IS UNFAIR PROCESSING THE NEW LIBEL? HOW DO YOU ADVANCE AND DEFEND CLAIMS FOR CLIENTS?

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Dale Vince v Associated Newspapers Ltd

8 and 9 June 2023 (originally "sex pest")

Labour repays £100,000 to 'sex harassment' donor

By **David Churchill**
Chief Political Correspondent

SIR Keir Starmer was left embarrassed yesterday after repaying a £100,000 donation to a high-flying City financier accused of sex harassment.

The Labour leader was forced into a humiliating climbdown after being accused of 'hypocrisy' for accepting the cash despite the allegations against Davide Serra.

Mr Serra, the boss of a multi-billion pound asset management firm in London, made four £25,000 donations to Labour during the first quarter of this year, it emerged in official figures released yesterday.

And Labour faced further embarrassment yesterday when businessman Dale Vince, who has donated £1.5million to the party, joined an eco-protest in London with Just Stop Oil, the group he is helping to bankroll.

The party pocketed Mr Serra's money despite accusations that the 52-year-old married chief executive made 'wholly inappropriate' comments on the size of a female colleague's breasts.

A tribunal also heard he told clients that Jolanda Niccolini, his now former head of business development and investor relations, would do anything for them – 'including prostitute herself'. Mr Serra's firm was ordered to pay £32,000 in compensation by a tribunal judge last month after Ms Niccolini successfully sued for sex harassment and victimisation. Labour has decided to repay the £100,000 donation after the Daily Mail highlighted the case. It is understood it did not know about it before being alerted to it by this newspaper.



Road blockers: Dale Vince in London yesterday, and circled as he holds up traffic with Just Stop Oil

Earlier, Tory MP Craig Mackinlay said: 'If [Sir Keir] had principles he would hand the money back, otherwise it's hypocrisy.'

In central London yesterday, Mr Vince joined JSO activists who were blocking traffic around Parliament and Trafalgar Square.

Some suspect he may have influenced Sir Keir's pledge to block new North Sea oil and gas exploration if he wins the next election

Mr Vince said: 'I'm here to support the incredibly brave people of Just Stop Oil. I can't imagine it will make much difference to Keir Starmer, he's his own man and so am I.'

Tory Party deputy chairman Nickie Aiken said: 'As if it wasn't already clear enough, Labour's big bankrollers and policy paymasters are the eco-fanatics themselves.'

UKGDPR Art 5(1)(a):

"Personal data shall be processed lawfully, fairly, and in a transparent manner in relation to the data subject ("lawfulness, fairness and transparency") "

It all starts here….

Charleston v News Group Newspapers Ltd [1995] 2 AC 65 (HL)

1985-2025





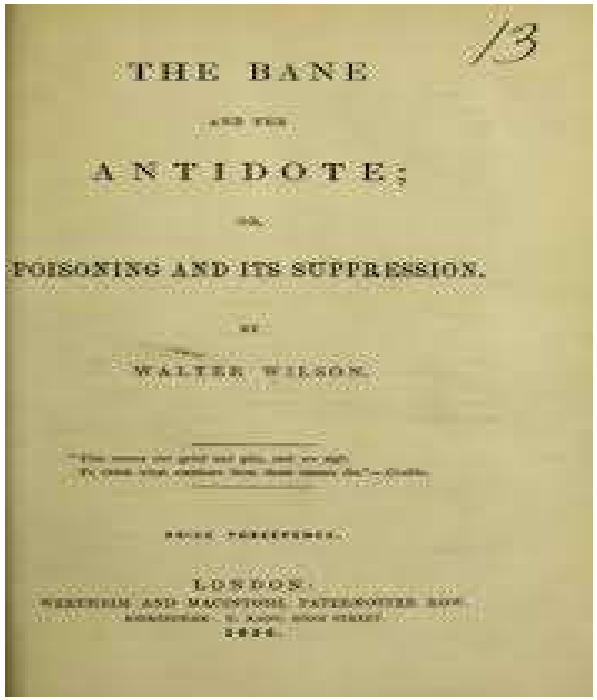
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The *Charleston* Principle

a claim in libel may only be founded on the whole of an article, rather than headlines or selected parts

bane and antidote


THE BANE

AND THE

ANTIDOTE;

OR,

POISONING AND ITS SUPPRESSION.

BY

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A Reminder:

“The plaintiffs were actors in a long-running Australian television serial which was also shown on British television. On 15 March 1992 the defendants' newspaper published material comprising an article with headlines, photographs and captions. The photographs showed the plaintiffs' faces superimposed on the near-naked bodies of models in pornographic poses. The article, which made it clear that the photographs had been produced without the knowledge or consent of the plaintiffs, castigated the makers of a pornographic computer game.”

The History

Indications that *Charleston* Principle held to be relevant to claims of inaccurate processing:

NT1 v Google LLC [2019] QB 344; [2018] EWHC 799 (QB) at [83] and [87] *per* Warby J

Aven v Orbis Business Intelligence Ltd [2020] EWHC 1812 (QB) at [28]-[29] *per* Warby J

Pacini v Dow Jones and Company Inc [2024] EWHC 2714 (KB)

DHCJ Richard Spearman KC at [64] - [65] and [74]: data claims involved not only considerations of accuracy (to which the single meaning rule applies) but also considerations of fairness, and a defamation approach could not be applied indiscriminately to both

At [79]: “fairness is a broad and flexible concept, and it is possible to take account of all the circumstances when determining it”

Vince Chronology

19 June 2023 IPSO inaccuracy complaint

26 June 2023 LBA intimating claims for libel and unfair processing

3 July 2023 IPSO reject inaccuracy complaint "the article made clear the basis for the article's headline"

2 October 2023 C issues claim – libel only

10 November 2023 D applies to strike out – infringement of *Charleston* principle

19 February 2024 HHJ Lewis hears strike out application – reserves judgment

Vince Chronology

9 May 2024 C instructs new counsel

5 June 2024 C issues unfair processing claim

15 July 2024 HHJ Lewis strikes out libel claim [2024] EWHC 1806 (KB); [2024] EMLR 14. C applies for PTA

18 September 2024 C serves claim form and PoC for unfair processing claim. Non-material harm – damage to reputation. Material harm – costs incurred by solicitors, in attempting reasonably to mitigate his loss by seeking takedown

Vince Chronology

18 October 2024 Warby LJ refuses PTA in libel claim

15 November 2024 D App to strike out claim as abuse of process (*Henderson* principle) – second set of proceedings and no reasonable prospect of success on claim data processed fairly.

5 December 2024 C app for SJ – mirror image of D app

9 June 2025 Swift J [2025] EWHC 1411 (KB)

Vince: Swift J at [38]:

Mr Vince's complaint is that processing by way of publication was unfair because the headline and the pictures gave a misleading impression. He contends that because of the unfair processing his reputation has been damaged. In this context I consider it is correct to determine whether personal data was processed fairly taking an approach that, like the rule in *Charleston* , takes account of the entirety of the publication. This is in no sense an artificial approach. As is apparent from Lord Nicholls' speech in *Charleston* the rule represents a balance struck in the public interest between competing considerations. While it is in practice obvious both that different people will understand published material in different ways, and that not all readers will pay the same attention to an article than they do to a headline or any picture printed with it, the law, through the rule in *Charleston* , reflects long established public interest in favour of public speech. The law of data protection is not the law of defamation. Yet in the context of this claim where the processing relied on takes the form of publication, the unfairness relied on is that a headline and photographs gave a misleading impression, and the primary harmed caused is said to be reputational damage, the law would be incoherent if the fairness of the processing was assessed other than by considering the entirety of what was published.

Vince: Swift J at [29] and [40] (on abuse):

D case: since arose from same event, libel and unfair processing proceedings should have been launched at same time (*Henderson*). Judge held inapplicable because unfair processing claim had been issued before libel judgment handed down but no sufficient reason for holding unfair processing claim in reserve.

"*what [had] happened in this case [was] a significant departure from any ordinary or proper use of the court's process*"

Court of Appeal [2026] EWCA Civ 899

Sir Geoffrey Vos MR, with whom Warby LJ and Whipple LJ agreed

On abuse: called for a "broad merits-based judgment" (at [52]), citing *Johnson v Gore-wood & Co* [2002] 2 AC 1. Came down in C's favour:

- Unfair processing claim advanced from first contact with D but its response inappropriately dismissive
- Followed legal advice and switched focus to DP law without undue delay after fresh advice from new counsel
- Unfair processing claim was legally novel and D, as a seasoned litigant, not oppressed by need to defend itself in consecutive proceedings.

Court of Appeal [2026] EWCA Civ 899

Fairness under article 5(1)(a) UK GDPR an autonomous concept: obviously implies a balance and that "[t]he data subject's reasonable expectations will be relevant at least when they have a relationship with the data controller" ([65]).

The meaning of fairness "may be significantly affected by the context" ([64]) - in this case, included provision in the Editors' Code – (to which the Court was bound to have regard to under s. 12(4)(b) HRA 1998) that newspapers must "take care not publish inaccurate, misleading or distorted information or images, including headlines not supported by the text" (quoted at [69]).

D had failed to take such care and so had not processed in accordance with the UK GDPR's fairness standard.

What about DPA 2018, Sch. 2, Pt. V, Para. 26?

Requires DC to **reasonably believe** that

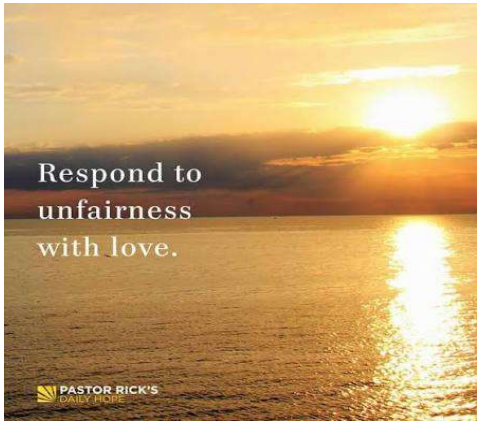
- application of "fairness" provision would be incompatible with the purposes of journalism; and
- Publication of the material would be in the public interest,
- Having regard to the Editor's Code of Practice

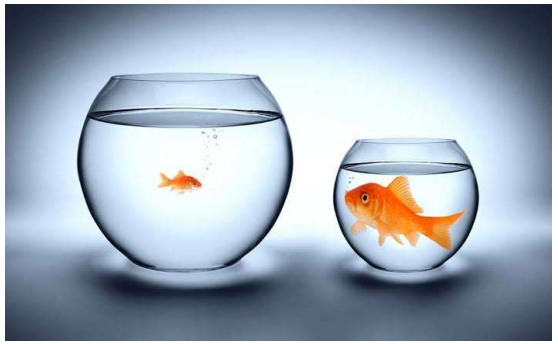
Held: (at [75]-[76]).

- D would "never be able to show" that it reasonably believed that publication of the headline juxtaposed with the captioned photographs was in the public interest.
- Found no evidence of any belief that application of the fairness provision to the processing would be incompatible with the purposes of journalism.
- Since D accepted that C had suffered some damage from the processing, he was entitled to summary judgment with damages to be assessed.

Tips: Advancing and Defending Claims…

Bringing a Claim:
merits/location/funding





Defending a Claim:
record-keeping vs pressure of time

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Thank you

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