

**Amended pursuant to CPR 40.12 on 26 August 2021**

**IN THE HIGH COURT OF JUSTICE**

**Claim No:QB-2021-003094**

**QUEEN'S BENCH DIVISION**

**MEDIA & COMMUNICATIONS LIST**

**Mr Justice Nicklin  
25 August 2021**

**BETWEEN**

**(1) MBR ACRES LIMITED**

**(2) JANE READ**

(for and on behalf of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited pursuant to CPR 19.6)

**(3) B & K UNIVERSAL LIMITED**

**(4) SUSAN PRESSICK**

(for and on behalf of the officers and employees of B & K Universal Limited, and the officers and employees of third party suppliers and service providers to B & K Universal Limited pursuant to CPR 19.6)

**Claimants/Applicants**

**-and-**

**(1) FREE THE MBR BEAGLES**

**(formerly Stop Animal Cruelty Huntingdon)**

(an unincorporated association by its representative Mel Broughton on behalf of the members of Free the MBR Beagles who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

**(2) CAMP BEAGLE**

(an unincorporated association by its representative Bethany Mayflower on behalf of the members of Camp Beagle who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

**(3) MEL BROUGHTON**

**(4) RONAN FALSEY**

**(5) BETHANY MAYFLOWER**

**(also known as Bethany May)**

- (6) SCOTT PATERSON
- (7) HELEN DURANT
- (8) BERNADETTE GREEN
- (9) SAM MORLEY
- (10) PERSON(S) UNKNOWN

(who are protesting within the area marked in blue on the Plan attached at Annex 1 of the Claim Form and/or engaging in unlawful activities against the Claimants and/or trespassing on the First Claimant's Land at MBR Acres Limited, Wyton, Huntingdon PE28 2DT and/or posting on social media images and details of the officers and employees of MBR Acres Limited, and the officers and employees of third party suppliers and service providers to MBR Acres Limited)

**Defendants/Respondents**

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## ORDER

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**UPON** the Claim having been referred to the Judge following the Order of 20 August 2021

**AND UPON** it appearing that the Claim includes a claim for harassment by speech/publication and therefore CPR PD 53B §§10.1-10.4 apply

**AND UPON** the Court having indicated to the parties that it was minded to transfer the Claim to Part 7 and direct service of Particulars of Claim by 10 September 2021 ("the Transfer Order") and invited any submissions from the parties

**AND UPON** ~~the Court not receiving any submissions as to the Transfer Order~~ **CONSIDERING** (1) the written submissions on behalf of the Claimants to the proposed Transfer Order ("the Claimants' Submissions") and (2) the Third Defendant's solicitors' emails of 24 and 25 August 2021

**AND UPON** the Claimants and the Third Defendant having asked to move the hearing fixed by the Order of 20 August 2021 for 29 September 2021 to 4 October 2021 and the other named parties not indicating any objection to this course

**WITHOUT A HEARING IT IS ORDERED THAT:**

- 1 The Claim is transferred to the Media & Communications List.
- 2 The Claim is transferred to Part 7.
- 3 The hearing directed by Paragraph 6 of the Order of 20 August 2021 is refixed for 4 October 2021 ("the Hearing"). The Directions given in Paragraphs 7-9 of the Order of 20 August 2021 are modified as follows:
  - 3.1 Bundles for the Hearing on 4 October 2021 must be lodged at Court and served on all parties by noon on 27 September 2021.

- 3.2 Claimants' skeleton argument for the Hearing together with authorities relied upon to be filed and served on the Defendants by noon on 27 September 2021.
- 3.3 Any defendant or third party intending to make submissions at the Hearing must file a skeleton argument with the Court and serve it on the Claimants by noon on 30 September 2021.
- 4 By 4.30pm on ~~40~~ 17 September 2021, the Claimants must:
- 4.1 file and serve on the Defendants Particulars of Claim that: (a) comply with CPR Part 16.4 and CPR PD 53B §10.3; and (b) in respect of each Defendant, identifies (1) the causes of action relied upon; and (2) his/her alleged wrongdoing; ~~and~~
- 4.2 serve on the Defendants (a) the Part 7 Response Pack as required by CPR 7.8(1); ~~and (b) a copy of this Order;~~ and
- 4.3 file and serve on the Defendants a copy of the order that the Claimants will ask the Court to grant at the hearing on 4 October 2021.
- 5 By 4.30pm on 27 September 2021, the Claimants must:
- 5.1 file and serve a witness statement setting out their efforts to identify those in the category of "Persons Unknown" whether by name or other identifying material and the steps taken to serve such persons who have been identified with the Claim Form;
- 5.2 issue, file and serve an Application Notice to join any additional named defendants.
- 6 Unless the Court otherwise directs the time for the Defendant to file an acknowledgement of service and/or a Defence under CPR 10.3 and CPR 15.4 is extended until 28 days after service of the Particulars of Claim in compliance with Paragraph 4.1 above.
- 7 By 4.30pm on 3 September 2021, the Claimants must serve this Order on the Defendants.
- 8 In part, this Order has been made without giving the parties an opportunity to make representations. Any party may apply to vary this Order, but any Application Notice seeking to do so must be issued filed and served by 4.30pm on 1 September 2021.

## REASONS

- (A) The Claimants' claim includes significant elements of alleged harassment by speech/publication and the defendants are engaged in protest, engaging Articles 10/11. In light of this, and having regard to CPR Part 53.1(3), the claim ought to be assigned to the Media & Communications List. Experience shows that harassment by speech/publication requires a careful identification of acts alleged to constitute the course of conduct amounting to harassment

and frequently generate disputed issues of fact. For these reasons, **Further** CPR PD 53B §10.2 disapplies CPR 65.28(1)(a). Claims for alleged harassment by speech/publication, should be commenced under Part 7. I have therefore directed transfer of the proceedings and service of Particulars of Claim and associated directions.

- (B) The Claimants' Submissions contend that "the claim for an injunction does not allege or seek to suppress the publication of alleged defamatory statements, and is not concerned with publication of journalistic material". This is not the definition of harassment by publication. The draft injunction order that the Claimants originally sought did seek to restrain publication of material on social media and sought other restrictions on freedom of expression that would have engaged s.12 Human Rights Act 1998 (as will almost always be the case with any injunction seeking to place restrictions on protest). The claim therefore "includes" a claim for harassment by publication within the terms of CPR 53.1. The submission that "this is not a matter which falls under paragraph 10.1 of CPR PD 53B" is not correct. "Publication" means communication to a reader or hearer other than the claimant: see ***Birmingham City Council -v- Afsar* [2019] EWHC 1560 (QB) [60]**.
- (C) In any event, and leaving aside any technical arguments on the applicability of CPR 53.1 to the current claim, the real question is what is the best way to manage the claim to ensure that it is dealt with justly and at proportionate cost. This includes ensuring that the parties are on an equal footing and can participate fully in the proceedings. Active case management to secure these objectives includes identifying issues at an early stage and giving directions that ensure that the case proceeds quickly and efficiently. One of the principal ways in which the Court (and the parties) are able to identify the issues in the case is properly pleaded Particulars of Claim. Use of the Part 8 procedure, particularly in claims brought against multiple parties and raising issues that can reasonably be expected to be factually contentious, is likely to obstruct the early identification of issues and the fair and expeditious resolution of the proceedings. As against litigants in person, the Part 8 procedure is also likely to place a greater burden on them to identify the issues that arise than would be the case with a Part 7 claim and Particulars of Claim that identify (a) what each defendant is alleged to have done; and (b) the relief claimed against each defendant. I note the Claimants' suggestion that a Scott Schedule could be provided, I do not consider this to be an adequate substitute for properly pleaded Particulars of Claim.
- (D) I can presently see no 'upsides' in use of the Part 8 procedure (and none is identified in the Claimants' submissions) and several 'downsides'. Even had it not been for the terms of CPR PD 53B §10.2, this claim is not suited to the Part 8 procedure. The overriding objective clearly favours an early transfer to Part 7 and the provision of Particulars of Claim that properly identify the particular allegations made against each Defendant (and comply with CPR PD 53B §10.3). Those Particulars of Claim, together with a draft of the injunction order that the Claimants seek, should be provided in good time before the return date on 4 October 2021.

- (E) The balance of the directions – including amendment of the directions given in the 20 August 2021 order – are to ensure that the Hearing is effective on the revised date of 4 October 2021. I have directed sequential exchange of skeleton arguments because most of the named defendants are unrepresented and fairness requires that they be given a longer opportunity to consider the Claimants’ submissions and to respond to them.
- (F) I have considered the submission that the Claimants’ Counsel “is now reasonably away during the court vacation”. Although this is a factor to be considered, it cannot be determinative. The Claimants have brought an urgent application for an interim injunction before the Court during the vacation. They have been granted an interim injunction pending a return date. The proposal that the Court should postpone the decision regarding allocation to Part 7/Particulars of Claim to the hearing on 4 October 2021 would prevent the issues being properly pleaded and identified prior to the hearing. This is unsatisfactory and risks causing unfairness to the defendants. In light of the Claimants’ difficulties with their Counsel, I have put the date by which the Particulars of Claim must be provided back to 17 September 2021. It cannot be later than this or the Defendants will not have an adequate time to consider and take advice on the claim and their position.

**25 August 2021**