Neutral Citation Number: [2020] EWHC 1794 (QB)

Case No: QB-2019-004270

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 07/07/2020

Before :

THE HONOURABLE MR JUSTICE SAINI

- -

Between :

UNITED KINGDOM INDEPENDENCE PARTY LIMITED	**Claimant**
- and -	
(1) RICHARD BRAINE	**Defendants**
(2) TONY SHARP	
(3) PERSONS UNKNOWN	

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- -

Jake Rowley (instructed via **Bar Direct Access Scheme**) for the **Claimant**
Richard Braine and **Tony Sharp** (Litigants in Person) for the **Defendants**

Hearing dates: 30 June – 1 July 2020

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Approved Judgment

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on Tuesday 7 July 2020.

MR JUSTICE SAINI :

This judgment is in 6 parts as follows:

I. Overview

1. These proceedings arise out of a factional dispute concerning the leadership and control of the UK Independence Party ("UKIP", or "the Party"), and events surrounding elections to its National Executive Committee ("the NEC") in October 2019.

2. UKIP is an unincorporated association which, as is well-known, operates as a political party. The Claimant is the service and operating company of the Party. The parties before me have not always distinguished between the Party and the Claimant in their evidence and arguments. They are however not the same entity and I will maintain a distinction below, particularly when it comes to the governance and constitutional arrangements which arise for consideration in this claim.

3. The Claimant brings claims for breach of confidence, breach of director's duties, conspiracy to injure by unlawful means and breach of the Copyright and Rights in Databases Regulations 1997. The claims are made by the Claimant against two former officers of UKIP: (i) Mr. Richard Braine ("Mr. Braine"), UKIP's former leader and a former director of the Claimant; and (ii) Mr. Tony Sharp ("Mr. Sharp"), UKIP's former Deputy Leader (who is sued in respect of each cause of action, apart from breach of director's duties).

4. In broad terms, the Claimant alleges that Mr Braine and Mr Sharp were behind a serious data breach and misuse of confidential information drawn from the Party's membership database on or around 16 October 2019. More specifically, the Claimant alleges that Mr. Braine and others were involved through their agents in unlawfully accessing the UKIP email database to send emails to UKIP members concerning the upcoming elections to its NEC. It is also alleged that the Defendants accessed and gathered data from private email inboxes of UKIP members.

5. Perhaps the most serious of the allegations is that Mr. Braine and Mr. Sharp were the persons behind what I will call the "BB Email" below. This was an email sent to four UKIP members (three of whom were then on the NEC) on 16 October 2019 from a person using the pseudonym "BB" from the email address reply@munge.cockington.com. That email contained various threats to disclose information to third parties unless the recipients resigned from positions within the Party. This was an attempt to blackmail the recipients.

6. I should record at the outset that both Mr. Braine and Mr. Sharp strenuously deny the allegations and have confirmed their denials in sworn evidence. In short, they say the first they heard of the BB Email was when injunction orders were served on them in this case, and such limited emails as they directed to be sent to members were always lawful.

7. Proceedings were originally commenced against two further individuals, Mr. Jeff Armstrong, former General Secretary and Returning Officer of the Party, and Mr. Mark Dent, a former Party member. These people, as more fully described below, were also once claimed by the Claimant to be involved in the misconduct I have summarised above. However, the Claimant discontinued the claims against Mr Armstrong and Mr. Dent earlier this year.

8. There are a number of applications before me, the most substantial of which is an application by the Defendants dated 12 January 2020 to strike out the entirety of the claim, alternatively, for summary judgment. That application also seeks an order striking out the claim for certain procedural defaults. There is a dispute as to whether Mr. Braine has in fact made such an application because the application itself was signed only by Mr. Sharp although he purported to make it on behalf of himself and Mr. Braine. I will proceed on the basis that the application was made by both Defendants and return to this dispute at the end of this judgment.

9. Closely related to the Defendants' application dated 12 January 2020 is the Claimant's application dated 19 February 2020 to substantially amend its Particulars of Claim; and the parties sensibly agreed these two applications logically fall to be considered together. The Claimant wishes to replace its existing Particulars of Claim with a new pleading which on its face says: "the Claimant deletes the entirety if its Particulars of Claim and replaces them with the below".

10. The hearing was conducted remotely by SKYPE. Mr. Braine and Mr. Sharp represented themselves and both addressed me orally and in writing. Counsel represented the Claimant and I should record the conspicuously fair way in which he conducted the proceedings against litigants in person in a case where there was some procedural complexity. He also provided me with substantial assistance in response to my questions and my requests for certain additional material.

11. These proceedings began with a claim for an interim non-disclosure order ("the INDO") which was granted, on an application without notice, by Lambert J on 23 October 2019. The INDO was in due course discharged by Warby J following an *inter partes* hearing on 6 December 2019.

12. Warby J's reasons were given in a detailed judgment dated 18 December 2019: see [2019] EWHC 3527 (QB). That judgment (which I will refer to as the "INDO Judgment") is heavily relied upon by the Defendants in support of their arguments in relation to their striking out/summary judgment application and in opposition to the application by the Claimant to amend the Particulars of Claim.

13. In summary, in the INDO Judgment, Warby J held that the evidential basis for the claim that the Defendants obtained and threatened to disclose confidential information from UKIP's email database was "slender in the extreme" and that it was "arguable that the Particulars of Claim fails to disclose a reasonable basis for claim and/or that the claim

has no reasonable prospect of success at trial": para. [52]. Warby J also held there had been significant failures to make full and frank disclosure before Lambert J: para. [68]. Emboldened by Warby J's observations, the Defendants made their application for the claims to be dismissed. They essentially argue that those observations are sufficient to dispose of the claims. At times it seemed to me that they pointed to the INDO Judgment as "game, set and match".

14. Matters are, however, not that straightforward. There are four points which I consider require me to approach this heavy reliance on the INDO Judgment with some caution: (i) the applications before me are for me to decide on the basis of the evidence and arguments now made and I have to form my own independent judgment; (ii) Warby J did not have a strike out/summary judgment application before him but was considering the different question as to whether to continue the INDO, applying a different legal test; (iii) while there remain overlaps with the original claim, the pleading I am concerned with is the draft Amended Particulars of Claim (not that before Warby J) and he did not address all the claims made by the Claimant; and (iv) the arguments before me have been more extensive than those developed before Warby J. I will of course carefully consider Warby J's but ultimately I have to form my own views.

15. Finally, by way of introduction, I should record that there were a number of additional applications before me on 30 June 2020 which are not addressed in this judgment. These applications were of a more procedural nature and concerned: (a) the Claimant's application dated 19 January 2020 to regularise service of the Particulars of Claim/relief from sanctions; (b) an application by the Defendants dated 12 January 2020 for relief from sanctions, if necessary, in relation to non-filing of Acknowledgement of Service; and (c) the Claimant's application dated 25 June 2020 to serve supplemental evidence in relation the Defendants' strike out/summary judgment application.

16. Having heard concise and helpful submissions from the parties, and for reasons given orally at the hearing, I dealt with both of these applications on that day by making orders regularising service of the Particulars of Claim and service of the Acknowledgment of Service. I did not permit the Claimant to rely upon the additional witness statement because I considered it had been served too late (25 June for a hearing on 30 June).

II. Striking Out for Procedural Breaches

17. Before I turn to the main applications, I deal briefly with the Defendants' application to strike out the claim on the basis of a number of procedural defaults. I reject that application for the reasons set out below. The Defendants complained of a number of alleged breaches, which I address in turn below.

18. First, it is said the Claim Form was served out of time. The Defendants say that it had to be served by 29 November 2019. That is wrong. That was the date by which the Claimant was required to issue a Claim Form, which was done.

19. Second, as regards certain complaints concerning email service of the Particulars of Claim, I have made orders regularising the position as indicated above. However, even if there had been a breach or failure as regards service it would not have been a

proportionate response to strike out the claim in circumstances where there was, I accept, some confusion in the minds of the Claimant's former advisers as to whether email service had been authorised.

20. Third, a further complaint is that the Defendants say, correctly and by reference to CPR r. 7.8, that they were not sent a copy of the 'response pack'. This pack was, however, brought to their attention by way of email in short order and thus the purpose of the Rule has been fulfilled. No sanction arises for failure to comply with r. 7.8 and I have made provision dealing with Acknowledgments of Service which ensure there is no prejudice to the Defendants.

21. Fourth, the Defendants complain that it was not expressly stated on the Claim Form that Particulars of Claim were "to follow". However, nor did the Claim Form expressly indicate that Particulars of Claim were "attached". This was unsatisfactory but was not a breach that would have justified striking out the claim when the Particulars of Claim were in fact served at the appropriate time.

22. Fifth and finally, the Defendants say that the original Particulars of Claim were not signed by a Statement of Truth. I was told by Counsel for the Claimant that the CE file version was in fact signed, and I accept that in the absence of any contradiction.

III. Legal Principles: summary judgment and amendment

23. I have taken the principles which apply to summary judgment applications from the judgment of Hamblen LJ in Global Asset Capital Inc v Aabar Block SARL [2017] EWCA Civ 37; [2017] 4 WLR 163, a case in which reference was made to the now well-known judgment of Lewison J in Easyair Limited v Opal Telecom Limited [2009] EWHC 339 Ch at [15], as well as a number of other cases.

24. Although Counsel for the Claimant took me to some other cases, it seems to me that Global Asset Capital Inc. contains all the principles relevant to this application, including the points which Counsel emphasised.

25. As to these principles, I would summarise the Part 24 approach as follows (highlighting points of specific relevance to the application before me) in six propositions as follows:

(a) First, the court must consider whether the opposing party (here, the Claimant) has a "realistic", as opposed to a "fanciful", prospect of success. It is important to emphasise that this is different to the "enhanced merits test" (see the INDO Judgment at [24]) which is applicable to relief which might affect the exercise of the right to freedom of expression, and which was applied by Warby J in discharging the interim injunction.
(b) Second, the court must avoid conducting a "mini-trial" without the benefit of disclosure and oral evidence and should avoid being drawn into an attempt to determine conflicts of fact which are normally resolved by a trial process.
(c) Third, the last point only goes so far because a court is not obliged to accept factual assertions which are contradicted by contemporaneous documents. There must be real substance to factual assertions.

(d) Fourth, where a party invites the court to draw inferences of arguable wrongdoing, there must be a sufficient *prior* pleaded factual foundation supporting such inferences. That foundation might come, for example, from expert evidence in a data breach case, even if in draft form prior to formal permission under CPR 35. The foundation for an inference might also come from the inherent probabilities that certain events would have followed upon other events which have been established as arguable by evidence. Naturally, a court will be less willing to draw an inference that there was arguable serious wrongdoing involving, for example, acts of dishonesty, concealment or bad faith than more neutral conclusions.

(e) Fifth, in reaching its interlocutory conclusions the court must take into account not only the evidence actually placed before it on the application for summary judgment but the evidence that can reasonably be expected to be available at trial (a point specifically emphasised by Counsel for the Claimant). Again, this point only goes so far and should not be interpreted as a charter to plead a factual case which it is said may become sustainable when disclosure is given.

(f) Sixth, some disputes on the law are suitable for summary determination. Generally, if the application gives rise to a point of law including construction of documents, and the court is satisfied that it has before it all the evidence necessary for the proper determination of the question, the court can and should determine the point. In this case, as appears below, certain of the disputes between the parties concern construction of the constitutional and governance documents of the Party. I consider myself as well equipped to interpret those instruments as a final trial Judge. They are not legally complex and no factual disputes can affect what they mean.

26. In relation to amendments, CPR r. 17.1 provides as follows:

> **"17.1**
>
> (1) A party may amend his statement of case at any time before it has been served on any other party.
>
> (2) If his statement of case has been served, a party may amend it only –
>
> (a) with the written consent of all the other parties; or
>
> (b) with the permission of the court.
>
> (3) If a statement of case has been served, an application to amend it by removing, adding or substituting a party must be made in accordance with rule 19.4.
>
> (Part 22 requires amendments to a statement of case to be verified by a statement of truth unless the court orders otherwise)"

27. The Court has a discretion to permit a party to amend a statement of case and in exercising that discretion the Court should have regard to all the matters set out in the Overriding Objective. The prospects of success of the proposed new claim and the timing of the application for permission are both relevant factors. In Quah Su-Ling v Goldman Sachs International [2015] EWHC 759 (Comm), Carr J put the matter thus at [38a]:

> "In exercising that discretion, the overriding objective is of the greatest importance. Applications always involve the court striking a balance between injustice to the applicant if the amendment is refused, and injustice to the opposing party and other litigants in general, if the amendment is permitted"

28. These views are echoed in the comments of Sir Geoffrey Vos VC in Nesbit Law Group LLP v Acasta European Insurance Company Limited [2018] EWCA Civ 268 at [40]):

> "In essence, the court must, taking account of the overriding objective, balance the injustice to the party seeking to amend if it is refused permission, against the need for finality in litigation and the injustice to the other parties and other litigants, if the amendment is permitted. There is a heavy burden on the party seeking a late amendment to justify the lateness of the application and to show the strength of the new case and why justice requires him to be able to pursue it. These principles apply with even greater rigour to an amendment made after the trial and in the course of an appeal."

29. In relation to opposed applications for amendment, the test to be applied is the same as the test applied to an application for summary judgment. The question is whether the proposed new claim has a real prospect of success.

30. A real prospect of success is to be contrasted with a "fanciful" prospect of success: see Swain v Hillman [2001] 1 All ER 91. A "realistic" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable see: ED & F Man Liquid Products v Patel [2003] EWCA Civ 472 at [8], applied and approved in Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) at [15]. I was also taken in this regard to SPI North Limited v (1) Swiss Post International (UK) Limited; (2) Asendia UK Limited [2019] EWHC 2004 (Ch) at [5].

31. The amendment to the Particulars of Claim cannot be ruled out on the grounds that it is too late. Proceedings are at an early stage. The real issue is whether the claims as now framed have a realistic prospect of success.

32. I agree with the parties that this is effectively the same as the issue on the Defendant's application for summary judgment/striking out. I note however that this application was made in relation to the original Particulars of Claim. Those Particulars of Claim, in essence, relied upon the same underlying facts and causes of action as now pleaded in

the draft amended Particulars of Claim. If the amendment fails so do the original Particulars of Claim.

IV. The Facts

33. In this section of the judgment, I will seek to summarise what seem to be certain uncontroversial facts and the broad nature of the pleaded case, specifically identifying where points of factual dispute arise. I have based my summary principally on the Claimant's pleading supplemented by references to the contemporaneous documents and the witness statements.

34. As to these witness statements, I have taken into account the evidence of the Defendants (including the other original parties, Mr Dent and Mr Armstrong) which was before Warby J on 6 December 2019. After some dispute, the Claimant accepted I could consider this evidence although Counsel for the Claimant rightly argued that it was not expressly relied upon in support of the summary judgment/striking out application made by the Defendants.

35. Counsel was given time during the overnight adjournment to consider this evidence and I was also willing to consider adjourning the hearing in case the Claimant considered it would be prejudiced by admission of this evidence. An adjournment was not in the event necessary and Counsel was able to address me orally with helpful submissions in response to this evidence on the second day of the hearing.

36. I have also relied in my summary below upon the Party's and the Claimant's constitutional documents, some of which I obtained by my own online researches (sources cited below) but with notice being given to the parties of what I had found so they could address me if necessary.

Relevant persons and governance

37. Mr Braine, is a former leader of UKIP and he was a director of the Claimant from 10 August 2019 (the date of his election on a ballot of the membership) until 17 October 2019 (when he ceased being leader of the party). The Electoral Commission requires political parties to have such a position.

38. Mr Sharp was formerly deputy leader of the Party (appointed by Mr Braine on 12 October 2019). The former Third Defendant, Mr Armstrong, was a former Returning Officer and General Secretary of the Party and the former Fourth Defendant, Mr Dent, was a member of the Party and an IT consultant (a fact relevant to the history of events). The Fifth Defendant (now Third Defendant) is a person or persons unknown who is/are said to be those involved the data breach.

39. At the times material to this claim, the Chairman of the Party was Kirstan Herriot ("Ms Herriot").

40. The position of the Claimant as a company limited by guarantee in relation to the business of operating UKIP may be summarised in broad terms as follows:

(a) UKIP (as is commonly the case with political parties) is an unincorporated association, which offers membership to individuals who choose to subscribe. UKIP is governed by written rules that, in the usual way, operate as a contract between the members of the unincorporated association.

(b) In the case of UKIP, certain rules are referred to as the "Constitution". The Constitution makes provision for various leadership roles with certain prescribed powers. The full version of the Constitution is at https://www.ukip.org/ukip-page.php?id=07.

(c) The key leadership roles within UKIP are the Leader, the Deputy Leader, the Chairman and the General Secretary.

(d) Those individuals are *ex officio* members of the NEC. The NEC also includes two members co-opted from among UKIP's elected representatives and a number of members who have stood for and been elected to the NEC. The Claimant's directors are ordinarily selected from the NEC. The Claimant receives the subscription fees paid by members of UKIP to enable it to carry out its operations.

(e) In addition to the Constitution, UKIP is governed by Rules of Procedure. I will call these "the Rules" and in the event of conflict between the Rules and the Constitution the latter prevails. I drew the Rules to the parties' attention following my own researches during the overnight adjournment. The parties agreed that they are relevant to the issues argued before me.

(f) Certain parts of the draft Particulars of Claim were, it seemed to me, in error in referring to certain provisions of the Rules as provisions of the Constitution as opposed to a completely separate document. The full version of the Rules is at https://www.ukip.org/uploads/New_Party_Rules.pdf. I will refer to the relevant provisions in more detail below.

(g) The Claimant has been incorporated by UKIP to conduct the business of operating the political party. I was provided at my request with the Memorandum and Articles of Association. The business of the Claimant includes employing individuals, entering into contracts with third party suppliers and, of particular relevance to this case, handling and using personal data of the members of UKIP.

(h) The personal data in question includes UKIP's members' identities and contact details, which are provided to UKIP on the basis that they are held in accordance with data protection law at the time in being. This material is held on a database.

(i) As was agreed before me (and even though it is not clear on the evidence), I proceed on the basis that the information within the database is controlled or owned by both the Claimant and the Party and either can seek relief to protect it.

(j) There is an express provision in the Rules which I drew to the attention of the parties and which regulates use of the data which is said to have been misused in this case:

"J.1.6 Use of the Party database is authorised for contacting members for official Party purposes only".

41. The role of UKIP's Leader as set out in the Constitution is as follows:

"7.1 Under the Political Parties, Elections and Referendums Act 2000 all registered parties must appoint a Party Leader. The Party Leader shall give political direction to the Party and shall be responsible for the development of the Party's policies with the agreement of the NEC.

7.2 The Party Leader may, at his discretion, form such advisory groups as he deems appropriate to advise him on any matter pertinent to the exercise of his functions, and will inform the NEC of the membership of such groups.

7.3.1 The Party Leader:

a) shall have the right to be a full member of all sub-committees and working groups set up by the NEC;

b) shall, subject to the approval of the NEC, appoint a Party Chairman; in the event of a refusal to approve the appointment, the Party Leader may request that the matter be referred to an EGM of the party;

c) shall make or approve national statements of the Party's policies and the manner of their communication; and

d) may make such other appointments as he thinks fit, with the agreement of the NEC….".

42. As regards the Rules, they provide as follows in relation to the Leader:

"K.9: The Party Leader shall primarily be responsible for:

(a) The political and policy direction of the party;

(b) The external Party communication and messaging, and

(c) The management of the Party's elected representatives."

43. The Chairman's role is provided for under the Constitution as follows:

"8.1 The Chairman appointed under Article 7.3.1 (b) shall be an ex officio member of the NEC if not already an elected member of it. The Chairman will be entitled only to a casting vote whether or not he is an elected member of the NEC. The Party Chairman may, notwithstanding his ex officio membership of the NEC, be a full time employee of the Party.

8.2 The Party Chairman shall chair meetings of the NEC, the Annual Business Meeting, Annual Conference and such Extraordinary General Meetings as may be called. The Party Chairman shall be responsible for maintaining accurate databases of membership and for safeguarding such databases within the terms of data protection legislation.

Responsibilities

8.4 The Party Chairman shall have overall responsibility for administration and direction of the Party organisation. He shall be responsible for ensuring that all efforts are made to have an active and properly constituted organisation of the Party in every constituency, financially able to support a parliamentary election campaign.

8.5 The Party Chairman may make such administrative appointments as he sees fit and may recommend to the NEC the creation of paid administrative posts. The Party Chairman shall, from time to time, report to the NEC on Party, branch and constituency activity or ensure that a report is made by an appointed Party officer, as appropriate, on such activity."

44. Additionally, under the Constitution the Chairman has, in exceptional circumstances, certain unilateral powers as follows:

"11.9 In cases of exceptional gravity and urgency the Party Chairman may, of his own motion, exercise any of the powers set out in Article 11.5…".

45. Article 11.5 of the Constitution provides, so far as material:

"11.5 Upon the conclusion of any Disciplinary Hearing the Discipline Committee may:

…

d) suspend the Respondent Member from membership of the Party for a specified period;

e) suspend the Respondent Member from elected Party office and/or candidature for elective office for a specified period;

…

g) take any other reasonable and proportionate action that it deems to be warranted by any particular circumstances;"

46. The Rules further provide as follows as to the Chairman's role:

"K.11: The Party Chairman shall primarily be responsible for:

(a) The organising and chairing of the National Executive Committee meetings;

(b) Dealing with all matters arising from the NEC meetings;

(c) Organising and chairing the Party Autumn and Spring Conferences;

(d) Overseeing the Party's publications, communications and campaigns, including the Party's website(s), marketing materials, recruitment activities, media relations, policy publications and all other online and offline communications created under the Party brand, and

(e) Organisation of staffing and resolution of disputes within the Party".

47. Ms. Herriot's contract of employment recorded under the heading "Management and Chain of Command, that "you will be working with direct responsibility to the Party Leader or their designated deputy". I was also shown UKIP's Branch Officer Handbook which shows that the Chairman reports to the Leader.

48. Before turning to a summary of the facts, I should record that I suggested to the parties in argument that the powers, duties and responsibilities of the Directors of the Claimant (including Mr Braine) were all subject to the Constitution and Rules of the Party. Those governance documents are the framework for regulating the conduct of Mr Braine which is in issue in these proceedings. This was not disputed.

49. That is not to say that the normal duties owed by directors did not apply. Rather, in my judgment, the scope of those duties falls to be assessed in the context of the Constitution and Rules of the Party. After all, Mr Braine was only a director because he was Party Leader and the Claimant exists essentially to serve the Party which is a political and not a trading entity.

50. This is supported by Article 6.2 of the Constitution which states that one of the roles of the NEC is making and amending the Rules for the discharge of its responsibilities

under this Article "and under company law for the efficient running of the Party and the attainment of its objectives".

Events: August to October 2019

51. From about the autumn of 2018, a faction within UKIP, led by UKIP's then-leader Gerard Batten ("Mr. Batten"), sought to focus the party on perceived issues pertaining to Islam in British society. A feature of this focus was said to be an attempt formally to involve the well-known (and generally considered far-right) activist known as "Tommy Robinson" (Stephen Yaxley-Lennon) in the Party.

52. This re-focussing of the party was opposed by a group within UKIP, which considered that the party was, and should remain, a constitutionally-focussed centre right-wing party and should not re-position itself further to the right as it was perceived Mr. Batten and his supporters wished.

53. On 2 June 2019, Mr. Batten resigned as leader of UKIP, having lost his seat as a Member of the European Parliament at elections the previous month. Mr. Batten thereafter sought to stand for re-election but was blocked from advancing his candidacy by the NEC. Accordingly, a leadership election took place without Mr. Batten as a candidate.

54. On 10 August 2019, Mr. Braine was elected as leader of UKIP. It does not seem to be in issue that Mr. Braine was a supporter of Mr. Batten.

55. On the material before me, it also does not seem to be in issue that Ms. Herriot, the Chairman, was not a member of the group supportive of Mr. Batten but rather was part of the opposing group which disagreed with Mr. Batten's proposed direction for the party.

56. On 17 September 2019 UKIP opened applications from members who wished to seek election to the NEC, in advance of NEC elections scheduled to take place in November 2019. Mr. Armstrong was appointed Returning Officer for those elections.

57. The Claimant says that although Mr. Batten no longer had any formal role within UKIP, Mr. Braine and those within Mr. Batten's faction of UKIP put forward a "slate" of candidates in the NEC elections expressly identifying themselves as supporters of Mr Batten.

58. The Claimant calls these persons "the Batten Brigade". I was told they self-described themselves (including in leadership election literature) as the "Batten Brigade" (Mr. Dent being a candidate on that slate). When I use this term below, I adopt it merely as shorthand and without implying anything by its use. I also note that Mr. Sharp distanced himself from this group and from Tommy Robinson at the hearing before me.

59. On 12 October 2019, the NEC met. By that time a dispute had arisen between members about the claimed conduct of Mr. Armstrong as Returning Officer. Broadly speaking,

Ms. Herriot and those opposed to Mr. Batten took the view that Mr. Armstrong had failed to investigate the Batten Brigade candidates' compliance with eligibility criteria, and had simply relied on their own assurances that they were eligible.

60. Turning to that meeting in more detail, the main business was the organisation of the NEC Elections for November 2019 and to receive Mr. Armstrong's Report as the General Secretary and Returning Officer regarding the List of Applicants for the vacancies on the NEC. Mr. Armstrong confirmed that the applicants had been 'vetted' by him under the criteria specified in the Constitution: (i) length of membership, (ii) service as an officer at least at local Branch level and (iii) whether the Applicant was in 'good standing'.

61. The last point caused controversy. In his evidence, Mr. Armstrong explains that he told the meeting that he could not discover from the National HQ officers anything more in relation to "good standing" matters other than that an Applicant had been and was up to date in their party subscription dues. Mr. Armstrong says that by the end of the meeting as far he was concerned his prepared "List of Applicants as Returning Officer" was now closed.

62. Whether a person is in "good standing" is the subject of an explicit provision in the Rules, which the parties did not refer to at the hearing but is relevant. It says:

> "I.8 A member shall be classed as 'in good standing' if at any given moment their subscriptions are up to date, they are not subject to any suspension or exclusion either from elected office or from standing as a candidate of any sort in any election, and they are not subject to any form of suspension or restriction as to their membership of the Party".

63. My own reading of the Rules suggests that Mr. Armstrong was plainly correct as far as the subscriptions issue is concerned and it has not been suggested that the List contained persons who within the "suspension" or "exclusion" categories.

64. Insofar as it might be argued that the "good standing" requirement requires a Returning Officer to "filter out" those he or she regards (or should have regarded) as "undesirables" on the basis of political views, that cannot be correct. Not only does that contradict Rule I.8, but it would be a remarkable thing for a Returning Officer to have this power. The eligibility requirements which Mr. Armstrong applied are plainly intended to be mechanistic and administrative, and not a means of blocking persons from being voted upon by the membership.

65. On the Claimant's case, it is clear certain individuals within the NEC (including Ms. Herriot) did not consider the matter of eligible candidates and the List to be closed. They were unhappy about the List and whether Mr. Armstrong had properly applied the rules as to "good standing" in determining who was eligible to run for the NEC. The Claimant says that Ms. Herriot was keen to see these rules enforced in view of Mr. Batten's attempt to reposition the party.

66. This dispute came to a head on 15 October 2019 and the events in the next few days (ending on 18 October 2019) are the focus of this claim.

67. On 15 October 2019, Ms. Herriot sought and obtained a resolution from the NEC (by email) for the suspension of Mr. Armstrong from his role as Returning Officer. Mr. Armstrong asserted that the purported suspension was unconstitutional and that he was accordingly entitled to continue with his duties.

68. In response to these events which Mr. Braine regarded as improper interference with the NEC election, he sent two emails which are at the heart of the claims.

69. First, on the afternoon of 15 October 2019, Mr. Braine emailed two staff members at UKIP's head office, Ruth Purdie and David Challice. In that email, Mr. Braine said that he was suspending Ms. Herriot and all other members of the NEC, both from the NEC and as directors of the Claimant.

70. The Claimant says that Mr. Braine had no power under the Constitution (or otherwise) to suspend Ms. Herriot or anyone else from the NEC, and nor did he have any power under the Constitution to suspend any person as a director (other than by proposing a directors' resolution subsequently passed by a majority, which it says Mr. Braine did not do). In my view, it is arguable that the Claimant's interpretation of the relevant provisions is correct.

71. The second email was sent by Mr Braine in the late evening of 15 October 2019, again to Mr. Challice and Ms. Purdie. That email (which I will call "the Direction Email") stated that Mr. Braine was sending Mr. Dent to UKIP's head office the following day, and included the following:

> "As far as I can see, Kirstan and the NEC are attempting to interfere in a Party election… It is my duty to see that the Returning Officer can run elections fairly. That is why the below steps are necessary…
>
> Lock her out of the chairman@ukip.org account and gain control
>
> Enable Ruth [i.e. Ms Purdie] to send out the emails from UKIPS [sic] Mail Chimp Account
>
> Do a Microsoft Office 365 scan of the chairman's account and other UKIP.org account to gain evidence, for use later."

72. In the morning of 16 October 2019, Mr. Sharp wrote to Mr. Challice and Ms. Purdie supporting Mr. Braine's proposal that Mr. Dent attend at UKIP head office. Mr. Sharp's email included the following:

> "Yourself and Ruth are absolved of any sanction for co-operating with the Leader and Returning Officer effected by Mark Dent and you are to co-operate with Mark Dent in effecting his instructions from the Leader and RO. Neither they nor the current NEC will hold you liable in any way for anything undertaken by Mark Dent under the Leader's and RO's instructions. This shall not affect your employment duties and rights."

73. Later in the day on 16 October 2019, Mr. Dent (who has considerable expertise in the area of information technology) attended UKIP's head offices at Mr. Braine and Mr. Sharp's requests set out above.

74. It is not in dispute that whilst at UKIP's head office Mr. Dent excluded Ms. Herriot from access to the chairman@ukip.org email address and that Mr. Dent made use of the Claimant's "Mailchimp" account (i.e. its mailing list management software) to send an email to all UKIP members identifying each of the candidates who wished to stand for NEC election. That is, Mr Armstrong's List was sent out.

75. To be clear, the Defendants accept these acts were undertaken by Mr. Dent as their agent. They say however this was the sum total of what was done on their instructions. It is important to note that Mr. Dent also attempted to create an account for Mr. Braine to directly access the Mailchimp system so that he could message the entire membership. However, it is common ground that Ms. Heriot contacted Iqual ISP, the service provider, and prevented such access before it could be secured.

76. The real dispute begins in relation to what the Claimant says happened next. The Defendants say nothing more happened. By contrast, the Claimant says that it is to be inferred (from the fact that it was one of Mr. Braine's instructions in the Direction Email) that Mr. Dent (either on 16 October 2019 at HQ or later) conducted searches of the content of various @ukip.org email accounts and extracted and passed to Mr. Braine and/or Mr. Sharp emails that he considered were likely to be prejudicial in some way to Ms. Herriot and to others in UKIP who opposed the Batten Brigade.

77. It was argued by the Claimant that the fact of Mr. Braine and/or Mr. Sharp seeking access to others' email accounts is further supported by an email from Mr. Sharp to Ms. Purdie and Mr. Challice at 1:48pm on 16 October 2019 including the following:

> "Can you find an 'auto forward' facility of the current NEC Members private email addresses to me without you having to see them?
>
> …
>
> Can you also put me in to the control of the 'legal@ukip' email... I shall deal with ongoing legal matters"

78. That leads me to the "blackmail" alleged by the Claimant. This was by way of the BB Email which was sent overnight on 16 – 17 October 2019 to four persons (three of whom were members of the NEC: Neil Hamilton, David Kurten and Paul Williams). The third recipient was Helen Windsor who was not on the NEC but had been the unsuccessful opponent of Mr. Braine in the leadership election earlier that year. The Claimant says that Mr. Braine and Mr. Sharp were behind the BB Email and their denial of involvement (in sworn evidence served pursuant to Lambert J's INDO) is untruthful.

79. The BB was sent from an unknown email address "no-reply@munge.cockington.com" and signed "B.B". The email stated as follows (grammatical errors as in the original text):

> "On Wednesday we legally got all your ukip emails for years, ones from or to you or which you sent from outside of ukip to any one with a ukip email.
>
> If anyone says we do not have them or did not get them legally they are lying, that is why we removed the Party Secretary.
>
> After two days our B.B team will be reviewing the emails for evidence. Then the useful parts can find their way any where, even your neighbours, we know where you are. Think of how much you will lose.
>
> We give you a chance. By Midnight on Friday 18, you must resign from ukip and all your positions you claim in ukip, sending the resignation to both membership@ukip.org and action@integritypurple.com, who do not have any connection but can verify for us. Then we won't do any thing.
>
> Once you betrayed the Party Leaders you don't deserve pity but we give you're a choice.
>
> B.B."

77. As I understood the Claimant's case, it says that, as a matter of inference, the BB Email was sent by or at the direction of Mr. Braine and/or Mr. Sharp for the following reasons:

    (a) The pseudonym "B.B." seems obviously to be interpreted as an abbreviation of "Batten Brigade".
    (b) The references to access to emails indicates knowledge of the fact that, earlier that same day, Mr. Dent had attended UKIP head office to access emails (pursuant to the Direction Email).
    (c) The step requested of the recipients of the BB Email was that they resign from their various positions with UKIP. It was argued that this outcome is not one likely to be desirable to anyone other than Mr. Braine, Mr. Sharp or their close associates.

80. On 18 October 2019, Mr. Dent met with Mr. Braine and went to Lexdrum House Newton Abbot, to request the office staff under Mr. Challice to assist Mr. Braine in being able to communicate by email directly with the national membership of UKIP. It will be recalled that an attempt to give access to systems to allow such communication had failed on 16 October 2019. Mr. Challice refused them entry to the premises.

81. The next material event is that the Claimant applied without notice for the INDO before Lambert J on 24 October 2019 on the basis that the Defendants were behind the blackmail attempt and that they had been involved in a data breach implied by the BB

Email. That injunction was granted (with orders for disclosure) and then discharged by Warby J in due course on 6 December 2019 for the reasons he gave in the INDO Judgment, as described above.

82. This concludes my summary of the factual background. I now turn to consider the causes of action said to arise on the basis of the allegations I have outlined above and whether each has a realistic prospect of success in accordance with the principles I have set out in **Section III** above.

V. The Causes of Action

83. As indicated above, the Claimant says that these facts give rise to four causes of action: breach of confidence; breach of director's statutory duties; conspiracy to injure by unlawful means; and breach of the Copyright and Rights in Databases Regulations 1997 (the "Database Regulations"). The ingredients of these causes of action were not in dispute and I am content to proceed on the basis of the Claimant's own summary of what it needs to establish.

84. Apart from certain distinct pleas in relation to breach of director's duties, the common pleaded feature in respect of each of these claims as set out in the draft Amended Particulars of Claim is misuse of confidential information, breach of confidence or some form of unauthorised use of confidential information. I will call this "breach of confidence" generally.

Breach of confidence

85. Counsel for the Claimant, in his clear and powerful submissions, emphasised that it was of crucial importance to appreciate that the Claimant alleges that there were *two* sets of data which were subject to a breach of confidence:

    (a) The membership email database contained within a password protected Mailchimp account i.e. its mailing list management software ("the Mailchimp data"); and

    (b) Data gathered from private individual email inboxes in Office365 within the "@ukip.org" domain ("the Inbox data").

86. I agree with Counsel for the Claimant that both the Mailchimp data and the Inbox data had the necessary quality of confidence in accordance with the *Coco v Clark* principles. They contain both email addresses and names as well as the data in email accounts (likely to include personal data). I have also accepted for the purposes of this application that the Claimant has locus to seek relief in respect of such confidential material.

87. I turn first to consider whether there is a realistic prospect of success in relation to the claims of alleged wrongdoing in respect of each such confidential data set. I start by observing that it was not disputed by the parties, when I raised the issue, that each data

set was part of "the Party database" within the Rules to which I drew their attention during the course of the hearing (see para. [40(j)] above).

88. Those Rules are strict in terms of protecting the database and in terms of specifying permissible uses of the database. I have also reminded myself of the terms of the Constitution and the Rules as to the specified powers and duties of the Party Leader and the Chairman, respectively including Article 8.2 of the Constitution.

89. On the facts agreed before me, the Defendants accept that Mr. Braine by the Direction Email instructed Mr. Dent, a member of UKIP who was an IT professional, to visit UKIP's headquarters on the 16 October 2019 with the purpose of enabling Mr. Armstrong, as Returning Officer, to send to the members an email containing the list of the twenty-one prospective NEC candidates. Was this specific act of use of the Mailchimp data arguably unlawful?

90. In my judgment, the position is as follows:

90.1 Neither the Chairman nor the Leader have exclusive control over the party Database and the Constitution does not prohibit the Leader from having direct communications with the membership.

90.2 Indeed, it would be a surprising position if that were the case and one would expect express wording to achieve such an odd result. The most common modern way of a Leader communicating with his or her members would be via electronic mailshot. It seems to me clear that the Constitution at Article K.9 when it refers to the Leader having the role of deciding the political and policy direction of the Party and management of the Party's elected representatives must implicitly be able to access the membership by email including in respect of elections to the NEC (whether himself or by an agent).

90.3 I note that as provided for by Article 8.2 of the Constitution it is the responsibility of the Chairman to maintain an accurate Database and to ensure it is safeguarded. However, the specific provision governing authorised uses of the Database is Rule J.1.6: "Use of the Party database is authorised for contacting members for official Party purposes only".

90.4 The question then is whether the Leader, Mr. Braine, when using (or authorising use of) the Database to send an email to all members containing the list of the twenty-one prospective NEC candidates was acting within this Rule and the Constitution?

90.5 In my view, Mr. Braine's act was clearly an authorised act within the Rule. It was not done for any personal purpose but expressly for official Party purposes.

90.6 It does not make any difference that there may have been an internal dispute as to whether this was a proper list.

90.7 The relevant fact is that the mailing system was used by Mr. Braine for an official Party purpose.

91. These conclusions mean that the act of sending the list of candidates to all members was lawful. The Mailchimp data complaint cannot form the foundation of any claim.

92. However, as I have recorded above, the Claimant emphasises that it does not limit itself to this claim. It argues that I can infer that *additional* unauthorised use was made of the Party database. Counsel for the Claimant forcefully submitted to me that there is a cogent and more than merely fanciful case that the Defendants (acting through Mr. Dent) also obtained the Inbox data.

93. Reliance was placed on the following specific matters in the oral submissions:

93.1 The Defendant's actions are to be viewed through the prism of a clearly acrimonious breakdown between internally competing factions within the Party. It was said they have the quality of retribution for the removal of Mr. Armstrong as Returning Officer. They happened very shortly after Mr. Armstrong had been removed and they included an extraordinary supposed suspension, by Mr. Braine, of the Chairman and all other members of the NEC both as members thereof, and as directors of the Claimant.

93.2 Reference was made to the fact that Mr. Braine emailed Mr. Challice and Ms. Purdie (at the Claimant's HQ) confirming he was sending Mr. Dent to HQ the following day. The email asked for them to supervise Mr. Dent in the three tasks set out including, "3. Do a Microsoft Office 365 scan of the chairman's account and other UKIP.org account to gain evidence, for later use". Counsel submitted that it is notable that the Defendants succeeded in their other two stated aims, making it more likely that they succeeded in relation to all three. It was said that Mr. Braine's explanation that his instructions were "…simply to provide technical support in circumstances where the NEC Election Returning Officer appeared to be the victim of intrusion or dirty tricks" appears wholly unsupportable given the actual wording of the email itself.

93.3 It was argued that sending Mr. Dent (someone possessed of IT skills), to carry out these activities cannot be mere coincidence.

93.4 Reliance was also placed on the terms of Mr. Sharp's email to Ms. Purdie and Mr. Challice (at HQ) on 16 October 2019 in which he asked, "Can you find an 'auto forward' facility of the current NEC Members private email addresses to me without you having to see them?". That is said to be striking. Counsel argues that begs the questions – why was Mr. Sharp seeking to auto forward *private* emails; and why was he attempting to do so 'cutting out' Ms. Purdie and Mr. Challice?

94. As the central focus of its case, the Claimant also relies on the content of the "B.B. Email" as strongly supporting the conclusion that the Defendants did, in fact, obtain the relevant data.

95. It was said that the pseudonym "B.B." seems obviously to relate to the "Batten Brigade" and the Defendants were supportive of Gerrard Batten and affronted at his inability to stand as a candidate for Leader. I was referred to the following specific matters. The email stated: "*we legally got all your ukip emails for years…"* thus, seemingly

indicating knowledge of the previous day's events. It is said that its temporality to the relevant events is striking and compelling. The authors of the email describe themselves in the plural, "we". It twice references the 'legality' of the manner in which the emails were obtained. That is said to be notable and appears to almost pre-emptively seek to neutralise any suggestion of wrongdoing. It also confirms that if anyone says that the authors did not have the emails or did not get them legally, "*…they are lying, that is why we removed the Party Secretary"*. The email thus clearly evinces what Counsel said was a "hostile animus" towards the Party Secretary, at the time, Mr. Adam Richardson. Moreover, Mr. Sharp's email of 16 October 2019 asked that he be put in control of the 'legal@ukip' email account – i.e. that previously used by Mr. Richardson. It was said that is a remarkable request considering that Mr. Sharp was never elected Party Secretary and he is not a qualified lawyer. The steps required by the threat were to resign from positions within the Party (and not, for example, the payment of monies). Counsel argued that this outcome was unlikely to be desirable for anyone other than Defendants. Finally, the email refers to betrayal of the "*Party Leaders"*. Counsel submitted that those are, of course, the very people subject to this claim.

96. Taking all these matters into account it is argued that whether Mr. Dent did download the data alleged raises a serious live issue of fact, which can only be determined by hearing oral evidence. Counsel also pressed the point that the Claimant axiomatically cannot know with precise accuracy what information the Defendants obtained (acting through Mr. Dent) from the Inbox data. The Court must, however, take into account not only the evidence before it, but also the evidence that can reasonably be expected to be available at trial (see: Easyair Ltd (supra) at [15(v)], which I have cited above). Disclosure is said to be vitally important in this case because it will confirm what data Mr Dent actually took and to whom it was disseminated.

97. These submissions were forcefully and attractively made but I have no hesitation in rejecting for summary judgment purposes the Inbox data claim. The simple reason is that there is no proper evidential basis for establishing it has a realistic prospect of success even bearing in mind the low hurdle for the Claimant in this regard.

98. My reasons are as follows:

98.1 Remarkably for a case concerning data breach and the alleged mass accessing and downloading of data some 9 months ago, there is *no* evidence of any data having actually been taken by Mr. Dent on 16 October 2019. It is commonplace for expert evidence in cases of this type to show at least a trace of such conduct. Here, there is none. I am asked to infer it happened when the Claimant could have established there was evidence or some even basic digital "fingerprint" of a person who had covered their tracks.

98.2 The position is in fact even weaker. The Claimant at an earlier stage served evidence from Zain Ul-Haq, Head of Cyber at an organisation called Cyfor ("the Cyfor Report"). The Cyfor Report contained an analysis of the available data, including in particular the unified audit log. Mr Ul-Haq's conclusions included this: "I have insufficient information to determine whether data was exfiltrated during the security event". Under the heading "Next Steps", the Cyfor report said, "Further work is required using the computer utilised by the unauthorised user; forensic examination of such a machine will identify user activities, including details of browser activities

and any downloads that have occurred". I am puzzled as to why that work has not been undertaken, or if undertaken, its conclusions have not been shared with the Defendants and the Court.

98.3 Mr. Dent has served two witness statements in which he denies acquiring the information. He has also, in his second statement, provided some additional evidence that strongly supports the view that, on a true analysis, the expert report provided by Cyfor proves that no such information was obtained by him, or anybody else. He says, correctly in my view, that the Cyfor report discloses no evidence that he downloaded elements of UKIP's database or systems, or that any data was downloaded. He points out, again correctly, that the logs produced and discussed by Mr Ul-Haq contain no reference to any attempt, successful or otherwise, to download any data.

98.4 Counsel said in response to my questions about the lack of expert evidence supporting his case that the position following the Cyfor report was "neutral" as to whether there had been downloading. The correct characterisation in my judgment is that the Claimant has no evidence in this regard to show downloading, the burden being on it to show at least an arguable case. The report, following examination of all the available data, contains no indication that a download occurred or might have occurred.

98.5 Like Warby J, I take the view that Mr. Dent takes the matter further, as he goes on to assert that "if data had been downloaded it would have recorded the phrase 'download to computer' on the logs", which it does not. I note that Mr. Dent does not claim expertise, but he is a McAfee Certified Security Specialist, and his evidence is that "... it is common knowledge within the IT industry that the logs provide a definitive guide to what actions have been undertaken to a system. ... I have my own Office 365 Email Platform and out of interest downloaded files from my system on 12 November. I exhibit a screen shot from my own MS 365 'activity log' that clearly records "Download files to computer"". It is again remarkable that some 9 months on this evidence remains unchallenged.

98.6 Mr. Sharp's second statement makes the point that the Claimant had nothing concrete on which to base a contention that the Defendants were responsible for the blackmailing BB Email. I agree with him that there were multiple reasons to doubt that this was the case. The evidence appears to be that the BB Email was sent to a number of private email addresses. In other words, the blackmailer was not using the @ukip.org addresses which had allegedly been attacked.

98.7 I also consider it notable that Mr. Braine had driven through the night from Wigan to UKIP HQ in Newton Abbott on 18 October 2019, to seek help with access to the UKIP system. That act made no sense, if the Claimant's case (that he obtained access before that date in order to send the BB Email) is well-founded. There is no answer to this point.

98.8 After the BB Email and to date, there have been no more such emails, nor any other evidence that the Defendants were behind the first and only one. The blackmailer has not carried out the threats.

98.9 I am also struck by the fact that Mr. Braine's instructions to Mr. Dent in the Direction Email were given in writing, openly, and shown to UKIP HQ staff. It is inherently unlikely that a person intent on blackmail would act in such a way.

98.10 There is no obvious match between the instructions given to Mr. Dent and the information which the blackmailer threatened to disclose. The instruction was to obtain "evidence" which, against the background of the dispute then under way, appears to have been evidence of misconduct by Ms. Herriot, not the entire contents of the UKIP email server. Ms. Herriot is not one of the four individuals said to have received the BB Email.

98.11 I have not overlooked the Claimant's reliance on the terms of Mr. Sharp's email to Ms. Purdie and Mr. Challice (at HQ) on 16 October 2019 but I do not consider it to be sinister, as claimed by the Claimant. I accept that Mr. Sharp, as he submitted, merely wished to be able to contact NEC members. I also do not consider there was anything wrong with him wishing to see emails which would have gone to Mr. Richardson (former Party Secretary).

98.12 Warby J observed in the INDO Judgment that the Claimant had no solid foundation for its inferential case in relation to the Inbox data. I have considered the material before Warby J and additional material and have independently come to the same conclusion. The case has not improved despite the Claimant's obvious ability to bolster it with expert evidence in relation to the claimed data breach.

99. Accordingly, I reject the inferential case. It does not have a realistic prospect of success. I also reject the submission that the inference might be improved by something that might turn up on disclosure. The Claimant has singularly failed to establish even the bare bones of an evidential inferential case to allow this aspect of the claim to proceed. One cannot plead an unsustainable case and then pray in aid potential disclosure to save it from summary judgment and striking out. In this case, I am asked to infer that the Defendants were behind a data breach. However, the Claimant falls at the prior hurdle of establishing a more than fanciful case that there was a data breach at all.

100. For completeness, I should record that there remains a continuing dispute between the parties as to the claimed failure of the Claimant to disclose the original BB Email (including headers reporting source IP addresses and message-id). The version before me is a "cut and paste" version, not the original. I do not need to take this matter further at this stage because the confidentiality claim fails for other reasons, but given the continuing dispute which has been argued with some force by email before me, post-hearing, I will ask the parties for any further submissions, bearing in mind CPR 31.14, when I deliver this judgment. I am puzzled however by the fact that the Claimant cannot simply produce the original.

101. For these reasons, I refuse permission to amend in respect of all aspects of the claim which plead a form of breach of confidence. More formally, this means the breach of director's duty claim (as regards Amended Particulars, paras. 33.1, 33.5, 33.6 and 33.7), the entire breach of confidence claim (Amended Particulars para.40-45), the conspiracy claim (paras. 46 and 47 as regards breach of confidence) fall away.

Database Regulations

102. The plea in respect of this claim is that Mr Braine and/or Mr Sharp, by virtue of the matters pleaded in relation to the unauthorised use of the Mailchimp account to email UKIP's members, have extracted and/or re-utilised a substantial part of the database and therefore are in breach of Regulation 16(1) of the Database Regulations.

103. I refuse permission to amend as regards the Database Regulations claim (Amended Particulars, para.38). The only use of the database as regards the email of UKIP members was authorised and lawful for the reasons I have set out above. I also grant summary judgment dismissing these claims in the original Particulars of Claim.

Conspiracy to injure by unlawful means

104. As regards the balance of the claim that Mr. Sharp and Mr. Braine were party to a conspiracy to injure the Claimant by unlawful means, two unlawful "means" are pleaded: breaches of Mr. Braine's duties as a director and breaches of confidence. There is no arguable case as to the latter, for reasons already given.

105. As to the remaining "means" (breach of director's duties), and applying the principles to which Counsel for the Claimant made reference, I consider there to be no arguable claim as to intention or combination. I refer to the summary in Stobart Group Limited v William Andrew Tinkler [2019] EWHC 259 (Comm at [544]). The evidence does not establish even an arguable case of any intention on the part of the Defendants to injure the Claimant (even if there were some arguable breach of statutory duty on the part of Mr. Braine - a matter to which I turn below). They were merely acting to pursue their own views (politically right or wrong) as to the direction in which the Party should go and their wish to ensure that the electoral process ran in accordance with their understanding of the Party rules. To suggest that in taking these steps they had any form of intention to injure the Claimant (the Party's operating company) is fanciful.

106. Further, there is no arguable case that there was a "combination" between them on the basis outlined in *Clerk & Lindsell on Torts* at [24-97]. Having considered the pleaded acts said to have been undertaken by Mr. Sharp I do not consider it arguable that he conspired or combined with Mr. Braine in breaches of what were Mr. Braine's duties as a director. Permission to amend is refused and the like claims in the original Particulars of Claim are struck out.

Breach of director's duties

107. As regards the claim of breach of statutory duty against Mr. Braine in paragraphs 32-33 of the draft Amended Particulars of Claim it is pleaded in a very general way in the following terms:

> "32. By virtue of his status as a director of the Claimant at all material times, Mr Braine owed the Claimant statutory duties

pursuant to Chapter 2 of Part 10 Companies Act 2006. Those duties include the following:

S.171 - Duty to Act within powers

S.172 - Duty to promote the success of the company;

S.173 - Duty to exercise independent judgment; and

S.174 - Duty to exercise reasonable care, skill and diligence.

Particulars of breaches of duty

33. The First Defendant acted in breach of Ss. 171, 172 and 173 by:

33.1 Procuring Mr Dent to gain access to the Claimant's Mailchimp account and/or make use of the Mailchimp account without the authority of Ms Herriot to email all of UKIP's members.

33.2 Prevailing on UKIP's staff (specifically Mr Challice and Ms Purdie) to assist in the improper and unconstitutional matters pleaded above.

33.3 Further or alternatively arranging for and/or approving an unvetted slate of candidates being emailed to UKIP's membership and/or coordinating with the returning officer Mr Armstrong to procure that candidates be put forward to election notwithstanding that they had not been properly vetted.

33.4 Further or alternatively purporting to suspend the Chairman and/or the NEC and the Claimant's Board of Directors in spite of having no constitutional authority to do so and/or blocking Ms Herriot from access to her email account.

33.5 Further or alternatively purporting to grant authorisation to send an email to the membership containing non-vetted candidates for election.

33.6 Further or alternatively procuring the acquisition of data from various email addresses within the @ukip.org domain (as he described it as pleaded above for the purpose of gathering "evidence").

33.7 Further or alternatively insofar as Mr Braine sent the BB Email, or procured authorised or otherwise approved or facilitated in any way the BB Email, those actions were a breach of the duties particularised above"

108. Paras. 33.1, 33.6 and 33.7 fall away for reasons I have set out above. As to paras. 33.2, 33.3. 33.4 and 33.5, these are in broad terms complaints that certain conduct amounted

(ignoring the breaches of confidentiality claims) to breaches of the statutory duties under the 2006 Act, and there has been loss and damage caused to the Claimant.

109. On the basis of the material before me, I can summarily reject the complaints that as a matter of company law Mr. Braine's alleged acts were failures to promote the success of the company (s.172), to exercise independent judgment (s.173) and to exercise reasonable care, skill and judgment (s.174).

110. Each of these claims is fanciful for the following reasons:

i) I see no basis for any conclusion other than that Mr. Braine acted to further the interests of the Party in the political direction which he, as Leader, was entitled to take. There is no room in my judgment for a court to seek to question these judgments by ignoring the fact that these were political assessments. Mr. Braine was only a director of the Claimant by reason of being the Leader and the Claimant exists to serve the Party as a political entity.

ii) In my judgment, it would be wrong in principle for a court to ignore the fact Mr. Braine's duties in company law arise in the context of his role as the Party Leader whose role is governed by the Constitution and the Rules. By Article 7.1 of the Constitution and Rule K, the overall political direction for the Party was for Mr. Braine as an elected leader.

iii) The court cannot properly second-guess his assessments in this regard, which is exactly what the Claimant invites the court to do under the guise of a 2006 Act claim of allegations for example of negligence under s.174.

iv) Equally, I fail to see how it is arguable that the decisions he made *qua* leader put Mr Braine in breach of his duties to the Claimant to act independently and in its best interests. One might not agree, for political reasons, with those decisions but they do not amount to private law breaches of those duties in the generalised way that is pleaded.

111. That leaves the one remaining complaint under section 171 of the 2006 Act, the claim that Mr. Braine failed in his duty to act within powers. Although not clearly pleaded (not by present Counsel for the Claimant), I assume that this allegation is based on the suspension of Ms. Herriot and other members of the NEC by Mr. Braine on 15 October 2019 which the Claimant argues was unlawful within the Constitution. I consider that the issue of whether there was power in Mr. Braine to do this is a matter which is fit to go to trial. It is not clear to me that Mr. Braine had the power to do this as I indicated above.

112. Accordingly, unlike the other matters which I have determined, I do not consider on the basis of the evidence and arguments made to me that I can determine that this specific and single claim (s.171 of the 2006 Act) has no reasonable prospect of success as to liability.

113. I am concerned however as to whether any loss can be attributed to that single claimed breach. The material part of the claim for losses is as follows:

> "34. By virtue of the matters pleaded above, or alternatively one or more of them, Mr Braine caused or alternatively contributed to a concern among UKIP's membership that their data were insecure and/or that UKIP was being run on unconstitutional lines so as to allow it to become paralysed by factional infighting. Accordingly, there was a substantial diminution of UKIP membership in October 2019 and thereafter, depriving the Claimant of significant funds. Accordingly the Claimant seeks damages to compensate it for that loss."

114. The claim as to data security is not material (because I have rejected the confidence claims and related breach of director's duty claims as well as all other breach of duty claims save for s.171). What remains is the assertion that by reason of so-called factional infighting there was a substantial diminution in members and therefore funds. Given the limited time span concerning the events in issue in this case (a matter of days in October 2019) and the major event being purported suspensions of a number of persons, there are good grounds to argue this to be a purely speculative quantum claim unfit to go to trial. However, I cannot make a final conclusion on this.

115. If the Claimant wishes to pursue this single claim, it seems to me that it should proceed in the County Court and I will make an order for transfer in that regard, and to require the claim to be properly particularised as to quantum. Mr. Braine will retain the ability, following particularisation, to apply to strike out this claim on application to the District Judge.

Mr. Braine's late application

116. Counsel for the Claimant rightly identified at the hearing that the summary judgment/striking out application of 12 January 2020 (purportedly made by both Mr Sharp and Mr Braine) was in fact only made by Mr Sharp who did not have the ability to act for Mr Braine and issue applications for him. Mr Sharp had been informed earlier in these proceedings by Nicklin J that he could not represent Mr Braine in this way and Mr. Braine did not sign the application issued by Mr. Sharp.

117. In response, following conclusion of oral argument, Mr Braine issued his own application (on an identical basis to that made by Mr. Sharp). In due course, the Claimant's Counsel, with his characteristic fairness, and in recognition of the Claimant's duty under CPR r. 1.3 to assist the Court in furthering the Overriding Objective, did not in written submissions maintain any substantive objection before me dealing with the new application. This was appropriate and sensible given that the arguments and evidence in relation to that new application are all the same as Mr Sharp's application.

VI. Conclusion

118. Save in one minor respect concerning the claim against Mr. Braine in relation to claimed breach of his duties under s.171 of the Companies Act 2006, I refuse the Claimant's application for permission to amend the Particulars of Claim. That remaining and vestigial claim will be transferred to the County Court, if the Claimant wishes to pursue it and shall be the subject of particularisation as to quantum. I will however stay these proceedings for 1 month for mediation before any transfer takes effect.

119. All other claims against Mr. Braine are dismissed and also struck out.

120. All claims against Mr. Sharp are dismissed and also struck out.

121. Out of fairness to Mr Braine and Mr Sharp (as well as the original additional Defendants, Mr Dent and Mr Armstrong), it is important that I record that I consider the claims and allegations that they were involved in some form of mass data breach of UKIP records, based on conspiracy to breach confidentiality and to blackmail officers of UKIP, are fanciful and without any proper and sound evidential foundation.

122. I conclude by observing that one would hope a compromise can be achieved in respect of what is clearly litigation based on a historical factional political dispute, with little continuing relevance.