Neutral Citation Number: [2022] EWHC 2066 (QB)

Case No: QB-2021-004309

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/08/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

MR AWADHESH TEWARI	**Claimant**
- and -	
MR VIJAY KHETARPAL & 23 Others	**Defendants**

- -
- -

Ms Caroline Addy (instructed by **Shah Law Chambers**) for the **Claimant**
Ms Sarah Palin (instructed by **Taylor Rose MW**) for the **1st, 4th, 10th-13th and 15th-24th Defendants**
The remaining **Defendants** did not appear and were not represented

Hearing date: 30th June 2022

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives.
The date and time for hand-down is deemed to be 12pm on 1 August 2022

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THE HONOURABLE MRS JUSTICE COLLINS RICE

Mrs Justice Collins Rice:

Introduction

1. The Claimant, Mr Tewari, was employed by an unincorporated charitable organisation (Vishwa Hindu Parishad: VHP) as a Hindu priest at a temple in Ilford. He was dismissed from his post in November 2020 and is claiming against VHP's board of trustees in the Employment Tribunal.

2. He brings a further claim in the High Court, for defamation, breach of confidence, misuse of private information and data protection, because of a statement published on 21st November 2020 to subscribers to the temple's e-newsletter, purporting to explain why he was dismissed.

3. The defamation etc claim is against 24 individual named Defendants connected with VHP. The 1st, 4th, 10th-13th and 15th-24th Defendants are represented in these proceedings by solicitors Taylor Rose MW and known as the Taylor Rose Defendants or TRDs. The TRDs are the trustees of VHP UK, together with some members of the executive committee of the Ilford branch of VHP. The remaining Defendants are not legally represented.

4. The defamation claim was issued on 22nd November 2021. Although the point had been disputed, Ms Addy of Counsel – very recently instructed by Mr Tewari – entirely properly accepted before me that this was one day outside the limitation period for bringing defamation actions. She was right to do so.

5. I had before me two applications. Mr Tewari asked me to exercise my discretion to disapply the limitation period. The TRDs asked for summary judgment in their favour on grounds of limitation, or, alternatively, to strike out the claim as disclosing no reasonable grounds for bringing it and/or as being an abuse of the court's process.

Legal Framework

(i) Limitation

6. The Limitation Act 1980 makes special provision for defamation actions. By section 4A, they must be brought within one year, a shorter period of time than for the generality of torts.

7. By section 32A, however:

> (1)If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—
>
> (a)the operation of section 4A of this Act prejudices the plaintiff or any person whom he represents, and
>
> (b)any decision of the court under this subsection would prejudice the defendant or any person whom he represents,
>
> the court may direct that that section shall not apply to the action or shall not apply to any specified cause of action to which the action relates.
>
> (2)In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

> (a)the length of, and the reasons for, the delay on the part of the plaintiff;
>
> (b)where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period mentioned in section 4A—
>
> > (i)the date on which any such facts did become known to him, and
> >
> > (ii)the extent to which he acted promptly and reasonably once he knew whether or not the facts in question might be capable of giving rise to an action; and
>
> (c)the extent to which, having regard to the delay, relevant evidence is likely—
>
> > (i)to be unavailable, or
> >
> > (ii)to be less cogent than if the action had been brought within the period mentioned in section 4A.

8. This provision therefore gives the Court a structured discretion to disapply the one-year statute-bar where it would be equitable to do so. Further guidance on the correct approach to the exercise of that discretion has been provided by the Court of Appeal in *Bewry v Reed Elsevier UK Ltd* [2015] 1WLR 2565 at [5]-[8] as follows:

> 5. The discretion to disapply is a wide one, and is largely unfettered: see *Steedman v BBC* [2001] EWCA Civ 1534; [2002] EMLR 17 at 15. However it is clear that special considerations apply to libel actions which are relevant to the exercise of this discretion. In particular, the purpose of a libel action is vindication of a claimant's reputation. A claimant who wishes to achieve this end by swift remedial action will want his action to be heard as soon as possible. Such claims ought therefore to be pursued with vigour, especially in view of the ephemeral nature of most media publications. These considerations have led to the uniquely short limitation period of one year which applies to such claims and explain why the disapplication of the limitation period in libel actions is often described as exceptional.
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> 6. *Steedman* was the first case in which the Court of Appeal had to consider the manner in which a judge exercised his discretion pursuant to section 32A of the Limitation Act 1980. Brooke LJ said at para 41 that:
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> > "it would be quite wrong to read into section 32A words that are not there. However, the very strong policy considerations

> underlying modern defamation practice, which are now powerfully underlined by the terms of the new Pre-action Protocol for Defamation, tend to influence an interpretation of section 32A which entitles the court to take into account all the considerations set out in this judgment when it has regard to all the circumstances of the case…"
>
> 7. The Pre-action Protocol for Defamation says now, as it said then, at para 1.4, that "there are important features which distinguish defamation claims from other areas of civil litigation. … In particular, time is always 'of the essence' in defamation claims; the limitation period is (uniquely) only one year and almost invariably a claimant will be seeking an immediate correction and/or apology as part of the process of restoring his/her reputation." …
>
> 8. The onus is on the claimant to make out a case for disapplication: per Hale LJ in *Steedman* at para 33. Unexplained or inadequately explained delay deprives the court of the material it needs to determine the reasons for the delay and to arrive at a conclusion that is fair to both sides in the litigation. A claimant who does not "get on with it" and provides vague and unsatisfactory evidence to explain his or her delay, or "place[s] as little information before the court when inviting a section 32A discretion to be exercised in their favour … should not be surprised if the court is unwilling to find that it is equitable to grant them their request." per Brooke LJ in *Steedman* at para 45.

(ii) Terminating Rulings

9. By Civil Procedure Rule 3.4(2):

> The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.

10. A court will strike out a claim under the first subparagraph if it is 'certain' that it is bound to fail, for example because pleadings set out no coherent statement of facts, or where the facts set out could not, even if true, amount in law to a cause of action. That calls for an analysis of the pleadings without reference to evidence; the primary facts

alleged are assumed to be true. It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and if so whether an opportunity should be given to do so (*HRH The Duchess of Sussex v Associated Newspapers Ltd [2021] 4 WLR 35 at [11]*; *Collins Stewart v Financial Times [2005] EMLR 5 at [24]*; *Richards v Hughes [2004] PKLR 35*).

11. Pleadings may be struck out under the second subparagraph as an abuse of process if their effect is reduplicative of other litigation, or where '*no real or substantial wrong has been committed and litigating the claim will yield no tangible or legitimate benefit to the claimant proportionate to the likely costs and use of court procedure* (see Nicklin J in *Tinkler v Ferguson* [2020] 4 WLR 89; *Dow Jones v Jameel* [2005] QB 946, discussed further below).

12. By Civil Procedure Rule 24.2:

> The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

13. The proper approach of a court on an application for summary judgment was summarised in *Easyair v Opal [2009] EWHC 339 (Ch)* at [15] as follows:

> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial';
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;

> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

14. In considering the test of 'real prospect of success' more generally, the criterion is not one of probability, it is absence of reality. The test will be passed if, for example, the factual basis for a claim is entirely without substance, or if it is clear that the statement of facts is contradicted by all the material on which it is based. On the other hand, if reasonable grounds exist for believing a fuller investigation into the facts would add to or alter the evidence available to a trial judge, or if a factual dispute is unlikely to be able to be resolved without reference to further (and especially oral) evidence, then a case should be permitted to proceed to trial (*Three Rivers DC v Bank of England [2003] AC 1*; *Doncaster Pharmaceuticals v Bolton [2007] FSR 63* at [18]).

Factual Background & Litigation History

15. Mr Tewari was dismissed on 17th November 2020 by a letter from the First Defendant citing gross misconduct on a number of grounds. These grounds were repeated in the e-newsletter of 21st November 2020 complained of in these proceedings. A copy of the newsletter is annexed to this judgment.

16. The misconduct set out was: (a) causing reputational damage to his employer by falsely claiming he had not been paid for months and had been asked to lie to get an NHS covid

test he was not eligible for; (b) disregarding instructions to keep the temple COVID secure, specifically prohibiting singing and bell-ringing, and being argumentative when challenged about this; (c) going absent on short notice during agreed duty times, in order to perform private work elsewhere; (d) removing temple keys and opening the temple without permission; (e) being disrespectful to the chair of the local branch of the charity.

17. On 14th December 2020, Mr Tewari raised a disciplinary appeal, seeking re-instatement. His solicitors wrote on 6th January 2021 explaining the basis for his appeal; the letter made a passing reference to Mr Tewari thinking about a 'separate claim of defamation and loss of reputation' against VHP in respect of the e-newsletter.

18. The appeal came before an independent HR consultant, Mr Christopher Edgley, on 29th January 2021. It was a full rehearing of the decision to dismiss. Mr Edgley reported on 12th February 2021. He made the following findings of fact: (a) Mr Tewari had disregarded management instructions to keep the temple covid secure by failing to tell the congregation not to sing or ring bells, and when challenged was argumentative; (b) he breached covid guidelines by failing to self-isolate for 14 days, disregarded instructions, and attended the temple when requested not to; (c) the allegation of misconduct by opening the temple without permission should be upheld. Mr Edgley noted a lack of facts or evidence either way in relation to some of the other allegations.

19. Mr Edgley was critical of Mr Tewari's conduct of his case at the appeal, noting his failure to address the principal allegations adequately or provide documentation promised, and his preoccupation with his 'negative perception' of the Ilford temple management committee. He also noted that '*many of [Mr Tewari's] concerns first arose in November 2018, were not pursued or addressed at the time they arose and only appear to have resurfaced in response to the recent actions of the management committee*'.

20. Mr Edgley was also critical of VHP UK. He remarked on a '*notable lack of rigour'* in the charity's presentation of its case at the appeal hearing. He noted it had no documented disciplinary policy or process, and while many of the allegations of insubordination were serious, they did not amount to gross misconduct. He noted that no informal warnings or disciplinary letter had been given. He concluded summary dismissal was not within the range of decisions properly available to a reasonable employer on the evidence available. He recommended the decision should not be upheld, and that Mr Tewari be issued a final warning letter instead, valid for one year, and be reinstated on a basis that was clearer about his role and responsibilities as essentially a 'casual' worker.

21. On 10th March 2021, Mr Tewari issued a claim against the trustees of VHP UK in the Employment Tribunal for unfair dismissal, wrongful dismissal, breach of contract, breach of statutory duty and unlawful deduction from wages.

22. On the day after he issued his ET claim, 11th March 2021, the First Defendant wrote to Mr Tewari telling him VHP's response to the outcome of his disciplinary appeal. This confirmed the dismissal letter of 17th November was revoked. He was being given a final written warning, detailing his misconduct as found by Mr Edgley. VHP would '*re-engage you as a casual (zero hours contract) worker, only to be invited under explicit instructions of the VHP Ilford Mandir Chairman, to offer your priestly services,*

as and when required. As of now, the Mandir is closed under the Covid-19 restrictions, your services are presently not required.' But Mr Tewari rejected the offer of reinstatement. He said it was on less advantageous terms than he had had before.

23. The Respondents to the ET claim filed their Grounds of Resistance on 7th April 2021. These plead, among other things, that Mr Tewari cannot claim for dismissal when his appeal to Mr Edgley had been upheld, and the Respondents had accepted that and reinstated him. They say they followed a fair appeal procedure and acted reasonably on the facts at all times. They say Mr Tewari was always employed as a casual worker and his offered reinstatement terms are simply a crystallisation and clarification of that pre-existing basis.

24. His ET case continues.

25. Although trailed as early as January 2021, a pre-action letter was not sent in relation to defamation proceedings until 9th September 2021. What Mr Tewari says about the intervening period in his first witness statement is that he was in financial difficulties and could afford to pursue only one line of litigation. He prioritised his employment proceedings '*with hopes that the dispute may well be resolved within the employment proceedings and that I may not need to issue defamation proceedings. … At all times, my hopes were that if the Defendants were to reinstate me on the same terms as I was previously working (or even if they were marginally worse), then I would forego my claim for defamation…*'.

26. The claim was issued on 22nd November 2021. It appears to have been served informally on 23rd December 2021 (by email – not agreed) on Taylor Rose MW, but not on the unrepresented Defendants. The TRDs applied for directions, including a determination of defamation preliminary issues. By Order of Nicklin J dated 16th February 2022, a directions hearing was listed. Nicklin J also directed the proper electronic filing of Mr Tewari's claim by 4.30 on 23rd February, timetabled responses from Mr Tewari and the unrepresented Defendants to the TRDs' application, and detailed preparations for the hearing.

27. Mr Tewari was reminded on 25th February 2022 that the deadline for the electronic filing of his particulars of claim had passed but he had not complied. He was told that if this was not remedied by 28th February an 'unless' order was in contemplation. He thereupon complied. Nicklin J had directed the filing of a skeleton for the hearing, listed for 22nd March 2022. Mr Tewari did not comply with that.

28. On the morning of the hearing, Mr Tewari's solicitors emailed the court at 10.09am to say that neither Mr Tewari nor any legal representative would be attending. No explanation appeared. The unrepresented Defendants did not attend. Nicklin J made extensive directions in the absence of the other parties, including (a) requiring the filing of certificates of service confirming service on each unrepresented defendant of the claim form, particulars of claim, and the order he was making; (b) as to the issue, filing and service of the TRDs' application for a terminating ruling, and Mr Tewari's application under s.32A of the Limitation Act (both duly filed on 12th April); (c) directing the hearing of those applications, before any preliminary defamation issues trial; and (d) striking out a number of paragraphs of Mr Tewari's claim on grounds of inadequate pleading of innuendo meaning and irrelevant pleading of factual matters. It appears Mr Tewari was over a week late in serving the order, as directed, on the

unrepresented defendants, having been chased. But confirmation that the unrepresented defendants were fully on notice of the claim – about which Nicklin J had been concerned – was eventually forthcoming.

29. The applications came before me for hearing on 30th June 2022. Mr Tewari and the TRDs attended by Counsel. None of the unrepresented Defendants attended. I asked the represented parties to confirm to the best of their knowledge that the unrepresented Defendants had indeed been properly served with *all* the papers relating to the hearing. I have since received witness statements from solicitors from both sides, which I accept, and which confirm and provide details of the information I was given on the day. I was satisfied on that basis that the unrepresented Defendants had been duly served, were on notice, had given no indication that they wished to participate actively by way of attendance at the hearing, and had not sought to adjourn the hearing. I noted also that the unrepresented Defendants had been directed by the order of Nicklin J of 22nd March 2022 to file and serve a skeleton before the hearing if they had wished to make submissions, but no skeleton had been filed. I was invited to, and agreed to, proceed in their absence on that basis.

Analysis

(i) General introduction

30. These applications are existential for Mr Tewari's defamation claim. They lie at extreme ends of a spectrum. Mr Tewari asks me to preserve his claim, on its merits, from the effects of limitation. The TRDs not only oppose that, they say his claim ought to be terminated *in any event*. Both are exceptional steps.

31. The TRDs' application raises a number of distinct questions. First, it requires consideration of whether Mr Tewari's claim *discloses no reasonable grounds for bringing the claim*. That is a question about whether the pleadings themselves, rather than their ultimate evidential sustainability, set out a proper case in defamation: one which is not *certain* to fail.

32. Then second, it raises potential issues about the relationship between the claim *as pleaded* and the ET claim *as pleaded*. The TRDs challenge Mr Tewari's High Court pleadings as being bad for reduplication and also for forum reasons.

33. Third, as argued before me, it raises issues about the factual matrix underlying Mr Tewari's claim. The TRDs say his claim, even if adequately pleaded, can achieve little if anything that he cannot achieve in his ET claim, and in any event is fundamentally unsustainable on the facts. These are aspects of their principal challenge – ***Jameel*** disproportionality: essentially, that if anything at all survives of Mr Tewari's claim from these lines of attack, it is too marginal to justify a High Court action being permitted to proceed. As discussed below, a ***Jameel*** challenge requires analysis of the merits of a claimant's case. As indeed does Mr Tewari's limitation application. That requires full contextualisation and consideration of all the circumstances, to assess what is *equitable*.

34. That is the analysis these applications require me to make. But before turning to the analytical task, I set out the contours of the dispute between the parties in general terms, for the context that provides for the analysis.

35. Mr Tewari is aggrieved by all the circumstances of his dismissal. He objects to having been summarily removed from office. He objects to the way the community was told about it, and what they were told. He says the reasons given were both inadequate and false, and there is an underlying vindictiveness to the whole affair. He wants his appointment back, on terms which *he* recognises as having been his old terms. And he wants an apology and compensation – sufficient vindication to restore him fully to his previous standing in the community and make up for the harm and humiliation he has been caused.

36. He says he can get some, or most, of that from the ET. But not all of it. He seeks the vindication of remedies, including non-pecuniary remedies, only the High Court can provide. The e-newsletter added insult to the injury of dismissal; it was a 'gratuitous' publication which has damaged his standing and reputation as a spiritual leader in his community in its own right. So he has a good claim in defamation, and ought not to be deprived of pursuing it, and the vindication it seeks, for the sake of a single day's filing muddle by his solicitors.

37. The TRDs say the dispute between themselves and Mr Tewari is an employment dispute from start to finish. His complaint is and always has been about his dismissal, and the reasons *he himself* was given for his dismissal. Who else might have been given those reasons, and to what possible effect, is no more than incidental detail. The vindication he seeks is retraction of the reasons and, having already been offered reinstatement, *better* terms. The only real dispute left is a narrow point on the detail of his casual hours contract. The ET will resolve that. High Court proceedings are collateral, reduplicative and pointless.

38. They say Mr Tewari acknowledges as much in his own witness statement: he would forego them as part of an agreement settling his ET claim. The High Court claim is no more than a bargaining tactic, designed to put pressure on them. Mr Tewari is concerned with his reputation only to the wholly limited extent of the claimed blight on his employment prospects, and that is due not to the publication of any newsletter but to the fact of and reasons for his dismissal in the first place.

(ii) The pleaded defamation claim – 'serious harm'

39. By section 1(1) of the Defamation Act 2013, '*a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*'. A claimant must plead, and establish, a causal link between the item he sues on and serious harm to his reputation, actual or likely.

40. 'Serious harm' in defamation actions refers to the reputational impact publications have in the minds of their readership, rather than any actions people may take as a result. That *may* be established by proving specific adverse consequences resulting from others reading the publication complained of. But it does not always have to be. It can also be established by inference – drawing on a combination of the meaning of the words, the situation of a claimant, the circumstances of publication and the inherent probabilities (*Lachaux v Independent Print Ltd* [2019] 3 WLR 253). Relevant factors may then include: scale of publication; whether at least one identifiable person who knew the claimant has become aware of the statement; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves. A claimant relying on an

inferential case of serious harm has to plead, and then establish, the harm claimed and the factual matters relied on to raise the inference of that harm.

41. Mr Tewari's pleading of serious harm is drafted to raise an inferential case of this sort. It is built from the inherent meaning of the words and their gravity, the initial volume of readership of the e-newsletter, the well-established 'grapevine' or 'percolation' tendencies of electronic publications to develop further readership (*Slipper v BBC* [1991] 1 QB 283; *Cairns v Modi* [2013] 1 WLR 1015), and some examples of individuals who had expressed concerns or taken actions by reference to the newsletter (including non-subscribers).

42. Ms Palin, for the TRDs, critiques this pleading in terms which essentially go to two (related) issues: causation and the 'situation of the claimant'.

43. The case raised by the pleadings on the gravity of the allegations is that for a number of reasons – dishonesty, insubordination, disregard for the health and safety of temple devotees, etc – Mr Tewari '*is therefore not a fit employee for the temple resulting in his dismissal*'. What is pleaded on 'situation of the claimant' is this, in its entirety ([41]):

> (ix) Since November 2020, the Claimant has appealed the employer's decision to dismiss him and subsequently issued employment proceedings for, inter alia, unfair and wrongful dismissal.
>
> (x) Despite attempts to seek alternative employment, the Claimant has not been able to find employment within the local community.
>
> (xi) The Claimant feels severe distress and embarrassment at joining other community members for religious festivals and holidays.
>
> (xii) The Defendant's published defamatory words to the local community, under the guise of the Defendants justifying the Claimant's dismissal, have damaged the Claimant's reputation by bringing into question his suitability for priestly work or any other work, where trust and confidence in the employment is very important.

44. Ms Palin suggests this pleading is defective because it conflates the 'serious harm' of dismissal itself with any effect alleged to have been caused by the newsletter. Publishing the newsletter did not *cause* people to think Mr Tewari was an unsuitable priest – it was the (recorded) fact of his dismissal that did that. Or at any rate, the pleadings do not explain what *additional* harm is said to have been caused by the statement over and above the action of dismissal, far less whether and how any additional harm can be said to be *serious.*

45. She also points out that Mr Tewari pleads serious harm entirely from the perspective of his identity as a worker. Of course, his work is of a special kind. It is vocational. It is intimately bound up with his moral standing in the community as a religious leader.

Nevertheless, it is his reputation *as a candidate for priestly or any other work* that is the only aspect of his 'situation' pleaded as having a bearing on the serious harm test.

46. So she says, in short, there is no visible pleading of the *causation* of serious harm *by the publication*; and there is no pleading of reputational harm at all other than that directly attributable to the underlying fact of dismissal. These are irremediable defects because the publication of reasons for dismissal – the entire content of the material complained of – is incapable of being causative of identifiable serious harm of the nature pleaded, over and above that caused by the dismissal and the reasons themselves.

47. I have looked carefully at the way Mr Tewari pleads this point in his particulars of claim. I see force in Ms Palin's criticisms. The inferential case on serious reputational harm, as pleaded, does not distinguish between the effects of the Defendants' decision and the effects of the publication. The harm pleaded is so inextricably bound up with Mr Tewari's complaint about the decision to dismiss him, it is hard to see what 'serious harm' is said to have been caused by the newsletter as such. Section 1(1) of the 2013 Act make that an essential part of the pleading of a defamation action. A defamation claim which does not sufficiently identify, and particularise the *causation* of, serious harm *by a publication* is deficient.

48. The question of remediability then arises. From first principles, it must be entirely possible for an account of reasons to add insult to the injury of dismissal. That is what Ms Addy suggests would be Mr Tewari's case. She says there is distinctive reputational poison in the statement over and above the effects of the underlying events. It is not a neutral, informative account of the fact of, or even the reasons for, his dismissal. It is denunciatory in tone, and self-serving and humiliating in content.

49. So I have read the statement complained of with the possibility of amended pleadings on serious harm in mind. I agree with Ms Addy to the extent that the newsletter is somewhat personalised and indignant in tone – perhaps even, using her term, 'gratuitously' so. But I hesitate over its potential to be pleaded as causative of serious harm on that account, for the following reasons.

50. The note is a little over a page long. Most of it is taken up with what could fairly be called descriptions of the incidents of which Mr Tewari was accused – rightly or wrongly – in factual and more or less neutral terms. Perhaps it goes into the small detail a little more than might be thought strictly necessary. As to the rest, there is some rhetorical flourish to the dishonesty allegation ('he lied… and he lied…'). And the adverb 'blatantly' in the account of a dispute over pay is a little gratuitous. But whether there is sufficient material here for a statable case on the causation of serious harm by publication – that is, over and above the decision to dismiss and its impact on his professional status - is not easy to be confident about. Perhaps it rubs a little salt into the wound; but not so very much.

51. The test for striking out on adequacy of pleadings alone – certainty of failure – is a high one. If there is doubt about the remediability of defective pleadings, the benefit of it should be given to a litigant. The TRDs, however, have other objections to his statement of case.

(iii) Reduplication of pleading

(a) Losses and damages

52. Ms Palin argues that even if Mr Tewari were able to set out good technical pleadings on 'serious harm' he has not – and cannot – set out any good case for significant damages in a defamation action.

53. His particulars of loss in the defamation claim set out 'mental hurt, distress and embarrassment'. But again, says Ms Palin, he faces causation problems. His loss of employment and any blight consequent on *that* are compensatable, if at all, in the ET. The defamation claim can deal only with any additional difference the newsletter could have made. But his pleadings do not identify or particularise any such losses.

54. And Mr Tewari has been offered reinstatement. The terms of that reinstatement remain in issue between the parties. But an offer of reinstatement is at least an overt acknowledgment by the Defendants that Mr Tewari is after all a fit and proper person to live and work as a religious leader in his community. The pleadings fail even to mention this limitation on any causative potential of the newsletter, never mind deal with it.

55. So the TRDs say the pleaded claim for damages should be struck out as 'embarrassing' or unsustainable in its own right. They also say it is problematically reduplicative of the ET claim. That claim includes a detailed schedule of loss. The schedule sets out a number of heads of loss, including by way of seeking compensation for '*future loss of earnings (18 May 2021 to date of trial)*'. Under that heading, the schedule particularises loss of salary on a weekly basis ('*subject to change if Claimant finds alternative employment in the meanwhile*'), and also this:

> Claimant has been looking for alternative employment but due to Defendant's unlawful and defamatory publication of Claimant's dismissal details, he has not been able to secure another employment.

56. This comes back to Ms Palin's charge that the two sets of pleadings fail to distinguish properly between employment blight caused by dismissal and reputational damage caused by publication – or rather, from the point of view of the defamation pleadings, fail to set out *any* compensatable reputational harm above and beyond the claimed employment blight, of which the ET is already fully seised.

57. Mr Tewari's defamation claim is for general rather than special damages (he estimates he is entitled to a figure between £25,000 and £40,000). The purpose of general damages in defamation is to compensate for harm to reputation and vindicate a claimant's good name. Compensatory damages in defamation cases are calculated in a broad and holistic way. They take account of the gravity of the defamation, the extent of its publication (including purposed or predictable re-publication), and evidence of the harm it has done (see the statement of general principles in ***Barron v Vines*** [2016] EWHC 1226 (QB) at paragraphs 20 and 21, and the summary in ***Sloutsker v Romanova*** [2015] EWHC 2053 (QB) at paragraphs 74 to 82).

58. General damages claims in defamation do not need to be pleaded with great specificity. But I agree that the pleading of compensatable loss across the two sets of pleadings looks at best untidy and at worst reduplicative. I consider in more detail below the question that raises about the substance of the financial remedies capable of being sought in the defamation proceedings over and above what it sought in the ET litigation – and, therefore, whether the defamation pleadings on this issue might be capable of being tidied up. This point does not, however, raise a case for the striking out of the whole defamation claim, which seeks other remedies also – injunctive relief and remedies specific to defamation actions, including the publication of an apology and 'any judgment in the claimant's favour'.

(b) The non-defamation claims

59. Apart from the claim in defamation itself, Mr Tewari's High Court claim raises actions in breach of confidence, misuse of private information, and breach of duty under the Data Protection Act 2018. All of these are also based on the publication of the newsletter.

60. Breach of confidence is pleaded with express reference to the duty of confidence between employer and employee:

> The Defendants have breached Claimant's confidentiality by revealing and disclosing information provided to them during the course of Claimant's employment with an expected, implied and/or necessary degree of confidence.

61. Data protection and misuse of private information are pleaded by reference to the Defendants' status as data controller, and confidant, of information Mr Tewari provided in a workplace context, and his consequent entitlement or expectation not to have it disclosed without his permission.

62. I cannot see that these pleadings are anything other than fully reduplicative of [75] of the ET particulars of claim:

> The Respondents' advertised claimant's 'Statement of Termination' on temple's e-newsletter on 21st November 2020 to be read by hundreds of readers, in breach of the Claimant's rights under the Data Protection Act 2018 provisions as well as employer-employee confidentiality under common law.

The ET Particulars do not of course reference misuse of private information. But it is not clear in any event what that is said to add to his other claims.

63. Mr Tewari cannot make an identical, or substantially identical, claim simultaneously in two different courts. The ET is already seised of his non-defamation claims. To that extent at any rate, I am satisfied that his High Court pleadings fall to be struck out.

(iv) Forum and jurisdiction

64. The TRDs make a more thorough-going challenge to the relationship between the ET and the High Court proceedings than simply the reduplication of pleadings, however. They say there are fundamental problems with issuing parallel proceedings in the ET and the High Court on the basis of the same underlying events. That challenge expresses itself principally as an abuse of process argument, discussed below. But it also addresses itself first to the conundrum that while each forum has Mr Tewari's narrative before it, that narrative engages each Court's *exclusive* jurisdiction. The ET has exclusive jurisdiction over the dismissal itself and the sustainability of the reasons for dismissal. The High Court has exclusive jurisdiction over defamation and the reputational effect of publications.

65. The different underlying causes of action have different factual components, and therefore concentrate on different aspects of the narrative. And some remedies are unique to each different set of actions. There is at the same time considerable factual commonality. Both rehearse the same sequence of events. Both are centrally concerned with the reasons for dismissal – the ET because they go to the fairness and reasonableness of the Defendants' conduct as employers, and the defamation claim because the reasons are the whole subject-matter of the publication complained of. The honesty or otherwise of the reasons, and their sustainability on the evidenced facts, are in issue in both proceedings. The impact of the promulgation of those reasons on Mr Tewari's standing as a spiritual leader in his community is also in issue in both: whether as to present and future employability or as to reputation any more generally.

66. The ET proceedings are considerably further advanced. On Mr Tewari's own account, they are his principal concern: only there can he achieve the substantive vindication of reinstatement on the terms he seeks. So Ms Palin, for the TRDs, took me to the caselaw on the '*Johnson* exclusion zone' (*Johnson v Unisys* [2001] UKHL 13), and the principle that the statutory system of specialist tribunals with exclusive jurisdiction over employment law is not to be undermined or circumvented by bringing collateral or parallel litigation based on other causes of action but the same facts.

67. In *Johnson* itself, Lord Hoffmann said this at [55]:

> In my opinion, all the matters of which Mr Johnsons complains in these proceedings were within the jurisdiction of the industrial tribunal. His most substantial complaint is of financial loss flowing from his psychiatric injury which he says was a consequence of the unfair manner of his dismissal. Such loss is a consequence of the dismissal which may form the subject-matter of a compensatory award. … The emphasis is upon the tribunal awarding such compensation as it thinks just and equitable. So I see no reason why in an appropriate case it should not include compensation for distress, humiliation, damage to reputation in the community or to family life.

Here too, says Ms Palin, compensation for *distress*, *humiliation* and *damage to reputation in the community* is what Mr Tewari seeks by his defamation action, and here too it is 'a consequence' of the *manner* of his dismissal, including the newsletter. The ET which is seized of his employment claim is therefore seized of the substance of his claim for reputational harm – and exclusively so. There is no room left for a separate defamation action.

68. The *Johnson* exclusion zone, properly so-called, is not a general principle about overlapping causes of action, but a particular rule excluding 'circumventory' claims based on a breach of the contractual duty of mutual trust and confidence implied into employment contracts. Claims are circumventory in these circumstances because they seek to evade the statutory cap on recoverable damages in unfair dismissal cases. We did look also at *Edwards v Chesterfield Royal Hospital NHS Foundation; Botham v MoD* [2012] 2 AC 22, where the principle was extended to claims based on a breach of *express* contractual terms incorporating disciplinary procedures. But I was not shown any case in which a defamation or other non-contractual cause of action was held to be within the *Johnson* exclusion zone.

69. Ms Palin suggested the present case was on all fours factually with the *Botham* case. A youth worker was dismissed for inappropriate conduct towards two teenage girls, and placed on the register of people unsuitable for work with children, but the process of his dismissal was in breach of contractual disciplinary procedure. He suffered loss of reputation and blighting of his employment prospects. The Supreme Court held by a majority that the damages claimed for loss of reputation were caused by the dismissal itself.

70. The facts of Mr Tewari's case are not identical. As Mr Edgley found, he had no contractual disciplinary procedures at all. In *Botham*, the placing of the claimant on the register was a direct, or automatic, consequence of the dismissal and it was *that* that caused the employment blight. What Mr Tewari says he complains of in his defamation proceedings is a newsletter *commenting* on his dismissal. So the connection between the dismissal and the newsletter is looser.

71. But there are similarities. Mr Tewari brings contractual as well as statutory claims in the ET, including specifically in relation to the disclosure of the reasons for dismissal in the newsletter. The question of causation resurfaces in this context also: was it the dismissal (and the reasons), or was it people reading the newsletter, that caused any *distress, humiliation, damage to reputation in the community or to family life* for which Mr Tewari seeks compensation? Is there really a more than statable difference between the two? And which would be the appropriate forum for answering that question?

72. Ms Palin does not seek to go so far as to establish Mr Tewari's claim as falling within the *Johnson* exclusion zone – or rather, as she put it, 'in the fringes of' the zone. She does not say the High Court would be jurisdictionally incompetent to entertain a defamation case based on the newsletter. And while I agree the jurisdictional tensions are genuine, I am not persuaded they are determinative of the current applications by themselves. The TRDs' case is simpler and more practical than that: these points may not mean the High Court *cannot* entertain Mr Tewari's case, but show why it *should* not.

73. Ms Palin says they should be borne in mind as part of her principal proposition that the defamation claim is oppressively (and expensively) reduplicatory of the employment proceedings, possibly 'circumventory' of the statutory governance of employment proceedings to at least some extent, and there is little Mr Tewari can obtain by it that he cannot obtain in the ET, even putting his claim at its highest. And, she says, his case should not be put at its highest, because its overlap with the employment proceedings also shines a light on its inherent weakness. All of these points go to the issue of whether Mr Tewari's High Court claim should be struck out as an abuse of process.

That requires moving beyond what might be called the formal or procedural questions raised by the TRDs' challenge, to engage with some questions about the merits of the claim.

(v) Disproportion and abuse of process

(a) General

74. I have been directed to ***Tinkler v Ferguson***: the careful consideration of the correct approach to strike-out for abuse of process, and the guidance provided, by Nicklin J in the High Court ([2020] 4 WLR 89 at [46]-[49]), and then by the Court of Appeal ([2021] 4 WLR 27 at [26]-[35]). From this I note the following.

75. The starting point on the law of abuse of process is the Article 6 ECHR guarantee of a right to a fair hearing to determine civil rights. That does not, however, confer a right to abusive and duplicative litigation. Individuals are entitled not to be vexed twice by litigation for the same reason. And there is a public interest in not having issues repeatedly litigated. So it is not just a matter of '*providing a level playing field and refereeing whatever game the parties choose to play on it*'. It is also about the proper and proportionate use of judicial and court resources in accordance with the requirements of justice. Where there is abuse, the Court has a duty, not a discretion, to prevent it.

76. The Court accordingly has jurisdiction to stay or strike out a claim where no real or substantial wrong has been committed and litigating the claim will yield no tangible or legitimate benefit to the claimant proportionate to the likely costs and use of court procedures: in other words, '*the game is not worth the candle*'. This is not a test based on a narrow cost/benefit analysis of the monetary value of a claim. It requires a '*close merits based analysis of the facts*', taking into account the private and public interests involved, to answer the question of whether a party is misusing or abusing the Court's process. It requires a Court to weigh the overall balance of justice.

77. The jurisdiction ought to be reserved for '*exceptional cases*'. Courts should not be too ready to conclude that continued litigation of a claim would be disproportionate to what could legitimately be achieved. To justify a terminating ruling, the conclusion must be that it is impossible '*to fashion any procedure by which that claim can be adjudicated in a proportionate way*'.

78. In summary:

> …the power to strike out for abuse of process is a flexible power unconfined by narrow rules. It exists to uphold the private interest in finality of litigation and the public interest in the proper administration of justice, and can be deployed for either or both purposes. It is a serious thing to strike out a claim and the power must be used with care with a view to achieving substantial justice in a case where the court considers that its processes are being misused. It will be a rare case where the re-litigation of an issue which has not previously been decided between the same parties or their privies will amount to an abuse

> but where the court finds such a situation abusive, it must act. (CA at [35]).

79. That last sentence is significant, because this is not a case like ***Tinkler*** where an issue has already been litigated, so as to raise issues of re-litigation proper. It is a case where there are parallel (potentially) live proceedings. It is therefore a case in which any *close merits based analysis of the facts* would have to be done on a provisional and interlocutory – a forward-looking – basis in relation to both proceedings. There is a question about the manageability of parallel proceedings based on the same events, with potentially inconsistent outcomes. There is a prior question about how much of a problem the parallel proceedings genuinely pose, and about the true extent of the overlap – what Mr Tewari can truly expect to achieve in one set of proceedings that he cannot achieve in the other. It is a case, moreover, with the distinctive feature of each forum's *exclusive* jurisdiction – the ET over dismissal and the High Court over defamation. That significantly diminishes the prospects for 'fashioning a solution' capable of resolving all the issues potentially involved in a single procedure.

80. Bearing the ***Tinkler*** guidance in mind, I turn first to consider a major question about the likely future course of the defamation claim which the TRDs say is essential to proper consideration of the question of abuse of process. I then consider whether in all the circumstances the parallel proceedings do indeed raise a problem of abuse of process – the true extent of the overlap, what Mr Tewari is seeking to achieve, the position of the Defendants to his claims, and whether, overall, his litigation is that rare case which is 'not worth the candle'.

(b) Privilege and malice

81. Ms Palin argues the dominant employment context of this claim has a further important consequence for the defamation action. The newsletter, she says, clearly attracts qualified privilege because of it, and Mr Tewari has no real prospect of showing the necessary 'malice' to defeat it.

82. The law of qualified privilege as a defence to defamation in this sort of case is well established. It protects communications '*where the communicator and the communicatee are in an existing and established relationship (irrespective of whether within that relationship the communications between them relate to reciprocal interests or reciprocal duties or a mixture of both)… What matters is that the relationship … is an established one which plainly requires the flow of free and frank communications in both directions…*' (***Kearns v General Council of the Bar*** [2003] 1 WLR 1357 at [30], [39]).

83. Where a publication attracts qualified privilege, a libel claimant cannot succeed without proving the publisher knew it was false, or was completely indifferent to its truth or falsity. The test of 'malice' is a high one, since it is tantamount to an accusation of fraud or dishonesty. It must also be pleaded with 'scrupulous care and specificity', including as to individual responsibility and state of mind, and the precise facts from which malice is to be inferred (see the summary in ***Qatar Airways v Middle East News*** [2020] EWHC 2975 at [149]-[151], and, as to pleading and evidence, ***Huda v Wells*** [2017] EWHC 2553 at [70]-[73]).

84. The TRDs say the publication in this case indisputably attracted qualified privilege. The subscription e-newsletter was the principal channel of communication between the charity responsible for the Ilford temple on the one hand, and its community of supporters, well-wishers and devotees on the other. VHP performed its charitable functions on behalf of, and in the interests of, that community. It was accountable to that community. There was a close, established relationship: a 'community of interest' in the fullest sense. Free and frank communication within the community was the whole point of the newsletter; it provided relevant news and information, and kept the community up to date on matters of common concern. So it was the obvious channel for informing and explaining about Mr Tewari's departure from office. It was entirely necessary for the charity to explain the removal of an employee and spiritual leader – it was their right and duty to do so, and it was the proper entitlement of the readership to receive it. Subscribers had a 'right to know' what was going on. The publication was not in the least 'gratuitous'.

85. Qualified privilege does not depend on due diligence, accuracy, rigour or neutrality in relation to the contents of a publication. It depends on honesty, and is defeated only where a claimant sufficiently pleads, and evidentially demonstrates, malice. Here, of course, we are at an interlocutory stage: no qualified privilege or other defence to the defamation claim has yet been pleaded by the TRDs, or responded to by Mr Tewari. But Mr Tewari's claim certainly *alleges* malice.

86. His High Court particulars of claim include the following:

> The Defendants published defamatory words to the local community under the guise of the Defendants justifying the Claimant's dismissal… ([41(xii)])
>
> The published defamatory words are as the Defendant knows wholly untrue… ([42(iii)])
>
> In publishing the defamatory words, the Defendant has consciously and maliciously misrepresented the true facts. ([42(vii)])
>
> In publishing the defamatory words, the Defendants dishonestly purported to be spreading the newsletter as justification and explanation of the Claimant's dismissal when in truth their motivation was malicious revenge for the Claimant rightly raising concerns…([42(viii)])
>
> …the Defendants know very well that the words complained of are entirely false and baseless…([42(ix)])

87. These are generalised allegations. The TRDs say, by contrast, there is a clear, indeed unanswerable, *factual* foundation for the explanation of events set out in the newsletter which excludes the possibility of malice. That factual foundation, and the honesty of their position, is both fully pleaded and evidenced in documents before the ET. It includes Mr Edgley's report, which either upholds the newsletter's reasoning on the facts as he found them or leaves issues open for want of clear evidence either way. It includes the fact that the statement was authorised and signed up to by *all* of the

Defendants, requiring Mr Tewari to establish a conspiracy of malice of substantial and unlikely proportions. And it includes witness statements from some of the individuals, including among the TRDs, most closely connected with the decisions and factual assessments set out in the newsletter, testifying to the basis and reasons for the (honest) conclusions they came to, and providing contemporaneous documentary evidence in support. There is, they say, no hope that Mr Tewari could stand up a malice case in these circumstances – the bar is high, the evidence does not exist, and his particulars of claim contain mere empty rhetoric.

88. Ms Addy says it is simply premature to come to any view about all of this. The application of qualified privilege is fact sensitive, and the 'community' of the newsletter readership may be less homogeneous than it appears. She says the newsletter is extravagant and spiteful in tone. She says there is a real issue raised by the material to date about the Defendants' motivation: adverse inferences may be drawn from Mr Edgley's conclusion that he was not satisfied that summary dismissal for gross misconduct was '*within the range of decisions that a reasonable employer would have made based on the evidence available to them at the time*', and Mr Tewari's supporters testify to significant procedural irregularities within the charity preceding the publication of the newsletter.

89. It is a feature of defamation pleadings that the distribution of the burden of proving the various matters potentially in issue can often mean that the real substance of a dispute does not emerge until a claim is formally defended. Here, the preliminary issue of serious harm aside, the TRDs say the whole of Mr Tewari's claim stands or falls on the twin issues of privilege and malice. A defendant applying to strike out a defamation case *before* a defence is pleaded is not in a position to challenge a claimant's whole ultimate case on grounds of defective pleadings alone. So the application therefore has to establish that a claim is *an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings*; or that – taking the litigation as a whole, including to the extent that it is not yet pleaded – a claimant *has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a trial.*

90. Here, the TRDs say they would 'unanswerably' succeed in establishing privilege and Mr Tewari would inevitably fail on malice. They say that means he has no real prospect of succeeding on the claim as a whole. They also say bringing the claim is abusive because the privilege arises out of the Defendants' functions *as his employer* and their provision and support, through that employment, of the religious community of interest, centred on temple devotion, which is their charitable purpose. If he claims against them qua employer, he must necessarily acknowledge their publication privilege qua employer.

91. A *close merits based analysis of the facts* is called for in response to an assertion of *Jameel* abuse of process. I am, however, considering two sets of proceedings arising from those facts, each at a (different) interlocutory stage. So first, I consider the 'prospects' of Mr Tewari defamation claim succeeding on the privilege/malice issue, examining it through the lens of the test for summary judgment. Then I consider the extent to which such merits as it has will be considered in the ET proceedings in any event. And finally, I stand back to consider the consequences of all this for an overall assessment of the TRDs' application for a terminating ruling.

92. I remind myself, therefore, that the summary judgment test is directed to considering whether Mr Tewari has a realistic, as opposed to 'fanciful', prospect of defeating an assertion of qualified privilege on the facts and evidence as they appear to date. I have to establish whether his prospects carry some degree of conviction rather than being merely arguable. I am to be mindful of the proper limitations on interlocutory assessment of merit, and I must not attempt a 'mini-trial'. But nor am I to take at face value and without analysis everything a claimant has placed before a court. I am to consider whether or not there is real substance in the factual assertions made. I must interrogate the facts and evidence available, but I must also take into account any further facts and evidence that can reasonably be expected to be available at trial. That is especially important here, in a case where these issues have not yet been pleaded out in the defamation context, but only in their ET context.

93. In the first place there seems to me, on the undisputed facts, to be a strong prima facie case that the newsletter enjoys qualified privilege. Whatever may be debated about the tone of the drafting or the fairness and accuracy of the content, it is inescapably a publication issued by a charitable organisation to its community of 'stakeholders' the whole purpose and content of which is directed to giving an account of the fact of, and the reasons for, the dismissal of an employee with a prominent leadership role in that community. It is not, of itself, gratuitous.

94. The newsletter is a subscription service, so its primary readership is an opted-in community of interest in the Ilford temple rather than, for example, a closed functional category of regulator and regulated, or employer and employees. In my view that strengthens the mutuality of interest in the newsletter. Whatever their varying levels or commitment, whatever their motivations, however recently or otherwise they have signed up, it seems to me the subscribership cannot be described in terms other than a group identifiable by their common interest in VHP's proper discharge of its charitable functions in relation to the Ilford temple, and the flourishing and reputation of the wider temple community. Those proper functions undoubtedly include the appointment, management and dismissal of the priests it employs. The fact that the newsletter may have percolated beyond that community does not deprive it of that essential quality. Ms Addy did not before me raise any point of law, or of present or future evidence, capable of casting real doubt on that.

95. The issue then is the substance of the case Mr Tewari raises, or has a prospect of raising, on malice. Malice is *claimed*, if not formally pleaded, in the defamation particulars as set out above. Malice is also *pleaded* in the ET particulars with specific reference to the reasons for dismissal. At [53]: '*The Claimant avers that the reasons cited by the Respondents are fabricated, and just a ruse to dismiss him*'. He implies he was dismissed for no, or an ulterior, reason, for which the stated reasons were a '*pretext*' or a '*guise*'.

96. That goes a long way beyond challenging the accuracy or sustainability of the reasons. It leaves no room for ordinary maladministration, irrational decision-making, negligence, poor employment practice, simple overreaction by the VHP in difficult covid circumstances, or interpersonal workplace friction, as being the 'true' reasons for dismissal. It is a frank allegation of dishonesty. The implication of dishonesty is, however, left in the air – no particularised factual account appears in the formal pleadings of the 'real' reason for dismissal, nor of how or why dishonest fabrication played any part in the matter.

97. A number of possibilities arise. It may be that, since none of the allegations of dishonesty, in either set of pleadings, is specifically directed to the task of defeating qualified privilege, they must be read simply as over-coloured drafting, and that Mr Tewari did not thereby intend to give any serious indication he was prepared to take upon himself the task of proving malice to the degree required by libel law. In that case, we are left with a strong prima facie case of qualified privilege and no visible means of defeating it – a defamation claim with no real prospect of success as things stand.

98. But Ms Addy suggested otherwise. She said there was a real prospect of Mr Tewari standing up a malice case. She relies on a number of factors.

99. First, she relies on the drafting of the newsletter. As I have already said, however, while I agree it might be thought a little more personalised and vehement than strictly necessary, I cannot agree it is suggestive of dishonesty. On the contrary, it is rather more suggestive of righteous indignation – not necessarily a judicious mindset, but not a malicious one.

100. Second, she relies on the criticisms of VHP in Mr Edgley's report. At their highest, these suggest poor employment practices, procedural unfairness and unreasonable overreaction to misconduct that was not serious enough to warrant summary dismissal (but was serious enough to merit a written warning). There is no hint whatever of dishonesty, or any reason to suspect dishonesty or ulterior motive, in the report.

101. Third, she relies on evidence before the ET indicating a degree of personal conflict among those responsible for the governance and management of VHP, including conflict between the TRDs and the unrepresented Defendants, and alleging, sometimes in strong terms, serious irregularities in the governance and procedures of the organisation leading up to Mr Tewari's dismissal. I have read this material. It takes strong exception to the attribution of the newsletter to *all* its signatories ('*totally illegal*'; '*misrepresentation, which is a criminal offence*'). But I could not find evidence of dishonesty as to the content of the newsletter. It would be a mistake to confuse vehement opinions with explicit, much less particularised, allegations of factual dishonesty.

102. Fourth, Ms Addy suggested there was 'more to come out' along these lines. She did not suggest what. Even if there is, the *quantity* of vehement allegations of bad governance do not add up to a *quality* of imputations of dishonesty. In any event, the prospect or hope that 'something may turn up' to evidence malice is not sufficient to rescue what would so far be an unfounded case.

103. And finally, Ms Addy suggested, no doubt on instruction, some reasons for inferring malice: vindictiveness against a whistleblower who had raised justifiable propriety and competence concerns about the management of VHP, including about covid protections; and that the newsletter was an aggressive and spiteful move to 'cut Mr Tewari off at the knees' and intimidate him into not taking his grievances to the ET or anywhere else.

104. There is no *evidence* for these suggestions. I would have great difficulty, without more, in recognising them as more than speculation without visible foundation. And of course, there is other material context. Mr Edgley's report either positively upheld the

factual allegations made or simply found them unproven. He just did not think they were serious enough to add up to a reasonable basis for summary dismissal (and so, if they had been fabricated, they were plainly not fit for their alleged malicious purpose). VHP accepted the report and offered to implement its recommendations, which is hard to square with malice. Mr Tewari disputes the offer of reinstatement; but what VHP offered, for better or worse, is straightforward to relate to the report's recommendations. And there is evidence before the ET, from those most immediately involved in establishing the facts of the reasons given for Mr Tewari's dismissal, which is detailed, credible, and supported by contemporaneous documentation. There is nothing comparable in relation to malice.

105. I remind myself of how high the test, and how demanding the process, for establishing malice in defamation. That is because it is such a very serious matter. Generalised allegations of spite and fabrication, speculatively imputed motives and hyperbolic language will not do. It is not enough that a claimant feels unfairness and victimisation so passionately that he expresses his grievance in terms that impugn his opponents' integrity. To defeat privilege, Mr Tewari would have to prove, with evidence, against each and every defendant, that no explanation short of knowing dishonesty (or equivalently reckless disregard as to truth or falsity) will do to account for the newsletter. That conduct must be identified, particularised, pleaded and made good. I cannot, on the present interlocutory basis, see any basis or prospect for Mr Tewari's success in that task which is other than 'fanciful' or lacking a discernible anchor in reality. I cannot see 'real substance' to his allegations.

106. It is my view that, on an interlocutory assessment of whether Mr Tewari's defamation case, on its own merits, has a 'real prospect of success', the answer must be no. I have been conscious of the warning from the authorities against 'mini-trials' and mindful of Ms Addy's warnings of prematurity. But I have been shown nothing in the factual matrix underlying this defamation claim - given the undisputed facts, the pleaded facts (albeit not as yet directed to privilege/malice), the evidence to date and what I have been told about the prospects for future evidence – to suggest that Mr Tewari has a prospect beyond theoretical arguability of establishing that (a) the publication did not properly attract qualified privilege or (b) if it does, it was malicious.

107. Added to that is the obscurity of his prospects for establishing the *causation* or likely causation of serious harm by publication – as yet insufficiently pleaded, and in any event complicated by the need to distinguish the impact of reading a newsletter from professional blight caused by dismissal. That is a particularly acute difficulty in the case of priestly employment where personal and professional or vocational standing in the community are so closely entwined.

(c) Added value: proportionality

108. The intrinsic merits of a case must, however, be put in their proper place where a challenge is based on ***Jameel*** disproportionality. Striking out for abuse of process on this ground is reserved for 'exceptional cases'. I come back therefore to the test of whether Mr Tewari's defamation proceedings properly fit the description of litigation where *no real or substantial wrong has been committed and litigating the claim will yield no tangible or legitimate benefit to the claimant proportionate to the likely costs and use of court procedures*.

109. I am satisfied it is not a 'legitimate' benefit for Mr Tewari to use defamation proceedings either as collateral leverage for settlement of his ET claim, or as an insurance policy to enable relitigation of the substantive fairness of the reasons given for his dismissal should he fail in the ET. But I say that only to eliminate those lines of argument, not because I consider this to be a complete explanation for his issuing the claim, notwithstanding the account he gives in his own witness statement. The question is rather about what tangible benefit the defamation claim seeks to achieve that cannot be determined in the ET claim.

110. Mr Tewari's solicitors provided a witness statement in response to the TRDs' application for a terminating ruling. This sets out two practical reasons why I should conclude the defamation claim is not abusive.

111. The first relates to the defendants being different in each case. The ET proceedings are brought against the board of trustees of VHP UK – the 16th-24th Defendants in the present case, so a subset of the TRDs. The defendants are of course chosen by the claimant, and the witness statement does not explain *why* different defendants have been chosen in each case. It says the unrepresented Defendants '*have indicated that they were not even involved in the publication of the statement*' – and that is indeed their own account – and they are keen as a result for the defamation case to proceed to trial so they can distance themselves from it and blame the TRDs. But if Mr Tewari considers this to be a good thing, it is unclear why he brought defamation proceedings against them at all, rather than obtaining their support as witnesses. Defamation proceedings cannot succeed otherwise than against those responsible for publication.

112. What the witness statement says otherwise about the lack of congruence or privity between the defendants in each case is this:

> These [defamation] proceedings have significantly more Defendants against whom the Claimant can enforce any consequential damages or costs awarded that the Court may make in his favour, whereas in the employment proceedings there are only 9 Defendants namely the trustees of VHP UK as they appear on the Charities Commission website.

Not only does that not explain *why* Mr Tewari decided to claim against a wider category of defendants in the defamation action and a narrower category in the ET on *liability*, it appears to suggest that the benefit to Mr Tewari in doing so goes to the *enforceability* of any costs and damages awards he may obtain. That too is puzzling. If there is no other good reason for bringing separate proceedings, then taking an opportunity to add some more people against whom to enforce damages and costs does not obviously provide one.

113. Mr Tewari's solicitor's second reason is the availability of different remedies. This in turn is an argument in two parts.

114. The first relates to the availability of the non-pecuniary remedies unique to defamation – restraint of future publication, and the publication of a summary of any vindicatory judgment (an order for an apology is not a remedy available to a Court). That, says Ms Addy, is a key feature making the case for High Court proceedings. Satisfactory reinstatement is *not* in itself complete reputational vindication. The vindication Mr

Tewari seeks addresses the distinct poison of the newsletter and its effects in the community. She points out that the defendants have never retracted their publication – even after Mr Edgley had ruled on the matters contained within it in significant respects in Mr Tewari's favour. They have never set the record straight. They have never apologised. That is vindication which is crucial to Mr Tewari's claim and it is not vindication the ET can provide.

115. There is force in this point. It is not clear why the TRDs did not take the opportunity, in response to Mr Edgley's report, to put an update message in the newsletter explaining the results of Mr Tewari's appeal and their acceptance of it. But Ms Palin suggests the claim for injunctive relief must nevertheless be regarded as 'pointless' for two reasons.

116. First, the vindication Mr Tewari seeks is retraction of the *reasons* given for his dismissal, not retraction of the newsletter; the latter is worthless without the former and unnecessary with it. Second, by their offer of reinstatement, accepting as it does Mr Edgley's report, the Defendants have openly changed their position and there is no reason to apprehend a return to the position set out in the newsletter or any republication of it. It has been wholly superseded. As I say, that would be a more conclusive point if I had been shown any evidence of a *published* change of position. But I must accept the TRDs did overtly change their position towards Mr Tewari.

117. Although restraining the publication of 'same or similar' words is a usual outcome of successful defamation proceedings, it is not automatic. It must still be shown that injunction is a necessary restraint. Here, the necessity of restraining the TRDs from publishing a position on dismissal they have for all practical purposes discarded may be hard to establish. That does not mean there is nothing left in the way of non-pecuniary remedies for Mr Tewari to pursue in defamation proceedings. But if he achieves reinstatement on satisfactory terms in the ET that will, on his own account, provide very significant vindication. And if he fails to achieve it, it is not clear either how easy he will find it to make out liability in defamation, nor how valuable non-pecuniary remedies in relation to a newsletter from November 2020 can be said to be.

118. The other part of the case on remedy in the witness statement has to do with financial remedies. Here, the solicitor notes there are different heads of *liability* involved, which is true. Mr Tewari seeks compensation in the defamation proceedings for the effects of the *newsletter*, to the extent that that is additional to the effects of the *dismissal*. But the statement does not identify what that extent *is*, or grapple with the underlying problems of causation and attribution which that question raises. The issue of overlap and reduplication in the pleadings of compensatable financial loss has already been noted above. It is opaque what Mr Tewari is saying he can properly achieve financially *in addition* to the ET claim and how it would be calculated.

119. The only specific instance given of the financial margin of difference is when the witness statement addresses loss of earnings. The solicitor notes Mr Tewari is pursuing an unfair dismissal claim in the ET which includes *continuing* loss of earnings. He notes that '*following his dismissal, he has not been able to find suitable work, and therefore he is entitled to be compensated for loss of earning and there is a cap of 52 weeks to which the Claimant's employment tribunal claim is subject*'. He notes that compensation for damage to reputation is not so capped. But he does not engage at all with the relationship between the two.

120. Although the purpose and assessment of damages in each forum is different, it is obvious Mr Tewari cannot be compensated and vindicated financially twice over for the same harm. He has a live claim for future loss of earnings and professional blight before the ET and seeks 'compensation and/or damages' at large there, which, as Lord Hoffmann noted in ***Johnson*** itself, is capable, in an appropriate case, of including compensation for *distress, humiliation, damage to reputation in the community or to family life*. A case involving loss of a priestly position may be a particularly 'appropriate case' for the ET to consider in this light. I have been offered no reason to think otherwise. That makes it incumbent on Mr Tewari to explain with some care what, if he is successful in the ET, he can expect the High Court to provide in addition – or why, if he is unsuccessful in the ET, he can expect a different result in the High Court.

121. To the extent that the answer to that question has to do, as is suggested, with the uncapped nature of the High Court's power to award damages, then questions of 'circumvention' do arise. Even if a defamation action is not in the ***Johnson*** exclusion zone, the bringing of an otherwise reduplicative action in order to circumvent statutory restrictions on the ET does at least raise questions about the propriety and legitimacy of what is being sought.

(d) Abuse of process - conclusions

122. Drawing all of this together, my conclusions on the TRDs' application to strike this defamation claim out on grounds of disproportionality and abuse of process are these.

123. The most Mr Tewari can hope to achieve with his defamation action is vindication and remedies *over and above* anything he can achieve in the ET. That is not a matter just of reciting the different formal components of liability in each head of action pleaded, the different remedies available or the differences in the way financial compensation is calculated. It is not a theoretical exercise. It requires looking at the common factual matrix, the real-life permutations, and the practical differences.

124. Mr Tewari's ET claim seeks the principal vindication of reinstatement on terms other than those offered. He has asked the ET to look at all the facts of his dismissal, including the publication of the newsletter. He has asked it to look at the fairness of VHP's procedures and conduct, and at whether it has breached his contractual and statutory duties towards him. He has asked it to consider whether the newsletter in form and content partook of unfair procedures, and whether it unlawfully published matters it was contractually or statutorily prevented from publishing. He has asked it to look at the harm and losses all of this has caused him, including blighting his reputation and prospects for continuing to work as a priest in his community. He has asked for fair compensation for all of this.

125. What that leaves for the High Court to consider is not easy to articulate. There is no clear account of any claimed reputational interests beyond those of priestly standing in his community. There is no clear account of claimed *serious* harm *caused or likely to be caused* to his reputation by the newsletter *in addition to* the effects of the central events of his dismissal. There is no apparent factual basis for a real prospect of resisting a defence that the newsletter was privileged.

126. The case for substantial damages in defamation necessarily relies on establishing a deficit in the vindication already sought in the ET. The application for injunctive relief requires at least some demonstrable prospect of the *unwarranted* republication of the content of a newsletter superseded by a formal change of position by VHP, which may not be a remedy of any real value. That leaves the matter of a published judgment, over and above the vindication of reinstatement and compensation: significant, certainly, but on its own a small gain of territory for the major battle of a High Court libel case.

127. What the High Court proceedings certainly do add, by contrast, is the complexity of the many intersectional questions raised in this analysis, a considerable financial and emotional burden on all the participants, and the occupation of a substantial amount of public resource.

128. Mr Tewari is entitled to fair trial of his claim that his legal rights and protections have been violated by his employers. But he is not entitled to pursue his employers twice over. For all the reasons set out and explained, I cannot see that what he can hope, legitimately and realistically, to achieve by these High Court proceedings is other than too marginal and uncertain an addition to what he can hope to achieve in the ET, to justify their continuation to trial.

129. The twin-track approach he has embarked on is disproportionate to the justice he seeks in what is essentially an uncomplicated employment dispute. Of course, his self-respect, moral reputation, community standing and professional prospects are intensely engaged, as is often the case in hard-fought employment disputes involving issues of professional integrity. The ET is there to do justice in such cases. The fact that a community newsletter has had a part to play in the disputed employment narrative does not fundamentally alter that. The burdensomeness to the parties, and the commitment of substantial public resource, which High Court defamation proceedings would inevitably entail, are out of any reasonable proportion to any *additional* justice they could legitimately achieve for Mr Tewari. His High Court claim does not, in other words disclose the commission of a real or substantial wrong *additional* to those before the ET. It is therefore my duty to strike his claim out.

(vi) Limitation

130. Had I come to a different conclusion on the TRDs' application – or if that conclusion is wrong – then it would fall to me to consider Mr Tewari's application to lift the statute bar on his defamation action.

131. The TRDs' application for a terminating ruling was a matter for them to persuade me of. As I have set out, the test for giving a terminating ruling on *any* of the bases they sought is a demanding one. That is entirely proper, since access to the justice of a full trial of a claim should be denied only where it discloses no reasonable grounds for being brought, is reduplicative, abusive or positively obstructive of justice, fails to comply with rules and orders of court, or has no real prospect of success. But where features like these are present, proceeding to a full trial is *not* just or in the public interest.

132. Limitation is also a ground for preventing a trial. It is a mandate from Parliament to the courts to do so except where equity requires otherwise. This time, however, it is the claimant, not the defendant, who must seek the court's intervention. The burden of

persuasion shifts. Termination is the default. A claimant must make a positive case for being permitted to proceed.

133. Mr Tewari's application to lift the statute-bar requires me to consider what would be 'equitable'. I have to look at the possibility of prejudice to the parties either way, including evidential prejudice. And I have to have regard to all the circumstances of the case, starting with the length of and reasons for the delay.

134. Mr Tewari's claim was issued one day late. The explanation for missing the deadline appears to be that Mr Tewari's solicitors had first filed a defective claim form, close to the deadline, which did not give the names and addresses of the Defendants and was properly rejected by the Court. Either they had not left themselves enough time to file an effective claim form and/or they had miscalculated the date they needed to aim for. In any event, it seems they had tried to issue on time but narrowly failed to do so.

135. The parties' respective starting points on the Limitation Act balance of prejudice may be shortly stated.

136. Mr Tewari says it would be unfair to lose his entire claim for the sake of a filing mistake – and a single day – which was anyway his solicitors' fault and not his. He says the Defendants were well aware of the complaint from the outset and stand to suffer no prejudice at all, evidential or otherwise. Indeed, he says this is an example of a case '*where the limitation defence can fairly be described as a complete windfall*' for a defendant, as one of the textbooks describes it with apparent reference to the ***Steedman*** case at [44] ('*Obvious examples might be cases where it would be manifestly unjust to allow a defendant to take advantage of a very small slippage of time*'). Care is needed, of course: qualifying words like 'fairly' and 'unjust' underline that a near miss is not automatically or always a signal for extension. But it is a relevant factor.

137. The TRDs remind me of the 'exceptional' test for extending the limitation deadline, and the policy underlying Parliament's deliberate imposition of that deadline. Limitation always puts a claim into complete jeopardy. Claimants lose their *right* to litigate at that point and must make a positive case for being permitted to do so. Defamation claimants in particular, if they are serious about the vindication they seek, are expected to show that by proceeding as expeditiously as possible at all stages. If they leave things to the last minute, that is already prejudicial to defendants, and claimants do so at a properly high risk of jeopardy if they miss the deadline: the risk is entirely on them.

138. So these are the two sides of the limitation coin. But I have to consider *all* the circumstances and decide the balance of prejudice, and equity, on Mr Tewari's application.

139. The implication of the TRDs' own application is of course that he will suffer no prejudice *by reason of section 4A of the Limitation Act* – while they by contrast face a high degree of prejudice if they have to go on to defend the claim – because Mr Tewari's litigation ought to be terminated *in any event*. But even without proceeding on that basis, the apparent merits of a claimant's case are a weighty consideration in considering the balance of prejudice and of equity.

140. I have explained that, on the necessarily limited basis of an interlocutory assessment, Mr Tewari's case would have to be considered weak even if, contrary to my view, it could be considered to have any real prospect of success on its merits at all. The requirement for him to establish the causation or likely causation of serious reputational harm by a publication is on the facts of this case – even if adequate pleadings could be imagined – a steep mountain for him to climb. And I have explained the difficulties he appears to be in over defeating a defence of qualified privilege.

141. I have explained also why, even if his litigating in parallel over the same events in the ET and the High Court is not considered so reduplicative, oppressive and disproportionate as to be stopped on that ground alone, nevertheless there must be a real prospect of escalating expense, overcomplication, and complexity in the management of the interrelationship of the two sets of proceedings, in which the potential benefit to Mr Tewari is out of any recognisable proportion to the potential detriment to the Defendants.

142. A claim which is weak on its merits, and borderline abusive if not fully so, weighs the balance of equity heavily against giving limitation relief.

143. I take into account not just the explanation for the one-day overshooting of the limitation bar, but also the explanation for trying to issue so close to the deadline in the first place when a defamation claim had been trailed more than 10 months previously. I have noted carefully what Mr Tewari says about his personal and financial circumstances at the time – including his health issues and his caring responsibilities for his wife and children. It is an immensely expensive, time-consuming and stressful matter for a claimant in modest or adverse circumstances to embark on defamation proceedings. Since they are about reputational vindication, time is also very much of the essence. I do sympathise with Mr Tewari's personal predicament. But in a limitation application I have to look at the other side of the coin too – the problems that failure to progress a claim rapidly cause for the position and personal and financial wellbeing of the many individual defendants he has engaged on his claim.

144. I also bear in mind that the burden Mr Tewari took on himself of preparing for High Court litigation at this time was over and above his active conduct of ET proceedings at the very same time. The prioritisation of the ET litigation in hopes of a settlement in which he would forego the defamation proceedings is at best of ambiguous assistance to Mr Tewari's case on equity.

145. I cannot ignore either the litigation history of this claim even once it was finally issued – the multiple and protracted failures to comply with rules and orders of court, and the extraordinary and unexplained notification on the morning in question that Mr Tewari would neither attend nor be represented at the directions hearing. Mr Tewari again blames his solicitors for that. But the overshooting of the limitation deadline has been part of a continuing story of the defective conduct of Mr Tewari's claim, in circumstances which have been unwarrantedly burdensome to both the Defendants and the Court already.

146. The one-day filing mistake must be seen in this whole context. It is not an isolated example of Mr Tewari seeking, or even presuming on, the indulgence of the Court. Had the balance of equity otherwise been favourable to him, or even broadly neutral, the

near miss would have been a weighty and perhaps determinative recommendation in favour of overlooking limitation. But it is not.

147. Apart from the brevity of the deadline lapse (and the lack of evidential or other prejudice attributable to the single day in question), I do not find equity of any strength in favour of granting Mr Tewari's application. He will undoubtedly suffer *prejudice* in not being able to pursue his claim. That is what limitation is; it is inherent in the whole exercise. What is more crucial is to consider the question of *justice* or fairness as between the parties. Here, for the reasons I have given, I do not consider Mr Tewari will suffer *injustice* (as distinct from prejudice) in being denied permission to bring this claim, when he has access to justice in the ET, and when the merits of his case, the added value it has any prospect of bringing him, the burden and complexity imposed by parallel proceedings, and conduct of the High Court proceedings to date, bring the equitable balance firmly down on the side of the Defendants. This is not an unfair windfall result for them. On the contrary, I consider that the Defendants would suffer the greater injustice if the statutory bar were lifted.

Decision

148. Mr Tewari's defamation claim is defective in its pleading of causation of serious harm on the facts. He has not sought permission to amend his pleadings and I have not been given a sound basis for considering them remediable. His pleading of the non-defamation heads of his claim are fully reduplicative of his equivalent pleadings before the Employment Tribunal in relation to the publication complained of.

149. I do not see a real prospect of success for Mr Tewari's defamation claim, because I am unable to recognise a basis in the underlying factual matrix, in the evidence available or in the evidence which there is reason to think may be capable of being produced in future, to establish the causation of serious harm or to defeat a defence of qualified privilege.

150. I consider Mr Tewari's defamation claim in all these circumstances an abuse of the Court's process because, considered alongside the parallel ET proceedings brought on the same factual history, it represents a burden on the Defendants and on the resources of the Court out of all proportion to what he could legitimately and realistically achieve that could not be achieved in the ET alone.

151. I therefore consider his claim should be struck out.

I further consider that in all these circumstances, and bearing in mind also the full history of the bringing and conduct of this claim, the balance of equity comes down in favour of refusing to lift the statutory limitation bar, notwithstanding the very brief duration of its application. The claim falls to be struck out on this ground also.

Annex

Statement: Termination of Awdhesh Ji's services

The decision to terminate Mr Awdhesh Tiwari Ji's services has not been taken lightly. Numerous incidents contributed to the final decision. The Board of Trustees and the Central Committee of VHP UK have been fully involved in making the decision.

Reputational damage to VHP Ilford was the one which ultimately led to his dismissal. Awdhesh Ji was the one who first spread lies about VHP to the council. He lied that he was asked 'to lie to get a COVID test 'and he lied that he had not been paid since June 2020. He had been asked to get a COVID test as he had called sick due to flu like illness. When he had said that he had checked with 'how to get COVID test' web site, and was told that he was not eligible, he was advised to get a' fit to return to work' note from the GP. He did not get the note. He had been offered the pay for July, August and September 2020 by the Treasury Team which he had blatantly refused to accept.

Awdhesh Ji has also been heard saying that he does not believe in the present committee and has incited devotees to spread falsehoods about the Karva Chauth Mahotsava.

Some of the notable other incidents include:

1. **Disregard of the instructions to keep our Mandir Covid secure.**

   The Committee had covered all the bells in the mandir as infection control precaution. However, one evening a young man uncovered a bell and started gonging it during the Aarti. Dr Pratibha Datta politely asked him not to do so. Herefused to do so and said that the Pandit Ji had given him the permission. WhenAwdhesh Ji was confronted about this he flatly refuted that he had given the permission. The young man was standing nearby and said that he has been uncovering and gonging the bells every day for the last 5 days!

   Another infection control mechanism stated in government guidelines is that there should not be any congregational singing to avoid aerosol transmission of Covid. This means that Aarti should not be sung by devotees present at the time of the Aarti. Awdhesh Ji had been instructed to announce this prior to every Aarti time. He did not do so. Consequently, devotees sang Aarti loudly. When he was politely asked why he had ignored the instructions given to him, he started arguing with Dr Pratibha Datta.

2. **Giving short notice for absence during agreed duty times to perform priestly dutieselsewhere**

   There have been numerous occasions when Awedhesh Ji was away during agreed working hours to perform private priestly duties elsewhere. Often at very short notice making it difficult for the management to put alternative arrangements in place.

3. Incidents of misconduct.

Removing some keys from a bunch of keys in the mandir without due permission to do so.

Being disrespectful to the chairman of VHP Ilford and challenging him 'If you haveguts then remove me from the Mandir".

Note: Dr Pratibha Datta is the designated officer of VHP Ilford to advice the committee on implementation of government's guidance on making places of worship COVID secure.

20th Nov 2020