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*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:*	24/10/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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KING'S BENCH DIVISION

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BETWEEN:

MACNAUGHTON BLAIR LTD
STEVEN WHYTE
ANDREW McCARRON
ASHLEIGH MORGAN

Plaintiffs

and

CATHERINE EDGAR

Defendant

_____

Mr Peter Girvan (instructed by Worthingtons Solicitors) for the Plaintiffs
The Defendant appeared in person

_____

COLTON J

Introduction

[1] The defendant was previously employed by the first-named plaintiff, Macnaughton Blair Ltd. The remaining plaintiffs held senior positions of responsibility within Macnaughton Blair Ltd at all relevant times to these proceedings.

[2] The genesis of this action arises from a claim brought by the defendant against the first and second plaintiffs claiming constructive dismissal from her employment. Before the Industrial Tribunal the defendant raised complaints in relation to wearing a mask and/or a lanyard to indicate the status of exemption under the Coronavirus Regulations during the Covid-19 pandemic. The central allegation made by the defendant in the Industrial Tribunal against the first and second-named plaintiffs is alleged discrimination and harassment on grounds of disability.

[3] Her application was heard before an Industrial Tribunal which delivered judgment on 21 February 2023.

[4] The Tribunal dismissed the defendant's claim. The unanimous decision of the Tribunal was that:

(i) The claimant was not discriminated against on grounds of disability;

(ii) The claimant was not discriminated against for reasons related to disability;

(iii) The claimant was not unlawfully harassed on grounds of disability;

(iv) The claimant was not discriminated against by reason of failure to make reasonable adjustments;

(v) The claimant was not constructively unfairly dismissed; and

(vi) The claimant is not entitled to notice pay or other sums due to a breach of contract.

[5] Accordingly, the defendant's (described as the claimant in the judgment) claims were dismissed. The decision was accompanied by a detailed written judgment.

[6] The defendant sought a reconsideration of the Tribunal's judgment. Her application was dealt with by way of written submissions and an oral hearing. The application to reconsider the original decision was rejected in a reasoned judgment dated 30 May 2023.

[7] The defendant was dissatisfied with the decision of the Tribunal. She appealed the matter to the Court of Appeal. On 14 December 2023, the Court of Appeal in a written judgment unanimously dismissed the appeal, confirming the decision of the Tribunal.

[8] The defendant remained dissatisfied. She sought leave to appeal the matter to the Supreme Court. This was refused by the Court of Appeal.

[9] Thereafter, the defendant filed an application to the Supreme Court seeking permission to appeal the order made by the Court of Appeal. Permission to appeal was refused by the Supreme Court on 8 May 2024.

[10] Having exhausted all remedies, there the matter should have rested.

The defendant's social media accounts

[11] The defendant operates social media accounts in her own name on Twitter (now X) and Substack.

[12] Since 19 March 2023, the defendant has used these accounts to publish documents and discovery provided by the plaintiff company during the tribunal proceedings and to make allegations against each of the plaintiffs.

[13] By way of example the following has been published by the defendant:

(i) That the plaintiff company is guilty of disgusting discrimination against the defendant as a disabled woman.

(ii) That the defendant was mistreated and discriminated against by the company.

(iii) Publication via hyperlink of the entirety of the Speaking Note which alleges the second plaintiff was dishonest in his evidence and his notes of a meeting were also dishonest with similar allegations made in respect of the third plaintiff. Both are accused of malicious intent when providing evidence under oath.

(iv) The allegation that the second plaintiff tampered with, fabricated or amended notes of a meeting to remove reference to emotional distress is made directly on Twitter.

(v) The allegation of dishonesty on the part of the second plaintiff is also made directly on Twitter.

(vi) The third plaintiff is alleged to have lied in his witness statement "liar liar pants on fire Andy!" as part of the highlighted document fully reproduced on Substack which is shown below the Tweet to indicate/highlight the alleged lies.

(vii) That the second plaintiff and third plaintiff conspired with others and acted with malicious intent towards the plaintiff.

(viii) That the fourth plaintiff was dishonest in her witness statement to the Industrial Tribunal.

(ix) A further Tweet alleges that as against the second and fourth plaintiffs that:

> "The Tribunal has not acknowledged the blatant dishonesty or any lies told and recorded by Steven Whyte and Ashleigh Morgan."

(x) The defendant has also published a distorted version of the company's registered trademark which incorporates the allegation that the company is a "local discriminatory employer."

[14] The above is taken from the statement of claim which has been served in this action.

[15] The relevant Tweets have been set out in pre-action correspondence and within affidavit evidence served during the currency of the proceedings.

Proceedings

[16] Arising from the posts referred to above the plaintiffs have issued proceedings against the defendant alleging breach of confidence, breach of undertaking, defamation/libel and breach of copyright and trademark.

[17] Reading from the writ of summons, issued on 12 June 2023, it is alleged by the plaintiffs that:

> "From in or around 19 March 2023 being a date shortly after the Tribunal rejected the defendant's legal complaint in a reasoned judgment, the defendant has used Twitter and Substack Accounts to publish confidential documents and discovery provided subject to the implied undertaking by the first plaintiff during the Tribunal proceedings, to defame and libel each of the plaintiffs by a series of publications on these Accounts and has infringed the copyright and trademark of the first plaintiff as part of a campaign as set out in the Pre-Action Protocol Correspondence sent by the plaintiffs' solicitors scheduled hereto at Schedule 1."

[18] The plaintiffs claim the following:

> "(i) An injunction restraining the defendant from publishing confidential documents and discovery provided subject to the implied undertaking by the first plaintiff during the Tribunal proceedings on Twitter and Substack as are otherwise outside the Tribunal proceedings and any appeal therefrom.
>
> (ii) An injunction restraining the publication of the defamatory content specified in the Pre-Action Protocol Correspondence or publication of the

same or similar defamatory allegations whether on Twitter and Substack or elsewhere.

(iii) An injunction restraining the misuse and mutilation of the First Plaintiff's trademarks and brand whether on Twitter and Substack or elsewhere.

(iv) Damages including in respect of the second, third and fourth plaintiffs aggravated damages for libel/defamation.

(v) Costs including pre-action costs.

(vi) Further or other order as deemed appropriate by the court."

[19] The defendant is a litigant in person, who is clearly greatly aggrieved by the way in which she alleges she was treated by her employers and by the outcome of the legal proceedings she initiated.

[20] Conscious of the background the court was anxious to case manage this case in such a way as to avoid a contested and expensive hearing. Mr Girvan who appeared on behalf of the plaintiffs made it clear from the outset that the plaintiffs were prepared to waive any claim for damages if the defendant would agree to desist making the publications about which they complained.

[21] The defendant was encouraged by the court to engage with the plaintiffs and consider whether it would be to her advantage to face an action in the High Court.

[22] However, these efforts were in vain, and the defendant eventually served a defence on 12 September 2024.

[23] Making due allowances for the fact that the defendant is a litigant in person from her defence statement and affidavit it is clear that she will rely upon a defence of truth, honest opinion and public interest.

[24] She asserts her rights under Articles 8 and 10 of the European Convention on Human Rights which are protected by the Human Rights Act 1998.

The application

[25] On 2 September 2024 the plaintiffs issued a summons seeking the following relief:

"1. An order pursuant to Order 18 rule 19(1)(a), (b) and (d) of the Rules of the Court of Judicature (Northern Ireland) 1980 striking out the Defence of the Defendant on the grounds that:

(i) It discloses no reasonable defence;

(ii) It is scandalous, frivolous or vexatious; and/or

(iii) It is otherwise an abuse of process of the court.

2. An order pursuant to Order 82 rule 9 and Section 8 of the Defamation Act 1996 entering summary judgment against the defendant in respect of the plaintiffs' claim in defamation.

3. An order pursuant to Order 14 rules 1 and 3 of the Rules of the Court of Judicature (Northern Ireland) 1980 in respect of the plaintiffs' claim for breach of confidence and breach of trademark.

4. Further or other order as deemed appropriate by the court."

[26] The court received written arguments from the parties elaborated upon by oral submissions at a full hearing.

The defamation claim

[27] Such has been the volume of publications by the defendant it is important to identify those publications which the court is considering within the ambit of the pleadings. The relevant publications are identified in para 17 of the statement of claim. They are the posts referred to in paras 15 and 16 of the pre-action correspondence. The posts are also expressly identified in Schedule 2 and 3 of the affidavit accompanying the plaintiffs' application for an injunction.

[28] Before turning to the pleaded defence it is important to establish the defamatory nature of the posts complained of by the plaintiffs. At the hearing the defendant did not appear to understand this point

[29] The allegations contained in those Tweets are set out in para 15 of the statement of claim (see above).

[30] Consistent with their obligations the plaintiffs, having set out the posts about which they complain, and the allegations contained therein go on to plead at para 19 of the statement of claim as follows:

> "19. In their natural and ordinary meaning, the Tweets set out above at paragraphs 15-17 whether read as individual posts or in the context of the Twitter (now X) account as a whole defamed and libelled the plaintiffs and meant and were understood to mean that:
>
> Particulars of natural and ordinary meaning
>
> (i) That the company and the individual plaintiffs were guilty of unlawful discrimination and harassment against the defendant during the course of her employment by the company.
>
> (ii) That the second, third and fourth plaintiffs are dishonest, malicious and gave false evidence under oath during the Tribunal proceedings."

[31] There can be no doubt that the allegations pleaded in the statement of claim in their natural and ordinary meaning are defamatory of the plaintiffs. There can be no sustainable challenge to the meanings pleaded in para [19] above. The defendant in the course of the hearing appears to fail to understand that this is so. To accuse someone of disgusting discrimination of a disabled woman is plainly defamatory. To allege that witnesses gave dishonest evidence in court is plainly defamatory. I need not elaborate further.

[32] The issue for the court is whether the defences relied upon should be struck out under Order 18 rule 19 and whether as a result the plaintiffs are entitled to the judgment they seek in their summons.

The pleaded defences

[33] I turn now to the defences relied upon by the defendant. In doing so, I make full allowance for the fact that the defendant is a litigant in person. Pleadings in defamation claims are complex and technical. That said the defences relied upon and the intentions of the defendant in support of those defences are clear.

[34] She avers that the statements that she has made are protected under the Defamation Act (Northern Ireland) 2022. She relies on the defences of truth; honest opinion and public interest. She also asserts her rights under Article 10 of the ECHR which expressly protects the right to freedom of expression.

[35] In her defence, she accepts that the statements about which the plaintiffs complain "reflect factual events." She unhesitatingly asserts that those facts included incidents of dishonesty, discrimination and unlawful behaviour.

[36] Specifically, she pleads that "it is reasonable to conclude that MacNaughton Blair, through the actions of Steven Whyte, Andrew McCarron, Ashleigh Morgan and Gary Ellis broke multiple laws and committed disability discrimination against me."

[37] She asserts that Andrew McCarron was "dishonest in his evidence."

[38] She pleads that Steven Whyte "was dishonest in his evidence."

[39] She asserts that Steven Whyte or his colleague "did tamper with and amend notes of a meeting."

[40] She pleads that Steven Whyte and Andrew McCarron acted with "malicious intent" towards her.

[41] She pleads that the Industrial Tribunal did not acknowledge the blatant dishonesty and lies told and recorded by the second and fourth named plaintiffs during the Tribunal proceedings.

[42] She pleads that Ashleigh Morgan was dishonest in her witness statement. She pleads that the Industrial Tribunal "did disregard and dismiss presented evidence of dishonesty, psychological abuse, physical injury and abuse related to visor wear, harassment, mistreatment, dereliction of duty and lawbreaking."

[43] In respect of the defence of honest opinion, she pleads:

> "These opinions were based on true facts that existed at the time and reflect my genuine beliefs, particularly in relation to disability rights, workplace practices and the amendments to mask regulations. As a former employee and an individual directly affected by these issues, I have a legitimate right to express my views publicly. Under the Defamation Act (Northern Ireland) 2022, I am entitled to rely on the defence of honest opinion, as any reasonable person could have held the same views based on the facts known to me."

[44] Relatedly, she relies on the defence of public interest in which she says the statements about which the plaintiffs complain relate to the treatment of disabled individuals, public health regulations and workplace discrimination. She says these are matters of public interest and that by sharing her experiences and drawing attention to these important issues she served the public interest. She says that her intention was not to defame the plaintiffs but to raise awareness about issues that affect a significant portion of the population and to ensure that her experiences are part of a public record and the public discourse.

The legal principles

[45] The governing principles in relation to strike-out applications under Order 18 have been set out by the Court of Appeal in a judgment by McCloskey LJ in the case of *Holbeach v the Chief Constable of the Police Service of Northern Ireland* [2024] NICA 45 at para [7] in the following way:

> "[7] …The principles by which such applications are determined were rehearsed in the decision of this court *in Magill v Chief Constable of PSNI* [2022] NICA 49, at para [7]:
>
> > '[7] In summary, the court (a) must take the plaintiff's case at its zenith and (b) assume that all of the factual allegations pleaded are correct and will be established at trial. As a corollary of these principles, applications under Order 18 rule 12 of the 1980 Rules are determined exclusively on the basis of the plaintiff's statement of claim. It is not appropriate to receive any evidence in this exercise. Based on decisions such as that of this court in *O'Dwyer v Chief Constable of the RUC* [1997] NI 403 the following principles apply:
> >
> > (i) The summary procedure for striking out pleadings is to be invoked in plain and obvious cases only.
> >
> > (ii) The plaintiff's pleaded case must be unarguable or almost incontestably bad.
> >
> > (iii) In approaching such applications, the court should be cautious in any developing field of law; thus in *Lonrho plc v Tebbit* (1991) 4 All ER 973 at 979H, in an action where an application was made to strike out a claim in negligence on the grounds that raised matters of State policy and where the defendants allegedly owed no duty of care to the plaintiff regarding exercise of their powers, Sir Nicholas Brown-Wilkinson V-C said:

> 'In considering whether or not to decide the difficult question of law, the judge can and should take into account whether the point of law is of such a kind that it can properly be determined on the bare facts pleaded or whether it would not be better determined at the trial in the light of the actual facts of the case. The methodology of English law is to decide cases not by a process of a priori reasoning from general principle but by deciding each case on a case-by-case basis from which, in due course, principles may emerge. Therefore, in a new and developing field of law it is often inappropriate to determine points of law on the assumed and scanty, facts pleaded in the statement of claim.'

(iv) Where the only ground on which the application is made is that the pleading discloses no reasonable cause of action or defence no evidence is admitted.

(v) A reasonable cause of action means a cause of action with some chance of success when only the allegations in the pleading are considered.

(vi) So long as the statement of claim or the particulars disclose some cause of action, or raise some question fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out." Thus, in *E (A Minor) v Dorset CC* [1995] 2 AC 633 Sir Thomas Bingham stated at p--:

> 'This means that where the legal viability of a cause of action is unclear (perhaps because the law is in a state of transition) or in any way sensitive to the facts, an order to strike out should not be made. But if after argument the court can properly be persuaded that no matter

> what (within the bounds of the pleading) the actual facts of the claim it is bound to fail for want of a cause of action, I can see no reason why the parties should be required to prolong the proceedings before that decision is reached.'
>
> We would add that a strike out order is a draconian remedy as it drives the plaintiff from the seat of justice, extinguishing his claim in limine."

[46] The principles of course are also in this context underpinned by the provision of Article 10 of the ECHR which protects freedom of expression.

The plaintiffs' case

[47] What then is the basis of the plaintiffs' applications?

[48] In short, the plaintiffs assert that the defendant's defence seeks to re-litigate the decisions and findings of the Industrial Tribunal and Court of Appeal. Her pleaded defence is nothing short of a collateral attack on issues that have been litigated and determined.

[49] Applying the principles referred to above, at first glance, it might seem difficult to argue that the defence discloses no reasonable defence. The court must anxiously scrutinise what the plaintiff has pleaded, what the defendant actually says in the publications complained of and the basis upon which truth, honest opinion and public interest are pleaded.

[50] In conducting this analysis it is useful to highlight some of the findings of the Industrial Tribunal and the Court of Appeal.

[51] As appears earlier in this judgment the Industrial Tribunal comprehensively dismissed the defendant's claim.

[52] The Tribunal made express findings that the second, third and fourth plaintiffs had provided measured and credible evidence under oath in the course of the proceedings.

[53] A central plank of the complaint pursued by the defendant was that she was disabled. The Tribunal found that she was not:

> "77. The burden in respect of proving that she was a disabled person lies with the claimant. The Tribunal has found that the claimant was not disabled at the relevant time.

> 78. Given that the claimant has not persuaded the Tribunal that she was disabled at the relevant time, all elements of her disability discrimination claim must fail and accordingly are dismissed."

[54] The Tribunal also rejected the discrimination and harassment claims:

> "80. Even if this were not the case, the Tribunal would not have inferred discrimination as it accepted the respondent's explanation, advanced through the evidence adduced on its behalf, that the reason the claimant was asked to wear a visor for a short period was on the ground of public health. It could not be inferred that the claimant was required to wear a visor on the grounds of her disability.
> …
> 86. In considering how the respondent organisation, in what were unprecedented times during the global pandemic, responded to the claimant, the Tribunal … concludes the respondent's conduct could not reasonably or objectively be viewed as having violated the claimant's dignity or created an intimidating, hostile, degrading, humiliating or offensive environment for her."

[55] Mr Girvan points out that the judgment also records that:

> (a) The defendant had a history of publishing intemperate content via Twitter. For example, the defendant accepted she had related the transport face covering messaging to Nazi Germany (subsequently corrected to the "Stasi") and referred to the Chief Medical Officer as heading up a 'mob.'
>
> (b) The defendant shifted her case around and 'changed horses' during the course of the dispute.
>
> (c) The defendant gave evidence which was not credible or persuasive.

[56] The Tribunal made express findings under the heading "Credibility" in the following terms:

"**Credibility**

43. The claimant appeared to the Tribunal to have adopted a revisionist position in relation to her symptoms and the extent of her recovery, both at the time when the matters under consideration arose and as she has looked back and reflected post termination of her employment … The Tribunal acknowledges that the claimant strongly and genuinely believes her own narrative regarding her symptoms, that she strongly disagrees with the conclusions of many of the medical professionals that she has had contact with, pursuing complaints against some of them and that she (in the Tribunal's view unreasonably) described the treatment she received from the NHS as 'non existent.' In noting this, the Tribunal does not suggest that the claimant was deliberately seeking to mislead it. Notwithstanding this, the Tribunal did not find the claimant's evidence credible or persuasive.

44. By contrast, the Tribunal found the evidence of the respondents' witnesses to be measured and credible. Accordingly, where there has been a conflict between the claimant and the respondents' witnesses the Tribunal has generally preferred the evidence of the respondents' witnesses."

[57] In the reconsideration judgment of 30 May 2023, the Tribunal determined as follows:

"**Outcome**

26. As noted above, the claimant's application discloses her profound disagreement with the Tribunal's judgment. The Tribunal acknowledges her disappointment and disagreement with this decision. However, this does not mean that she is entitled to have a "second bite of the cherry" and re-argue her case. None of the matters explored by the claimant in her application, and during oral submissions at the hearing, engaged a "interests of justice" test. Even if the Tribunal has erred in this conclusion, it is satisfied that the interests of justice favour finality in litigation, and that subject to the outcome of an appeal (if any), the matter should not be reopened. The inevitable consequence of this is that the Tribunal affirmed its decision, subject to the correction below."

(The correction has no relevance to these proceedings.)

[58] In dismissing the applicant's appeal from the Tribunal the Court of Appeal in its judgment delivered by Kinney J concludes:

> "[39] The appellate function of this court does not engage in a rehearing of the merits of the original case. This ground of appeal is essentially taking issue with the decision of the Tribunal on its merits. We have carefully considered the entirety of the case management hearings, the transcripts made available to us and the final decision of the Tribunal. The Tribunal reached its decision after an extensive hearing. There was a detailed and extensive consideration of the evidence. Applying the principles set out in *Nesbitt* (para [19] above), it is our view that the decision and its reasoning have been clearly set out and the ultimate conclusions are unimpeachable.
>
> [40] We are satisfied that the appellant has been genuine in pursuing her claim before the Tribunal and indeed in pursuing her appeal before this court. She remains aggrieved by her treatment by the respondents and the decision of the Tribunal. Nevertheless, it is clear that there is no sustainable challenge to the Tribunal proceedings or its decisions. We have identified no merit in the centrepiece of her appeal, or any other complaint not embraced thereby."

The plaintiff's application – can the plaintiff succeed under Order 18?

The defamation claim

[59] In light of these findings can the plaintiffs establish that the defendant's pleadings in relation to the defamation claim disclose no reasonable defence or relatedly that they constitute an abuse of the process of the court by reason of issue estoppel?

[60] Under the rubric of *res judicata* the concept of issue estoppel is now regarded as an aspect of a wider doctrine of abuse of process.

[61] The essence of issue estoppel is that a litigant in a civil action may be estopped from re-litigating what has previously been finally decided against him/her by a competent court.

[62] The law was summarised by Lord Sumption in *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46; [2014] AC 160 at [17]-[26] (with the full agreement of the court).

[63] For the purposes of this application the important passage of Lord Sumption's judgment is as follows:

> "[17] Res judicata is a portmanteau term which is used to describe a number of different legal principles with different juridical origins. As with other such expressions, the label tends to distract attention from the contents of the bottle. The first principle is that once a cause of action has been held to exist or not to exist, that outcome may not be challenged by either party in subsequent proceedings. This is 'cause of action estoppel.' It is properly described as a form of estoppel precluding a party from challenging the same cause of action in subsequent proceedings. Secondly, there is the principle, which is not easily described as a species of estoppel, that where the claimant succeeded in the first action and does not challenge the outcome, he may not bring a second action on the same cause of action, for example to recover further damages: see *Conquer v Boot* [1928] 2 KB 336. Third, there is the doctrine of merger, which treats a cause of action as extinguished once judgment has been given upon it, and the claimant's sole right as being a right upon the judgment. Although this produces the same effect as the second principle, it is in reality a substantive rule about the legal effect of an English judgment, which is regarded as 'of a higher nature' and therefore as superseding the underlying cause of action … Fourth, there is the principle that even where the cause of action is not the same in the later action as it was in the earlier one, some issue which is necessarily common to both was decided on the earlier occasion and is binding on the parties: *Duchess of Kingston's Case* (1776) 20 St Tr 355. `Issue estoppel' was the expression devised to describe this principle by Higgins J in *Hoysted v Federal Commissioner of Taxation* (1921) 29 CLR 537, 561 and adopted by Diplock LJ in *Thoday v Thoday* [1964] P 181, 197-198. Fifth, there is the principle first formulated by Wigram V-C in *Henderson v Henderson* (1843) 3 Hare 100, 115, which precludes a party from raising in subsequent proceedings matters which were not, but could and should have been raised in the earlier ones. Finally, there is the more general procedural rule against abusive

> proceedings, which may be regarded as the policy underlying all of the above principles with the possible exception of the doctrine of merger."

[64] The inherent power of the court to strike out a pleading for abuse of process was recognised by Lord Diplock in *Hunter v Chief Constable of the West Midlands Police* [1982] AC 529 at 536 where he described the:

> "inherent power which any Court of Justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. The circumstances in which abuse of process can arise are very varied: those which give rise to the instant appeal must surely be unique. It would, in my view, be most unwise if this house were to use this occasion to say anything that might be taken as limiting to fixed categories the kinds of circumstances in which the court has a duty (I disavow the word discretion) to exercise this salutary power."

[65] Reflecting on the case law the starting point remains that the power to strike out a pleading which has the effect of either denying a claim or a defence is a draconian one, or as Lord Diplock put it, a salutary power.

[66] Whilst the circumstances in which the power can be exercised are very varied the principle and policy behind the power in the context of this case is plain. Issue estoppel arises where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided and in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant one of the parties seeks to re-open that issue.

[67] On any showing it is clear from the posts about which the plaintiffs complain that in seeking to justify those postings the defendant is seeking to re-litigate facts that have been determined by the Industrial Tribunal and affirmed by the Court of Appeal.

[68] If the court is to determine the truth of the allegations about which the plaintiffs complain by necessity it will have to reconsider the matters determined by the Industrial Tribunal. Of necessity such a determination would require hearing the same evidence and assessing the same documentation as was before the Tribunal. This is clear from the papers alone, but the court is confirmed in its view by the submissions of the defendant at the hearing. By way of one example, the

defendant invites the court to conclude that because the Tribunal's decisions were influenced by flawed procedures and unfairness, issue estoppel should not apply to its determination on the issues that arose in the case. The defendant's submissions were replete with express challenges to the findings of the Tribunal as affirmed by the Court of Appeal. Consistent with her approach, the plaintiffs' plead at paragraph 16 of the statement of claim that:

> "The Tweets also attacked the company's legal representatives, the Tribunal/President and more widely go on to attack the Lady Chief Justice and project an ungrounded conspiracy theory of State corruption."

[69] The effect of permitting this defence to proceed would in the court's view be unfair and oppressive to the plaintiffs.

[70] There is a clear public and policy interest in the finality of judicial proceedings by competent courts. Plainly, permitting the defence of truth to proceed will involve relitigating matters that have been determined by a competent court.

[71] Fully alive to the draconian nature of the relevant power, in the circumstances of this case, the court is driven to the conclusion that it is under a duty to strike out the plea of truth.

[72] The court therefore grants an order pursuant to Order 18 rule 19(1) striking out the defence of truth on the grounds that it is an abuse of the process of the court. In the context of this case, such a defence has no prospect of success. It discloses no reasonable defence.

[73] I turn now to the question of honest opinion. In the court's view it is clear that the defamatory meanings are plainly allegations of fact and are *CHASE Level 1* allegations of serious misconduct. Indeed, this is recognised by the defendant herself who asserts that her allegations are factually accurate. Determining the accuracy of the allegations would involve, of necessity, relitigating matters that have already been concluded. Again, permitting such a defence would constitute an abuse of process of the court. Such a defence is unarguable.

[74] The court, therefore, makes a similar order in respect of the defence of honest belief. That is an order pursuant to Order 18 rule 19(1) striking out the defence of honest opinion on the grounds that it discloses no reasonable defence and constitutes an abuse of process of the court.

[75] I turn to the defence of public interest. I do not consider that this gets off the ground. The defendant is in effect engaged in a campaign against the plaintiffs relying on allegations which have been expressly dismissed by a competent court in this jurisdiction. On no account could they be said to be reasonable or responsible, fair or accurate. The defendant is disingenuous when she says that she wishes to

express her views publicly in relation to disability rights, workplace practices and the amendments to mask regulations. That is not what her posts actually say. Rather, they are explicit and express attacks on the plaintiffs. The posts seek to re-assert and embellish the allegations rejected by the Tribunal. The Industrial Tribunal and the Court of Appeal have rejected those attacks. Such a defence is unarguable; it discloses no reasonable cause of action and constitutes an abuse of process of the court.

[76] The court, therefore, makes an order under Order 18 rule 19(1), striking out the defence of public interest, on the grounds that in the context of this case it discloses no reasonable defence and constitutes an abuse of process of the court.

[77] In making the orders the court is mindful of its obligation to protect freedom of expression as enshrined in Article 10 of the ECHR. The right of course is a qualified one and in the context of defamation litigation needs to be balanced against the rights of persons to their reputation. Having regard to the matters set out above, a balancing exercise of the respective rights clearly comes down in favour of the plaintiffs.

Summary disposal

[78] Having regard to the court's findings striking out the substantive defences pleaded in relation to the plaintiffs' defamation claim, the issue of summary disposal under the Defamation Act 1996 ("the 1996 Act") arises as sought in the plaintiffs' summons. Section 8 of the 1996 Act provides:

> "**8. Summary disposal of claim.**
>
> (1) In defamation proceedings the court may dispose summarily of the plaintiff's claim in accordance with the following provisions.
>
> (2) The court may dismiss the plaintiff's claim if it appears to the court that it has no realistic prospect of success and there is no reason why it should be tried.
>
> (3) The court may give judgment for the plaintiff and grant him summary relief (see section 9) if it appears to the court that there is no defence to the claim which has a realistic prospect of success, and that there is no other reason why the claim should be tried.
>
> Unless the plaintiff asks for summary relief, the court shall not act under this subsection unless it is satisfied that summary relief will adequately compensate him for the wrong he has suffered.

(4) In considering whether a claim should be tried the court shall have regard to—

(a) whether all the persons who are or might be defendants in respect of the publication complained of are before the court;

(b) whether summary disposal of the claim against another defendant would be inappropriate;

(c) the extent to which there is a conflict of evidence;

(d) the seriousness of the alleged wrong (as regards the content of the statement and the extent of publication); and

(e) whether it is justifiable in the circumstances to proceed to a full trial.

..."

[79] It will be apparent from the court's findings set out above, that it appears to the court that there is no defence to the claim which has a realistic prospect of success.

[80] Considering the statutory criteria it does not consider that there is any other reason why the claim should be tried.

[81] The issue then arises as to whether summary relief should be provided and, if so, what form that relief should take.

[82] Section 9 of the 1996 Act provides:

"**9. Meaning of summary relief.**

(1) For the purposes of section 8 (summary disposal of claim) "summary relief" means such of the following as may be appropriate—

(a) a declaration that the statement was false and defamatory of the plaintiff;

(b) an order that the defendant publish or cause to be published a suitable correction and apology;

(c) damages not exceeding £10,000 or such other amount as may be prescribed by order of the Lord Chancellor;

(d) an order restraining the defendant from publishing or further publishing the matter complained of.

(2) The content of any correction and apology, and the time, manner, form and place of publication, shall be for the parties to agree.

If they cannot agree on the content, the court may direct the defendant to publish or cause to be published a summary of the court's judgment agreed by the parties or settled by the court in accordance with rules of court.

If they cannot agree on the time, manner, form or place of publication, the court may direct the defendant to take such reasonable and practicable steps as the court considers appropriate.
…"

[83] The relevant rules of court are set out in Order 82 rule (9) of the Rules of the Court of Judicature (Northern Ireland) as follows:

"**(1) Summary disposal under the Defamation Act 1996**

9.—(1) This rule applies to proceedings for summary disposal under sections 8 and 9 of the 1996 Act.

(2) The Court may, at any stage of the proceedings—

(a) treat any application, pleading or other step in the proceedings as an application for summary disposal; or

(b) make an order for summary disposal without any such application.

(3) The Court may, on any application for summary disposal, direct the defendant to elect whether or not to make an offer to make amends under section 2 of the 1996 Act.

(4) When it makes a direction under paragraph (3), the Court will specify the time by which and the manner in which—

(a) the election is to be made; and

(b) notification of the election is to be given to the Court and other parties.

(5) An application for summary disposal must be supported by an affidavit which—

(a) states that it is an application under section 8 of the 1996 Act;

(b) verifies the facts on which the application is based;

(c) identifies concisely any point of law on which the application relies;

(d) states that in the deponent's belief the claim or the defence has no realistic prospect of success and that there is no reason why the claim should be tried; and

(e) states whether or not the defendant has made an offer to make amends and whether or not the offer has been withdrawn.

(6) An application for summary disposal may be made at any time after the service of the statement of claim.

(7) Where the Court makes an order for summary disposal, the order will specify the date by which the parties should reach agreement about the content, time, manner, form and place of publication of the correction and apology.

(8) Where the parties cannot agree on the content of any correction and apology within the time specified in the order of the Court, the plaintiff must—

(a) prepare a summary of the judgment by the Court; and

(b) serve it on all the other parties within 3 days of the date specified in the order.

(9) Where the parties cannot agree the summary of the judgment prepared by the plaintiff, they must within 3 days of receiving the summary—

(a) lodge with the Court and serve on all the other parties a copy of the summary showing amendments they wish to make to it; and

(b) apply to the Court for the Court to settle the summary.

(10) An application to settle the summary will be heard by the judge who gave the judgment."

[84] In light of the findings set out above, it seems to the court that this is a suitable case for summary disposal.

[85] I, therefore, direct as follows:

(a) I direct that the defendant should elect whether or not to make amends under section 2 of the 1996 Act;

(b) Any such offer shall be made within three weeks of the date hereof;

(c) The defendant shall notify the court and the other parties whether she wishes to make an offer of amends; and

(d) If the defendant elects to make such an offer, the details should be included in the notification to the court and parties.

[86] In the event that the defendant elects not to make an offer to make amends, or any offer is unacceptable to the plaintiffs the court shall proceed to consider whether it should make orders for summary relief under section 9 of the 1996 Act.

Breach of confidence and the undertaking in respect of discovery

[87] The defendant's Substack account was used by her to publish documents obtained by her during the currency of the Industrial Tribunal proceedings with snippets of the document photographed and placed below Tweets on the Twitter Account and hyperlink within the Tweet directing the readers to the full version of the document on Substack.

[88] The documents which have been published on Substack have been identified in the plaintiffs' statement of claim at para [28] as follows:

> "(i) The full document filed by the defendant 'requests for reconsideration.' The plaintiffs assert that this document is replete with attacks upon the Tribunal, the plaintiffs and the company lawyers.
>
> (ii) The full document filed (with a minor redaction to suit the defendant) of the "final submissions" dated 31 October 2022.
>
> (iii) On Twitter and Substack on 12 March 2023, a copy of the company's three page list of documents from the Tribunal proceedings in addition to a full copy (redacted in parts by the defendant) of the 137 pages of discoverable documents referenced within the list of documents, both of which had been served upon the defendant in the course of the Tribunal proceedings on 21 January 2022.
>
> (iv) A partly redacted version of the Expert Medical Report of Dr Craig obtained by the company solicitor on behalf of the company disclosed in the Industrial Tribunal proceedings.
>
> (v) Large swathes of discovery include emails from the second, third and fourth plaintiffs and other employees which were private/confidential and to which the defendant was not copied and other emails/reports including occupational health reports to which the defendant was not privy other than via discovery in the Tribunal proceedings.
>
> (vi) Full versions of the ET3 Form filed on behalf of the company in the Tribunal proceedings, and the public release of Without Prejudice Save as to Costs correspondence from the company solicitors alongside the parties' correspondence with the Tribunal office.
>
> (vii) The entirety of the witness statements filed on behalf of the company and which are highlighted with an accompanying statement 'the highlighted text indicates dishonesty/lies/misleading

information that will be addressed and cross-referenced to evidence.'

(viii) The contents of a covert recording and internal documents provided in disclosure with an accompanying statement '*Note: dishonesty by the respondents was ignored in totality by Judge Gamble.'"

[89] The plaintiffs assert that publication of this material constitutes a breach of confidence and the implied undertaking in legal proceedings in respect of discovery.

[90] On this issue, the plaintiffs rely on the implied undertaking to the court to the effect that documents obtained as a result of the compulsory processes of the court will only be used for the purpose for which they were disclosed and will not be used for a collateral or ulterior purpose.

[91] Mr Girvan, points out that the purpose of the implied undertaking is to:

(a) encourage full and frank disclosure between parties for the purposes of proper litigation;

(b) acknowledge that the compulsion to produce material in a proceeding can violate a party's rights to confidentiality;

(c) protect a party's confidentiality in such circumstances; and

(d) in light of the above factors, strike an appropriate balance between the need to protect a party's confidentiality and the compulsory nature of court processes.

[92] Mr Girvan relies on the analysis in *Arlidge on Contempt*, chapter 12 paras 12-222 to 12-250 which sets out the precise ambits of duties under the policies behind the implied undertaking.

[93] He refers the court to the decision in *Harmon v Secretary of State for the Home Department* [1983] 1 AC 280, in which it was determined that a deliberate breach of the implied undertaking is an abuse of process and a contempt of court.

[94] *MST and others (Disclosure – Restrictions – Implied Undertakings)* [2016] UKUT 337, the then President of the Upper Tribunal, Mr Justice McCloskey, held that the implied undertaking in respect of documents provided in discovery is applicable to Tribunal proceedings – in that case the Upper Tribunal Immigration Asylum Chamber.

[95] Importantly, the decision reaffirmed the principle that documents obtained by a party pursuant to disclosure or production orders or directions are produced

under coercion and, in consequence, are received subject to certain restrictions. In particular, they must not be deployed by the receiving party for any collateral or ulterior purpose not reasonably necessary for the proper conduct of the proceedings.

[96] In assessing this matter, the court is conscious that there has been a public hearing in both the Industrial Tribunal and the Court of Appeal in which the dispute between the plaintiffs and the defendant was ventilated. The judgments of the respective courts are matters of public record. Therefore, there is an argument that some of the material about which the plaintiffs complained is in the public domain.

[97] It seems to the court that there is a distinction between documents provided by way of discovery in the Industrial Tribunal proceedings and those documents which form part of the public record of the hearing and judgment before the Industrial Tribunal and Court of Appeal.

[98] That said, the mischief which the tort seeks to address is the use of the documentation which has been provided in the course of the proceedings. In this case, the court considers that the documentation has, indeed, been used for a collateral or ulterior purpose not reasonably necessary for the proper conduct of the proceedings, namely as part of a defamatory campaign by the defendant against the plaintiffs.

[99] At this stage, the court does not propose to rule definitively on this point, which at the very least will require further consideration of the precise documentation about which the plaintiffs complain and the extent to which they are in the public domain. However, the court considers that a proper resolution of the defamation issue when the summary relief procedure is complete should address this issue to the satisfaction of the plaintiffs. The court does not consider that it is appropriate to grant summary relief on this issue at this stage.

Breach of trademark

[100] The plaintiff is a well-established and well-known firm in this jurisdiction which has its own branding/corporate identity. Its company mark/logo which has been illustrated in the plaintiffs' statement of claim, includes the text MacBlair, followed by a "thumbs up" logo. Beneath it is written "LOCAL BUILDERS' MERCHANT."

[101] The defendant, after the Tribunal proceedings, posted a Tweet with a new banner clearly mocking the one described above with a "thumbs down sign" and the text "YOUR LOCAL DISCRIMINATORY EMPLOYER."

[102] After receipt of pre-action correspondence, which asserted that the distortion of the company trademark was unlawful, the defendant published a further distortion of the trademark and copyright by publishing the banner with the text

"Bully Blair", accompanied by a "thumbs down" sign with the under lying text "Your local discriminatory employer."

[103] The relevant logo is a registered trademark. Given that it is registered, the company is entitled to enforce its trademark rights under domestic legislation – see sections 1-2, 9-27, 72-75 Trade Marks Act 1994 section 14 which provides:

> "**Action for infringement**
>
> (1) An infringement of a registered trademark is actionable by the proprietor of the trademark.
>
> (2) In an action for infringement all such relief by way of damages, injunctions, accounts or otherwise is available to him as is available in respect of the infringement of any other property right."

[104] On any showing it is clear the defendant has destroyed the company's trademark and published it with a view to damaging the brand of the company.

[105] The court notes that in *BP Amoco v John Kelly* [2000] NICh 18, (Girvan J) and [2001] NICA 3, *BP* succeeded in an injunction in respect of trademark infringement.

[106] Leaving aside any breach of trademark, the contents of the altered trademark published by the defendant is clearly defamatory. The court is not convinced that it is appropriate to provide summary relief in respect of alleged trademark infringement. It considers that the real issue on this point is the use of the trademark which the court has determined to be defamatory. The court considers that the resolution of the summary relief procedure in relation to the defamation cause of action is a sufficient remedy in respect of any breach of trademark. The court, therefore, does not propose to make any order for summary relief on this issue at this stage.