data in s.1 and the application of the Act delimited in s.5.
98. In 1995 search engines were in their infancy. Google was incorporated in 1998. There have been many developments since that time, including the increasing use of third party facilities.
99. However, I have to say that I do not understand how it could be said that s.36 has any application to the present case. It is true that s.36 gives protection to Art 10 rights limited to personal, family and household affairs. And s.32 gives protection to Art 10 rights in journalism, literature and the arts. Those who drafted the directive and the DPA omitted to address generally the relationship between the Art 8 rights which the Directive sought to implement, and the Art 10 rights which must also be respected, in accordance with both EU and English law. If there is a provision of the DPA which would give effect to Art 10 rights engaged in the activities of the Defendant, it would be s.32 (journalism, literature and art). Journalism that is protected by s.32 involves communication of information or ideas to the public at large in the public interest. Today anyone with access to the internet can engage in journalism at no cost. If what the Defendant communicated to the public at large had the necessary public interest, he could invoke the protection for journalism and Art 10. But for reasons given in the many judgments in cases against him referred to in this judgment, he cannot make any such claim, nor any claim at all for the protection under Art 10 for what he has communicated, because what he does is against the public interest. It has equally been established many times that the Defendant is responsible in law for what he communicates through the Website. The Commissioner cannot have been advised on these decisions of the courts on these matters in so many cases brought against the Defendant.
100. I do not find it possible to reconcile the views on the law expressed in the Commissioner's letter with authoritative statements of the law. The DPA does envisage that the Information Commissioner should consider what it is acceptable for one individual to say about another, because the First Data Protection Principle requires that data should be processed lawfully. The authoritative statements of the law are to be found not only in the cases cited in this judgment (including para 16 above), but also by the Court of Appeal in *Campbell v MGN Ltd* [2002] EWCA Civ 1373 [2003] QB 633 paras [72] to [138], and in other cases. As Patten J made clear in *Murray*, where the DPA applies, if processing is unlawful by reason of it breaching the general law of confidentiality (and thus any other general law) there will be a contravention of the First Data Protection Principle within the meaning of s.40(1), and a breach of s.4(4) of the DPA. See also *Douglas v Hello! Ltd* [2003] EWHC 786 (Ch) [2003] 3 All ER 996 paras 230-239 and *Clift v Slough Borough Council* [2009] EWHC 1550 (QB) [2009] 4 All ER 756. The fact that a claimant may have claims under common law torts, or under HRA s.6, does not preclude there being a claim under, or other means of enforcement of, the DPA.

101. I appreciate the burden that the law may have placed in the Commissioner. And where there is any room for argument as to whether processing is unlawful under the general law, it may be more appropriate that a complainant should be required to pursue his remedy in the courts (as happened in *Clift*, albeit by her own choice). There be many grounds on which the Commissioner may properly decline to exercise his powers under Part V of the Act. But where there is no room for argument that processing is unlawful (as is the case with the Defendant, given the numerous judgments against the Defendant referred to in this judgment), it seems to me to be more difficult to say that the matter is not one which could be dealt with under Part V.

THE TRANSFER INJUNCTION

102. On 2 November 2011 the Defendant posted the following message on the Website which stated that he was going to “give away” the Website to new experienced owners who would operate from overseas.

“Freedom of Speech’ - Preserved!

I would like to thank the dozens of authors who have taken the trouble to write and send in a Witness Statement confirming that what is posted on this website is true. I would also like to thank the decent lawyers who have contacted me offering their pro-bono help and expressing their concerns ([click here](#)) about the Law Society’s High Court action to have this website shut down.

However, past experience has taught me that regardless of how much evidence I present in the High Court to support my defence or claim, the judicial system will always side with the law firm, solicitor, or in this case The Law Society.

In order to secure the future of this website and **your right to freedom of speech**, I have decided to give the website away. The new experienced owners, who operate overseas, will be taking this site to the next level in terms of world wide promotion and ease of access by the public.

All current reviews will be unaffected. New reviews will be posted automatically on a new style website (similar to TripAdvisor). Authors will be able to edit and update their listings at any time. Others can make further reviews and solicitors can post a response. Full rating system and the ability to upload evidence, to name just a few advantages. All totally free of charge.

I would like to take this opportunity to thank everyone again for their previous support. Godspeed.

Rick Kordowski.”

103. As a result the Claimants issued an application for an urgent without notice injunction to prevent the Defendant from disposing, transferring or selling in any way whatsoever any or all of the data from the entire Website to any third party or third parties with the result that he no longer retained control of that data and/or the Website. It was supported by the Third Witness Statement of Mr Wilson made on 2 November 2011. The application was granted by Langstaff J on 2 November 2011.
104. Mr Wilson wrote to the Official Receiver to inform them of the threat made by the Defendant to 'give away' the Website and the injunction granted on 2 November 2011. The caseworker told Mr Wilson that he telephoned the Defendant after receiving the letter on 9 November 2011. The caseworker says he told the Defendant he is not permitted to take steps to dispose of the website as this would be a transfer at undervalue. The Defendant responded that he had not transferred the property. These matters are dealt with the Mr Wilson's fourth witness statement dated 14 November 2011.
105. The Claimants seek a perpetual injunction in the terms of the Transfer Injunction. Mr Tomlinson submits that if the Court grants an order for the removal of the Website from the internet, then the Defendant cannot transfer the operation of the Website to a third party outside the jurisdiction. He could, however, remove the Website from the internet and then transfer the domain name and the data on the Website to a third party outside the jurisdiction with a view to their republishing the Website with its current content.
106. In the absence of a continuation of the Transfer Injunction there is a clear and substantial risk that the Defendant will indeed transfer the operation of the Website to a third party operating out of the Court's jurisdiction. This is what he threatened to do on 2 November 2011. He is plainly a determined individual with a long standing animus against solicitors and appears to wish to continue to attack and abuse them by all available means.
107. The transfer of the domain name and data would be an unlawful processing of the personal data of the individuals named on the Website and would continue their harassment from somewhere where it may be very difficult to obtain an effective remedy. In these circumstances, the Claimants ask the Court to continue the Transfer Injunction.

BACKGROUND

108. At the start of his witness statement (at paras 1 to 9) the Defendant describes events between 2000, when he had instructed a firm which I shall refer to as the Defendant's Solicitors and 7 January 2004 when the Law Society's Adjudication Panel upheld a decision made on 16 September 2003 in which complaints by the Defendant against that firm had been upheld. The Defendant's solicitors were ordered to pay to the Defendant £500 in compensation. The decision was that that firm

“(a) failed to provide any client care and costs material at the outset of the retainer pursuant to their obligations under Solicitors Practice Rule 15 and the Solicitors' Costs Information and Client Care Code 1999 and further they failed to address and to conciliate complaints pursuant to their

obligations under Solicitors Practice Rule 15; (b) they delayed in carrying out the [Defendant's] instructions; (c) they failed to respond to communications from [him]”.

109. It appears from the First Instance Decision that the Defendant had approached that firm having been told that his residential property was being used for purposes that were not appropriate within planning regulations. He subsequently suffered grave difficulties when his state benefits ceased, and again approached that firm. The Defendant complained that he had lost ‘a window of opportunity’ in relation to his Benefit Agency dispute. In a Formal Report on his complaint dated 22 July 2003 by a person described as ‘Consultant Caseworker, Client Relations Office’ it is recorded that the Defendant claimed to have suffered financial losses of £729,558.88 (how that figure is made up does not appear from the papers before the court). He states that he was not in a financial position to pursue that claim, and did not know of Conditional Fee Agreements, if they existed at that time.
110. He goes on to state that he felt it his duty to share his experience with his solicitors on the internet, and created a website to warn others what might be in store for them. It was initially called by the name of his Solicitors. He was soon contacted by members of the public who had experienced similar problems with that firm and many other members of the public who had different problems with other firms. He states:

“I decided to re-name and re-engineer my website so that others could review or complain about their solicitor free of charge. Giving them at least some hope of relief”.
111. On 29 September 2005 www.SolicitorsfromHell.co.uk was registered. The first review posted was by himself regarding his Solicitors. All other submissions have been from members of the public. He explains how it is set up (see para 14 above). He states that some postings were removed by him, for example where he received evidence that they were harassment by disgruntled former employees or by individuals who had been in a personal relationship that had gone wrong.
112. He states that in November 2009 he decided to introduce an ‘Administration Monitoring’ service. But he dropped it in December 2010 because solicitors were accusing him of extortion in charging for deleting their names.
113. In September 2010 he was faced with a series of claims for libel. He states that he inferred that solicitors were abusing the site to post complaints about each other. So he started to require payment of a £1 payment through PayPal to enable him to trace who was making postings.
114. The Defendant states that on 31 March 2011 he was contacted by the police from New Scotland Yard, and that he was interviewed on 10 April 2011. The subject of the interview was a complaint by the Law Society alleging blackmail on the basis of documents dated June 2010 relating to his ‘Administration and Monitoring’ service. He states that he has not been interviewed again, nor charged. Since then he states that he has “been reliant on verification by the author of the posting only”. I take that to be a reference to other statements that he has made to the effect that he has stopped asking solicitors to pay him for deleting their names.

115. The Defendant exhibits a number of witness statements. Some of them are in a standard form. He also exhibits what he states to be an online petition signed by over 5000 people. It is a document which headed with just these words: “The Law Society totally ‘rejected’ suggestions to work together to expose wrongdoing, where it exists, for the sake of the DECENT solicitors in the profession. If you are a ‘decent’ lawyer please sign”.
116. The Website has, from time to time, been used as a tool to demand money from those it names. See *Phillips v Kordowski* referred to above, and my own judgment of 1 April 2011 in *Awdry Bailey Douglas v Kordowski* [2011] EWHC 785 (QB) at para 23, where I also record that the Defendant stated that no solicitor ever pays it. However, there is a document headed Defence and signed by the Defendant on 20 September 2010. It relates to *Harold Stock v Kordowski* in which Sir Charles Gray struck out the Defence ([2010] EWHC 3898 (QB)). The Defendant referred to the allegation against himself of extortion and wrote: “Many solicitors have willingly paid their fee in a free market”. In response to an e-mail of complaint sent on behalf of Harold Stock the Defendant wrote:
- “You are correct, its an outrageous complaint. However, a valid one and it will stay published as a warning to others. For removal instruction, please se the bold text at the top of this page [and there is a hyperlink]”
117. Mr Wilson in his first witness statement made on 11 October (paras 33-46) gives these and other similar instances of the Defendant demanding money, all taken from transcripts of proceedings and other documents. On occasions the demands are oblique, for example in an e-mail of 19 October 2010 to Mr Wilson the Defendant wrote:
- “You will notice that the option for firms to pay to be deleted is no longer available. As a solicitor I am sure you are open to some lateral thinking. Perhaps next time we can come to some agreement?”
118. In June 2010 the Defendant launched a website called ‘SolicitorsfromHeaven’. In his first witness statement Mr Wilson explains at paras 47-52 that this is similar to the Website, but gives members of the public the opportunity to submit postings commending the work of solicitors. The Defendant used this website in an attempt to obtain payment of a fee from a solicitor to be listed on that site. At the same time that would lead to removal of that solicitors name from the Website.
119. In an email dated 8 May 2011 (which is exhibited to the Defendant’s own witness statement) the Defendant demonstrates that he is still seeking payments for removal of postings. When asked by a new firm of solicitors “how much it would cost to prevent our name from going on the solicitors from hell website”, the Defendant responds:

“Dear Sirs,

Thank you for your enquiry.

My 'Administration and Monitoring' scheme, which ensured a firm us never listed (and many other benefits), is no longer available.

However, please put forward a figure for my consideration. Perhaps we can work something out.

Regards,

Rick Kordowski”

120. In an exhibit to his witness statement the Defendant has set out a list of 15 libel actions commenced against him in relation to the Website between 3 September 2010 and 13 May 2011. The Defendant has not successfully defended any of the claims that have proceeded to hearings. Judgment has been entered against the Defendant for substantial damages and costs on a number of occasions.
121. As already mentioned, the Defendant was made bankrupt by a judgment creditor on 7 September 2011. The List of Creditors is made up of five of the firms of solicitors who had obtained judgment against him in libel actions. As a result the intellectual property rights in the Website and its contents are vested in his Trustee in Bankruptcy. However, the Claimants contend that the Defendant continues to control and operate the Website and to post new content on it. He remains the “publisher” of its content and the data controller of the personal data which is being processed.

JUDGMENT IN DEFAULT OF DEFENCE

122. CPR Part 15.4 (1) provides that

“The general rule is that the period for filing a defence is –

- (a) 14 days after service of the particulars of claim; or
- (b) if the defendant files an acknowledgment of service under Part 10, 28 days after service of the particulars of claim.”

123. CPR Part 12.3 provides that

“(1) The claimant may obtain judgment in default of an acknowledgment of service only if –

- (a) the defendant has not filed an acknowledgment of service or a defence to the claim (or any part of the claim); and
 - (b) the relevant time for doing so has expired.
- (2) Judgment in default of defence may be obtained only –
- (a) where an acknowledgement of service has been filed but a defence has not been filed;
 - (b) in a counterclaim made under rule 20.4, where a defence has not been filed, and, in either case, the relevant time limit for doing so has expired.”

124. I have set out above the relevant dates which mean that the Defendant is out of time for the service of his Defence. Mr Tomlinson submits that the applicable principles in such a case are as follows, and that the Claimants are entitled to judgment in default accordingly.
125. The general rule is that where a defendant has failed to serve an acknowledgement of service or a defence within the prescribed time limits set out under the Civil Procedure Rules and the claimant has sought judgment in default, then the defendant will require the consent of the other parties or the permission of the Court to serve the defence out of time (see *Coll v Tatum*, The Times, 3 December 2001, Neuberger J at para [12]).
126. Mr Tomlinson submits that the Defence served in this matter discloses no proper grounds for defending the action and, as a result, an application for permission to serve it out of time should be rejected. The factors taken into account when the court exercises its discretion should include those to be applied on an application to set aside or vary a judgment entered in default. In such a case CPR Part 13.3(1) provides that the court may set aside or vary a judgment if
- “(a) the defendant has a real prospect of successfully defending the claim; or (b) it appears to the court that there is some other good reason why (i) judgment should be set aside or varied; or (ii) the defendant should be allowed to defend the claim”.
127. Regard should also be made to the overriding objective (Part 1) and the fact that allowing permission would lead to unnecessary court time and resources being wasted if the Claimants must then seek to strike it out under Part 3.2, or seek summary judgment under Part 24.
128. I accept that this is the appropriate test.
129. For the purposes of the claims in libel it means that, in so far as the Defendant does not admit that the words complained of bear the meanings attributed to them by the Claimants, or any defamatory meanings, I must decide whether he has a real prospect of defending the claims on the issue of meaning. For that purpose I must direct myself in accordance with guidelines established for determining the meaning which words complained of as defamatory are capable of bearing. These principles were summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at paragraph 14:

"The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole,

and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation..." (8) It follows that "it is not enough to say that by some person or another the words might be understood in a defamatory sense."

130. In his Skeleton argument the Defendant raises the unqualified Art 10(1) point I have already referred to. He disputes that the words complained of refer to all solicitors listed on the Website. He submits that the words complained of as referring to all the named solicitors are no more than a marketing tool to inform members of the public of their right to complain.
131. Applying these principles (and subject to the issue of whether a representative action should be permitted in this case) I am satisfied that the words complained (in so far as not admitted by the Defendant) are capable only of a defamatory meaning, and that the Defendant has no real prospect of successfully defending the libel claims on the issues of meaning and reference, and that there is no good reason why judgment in default of defence should not be entered, or why the defendant should be allowed to defend the claim. I am equally satisfied that the words complained of as referring to all named solicitors do refer to all named solicitors. The argument that they do not because they are marketing tool is hopeless.
132. As to the Second and Third Claimants, I am also satisfied on the basis of the evidence of Mr Morris and the Third Claimant that the allegations have been proved to be false. There is no direct evidence of falsity in relation to any of the Represented Parties So far as they are concerned, there is, of course, the presumption of falsity that applies in defamation. The relevance of that to the relief to be granted will be considered below.
133. For the claim in harassment, I am similarly satisfied that the Defendant has no real prospect of successfully defending the claim, and that there is no good reason why the Defendant should be allowed to defend the claim. The evidence of Mr Morris and the Third Claimant is not contradicted, and could not be contradicted. It is plain that the requirements of the PHA are satisfied. Any normal person would be distressed at the course of conduct the Defendant has pursued in publishing what he has published about those solicitors. So I am satisfied that the Defendant has committed, and is threatening to continue to commit, the statutory tort of harassment, and that the victims are not only the Second and Third Claimants, but all solicitors and other lawyers named or to be named on the Website. There is no need for evidence of falsity for me to reach this conclusion. Even if there were evidence that the allegations were true, the conduct of the Defendant could still not even arguably be brought within any of the defences recognised by the PHA. No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do. His conduct is a gross interference with the rights of the individuals he names.
134. The position is the same in relation to the DPA claim. The claim under the DPA is a claim that is based primarily on the facts that the Defendant's processing of the

personal data of those referred to in the Website is unfair and unlawful, and contrary to the rights of the individuals concerned, and so contrary to the First and Sixth Data Protection Principles (para 77 above). Accuracy is a requirement of the Fourth Data Protection Principle. Inaccuracy or falsity of data may be sufficient to establish a breach of the DPA, but it is not necessary. Any unlawfulness will suffice for there to be a breach of the First Data Protection Principle, including harassment and libel. That principle is not confined to acts unlawful under that particular statute (para 78 above).

RELIEF FOR THE SECOND AND THIRD CLAIMANTS

135. It would follow from the foregoing that the Second and Third Claimants are entitled to relief in the form of an award of damages. I have not been asked to assess damages, no doubt because there would be no point, given the bankruptcy of the Defendant. The relief the Claimants want is a perpetual injunction. The rules relating to interim injunctions no longer apply, since I have found that they are entitled to final judgment. This is not simply a default judgment. I have found that the Second and Third Defendants have each proved their case. So the position is as it would be at the end of a trial. It is discussed in *Gatley on Libel and Slander* 11th ed para 9.27 and following.

136. The form of order which Mr Tomlinson has asked the court to make is as follows:

“1. The Defendant shall cease, forthwith, to publish of the website www.solicitors_from_hell.co.uk (“the Website”) by removing the Website from the Internet in its entirety. For the avoidance of doubt, this includes all content relating to the Website, including but not limited to, electronic material, source code, meta data and hyperlinks;

2. The Defendant be restrained, whether by himself his servants or agents or otherwise from publishing or setting up any website with the same or similar name to the Website and/or inviting members of the public to post complaints about solicitors, law firms or other individuals and/or organisations involved in or connected with the legal profession (without proper verification).

3. The Defendant be restrained, whether by himself, his servants, agents or otherwise, from publishing in the future the names or identifying details of any solicitor, solicitors’ firm or individual or organisation involved in or connected with the law by naming and/or listing and/or identifying them on the Website or on any website similar to the Website which lists or purports to list “solicitors from hell”.

4. The Defendant be restrained, whether by himself, his servants agents or otherwise howsoever, from harassing (within the meaning of the Protection from Harassment Act 1997) the Third Claimant and all solicitors or other individuals involved in or connected with the legal profession, by naming and/or

listing and/or identifying any of them on any website similar to the Website, which lists or purports to list or to identify “solicitors from hell.

5. The Defendant ceases to process any personal data concerning the Third Claimant and/or all solicitors, or other individuals involved in or connected with the legal profession via the Website or any similar website which lists or purports to list or to identify “solicitors from hell”.

137. These forms of order are not directed to protecting the Second and Third Claimants alone, but to all those who are represented. I shall consider the relief appropriate for the Second and Third Claimants separately from that asked for in respect of the Represented Parties.
138. There is little guidance on when a perpetual injunction in libel ought to be granted. In *Monson v Tussauds* [[1894] 1 QB 690 Lord Halsbury LC said at p690: “In all cases where the Court shall think it just and convenient the remedy exists.” The same principles apply in libel as in the case of any other form of perpetual injunction. The remedy is equitable. Further, the grant of a final injunction to restrain publication of speech is subject to the HRA s.12. That requires the court to have particular regard to the importance of the Convention right of freedom of expression.
139. I would not grant the perpetual injunction sought by the Claimants unless I am satisfied that the words complained of are false. In other words, I would not think it just, or in accordance with HRA s.12, to grant it simply on the basis of the presumption of falsity.
140. The form in which perpetual injunctions are usually granted (when appropriate) is an order restraining any further publication of the words complained of or any similar words defamatory of the claimant. So far as the claims of the Second and Third Claimants in libel are concerned, that would be an appropriate form of order to make in this case, and, subject to further submissions on the form of any order, I would make such an order.
141. In respect of the claims in harassment by the Second and Third Claimants, I would (subject to further argument as to the form of any order) grant a perpetual injunction as provided for by PHA s.1(2)(b), that is, restraining the Defendant from any further publication of the words complained of or any similar words which amounts to harassment of those Claimants or any member of the Second Claimant firm.
142. In respect of the claims under the DPA by the Second and Third Claimants, I would (similarly subject to further argument) grant a perpetual injunction as provided for by s.10, that is, to cease processing any personal data in respect of which the Third Claimant, or any member of the Second Claimant firm is the data subject. I would also make an order under DPA s.14 that the Defendant block, erase and destroy the data which is the subject of this action.

REPRESENTATIVE PROCEEDINGS

143. Although a number of cases have been brought successfully in libel by individual solicitors and firms, Mr Tomlinson submits that this is a waste of court time and resources as well as an injustice to the claimants who are unable to recover their costs. Attempts to invoke the criminal law and the assistance of the Information Commissioner have failed. This is a case where some form of collective action is called for, and the procedure of CPR Part 19 is the appropriate avenue to pursue.

144. CPR Part 19.6 provides:

“(1) Where more than one person has the same interest in a claim –

(a) the claim may be begun; or

(b) the court may order that the claim be continued,

by or against one or more of the persons who have the same interest as representatives of any other persons who have that interest

(2) The court may direct that a person may not act as a representative”.

145. In *Independiente Ltd v Music Trading On Line (HK) Ltd* ([2003] EWHC 470 Morritt V-C considered CPR Part 19.6 in a case where the claimants were suing for breach of copyright representing “all members of the British Phonographic Industry Ltd and Phonographic Performance Ltd who were owners and/or exclusive licensees of UK sound recordings” (see para [3]-[4]). It was accepted that that a representative claimant may sue in a representative capacity without the authority of those he claims to represent provided only that the claim satisfies the conditions prescribed by CPR Rule 19.6.(1) (para [16]).

146. At para [23], Morritt V-C said:

“The provisions of the civil procedure rules, particularly CPR Rule 1.2, emphasise the need to interpret the phrase "the same interest" and to apply the provisions of CPR Rule 19.6 both flexibly and in conformity with the overriding objective. Accordingly there are three questions: do the individual claimants on the one hand and the Relevant Members as defined on the other have (1) a common interest, (2) a common grievance and (3) is the relief sought by the claimants in its nature beneficial to the Relevant Members? Counsel for the defendants submits that the answer to each of those questions is in the negative.”

147. At para 29 Morritt V-C concluded:

“The common interest arises from the fact that the claim as pleaded is made in respect of the UK copyright in a sound recording to which any Relevant Member is entitled as owner or exclusive licensee. The common grievance arises from the facts pleaded regarding the operation of the CD-WOW [web]site. There is at least a threat to supply a CD embodying a sound recording to which a Relevant Member is so entitled in

response to an order placed on the website. The question whether that method of supply constitutes an infringement of the UK copyright in the sound recording is common to all Relevant Members because the same method is used for all supplies. Unless and to the extent that the defendants seek to put in issue the subsistence or ownership of the UK copyright contrary to the presumptions for which s.105 CDPA provides or the consent of a Relevant Member to the acts complained of the issues of fact and law will be identical however many sound recordings or Relevant Members are involved. It would be absurd and contrary to the propositions expressed by Megarry J in *John v Rees* [[1970] 1 Ch.345] and CPR Rule 1 if there had to be a separate claim in respect of each Relevant Member at least until it is seen if the issues in relation to that Relevant Member are substantially different from those relating to the generality of the Relevant Members.”

148. Mr Tomlinson also cited *Emerald Supplies v British Airways* [2011] 2 WLR 203, which is a case where Morritt V-C and then the Court of Appeal held that there should not be a representative action. The claimants had brought proceedings against the defendants contending that the defendant had been party to agreements and concerted practices with other air freight providers to fix prices at which air freight services were supplied with the object or effect of preventing or distorting competition contrary to article 81(1) EC of the EC Treaty and s.2 of the Competition Act 1998. The defendant contested that the character of the proceedings would be equally beneficial for all persons in the represented class. As Mummery LJ summarised it at para [15]:

“That would not be the case if, for example, there is a potential conflict between those in the class who "pass on" and those who do not "pass on" to their customers the inflated element of the illegally fixed prices. BA might be able to raise a "passing on" defence (i.e. a defence that no damage has been suffered) against some members of the represented class, but not against other class members.”

149. Morritt V-C had concluded at para 36 of his judgment [2010] Ch 48 (cited by Mummery LJ at para 28) that:

“36. It is not disputed that damage is a necessary element in the cause of action of individual members of the class. Whether or not an individual member of the class can establish that necessary ingredient will depend on where in the chain of distribution he came and who if anyone in that chain had absorbed or passed on the alleged inflated price. Given the nature of the cause of action and the market in which the relevant transactions took place, there is an inevitable conflict between the claims of different members of the class.”

150. The Court of Appeal upheld Morritt V-C for two reasons as follows:

“62. In my judgment, Emerald's case for a representative action, whether as originally pleaded or as proposed to be amended, is fatally flawed. The fundamental requirement for a representative action is that those represented in the action have "the same interest" in it. At all stages of the proceedings, and not just at the date of judgment at the end, it must be possible to say of any particular person whether or not they qualify for membership of the represented class of persons by virtue of having "the same interest" as Emerald.

63. This does not mean that the membership of the group must remain constant and closed throughout. It may indeed fluctuate. It does not have to be possible to compile a complete list when the litigation begins as to who is in the class or group represented. The problem in this case is not with changing membership. It is a prior question how to determine whether or not a person is a member of the represented class at all. Judgment in the action for a declaration would have to be obtained before it could be said of any person that they would qualify as someone entitled to damages against BA. The proceedings could not accurately be described or regarded as a representative action until the question of liability had been tried and a judgment on liability given. It defies logic and common sense to treat as representative an action, if the issue of liability to the claimants sought to be represented would have to be decided before it could be known whether or not a person was a member of the represented class bound by the judgment.

64. A second difficulty is that the members of the represented class do not have the same interest in recovering damages for breach of competition law if a defence is available in answer to the claims of some of them, but not to the claims of others: for example, if BA could successfully run a particular defence against those who had passed on the inflated price, but not against others. If there is liability to some customers and not to others they have different interests, not the same interest, in the action.”

151. There are a number of harassment cases in which a claimant has been permitted to represent other persons who have been the subject of similar harassment and threats of harassment, in particular from animal rights activists. In *SmithKline Beecham v Avery* ([2009] EWHC 1488 (QB)) a personal claimant represented “the Protected Persons”. As set out in para [45], they were defined as

“(i) the directors employees agents subcontractors and suppliers of all members of the GSK Group; (ii) the families, servants or agents of the persons mentioned in subparagraph (i) hereof; and (iii) all persons seeking lawfully to visit or work at the business premises of the First to Eleventh Claimants or any home or

residence belonging to or occupied by any of the persons mentioned in subparagraph (i) and (ii) above”.

152. Jack J held at para [47] that the Protected Persons had a common interest in preventing acts of harassment by animal rights groups. He referred to *Edo MBM* where Gross J had said at para [36]:

“to my mind, Mr. Jones [the Second Claimant] and all those within C2 [the First Claimant’s employees, whom he sought to represent] have a demonstrably common interest in not being harassed by the Defendants (if the alleged apprehension of such harassment is established).”

153. Mr Tomlinson submits that in this action each of the Claimants is representing others who have a common interest and grievance in the proceedings and the relief sought is beneficial to all, and all the relevant conditions are met. A person may be represented without obtaining his consent, even where he can be found and his opinion sought consent is not a requirement of the rules (see *PMPF Trust Ltd v Taylor* [2009] EWHC 1693 (Ch), [47]). There is no limit to the size of the class that can be represented (see *Emerald Supplies v British Airways* [2010] Ch 48 [30]).

154. This is not a case like the *Emerald Supplies* case where the class of persons who might be represented could not be identified until liability to each of them has been established: the determining factor is being listed on the Website or being in class of individuals/organisations who are at serious risk of being listed on the Website.

155. The case in respect of the Law Society is pleaded as follows in the Particulars of Claim:

1.2 The Law Society sues in a representative capacity under CPR Part 19.6 on behalf of all solicitors in England and Wales who are members of the Law Society, law firms and other individuals and organisations involved with or connected to the legal profession that are at serious risk of being named on [the Website], as [the Law Society] has a common interest and/or grievance in relation to this litigation with those it represents, namely preventing the publication of their names on the Website (as to which see paragraph 17(b) below) and the relief sought in this litigation is beneficial to all...

14. The Website invites members of the public to post their ‘complaints’ about solicitors, law firms and others involved in or connected to the legal profession and there is a serious risk that any of the Law Society Represented Claimants will be the subject of postings on the Website. As a result, and for the reasons set out in paragraphs 15 and 16 below, there is an ongoing threat of defamatory publication by the Defendant against the Law Society Represented Claimants.

15. Any such publication would result in the following defamatory words being published or caused to be published by

the Defendant of a Law Society Represented Claimant. A copy of a print out of the relevant pages of the Website is attached to these Particulars of Claim at Annex 5.

(a) The publication of their name on a website called ‘Solicitors from Hell’ ... [there is then a pleading in terms identical to the paragraphs cited in para 32(b) and (d) above].

16. In their natural and ordinary meaning the said words would mean and would be understood to mean that the Law Society Represented Claimant acts oppressively, does not provide competent services, has been the subject matter of justified complaints and should not be instructed or dealt with.

17. For these reasons:...

(b) [the Law Society], on behalf of the Law Society Represented Claimants, seeks an injunction to restrain the continued publication of the names of any solicitors’ firm, solicitor, individual or organisation on the Website to prevent threatened defamatory publications.

In support of the contention that they are entitled to such injunctions, the Claimants will also rely on the facts and matters pleaded at paragraphs 39-43 below....

43. For the reasons set out above, unless restrained by the Court the Defendant will:

(a) further publish or cause to be published the same or similar words defamatory of the solicitors, firms of solicitors, individuals and organisations named on the Website, including in particular the Complainants and Second and Third Claimants; and will in future publish defamatory statements about the Law Society Represented Claimants...”

156. The Law Society has itself been the subject of defamatory postings on the Website, as described by Mr Wilson in his first witness statement at para 7, but it makes no claim in respect of these, nor does it claim on its own behalf relief on the basis of a threatened future publication (*quia timet*). Nevertheless Mr Tomlinson submits that it has a common interest and/or grievance in relation to this litigation with those it represents, namely preventing the publication of their names on the Website and the relief sought in this litigation is beneficial to all.

157. The Second Claimant sues not only on its own behalf, but also in a representative capacity under CPR Part 19.6 on behalf of all law firms and organisations presently listed on the Website. The Second Claimant has a common interest and/or grievance in relation to this litigation with those it represents, namely the removal of their names and other identifying details from the Website and the relief sought in this litigation is beneficial to all.

158. The Third Claimant sues on his own behalf and in a representative capacity under CPR Part 19.6 on behalf of all listed solicitors and individuals on the Website.
159. The Third Claimant has a common interest and/or grievance in relation to this litigation with those he represents, namely: the removal of their names and other identifying details from the Website; preventing the harassment of solicitors and other individuals as a result of being listed on the Website; and preventing breaches of the DPA as a result of the existing postings on the Website; and the relief sought in this litigation is beneficial to all.
160. This action is also brought by the Third Claimant on his own behalf and in a representative capacity under CPR Part 19.6 on behalf of all solicitors in England and Wales and other individuals involved with or connected to the legal profession that are at serious risk of being named on the Website. The Third Claimant has a common interest and/or grievance in relation to this litigation with those he represents, namely: preventing the harassment of individual solicitors; and preventing the breaches of the Data Protection Act 1998; and the relief sought in this litigation is beneficial to all.
161. The Defendant submits that
- i) not all solicitors have an interest in a claim against him. For example solicitors who have not been named on the Website have no interest in a claim;
 - ii) the majority of solicitors identified on the Website have not opted in to the claim and they are assumed to have rejected pursuing a claim;
 - iii) it is clear that the class of persons who might be represented could not be identified until liability to each of them has been established;
 - iv) any claim would not be equally beneficial for all the persons in the represented class.
162. In my judgment the proceedings by the Second and Third Claimants in respect of the claims for harassment and under the DPA should be continued as they have been begun. Solicitors who have not been named have an interest in the injunction in so far as it is *quia timet*. Consent to be represented is not required, as the authorities show. The class is readily identifiable once persons or firms are named on the Website. An injunction would be equally beneficial to all.
163. The common interest arises from the fact that the claim as pleaded is made in respect of a course of conduct, which includes data processing, which is the same or similar in relation to all the Represented Parties. The common grievance arises from the facts pleaded regarding the operation of the Website. There is at least a threat to cause distress to all Represented Parties in circumstances where no defence has ever been raised by the Defendant, nor could be raised by him. The question whether that course of conduct constitutes a breach of the PHA or the DPA is common to all Represented Parties because the same course of conduct is used in respect of all of them.
164. As already discussed, while the falsity or inaccuracy of the words (the course of conduct complained of) is not irrelevant to the claims under the PHA and the DPA, truth is not of itself a defence.

165. So far as the First Claimant, the Law Society, is concerned, since it does not sue for any of the causes of action for its own benefit (whether existing or threatened) it does not have the common interest and grievance with the Law Society Represented Claimants that is required by CPR Part 19.6. But in my judgment the Second and Third Claimants have the required common interest with the Law Society Represented Claimants. Accordingly, pursuant to CPR Part 19.6(b), I order that the Law Society Represented Claimants be continued by the Second and Third Claimants in respect of the claims for harassment and under the DPA.
166. The position in relation to libel seems to me to be different. The Second and Third Claimants have been careful to claim separately for those words which they claim refer to all solicitors named in the Website, as distinct from those which refer only to themselves. To the extent that they complain of words which refer to all solicitors named in the Website (that is both words already published and words which the Defendant threatens to publish in the future) I accept that there is a common interest. However, whether publication of those words is, or will be, unlawful does not depend on the conduct of the Defendant. It depends upon whether the words are true or false, or whether they can be defended under one of the other established defences in libel.
167. Mr Tomlinson submits that, since damage is not a necessary constituent of the cause of action in libel (damage is presumed) inclusion of the name of any firm or person on the Website in the future would be *prima facie* unlawful. He submits that in the particular circumstances of the present case the court can proceed on the basis that if there were to be such a publication in the future, the Defendant would have no defence, and so the publication would be unlawful. The Defendant has not suggested that if he were to continue to operate the Website, he would do so under conditions in which he would claim to be able to raise a defence known to the law (other than the supposed unqualified Art 10(1) right that the courts have repeatedly rejected). So, submits Mr Tomlinson, in these circumstances it would be appropriate for the court to grant a *quia timet* injunction in libel as well as under the PHA and DPA.
168. Given the history of the Defendant, I accept that it seems theoretical to talk of the Defendant raising any defences under the law of libel. That is not something he has ever attempted with success. But as in *Emerald* it seems to me that judgment in an action for libel would have to be obtained before it could be said of any person that they would qualify as someone entitled to an injunction against the Defendant, or to any remedy other than damages. The presumption of falsity may entitle a defendant to a judgment in default, for damages to be assessed, but to no more. I repeat the reasons set out in paras 138 and 139 above. And as Lord Denning MR said in *Fraser v Evans* [1969] 1 QB 349 at 361, explaining the rule in *Bonnard v Perryman*:
- “There is no wrong done if [the defamatory allegation] is true, or if it is fair comment on a matter of public interest [or, he might have added, it is on an occasion of qualified privilege]”.
169. Accordingly, I would direct that in respect of the claims in libel the Claimants may not act in a representative capacity.

RELIEF FOR THE REPRESENTED PARTIES

170. In the light of my decision on the representative claims in libel, the question of relief for the represented parties is to be considered only in relation to the claims under the PHA and the DPA.
171. The form of order sought is set out at para 136 above. The wording of para 2 seemed to me to present a particular difficulty, to which I referred at the end of the hearing. The qualification ‘without proper verification’ is undoubtedly an encouragement to proper behaviour. But it does not reflect a defence that would be available to either cause of action. And it lacks the clarity that is essential to an injunction, which is an order the breach of which can be punished with imprisonment (see eg *Thomas v Mold* [1968] 2 QB 913, 922F).
172. I note with interest that an injunction preventing the processing of personal data in relation to a website was granted in representative proceedings in *SHG v Baines* [2006] EWHC 2359. Mr Tomlinson refers to paragraphs 7, 25 and 26 of the judgment of Eady J. The terms of the injunction were to restrain publication of defamatory words and harassment as well as processing of personal data. In relation to harassment and the processing of personal data (but not the defamation) the injunction was in respect of the “representative parties” as well as the personal claimant. In relation to the application under the DPA it is to be noted that Eady J observed that this was a novel order, and one which he made on the basis that it was a temporary order, where there would be an opportunity to apply to discharge. So while it provides only slender support for the application in this case, it is some support.
173. For the same reasons, I would also grant a perpetual order in the terms of the Transfer Injunction.
174. In deciding that it is just and convenient to grant perpetual injunctions in these representative proceedings I have in mind the private rights of the Claimants and those whom they represent: justice to them requires that an injunction be granted. But before granting an injunction the courts may have regard to the rights of third parties and the interests of the public at large, as the Law Society submits that I should (para 15 above).

THE PUBLIC INTEREST

175. In the present case the rights of the interests of the public at large are strongly supportive of the need for an injunction.
176. In *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 at p218 Lord Nicholls said:

“Your Lordships Committee were reminded that it was eloquently said by Judge Learned Hand in *United States v Associated Press* (1943) 52 F Supp 362, 372 that the First Amendment

"presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any

kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all."

In like vein was the pronouncement of Holmes J, dissenting but with the concurrence of Brandeis J, in *Abrams v United States* (1919) 250 US 616, 630, "the best test of truth is the power of the thought to get itself accepted in the competition of the market".

Such observations are most naturally apposite, however, to freedom to express ideas and convey news. Neither of the cases in which they were made was a defamation case. It would be dangerous to stretch them out of context. As to defamatory allegations of fact, even in the United States the opinions of jurists differ on the extent to which the collectively cherished right of free speech is to be preferred to the individually cherished right to personal reputation; and it is certain that neither in the United Kingdom nor anywhere else in the Commonwealth could it be maintained that the people have knowingly staked their all on unfettered freedom to publish falsehoods of fact about political matters, provided only that the writer or speaker is not actuated by malice."

177. Freedom of expression can only advance the objective of truth if the participants in a debate aim at truth. As Baroness O'Neill said (The Financial Times 20 November 2011):

"Both false and unreliable reporting, and reporting that misrepresents its aims and its evidence, can silence, confuse or marginalise important issues or voices, can promote manufactured or manipulated 'news', and can make it hard or impossible for audiences to judge what they read, hear and view. Failure to maintain standards for adequate communication, including adequate standards for truth claims, can have heavy costs".

178. If a free market is to work, consumers must assume that suppliers are offering their goods or services in good faith, and not deliberately misleading the public. Participation in a market involves responsibilities. In the same way the right to freedom of expression guaranteed by Art 10(1) is subject to the responsibilities referred to in Art 10(2). Deliberately to introduce falsehoods into public debate is like contaminating food in the shops. And where the internet is concerned, the motive is often the same: extortion or revenge.
179. The effect of misinformation on those searching for true information is that they are likely to be misled by finding information that is in fact false. The common law, underpinned by the HRA, guarantees many freedoms, including free markets in goods and services for the benefit of the public both as consumers and as suppliers. These freedoms can only be enjoyed if there is extensive interference with freedom of expression in the form of regulations governing what can be said by suppliers.

180. There is a large body of law prohibiting the making by suppliers of false and misleading claims as to the supposedly good qualities of their goods and services. The responsibilities imposed on suppliers by these laws are interferences with freedom of expression which are justified under Art 10(2). Until the internet made it possible for individuals to communicate with the public at large at virtually no cost, there did not appear to be a need for similar regulations to prevent the making of false and misleading claims as to the supposedly bad qualities of the goods and services of suppliers. Such false claims were made unlawful by torts such as defamation and malicious falsehood, and the economic torts. But these are not enforced on behalf of the public by public authorities. Victims are left to pursue their own civil law remedies for their own benefit.
181. However, the public as consumers need protection not only from false claims to the supposedly good quality of goods and services, but also from false claims to the supposedly bad quality of goods and services. In extreme cases a false claim that a product is bad may cost lives, as happened in the recent case of the pharmaceutical product MMR. Discouraging people in need of legal advice from instructing good lawyers is as much against the public interest as encouraging them to instruct bad lawyers. At worst it may lead to miscarriages of justice (if clients do not take or follow advice because they do not trust their solicitors to give advice in their best interests). At the least it will lead to restrictions on the consumers' freedom of choice, and to distortion of the free market in legal services.
182. If restrictions are to be enforced on behalf of the public, Parliament normally does this by legislation which makes the conduct in question a criminal offence. The DPA goes some way towards this. It can protect from unfair discrimination those suppliers who trade as individuals, as solicitors happen to do, as well as employees or prospective employees. And it does create criminal offences and a mechanism for enforcement by the Information Commissioner. Where the DPA does not apply, the suppliers who have large resources may invoke the common law to protect themselves. But there is a need for someone to protect the public. The procedural remedy of representative proceedings, coupled with an injunction, may be the best that the law can offer at present to protect the public from the unjustifiable dissemination of false information about the suppliers of goods and services. It is also the means by which the court may protect its limited resources in time and judiciary from having to deal with large numbers of claims by different claimants against the same individual on the same or similar facts.
183. The Defendant is a public nuisance. He is in effect a vexatious litigant who is a defendant. The courts have had to devise means to protect the administration of justice from such people, when they are claimants or applicants, by the means of what are now civil restraint orders under Practice Direction 3C of the CPR. That is the jurisdiction that Smith LJ and Sir Richard Buxton were applying by designating the Defendant's applications for permission to appeal as totally without merit. Henriques J was calling for something similar to protect the court from defendants who mischievously provoke claims which they know they cannot defend.

CONCLUSION

184. These are the reasons why on 15 November 2011 I made the order to prohibit further publication of the SolicitorsfromHell website. For the same reasons I shall grant

perpetual injunctions as indicated above. I shall hear further argument on the form of the order.