

**BETWEEN:**

**THE LAWRENCE SHERIFF SCHOOL TRUST**

**Claimant**

**- and -**

**MR AMIT MATALIA**

**Defendant**

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DEFENCE

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**Introduction and overview**

1 The Particulars of Claim unnecessarily plead matters of law. Furthermore, the factual allegations in the Particulars of Claim are in almost all respects insufficiently particularised. That which is said below is without prejudice to those contentions. The assertions of law in the Particulars of Claim are responded to below so that the Defendant’s position is known for the avoidance of doubt. The factual assertions in the Particulars of Claim are responded to as well as is possible given the generalised nature of those assertions.

**The law**

2 If and to the extent that paragraphs 2-4 (i.e. paragraphs 2-4 of the Particulars of Claim; a reference without more below to a paragraph is to a paragraph of the Particulars of Claim) contain accurate quotations of the current versions of sections 1 and 3 of the Protection from Harassment Act 1997 (“PHA 1997”), they are admitted. Reliance at trial will be placed on the current versions of those sections.

3 Paragraph 5 is inaccurate if and in so far as it asserts that a corporate employer can bring a claim under section 1(1) of the PHA 1997 on behalf of its employees. A claim can be made by a corporate employer under the PHA 1997 only under section 1(1A)(c), i.e. only

for conduct which is aimed at employees of the employer “by which [the defendant] intends to persuade any person (whether or not one of those mentioned [in section 1(1A)(a) or (b)]— (i) not to do something that he is entitled or required to do, or (ii) to do something that he is not under any obligation to do.”

- 4 The content of paragraph 6 is noted. *Plavelil v Department of Public Prosecutions* concerned a very different set of circumstances from those of this case and is no more than an example of the application of principles in *R v Haque* [2012] 1 Cr App R 5 2011 EWCA Crim 1871, *Willoughby v Hayes* [2013] UKSC, and *Majrowski v Guy’s and St Thomas’ NHS Trust* [2007] 1 AC 224. The most illuminating recent authority is the judgment of Elizabeth Laing J in *Merlin Entertainments plc v Cave* [2014] EWHC 3036 (QB), [2015] EMLR 3.
- 5 The content of paragraph 7 is noted. The case of *University of Southampton v Mohtasham* [2012] EWHC 1630 (QB) contains no development of principle and is simply a case on its own facts. It contains nothing which is of relevance here.

### **The factual background**

- 6 Paragraph 8 is admitted, except to the extent that it asserts that the Claimant is entitled to bring this claim “on behalf of its governors and the staff of the school”. Only if and to the extent that the claim is properly made under section 1(1A)(c) of the PHA 1997 can this claim be advanced. For the avoidance of doubt, before 1 September 2014, the School was a voluntary aided school within the meaning of section 20 of the School Standards and Framework Act 1998 (“SSFA 1998”).
- 7 The first sentence of paragraph 9 is admitted. The second sentence is denied in so far as it asserts that the Claimant voluntarily offered the Defendant a place at Lawrence Sheriff School (“the School”) for his younger son. That place was required by section 94(6) of the SSFA 1998 to be made available because of the successful appeal of the Defendant against the refusal by the predecessor to the Claimant, the governing body of the School,

to admit the Defendant's younger son to the School. The Claimant has in fact since the appeal was determined withdrawn the place which it was obliged to make available at the School.

8 It is admitted that there was in June 2012 an incident on a school residential trip concerning the Defendant's elder son, and that as a result of that incident officers of the Claimant and members of the local police force were consulted. Except to that extent, the first sentence of paragraph 10 is not admitted. The second sentence of paragraph 10 is admitted. The final sentence of paragraph 10 is noted but does not require a response from the Defendant.

9 The first sentence of paragraph 11 is admitted. The first half of the second sentence of that paragraph is admitted. The second half of that sentence is denied. While it is admitted that the Claimant's predecessor, namely the governing body of the School when it was a maintained school, purported to conclude that the Defendant's application for a place for the Defendant's younger son "contained fraudulent/misleading information", it is the Defendant's case that that application was in no way fraudulent and contained no misleading information. The third sentence of paragraph 11 is not admitted. (For the avoidance of doubt, while it is admitted that the offer of a place for the Defendant's younger son at the School was withdrawn, it is not admitted that the reason for that withdrawal was because the Defendant's application contained fraudulent/misleading information.) The substance of the fourth sentence of paragraph 11 is responded to above. The first part of the final sentence of paragraph 11 is admitted. The words in the second half of that sentence "and as a result, this event exacerbated the Defendant's conduct" are so imprecise as to be meaningless in the context. Without prejudice to that contention, the second half of the final sentence of paragraph 11 is denied. If and in so far as the words of that sentence are subsequently amended to claim something material, the Defendant will respond to them by way of an amendment to this Defence.

10 Paragraph 12 is noted. The test for determining whether or not there has been conduct within the meaning of section 1(1) of the PHA 1997 is objective, and the subjective belief

of the Claimant is irrelevant here.

11 Paragraph 13 is a misstatement of the true position. The reality is that the head teacher of the School, Dr Peter Kent, himself approached the West Midlands Police and on 9 August 2013 made a complaint of harassment against the Defendant. That complaint was about all of the matters about which complaint appears to be made in this claim up to the date of the complaint made by Dr Kent to the West Midlands Police (i.e. 9 August 2013). After a careful investigation, the police did not charge the Defendant with harassment, contrary to the PHA 1997. Their decision not to charge the Defendant was made in November 2013.

12 Paragraph 14 contains a series of generalised allegations to which it is impossible to respond meaningfully except in a general way. Paragraph 14 is accordingly an abuse of process and should be struck out. Without prejudice to that contention, and without prejudice to anything which is said above or below in this Defence, the Defendant's response to the subparagraphs of paragraph 14 is as follows:

12.1 The Defendant made allegations against individual members of staff and governors which were genuinely and reasonably believed by him to be true, i.e. he had objectively good reasons to believe that they were true. This is not the forum for a determination of whether or not the allegations were true. If those allegations are to be the subject of a determination by this Court, then they should be the subject of a claim of defamation by the individuals concerned. Paragraph 14(a) is accordingly not well-founded.

12.2 Maintained schools within the meaning of section 20 of the SSFA 1998 (for that is what the School was at all material times until 1 September 2014) and Academy schools are publicly funded. The staff and governing bodies of such schools can expect to be the subject of public criticism. If only for this reason (i.e. without prejudice to that which is said above and below in this Defence), paragraph 14(b) is not well-founded. In fact, the Defendant has never "publicly

demanded that individual members of staff and the governing body resign or are sacked”. The Defendant has on occasion publicly expressed the view that they should resign or be sacked, but he has done so in a measured way which fell well outside the scope of the PHA 1997.

- 12.3 It is denied that the Defendant acted aggressively at meetings with the Claimant’s staff. It is admitted that the Defendant recorded one meeting, i.e. his meeting with Mr M Hickling, an Assistant Headteacher at the School, on 2 October 2012. That recording was made inadvertently, when a pen which had a mini digital video recorder in it which the Defendant had with him automatically started recording (which it did if the ambient volume increased). The recording could not be retrieved from the pen, so it was never used. Paragraph 14(c) is accordingly not well-founded.
- 12.4 The fact (if it be such; no report of the School’s investigations has been given to the Defendant) that the School “found [the Defendant’s accusations against individual staff members of aggressive behaviour] to be unsubstantiated” is irrelevant to the truth or otherwise of the allegations. If and in so far as paragraph 14(d) is concerned with the behaviour of Mr Hickling on 2 October 2012, then it is the Defendant’s case that Mr Hickling’s behaviour was in fact aggressive on that occasion. Paragraph 14(d) is accordingly not well-founded.
- 12.5 Paragraph 14(e) is insufficiently particularised. It is to be expected that a member of the staff or governing body of a publicly-funded school will respond to any suggestion that disciplinary action should be taken against a member of the school’s staff with an appropriate degree of caution, and will not experience a threat to take legal action or to go to the press if such action is not taken as harassment. If legal action is not well-founded, then it can with equanimity be contemplated. If the situation is not worthy of press interest, then the threat to go to the press can be ignored. In any event, a parent who is critical of a publicly-funded school has the right to freedom of expression within the meaning of

Article 10 of the European Convention on Human Rights, and the governing body and/or managers of such a school is/are required to accept that. For the avoidance of doubt, it is the Defendant's case that at no time did he unreasonably suggest that disciplinary action should be taken against any member of the School's staff. His main relevant concern was that (1) Dr Kent and the governing body of the School refused to accept that any allegation which he (the Defendant) made was well-founded and appeared to dismiss such allegations out of hand, and (2) the word of any relevant member of the School's staff was accepted uncritically by him and/or it in preference to his (the Defendant's) own. For all of these reasons, paragraph 14(e) is not well-founded.

- 12.6 Paragraphs 14(f), (g) and (l) concern matters which are properly within the province of the law of defamation. The publication of the accusations against individual members of staff and of the governing body of the School as described in paragraphs 14(f), (g) and (l) was in the circumstances outside the scope of the PHA 1997, i.e. it did not infringe that Act. Paragraphs 14(f), (g) and (l) are accordingly not well-founded.
- 12.7 Paragraph 14(h) is denied. If and to the extent that the Defendant used "personal information about individual staff members and governors" in "correspondence" with anyone, or "published it on his websites", it was not done "to intimidate them", and in any event could not reasonably have been taken by anyone to be intimidatory or otherwise as conduct constituting harassment within the meaning of section 1(1) of the PHA 1997.
- 12.8 Paragraph 14(i) is not well-founded if only because responding to the predecessor to the Claimant's consultation on its admission arrangements could not fall within the PHA 1997. In any event, that which the Defendant said in that consultation process could not reasonably be taken by anyone as harassment within the meaning of section 1(1) of the PHA 1997. Paragraph 14(i) is accordingly not well-founded.

- 12.9 Paragraph 14(j) is particularly broadly pleaded and cannot be responded to meaningfully here.
- 12.10 While it is accepted that the Defendant made contact with one (and only one) member of the governing body of the School at her home, that was not done “to pressure [her] to address issues that [had] already been dealt with”, and in any event the contact was made because it reasonably appeared to the Defendant that Dr Kent was refusing to pass on to the governing body the complaints which the Defendant had made about the acts and omissions of Dr Kent. At no time did the governor in question (Ms Jackie Harborne) state or otherwise indicate during the first time that the Defendant contacted her that the Defendant should not contact her at home again. On the second and last occasion when the Defendant contacted the governor, she asked him not to call her again, and the Defendant agreed not to do so. Paragraph 14(k) is therefore denied.
- 13 While paragraph 15 is hopelessly general in content, if and in so far as it has any factual basis, that is a matter which is within the law of defamation alone. The publication of accusations against individual members of staff and of the governing body of the School as described in paragraph 15 was in the circumstances outside the scope of the PHA 1997, i.e. it did not infringe that Act. Paragraph 15 is accordingly denied.
- 14 Paragraph 16 is also insufficiently particularised; it is accordingly an abuse of process and should be struck out. Without prejudice to this, the Defendant’s response to the allegations set out in paragraph 16 is as follows.
- 14.1 That which is said in response to paragraph 14 applies also so far as relevant to the allegations stated in the bullet points below the names of Dr Kent, Mr Hickling, Mr Thomas and Ms Harborne.
- 14.2 That which is additional in paragraph 16 is in the final bullet point in relation to

Mr Thomas. If and in so far as the Defendant wrote lengthy letters to Mr Thomas about matters which had previously been the subject of investigation by the predecessor to the Claimant, it was part of Mr Thomas' role to consider the accuracy of the letters, and if he was satisfied that the letters were not accurate, to reject what was in them. If they were well-founded then disciplinary action against members of staff was warranted. It was not open to Mr Thomas to discipline let alone dismiss members of staff, and he must have known that. No reasonable person would have taken the writing of long letters as being harassment in itself. No reasonable person would see pressure to revisit a complaint as harassment. That which is described in the final bullet point of paragraph 16 is far from harassment within the meaning of section 1(1) of the PHA 1997.

14.3 Paragraph 16 is accordingly denied.

#### **The Defendant's response to the Claimant's claims**

15 Without prejudice to that which is said above, the only parts of this claim which could succeed are those which could, if well-founded on the facts, fall within section 1(1A)(c) of the PHA 1997. The Claimant has failed to particularise the claim under section 1(1A)(c) except to the extent that (interpreting the Particulars of Claim in a manner which is generous to the Claimant) the Claimant claims that the Defendant:

15.1 harassed Dr Kent by conduct by which he intended to persuade him to discipline and/or dismiss Mr Hickling, when Dr Kent was not obliged to do that;

15.2 harassed Dr Kent by conduct by which he intended to persuade him to discipline one or more unnamed pupils at the School when Dr Kent was not obliged to do that;

15.3 harassed Mr Thomas by conduct by which he intended to persuade him to dismiss



Dr Kent when he was not obliged to do that;

15.4 harassed Mr Thomas by conduct by which he intended to persuade him to resign from his position as chair of the School's governing body when he was not obliged to do that;

15.5 harassed Mr Thomas by conduct by which he intended to persuade him to discipline or dismiss one or more unnamed members of staff when he was not obliged to do that;

15.6 harassed Ms Harborne by conduct by which he intended to persuade her to raise issues regarding the Defendant's son with the governors when she was not obliged to do that; and

15.7 harassed Ms Harborne by conduct by which he intended to persuade her to raise with the School's governing body an admissions issue when she was not obliged to do that.

16 It is the Defendant's case that none of his acts at any times fell within section 1(1) of the PHA 1997, so that all of the allegations identified in paragraph 15 above are denied. The Defendant has expressed himself in a forthright manner on a number of occasions, but on no such occasion did that conduct constitute criminal conduct falling within section 1(1) of the PHA 1997. Without prejudice to the generality of the two preceding sentences, at no time was the Defendant's conduct such as to cause in the mind of a reasonable recipient of it a belief that the Defendant was actually seeking to achieve the outcome which is identified in each numbered subparagraph of paragraph 15 above. Rather, that which the Defendant was doing was expressing himself in a forceful manner which was designed to focus the mind of the recipient of the expression on the appropriateness of the conduct about which the Defendant was complaining.


17 Paragraphs 17 and 18 are therefore denied.

- 18 Paragraph 19 is not admitted. It is admitted that the Claimant wrote to the Defendant in April 2014. The Defendant will refer to the letter in which the Claimant wrote to the Defendant at trial for its full terms and effect. The unparticularised final sentence of paragraph 19 is so general as to be meaningless for present purposes, and is in any event denied.
- 19 Paragraph 20 contains a factual allegation which (a) is denied and (b) even if it were true would have been about a matter which is irrelevant to this claim.
- 20 It is denied that the Claimant's governors and staff have suffered loss, damage, distress and anxiety of a sort which attracts the protection of the PHA 1997. Paragraphs 21 and 22 are accordingly denied.
- 21 The Claimant has not harassed the Claimant's governors and staff within the meaning of the PHA 1997 and has no intention of starting to do so. An injunction here is accordingly inappropriate, and paragraph 23 is not well-founded.
- 22 It is the Defendant's case that the claims made in this case are inappropriately made. All of the Claimant's claims are denied.

OLIVER HYAMS

**Statement of Truth**

I believe that the facts stated above in this Defence are true.

Signed:   
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 AMIT MATALIA

Date: 10th February 2015  
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