Neutral Citation Number: [2015] EWHC 1491 (QB)

Case No: HQ 15 X 00982

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Tuesday, 5th May 2015

Before:

HIS HONOUR JUDGE SEYMOUR QC
(Sitting as a Judge of the High Court)

- -

Between:

ALIREZA ITTIHADIEH	**Claimant**
- and -	
(1) 5-11 CHEYNE GARDENS RTM COMPANY LTD **(2) CLAUDE GREILSAMER** **(3) PAUL ANTHONY KNAPMAN** **(4) STEPHEN CHARLES MAY** **(5) JAMES ALEXANDER MCCONNELL ORR** **(6) HMR LONDON LTD** **(7) SUSAN METCALFE**	**Defendants**

- -

MR. PHILIP COPPEL QC (instructed by **Taylor Wessing LLP**) for the **Claimant**

MR. ROBIN HOPKINS (instructed by **Stitt & Co**.) for the **Defendants**

- -

APPROVED JUDGMENT

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JUDGE SEYMOUR QC:

1. The background to the application before me is that at numbers 5 to 11 Cheyne Gardens there is a block of ten Victorian houses which were converted into 15 interlinking flats in the 1960s. From, I think, 1995 one of those who has been residing in one of the flats in that block, in fact flat 5 at number 6 Cheyne Gardens, is Mr. Alireza Ittihadieh, who is the claimant in this action.

2. Mr. Stephen May is the fourth defendant in this action and in his witness statement made on 22nd April 2015, at paragraph 5, he describes the background further in this way:

> "Until 2010 the freeholder was the Cadogan Estate and head leaseholder was a small property company, August Building Ltd. On 30th December 2009 August Building gave notice of its intention to dispose of its interest in the building and in about April 2010 the head lease was purchased by the Claimant, Alireza Ittihadieh, resident in Flat 5 at 6 Cheyne Gardens."

3. In his witness statement dated 28th April 2015 Mr. Ittihadieh explains that in fact it was not he personally, but a company called Drisnol Investment Inc., which purchased the head lease Mr. May refers to. Going back to paragraph 6 of Mr. May's witness statement he says:

> "There was a general feeling of unease amongst residents of this potential development as the Claimant had in the past shown himself to be a temperamental and often abusive neighbour. I illustrate below why I hold that opinion.
>
> 7. It was therefore agreed to establish a right-to-manage company (5-11 Cheyne Gardens RTM Company Ltd. [which in the language of the hearing before me has been described as 'the RTM Company'] under the Commonhold & Leasehold Reform Act 2002. Eleven of the fifteen residents applied and became members of the RTM Company, the exceptions being the Claimant, his partner Ms Irja Brant who owns Flat 2, 9 Cheyne Gardens and two companies registered in Panama holding leases of Flat 2, 6 Cheyne Gardens and Flat 11 as trustees for the Claimant. A Right to Manage Claims Notice was served on the Cadogan Estate and August Building Ltd. on 12th April 2010."

4. I think for present purposes all I need say further about the background is that it seems that, from the time that the company Drisnol Investment Inc. acquired the head lease in the block of buildings, there seemed to have been a series of disagreements between Mr. Ittihadieh and his companies, on the one hand, and a number of other residents in the block of houses, on the other hand.

5. Apart from Mr. May, the defendants in this action are, first of all, the RTM company as first defendant: then Mr. Greilsamer and Mr. Knapman as second and third

defendants - they are residents of the property: also resident is Mr. James Orr, the fifth defendant. The second, third, fourth and fifth defendants, as I understand it, are all directors of the first defendant. The sixth defendant is a limited company - I think possibly now called Suzie Metcalfe Residential Property Management Limited but previously called HMR London Limited. That company, as I understand it, is the company secretary of the first defendant. The seventh and last defendant is Susan Metcalfe, who is a director of the sixth defendant.

6. The application before me relies upon the provisions of Data Protection Act 1998. Data Protection Act 1998 was passed in an attempt to implement in England and Wales Directive 95/46/EC of the European Parliament and Council of 24th October 1995. That directive did not take direct effect but required implementing legislation and that implementing legislation, as I say, is Data Protection Act 1998. To a traditional English lawyer the Act is compiled in a rather unusual way and contains somewhat difficult provisions.

7. Section 1 of the Act contains what are described as basic interpretive provisions. There is a description of "data" which I think I need not be concerned with for present purposes. Then there is a definition of "data controller" as essentially a 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. There is a definition of "personal data" which elaborates upon the definition of "data" but the detail of that is not material for present purposes.

8. However, it should be noted that at subsection (5) of section 1 there is a reference to information being held by a public authority. The definition of that is to be found in Freedom of Information Act 2000 section 3(2), which is, as it were, incorporated by reference into the definition of "data" in subsection (1). The materiality of that for present purposes is that the reference in Freedom of Information Act refers to data which is held by or on behalf of a public authority and so what is relevant in the context of Data Protection Act 1998 in relation to "data" and a "data controller" is "data" which is held by or on behalf of the "data controller".

9. The right of access to "personal data" is given in section 7 of the Act. There are a number of stipulations, some of which are of some significance for the purposes of the application presently before me, but I do not think it is necessary for present purposes to recite the provisions of subsection (1). However, subsection (2) is important. It provides:

> "A data controller is not obliged to supply any information under subsection (1) unless he has received —
>
> (a) a request in writing, and
>
> (b) except in prescribed cases, such fee (not exceeding the prescribed maximum) as he may require."

The prescribed maximum is £10. Section 7(4) provides:

> "Where a data controller cannot comply with the request without disclosing information relating to another individual

> who can be identified from that information, he is not obliged to comply with the request unless —
>
> (a) the other individual has consented to the disclosure of the information to the person making the request, or
>
> (b) it is reasonable in all the circumstances to comply with the request without the consent of the other individual."

Section 7(9) provides:

> "If a court is satisfied on the application of any person who has made a request under the foregoing provisions of this section that the data controller in question has failed to comply with the request in contravention of those provisions, the court may order him to comply with the request."

I think I can then move to section 15(2), which provides:

> "For the purpose of determining any question whether an applicant under subsection (9) of section 7 is entitled to the information which he seeks (including any question whether any relevant data are exempt from that section by virtue of Part IV) a court may require the information constituting any data processed by or on behalf of the data controller and any information as to the logic involved in any decision-taking as mentioned in section 7(1)(d) to be made available for its own inspection but shall not, pending the determination of that question in the applicant's favour, require the information sought by the applicant to be disclosed to him or his representatives whether by discovery (or, in Scotland, recovery) or otherwise."

10. One of the peculiarities of Data Protection Act is that it contemplates a process in which the court is provided with information which is not shared with the applicant, to enable the court to reach a conclusion on the applicant's application. But there it is.

11. The claim before me was issued on 2nd March 2015 and seeks this relief in summary:

> (a) an interim injunction compelling each of the defendants to comply with the claimant's subject action request dated 3rd November 2014;
>
> (b) under section 13 of the Data Protection Act 1998 for compensation for damage and for distress suffered by reason of the defendants' contravention of their full duty to comply with the data protection principles with respect to the claimant's personal data, and
>
> (c) under section 14 of the Data Protection Act 1998 for rectification, blocking, erasure, disruption and supplementation

> of the claimant's personal data of which a defendant is the data controller and third party notification of the same.

12. There are two applications in fact before me, one on behalf of the claimant and one on behalf of the defendant. That on behalf of the claimant was issued on 5th March 2015 and seeks this, so far as is presently relevant: an order under section 7(9) of Data Protection Act 1998 that within 14 days of the date of the order each of the defendants do by signed witness statement with a statement of truth:

> (a) state where the personal data of which the claimant is the data subject is being processed by or on behalf of that defendant;
>
> (b) if that is the case give a description of
>
> (i) the personal data of which the claimant is the data subject,
>
> (ii) the purposes for which they are being or are to be processed and
>
> (iii) the represent recipients or classes of recipient to whom they are or may be disclosed and
>
> (c) the information available to that defendant as to the source of that personal data.

13. Also sought is an injunction compelling each defendant to communicate with the claimant all information constituting personal data of which the claimant is the data subject that is being processed by that defendant.

14. I think served with that application notice was a draft order which is in the form of an injunction, in particular the draft includes a penal notice.

15. The application on behalf of the defendant was issued on 20th March 2015 and seeks an order to the following effect:

> (1) pursuant to Part 3.4 of the Civil Procedure Rules the second to seventh defendants cease to be parties in this action and that their names be struck out of the claim form and all subsequent proceedings and the costs of the said defendant be paid by the claimant;
>
> (2) pursuant to Part 3.4 of Civil Procedure Rules the application for injunctive relief be struck out in its entirety;
>
> (3) pursuant to section 40 of the County Court Act 1984 and Part 30.3 of the Civil Procedure Rules, the claim be transferred to the county court.

16. What has given rise to those applications is what was included in a letter which was written on behalf of Mr. Ittihadieh by his solicitors, Taylor Wessing LLP, in a letter of 3rd November 2014. The rubric below the salutation at the start of the letter says this:

"Discrimination against, and harassment and victimisation of our client Section 7 Data Subject Access Request"

17. The letter ran to three tightly typed pages of A4 text and after the introductory section on the second page there was the rubric "Breach of Equality Act 2010". What followed that rubric occupied most of the rest of that page but at the very bottom of the page there was the rubric "Breach of Protection from Harassment Act 1997". Then towards the top of the third page was the rubric, "Section 7 Data Protection Act 1998" where one found this:

> "Our client is aware that the RTM company holds personal information about him. He also believed that the RTM company holds information about our client which is, amongst other things, false and defamatory.
>
> Our client hereby requests, pursuant to section 7(1) of the Data Protection Act 1998, that you provide him with all information and documents which our client is entitled to receive under section 7(1)(a)-(d). We demand that you confirm to us in writing whether the RTM company or anyone acting on its behalf is processing personal date (including emails) about our client. For the avoidance of doubt, we expect this to include personal data processed by Mr Claude Geilsamer, Mr Paul Anthony Knapman, Mr Stephen Charles May, Mr James Alexander Macconnell Orr, HMR London Limited and Ms Susan Metcalfe personally acting in their capacity as directors or company secretary of the RTM Company or otherwise in the course of the RTM Company's business."

Then I can omit a couple of paragraphs.

> "A fee of £10 was sent to Mr. Peter Crawford of Stitt & Co. [the firm acting as solicitors to the defendants] We are awaiting confirmation that he will be forwarding this to you. You have 40 days from the date of receipt of this letter in which to deal with our client's request (i.e. until 13 December 2014).
>
> Our client will in due course be issuing a claim against the RTM company, its directors and company secretary, both in their capacity as directors or company secretary and personally, for the discrimination against, and harassment and victimisation of our client, as set out above. Our client reserves all of his rights in respect of any other legal claims he may have."

18. The substantive response to that request, which I should say was sent to the directors of the first defendant and to the other defendants individually, as I understand it, was given in a letter written by Stitt & Co. dated 12th December 2014. They referred to the subject access request and went on:

> "We enclose copies of all the documents containing personal information of your client held by or on behalf of the RTM

> company. Neither our client nor anyone else on its behalf is processing personal data about your client in the sense contemplated by the Act with the possible exception of computer generated service charge accounts and the circulation of emails to and from directors and the managing agents. Any personal information about your client is processed fairly and lawfully.
>
> As indicated in our previous letter we have not included service charge accounts which have already been sent to your clients.
>
> Some documents have been redacted and marked accordingly in order not to disclose personal information about other individuals who have not consented to disclosure."

19. Then there was a comment as to whether the subject access request was a fishing expedition and possibly an abuse of process. What was sent in response to the request, as I understand it, was some 400 pages of documents. What has been withheld, which has been identified as potentially falling within the provisions of Data Protection Act, is what has been described, using the jargon of the hearing before me, as the Alireza file. I will come back to the Alireza file later. There is no evidence before me that any of the defendants has any document or information which potentially falls within the provisions of Data Protection Act beyond the 400 pages which have been disclosed and the Alireza file.

20. An issue has arisen as to whether the individual defendants should conduct personal searches of their own email accounts in order to ascertain whether they, as individuals, have documents which potentially fall within the scope of Data Protection Act. However, it seems to me that it is not strictly necessary to consider that contention further at this point because I need, logically, before making any further observations on that question, to consider whether any of the second to seventh defendants are properly defendants in this action at all.

21. The question which arises is whether any of the second to seventh defendants fell within the provisions of section 7(2) of the Data Protection Act, that is to say, whether the second to seventh defendant, or any of them, (a) had received a request in writing and (b) had been paid such fee as that person might require.

22. The answer to this question, as it seems to me, depends entirely on the proper construction of the material part of the letter of 3rd November 2014 which I have read. Mr. Philip Coppel QC, on behalf of the claimant, contended that the letter, written as I have said not only to the directors of the first defendant but also, as I understand it, to the other defendants on an individual basis, was a request to each of defendants for the purposes of section 7 of Data Protection Act.

23. Mr. Robin Hopkins, who appeared on behalf of the defendants before me, submitted that, on a proper construction of the letter, the request was only directed to the first defendant. In my judgment that submission is well founded. It is, I think, important in construing this letter to apply the principles to be found in the guidance of Lord Hoffmann in ***Investors Compensation Scheme v West Bromwich Building Society***.

24. Relevant indications that Mr. Hopkins' submissions are sound, in my judgment, are these. First, the recitation of the belief of Mr. Ittihadieh that the RTM company, and not any of the other defendants, holds personal information about him. Second, there was no assertion in the letter that any of the second to seventh defendants inclusive was a "data controller" for the purposes of Data Protection Act. Rather the terms of the paragraph which referred to the second to seventh defendants, in my judgment, made reference to them each as individuals or, in the case of the sixth defendant, a company, which might hold personal data on behalf of the first defendant.

25. An important indication that only one request directed to one party was intended is the reference to a fee of £10 being sent to Mr. Crawford of Stitt & Co. I think it was common ground before me that if it was intended to make a request of each the first to seventh defendants it would have been necessary either to enquire of each of the defendants whether they required to be paid a fee, which fee would then have to be paid, or to tender to each of them, as I understand from Mr. Coppel is common practice, the maximum permitted fee of £10.

26. In my judgment the tendering of one amount of £10 is a very strong indication that what was intended by this letter was a single request to a single entity and, construing the letter as a whole, it seems to me clear that the request was directed to the first defendant. It was common ground before me, as I have said, that no fee of any kind was proffered to any of the second to seventh defendants until after the issue of the claim form in this action and, indeed, after the issue of the application notice on behalf of the claimant.

27. In a letter of 27th March 2015 to Mr. Crawford at Stitt & Co., Taylor Wessing LLP wrote as follows:

> "Further to our letter of 23 March 2015, we enclose six cheques for £10 in respect of the s 7 subject access request of 28 October 2014, made payable to each of the Second to Seventh Defendants."

28. In my judgment, consequently, the claims in this action as against the second to seven defendants are ill founded and the appropriate course, bearing in mind the terms of the defendants' application notice, is for me to strike out the second to seventh defendants from this action and to dismiss the action as against them. Consequently, it is not necessary, strictly speaking, to consider further whether they might in any circumstances have been bound to comply with obligations arising under section 7 of Data Protection Act.

29. In fact, had it been necessary to consider that aspect, it seems to me that in the circumstances of the present case the answer is that none of the second to seventh defendants was at any material time a "data controller" for the purposes of Data Protection Act 1998 in relation to the circumstances of this case.

30. The proper approach to claims for disclosure under Data Protection Act against directors of limited liability companies was correctly, if I may respectfully say so, explained by David Richards J in a case called in ***Re Southern Pacific Personal Loans Limited*** [2014] 2 WLR 1067 at 1073 in paragraph 19 where he said this:

> "Any decisions taken by the company before the commencement of its liquidation in respect of data processed by it were taken by or on the authority of the directors. The directors do not act in a personal capacity but as agents of the company. A decision taken by them is the decision of the company. Given the definition of 'data controller' as a 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, it might be argued that the directors as persons who in fact determine the purposes for which any personal data are to be processed on behalf of their company are within the definition. Correctly, however, it is not suggested by the Commissioner that the directors of a company are, by virtue of their position and authority as directors, data controllers. The person who determines the purposes for which and the manner in which data are to be processed is the company, albeit acting by its directors. Save as agents for the company, the directors do not make any determination, either alone or jointly or in common with their company. It is therefore the company alone which is the data controller."

31. It was suggested in the course of the hearing before me that it might be that those who are in fact sued as directors of the first defendant might have communicated matters relevant to Mr. Ittihadieh to others, as it were, in a personal capacity, and that in relation to those personal communications consequently each of them would be a "data controller". Well, that may be. Provision is made in section 36 of Data Protection Act, in a section which is concerned with exemptions, to what is described as "Domestic Purposes". The provision in question is this:

> "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 and the provisions of Parts II and III."

32. Section 7 is to be found in Part II. The materiality of section 36, had it been relevant to the circumstances of the present case, is this. It may well be that the second, third, fourth and fifth defendants, as residents in the block of houses with which this judgment is concerned, might, in a personal capacity, have expressed some view about Mr. Ittihadieh and his activities and might, indeed, have communicated thoughts about Mr. Ittihadieh and his activities to other persons, in particular, perhaps, to other residents of the block of houses in question. Any such communications - and there was no evidence that there had been any, although I have already identified as an issue the question whether there might have been such communications - would have fallen within that exemption, as it seems to me. Bearing that in mind, I remind myself that section 7(9) does provide not that the court is bound to make an order in the circumstances contemplated by subsection (9), but that the court may order somebody who is in default to comply with a request.

33. It was suggested by Mr. Coppel, in submission, that the extent of the discretion of the court under section 7(9) was in some way limited. Mr. Coppel drew attention to a

decision of Cranston J, ***Roberts v. Nottinghamshire Health NHS Trust*** [2008] EWHC 1934. At paragraph 14 Cranston J said this:

> "Finally, apart from the Act, the court has no independent discretion to sanction non-disclosure of data by a data controller. If a data controller is to deny a request for access to data it must point to the Act, most likely, an exemption, and then satisfy the various legal requirements just canvassed. Any other approach, recognising in the court a power to deny access to data, despite the prerequisites of the Act being satisfied, would drive a coach and horse through the legislation as well as undermining this country's international obligations."

34. With great respect to Cranston J it is very difficult to understand the reference to undermining this country's international obligations by any order that might be made by this court on an application under the 1998 Act. It is noteworthy that Cranston J starts with the proposition that the court has no independent discretion to sanction non-disclosure of "data" by a "data controller" apart from the 1998 Act. Another, perhaps more logical, position at which to start is that, but for the terms of the 1998 Act, this court has no jurisdiction to order disclosure of any data.

35. A view rather different from that of Cranston J was that of Auld LJ expressed in ***Durant v Financial Services Authority*** [2004] FLR 28. At paragraph 74 of his judgment Auld LJ stated:

> "If I am correct in my conclusions on the primary issues, the question of exercise of discretion under section 7(9) whether or not to order compliance with Mr. Durant's requests does not call for answer. I say only that I agree with the recent observations of Munby J in ***Lord***, at para. 160, that the discretion conferred by that provision is general and untrammelled, a view supported, I consider, by the observations of the European Court in ***Lindquist***, at paras. 83 and 88, to which I have referred ...".

36. In my judgment, in ordinary circumstances any discretion which is conferred upon this court is general and untrammelled unless there is some inhibition in the provision creating the discretion. It is obviously open to Parliament, if it wishes, to impose limitations or inhibitions upon the exercise by this court of its discretion, but if it does not do so and, in my judgment in section 7(9) of Data Protection Act it has chosen not to do so, the discretion is general and untrammelled.

37. Consequently, if necessary, I would, under section 7(9), have exercised my discretion against ordering the individual defendants to undertake a trawl of their respective email accounts in order to identify any documents referring to Mr. Ittihadieh and to give an account of those documents. So my analysis in relation to the second to seventh defendants is essentially this. There has been no proper request.

38. If there had been a proper request, the second to seventh defendants are not data controllers. If they were data controllers, then in relation to any individual documents, that is to say documents produced qua individual and not qua a director,

the overwhelming probability is that section 36 of Data Protection Act would be applicable, but if and in so far as it would otherwise have been appropriate for the second to seventh defendants to conduct any search for any documents with a view to proving that they fell within the scope of the section 36 exemption, that will be wholly disproportionate and I would exercise my discretion under section 7(9) not so to order.

39. In the light of those conclusions, what remains is the request against the first defendant. So far as the first defendant is concerned it is accepted that there was a request made. It is accepted that a fee was tendered. There was, as I have explained, a response to the request. So, in reality all I am concerned with is whether the response to the request was satisfactory. I have already explained that some 400 pages of documents were disclosed. There has been some criticism by Mr. Coppel of the response by producing 400 pages of documents. Mr. Coppel complains on behalf of the claimant that simply producing the documents did not, of necessity, provide the information required under section 7(1)(b) and (c).

40. That may well be so. I do not know. I have not been shown the 400 pages of documents which have been produced. No attempt has been made to demonstrate to me that the answers to all of the questions that arise under section 7(1) is not provided by looking at the 400 pages. In any event, in the absence of any specific criticism by reference to any identified document, it seems to me that going through the charade of making an order against the first defendant to comply with such of the provisions of section 7(1)(a), (b) and (c) as are not met by the production of the documents which have been produced is wholly disproportionate, and consequently I exercise my discretion under section 7(9) to make no order to require that to happen.

41. That leaves the Alireza file. I was asked over the short adjournment to read the Alireza file. In the exercise of the powers conferred by section 15(2) of Data Protection Act, having undertaken that exercise, in which I emphasise the claimant had no role because the claimant was not permitted to see them and, therefore, the claimant's ability to comment upon them and my assessment of them was limited, I did, when sitting this afternoon, indicate my preliminary conclusions, having read the documents, as to whether they fell within relevant exemptions and, if so, to what extent. I have already indicated my preliminary conclusions on those points.

42. I have taken into account the submissions which Mr. Coppel was able to make, recognising that he was severely inhibited in making submissions because he has not seen the documents which I had read, but that is a mechanism that the statute specifically contemplates. I am not persuaded that the preliminary conclusions which I expressed when I sat this afternoon were inappropriate and, consequently, I am not going to make any order on the claimant's application but I am going to dismiss it.

43. So far as the defendant's application is concerned, for the reasons which I have already explained I am striking out the second to seventh defendants as parties to this action and dismissing the claim as against them.

44. A curiosity which I have already mentioned in the claim form and the application on behalf of the claimant before me today is that he was, on the face of it, seeking an injunction, and not merely an order under section 7(9) of Data Protection Act. I have a sneaking suspicion that the reference to an injunction and the inclusion of a draft

injunction in the material put before me was not inadvertence or oversight, but an attempt to intimidate. There are various pieces of evidence in the material which has been put before me which indicate that Mr. Ittihadieh has been seeking to bully the defendants in order to achieve the results which he desires.

45. I simply choose for present purposes as the most uncontroversial, because Mr. Ittihadieh accepts them, his comments on Mr. May's witness statement in Mr. Ittihadieh's own witness statement. What Mr. Ittihadieh has done is to set out different columns. In the first column he quotes the witness statement of Mr. May. In the second column he makes his own observations. I can confine my references to paragraphs 32 and 44 of Mr. Ittihadieh's witness statement commenting on the equivalent paragraphs in Mr. May's witness statement. First Mr. May's paragraph 32:

> "He [that is Mr. Ittihadieh] then instructed solicitors, Taylor Wessing, to threaten a claim against the RTM Company, its directors, the managing agents and the company secretary for racial discrimination, harassment and victimisation. At the time he raged in three separate telephone calls to me, Dr Knapman's flat and to the company secretary that he intended to 'ruin' them by forcing them to incur legal expenses. In his conversation with me, the Claimant ended by calling me a '*piece of white fucking trailer trash'*. The Claimant declined to apologise for this racist insult which he denied making. Instead, Taylor Wessing claimed contrarily that the making of this allegation was part of a malicious campaign to victimise and threaten the Claimant for which we should apologise (see PHCl page 25). I was sufficiently affronted by the Mr Ittihadieh's call to record it in an email to Mr Crawford immediately afterwards."

Mr. Ittihadieh's resounding comment upon that paragraph was this:

> "As I have said above, I did have concerns that I was being treated differently to other residents of the building, who were allowed to store their possessions in the communal area.
>
> I did make three separate telephone calls to the Fourth Defendant, Third Defendant and the company secretary in or around October 2014. I was upset about the fact that I had been told to remove my possessions from the communal area when others had previously been allowed to do so. The conversation was heated, due to the fact that I was upset. However, I never used racist language on the phone to the Fourth Defendant. I would never have used 'white' as an insult to describe him, though I admit that I did call him 'fucking trailer trash' [so that is all right then]. Neither I nor my lawyers have seen the email recording the fact that I supposedly said this, as referred to by the Fourth Defendant."

Paragraph 44 of Mr. May's witness statement:

> "I believe the Claimant's primary purpose in bringing his legal actions is, as he said in three conversations, to seek to 'ruin' us. He therefore made allegations, which, whether he himself believed them or not, were pursued in a manner and at a length which suggested the aim of racking up costs and harassing us are never far from his mind. His subject access request and the present proceedings are in my view part and parcel of that campaign."

Another resounding rejection from Mr. Ittihadieh:

> "It is not and has never been, my intention to arbitrarily 'ruin' the Defendants, and there is no 'campaign' against them. I simply want to have access to the personal information which the Defendants hold about me. The Defendants' refusal to comply has led me to believe that there is something in the file which they do not want me to see. I may have said that I would 'ruin' them but I was only responding to their aggressive behaviour (i.e. them demanding that I remove the partition wall immediately.)"

46. In all of the circumstances it seems to me that it is appropriate for me to strike out from the claim form the reference to injunctive relief and that I do.

47. It remains for me to consider, in relation to the defendants' application, transfer to the county court. Mr. Coppel has drawn my attention to the facts that by section 4(4) of Data Protection Act there is a statutory duty to comply with data protection principles, which includes responding to a request, and that there is provision in section 13 of Data Protection Act for compensation.

48. Section 13(1) provides:

> "An individual who suffers damage by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller <u>for that damage.</u>"

Section 13(2) provides:

> "An individual who suffers distress by reason of any contravention by a data controller of any of the requirements of this Act is entitled to compensation from the data controller for that distress if —
>
> (a) the individual also suffers damage by reason of the contravention, or
>
> (b) the contravention relates to the processing of personal data for the special purposes."

49. Paragraph (b) is not relevant in the circumstances of the present case. What I have to contemplate is the possibility that Mr. Ittihadieh has suffered damage by reason of a contravention by the first defendant of some requirement of Data Protection Act. There is no indication in any of material before me that Mr. Ittihadieh has actually suffered, or is likely to suffer, any identifiable class of damage, and certainly there has been no attempt to quantify any damage which he has suffered.

50. In the circumstances of the present case I do have grave difficulty in contemplating that Mr. Ittihadieh would actually be able to demonstrate that he had suffered any damage by reason of any contravention of Data Protection Act by the first defendant. If Mr. Ittihadieh is not able to prove that he has suffered any damage, he will not be able to recover compensation for any distress. If he is able to recover damage because he can prove that he has suffered damage, then it will be necessary for the court to determine whether, on the evidence, Mr. Ittihadieh has demonstrated that he has suffered any distress.

It is not necessary or appropriate for me to give lengthy consideration to the prospect that Mr. Ittihadieh has suffered distress, but the material before me does indicate that Mr. Ittihadieh is a person who is accustomed to defending his corner, to put it colloquially, if necessary, or perhaps even if not necessary, by resort to legal proceedings, or threat of legal proceedings, and he certainly seems to engage in the expression of colourful phrases in the English language which are not used in polite society. That use of language suggests that he, himself, may not be a particularly sensitive flower.

In those circumstances it seems to me that the jurisdiction of the county court to award damages, in the event that Mr. Ittihadieh is able to demonstrate that he has suffered any loss and/or that he has suffered distress, is more than adequate. Consequently I direct that the matter be transferred. I think nowadays one simply says to the county court rather than to a particular county court, although there is one conveniently situated in the Thomas More building.

MR. HOPKINS: My Lord, I make an application for the defendants' costs.

JUDGE SEYMOUR: Before we do anything further, may I, so that it is not mislaid, ask my usher to give you back the Alireza file.

MR. HOPKINS: Yes.

JUDGE SEYMOUR: Yes, your application for costs?

MR. COPPEL: My Lord, may I speed things up, we are not ***(unclear)*** your Lordship's order dispute the principle, it is a dispute about the amount but not the principle.

JUDGE SEYMOUR: Very well. Then, you will have your costs. I think I am being invited to assess them summarily?

MR. COPPEL: You are, my Lord. I do not know whether you want to hear the objection before my learned friend speaks. I think that is the usual course where the issue is agreed but the amount is not.

JUDGE SEYMOUR: Yes, I think it is for you logically to go next.

MR. COPPEL: May I indicate, my Lord, what we say in relation to it is that it appears to cover, and I say this on the basis of the schedule of work done to on documents, the whole matter ***(unclear)*** all of the defendants, really what needs to be isolated here is what actually uniquely belongs to D2 to D7 and belongs to the application that we made under section 7(9). My learned friends cannot get their costs of dealing with the claim form itself in the form that we sought it. What we can say is that you look, for example, at the draft letter to Taylor Wessing, we do not know when they were done. Documents for subject action request would seem to pre-date that, there is the ICO complaint, they ***(unclear)*** and ignore the response, I am looking at number 6 on the table. Then really what it seems to do is it starts at number 7. Item 7 we would accept a drafting of the witness statement of Mr. Crawford, 9, 10, 11, 12, 13, 14 and 15 would be within, research of data protection injunction is outwith, so 7 and is out and 15 inclusive with capable of being recovered but not the balance, we say.

JUDGE SEYMOUR: Yes.

MR. COPPEL: My Lord, apart from that, looking at the personal attendances, I make an observation in relation to letters out. 11 hours 30 minutes, this is on page 1, your Lordship has seen all of the letters that have gone out. Most of them pre date, some of them certainly pre date the commencement of the claim itself, 11 hours 30 minutes is excessive, so too for telephone. The letters on opponent, we do not say anything in relation to. Over the page no complaint on anything on page 2 and no complaint in relation to my learned friend's fees.

JUDGE SEYMOUR: No.

MR. COPPEL: The complaint we have of the matter in the schedule of work done on documents, which I have indicated, together with the letters out and telephone attendances on the clients themselves, we say is excessive in the circumstances.

JUDGE SEYMOUR: Yes.

MR. COPPEL: Subject to that, my Lord, the rates themselves we do not quarrel with.

JUDGE SEYMOUR: No, thank you.

MR. HOPKINS: My Lord, as to the correspondence in the schedule, in our submission you have seen how this consequence has unfolded. We submit, given that the Data Protection Act request has been part and parcel of a series of letters threatening legal action under various heads, it is impossible to disentangle those into various strands. Since the making of the subject access request this has been part and parcel of one series of correspondence heading in one direction, namely to the ***(unclear)*** this court.

JUDGE SEYMOUR: Well, yes, but you see the consequence of my order would justify the second to seventh defendants having their costs of the whole action. The request was a proper request, at least at the level that the first defendant answered it and provided some documents. Perhaps I had better say the action is continuing so far as I am concerned in the county court against the first defendant. So there are costs of the

first defendant that may be recoverable if the first defendant succeeds ultimately but which I should not be dealing with now.

MR. HOPKINS: I see the point. What I say back to that is you have the point that it is difficult to disentangle as regards the second to seventh defendants disentangled from the first. The point remains that those sort of breakdowns really lend themselves much more to summary assessment which neither of us proposes.

JUDGE SEYMOUR: Detailed assessment you mean.

MR. HOPKINS: Detailed assessment rather than a summary assessment. How one would break down the hours on documents according to the valid subject action request that was probably answered on the one hand as opposed to ----

JUDGE SEYMOUR: May I be clear what is in my mind so that you can address it? I think Mr. Coppel's submissions on costs are sound. So if I am going to proceed to make a detailed assessment today I think it is probably ultimately in the best interests of the first defendant that I make clear what I am not taking into account because then there can be a second bite at the cherry, whereas if I do not make it clear what I am not taking into account then it may be said that I have dealt with it and there can be no attempt of getting the money later.

MR. HOPKINS: I am grateful for that indication. I can take instructions from those behind me.

JUDGE SEYMOUR: As I say, I am with Mr. Coppel on this. I accept his submissions that the schedule of work done, 1 to 6 should not feature, which in my head I think is about £4,250, round about that, and that the personal attendances and attendances on opponents look as if they might include pre-action exchanges. I have already pointed out that the decision to pursue the second to seventh defendants seems to have been made rather late, round about the time that the claim form was issued, and that up until that point the focus of attention seems to have been the first defendant. So, I am minded to knock a bit off that as well.

MR. HOPKINS: I think for completeness on the schedule, Mr. Coppel also took issue with item 8, he said 1 to 6 and 8. Shall I assume that your Lordship is with Mr. Coppel on 8 also before I turn around and confer briefly?

JUDGE SEYMOUR: No, I should have made clear that I am not with Mr. Coppel on that yet. This is the sort of item one frequently sees, indeed, almost invariably in a costs schedule. If Mr. Coppel wants to persuade me that that one also should not be taken into account then I would consider his submission. Otherwise I will take it into account.

MR. HOPKINS: The implication then is 1 to 6 in the schedule and some proportion of the ----

JUDGE SEYMOUR: I will say pre claim form issue date correspondence and I will have a stab at that.

MR. HOPKINS: My Lord, we are content with that.

JUDGE SEYMOUR: Do you want to say anything about that, Mr. Coppel?

MR. COPPEL: No, my Lord, I added up items 1 to 6 at £4,312, someone may have a calculator and do better than I can do in my head but that is what I came up with. I do not have a difficulty at having a stab providing one stabs in the right direction of course.

JUDGE SEYMOUR: Yes.

MR. COPPEL: Approach-wise that is right. Whether your Lordship puts it in the way that your Lordship has, look at the numbers, 11 hours 30 minutes, and you can see what has been done in terms of attendances on defendants and attendances on opponents and 7 hours 30 minutes on the telephone is very high indeed given the state it reached. We say make a stab, it is in everyone's interests for your Lordship to come up with a number and that is ultimately what it is.

JUDGE SEYMOUR: Yes. All right, unless either of want to say anything further I will simply tell you the amount. It is £25,000.

MR. HOPKINS: I am grateful.

JUDGE SEYMOUR: Can you please between you prepare a minute ----

MR. COPPEL: One other matter.

JUDGE SEYMOUR: Yes.

MR. COPPEL: I ask for permission ----

JUDGE SEYMOUR: Right, I am not going to give you permission. An appeal would have no real prospect of success.

MR. COPPEL: I can identify the grounds if your Lordship wishes.

JUDGE SEYMOUR: I suspect you would be rehearsing the submissions which you have made to me which I have not been persuaded of.

MR. COPPEL: Some are not, my Lord. It is up to your Lordship. Given your indication I am going to have to renew in any event.

JUDGE SEYMOUR: Yes. I will sign the form Mr. Coppel and do it now. **(Pause)** That gives you what you need to go and try and persuade somebody else.

MR. COPPEL: Thank you, my Lord.

MR. HOPKINS: My only request was for 14 days for payment.

MR. COPPEL: That is normal, my Lord.

JUDGE SEYMOUR: Well, it is the default condition, so, yes, OK. Please prepare a minute between you and liaise with my associate.

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