

Section 13 order made against Google LLC (Blackledge v Persons Unknown)

This analysis was first published on Lexis®PSL on 27 July 2021 and can be found [here](#) (subscription required):

TMT analysis: This judgment is the first to make an order against Google LLC under section 13 of the Defamation Act 2013 (DA 2013), which sets out a relatively untested power available to the court in circumstances where a defendant fails to engage with proceedings and where their identity is not identifiable—and provides claimants with the means to ensure that the injunctive relief that is granted is effective. The order obliges Google, in its capacity as operator of a website containing defamatory statements, to take down the statements complained of (in this case, the order is for Google to take down the website entirely, likely because the website appears to have been set up for the sole purpose of publishing the allegations complained of). Written by Mathilde Groppo, senior associate at Carter-Ruck Solicitors.

Blackledge v Person(s) unknown being the authors, editors and publishers of the website <https://metooucu.blogspot.com> [2021] EWHC 1994 (QB)

What are the practical implications of this case?

The judgment is noteworthy for [DA 2013, s 13](#) order it makes, ordering Google LLC (the Californian-based operator of the website on which the defamatory allegations had been published) to take down the said website. Google did not appear at the hearing, and therefore the consequential order included a provision that it could apply for the order to varied or discharged.

Seeking an order under [DA 2013, s 13](#) against a third party website operator without naming them as a party to the proceedings is advantageous because it makes proceedings much simpler, faster, and therefore, cost effective. A claimant naming a website operator as a party faces significant practical hurdles, all of which add to the complexity and costs of a case:

- the need, for an action to proceed, to correctly identify the defendant with responsibility for hosting the site or for controlling what was published thereon (see, eg *Richardson v Facebook* [\[2015\] EWHC 3154 \(QB\)](#))
- the need, where the website operator is based outside the jurisdiction, to issue an application for permission to serve proceedings outside the jurisdiction, which may need to be made on notice to the operator and to effect service overseas
- the fact that the operator will be afforded a defence under [DA 2013, s 5\(2\)](#), and that the burden falls on the claimant to defeat the defence by proving that the requirements under [DA 2013, s 5\(3\)](#) are met

By seeking an order under [DA 2013, s 13](#), a claimant avoids these difficulties and yet obtains an order against the operator which ensures the effectiveness of injunctive relief. Whether [DA 2013, s 13](#) application is to be made on notice (thereby giving the operator an opportunity to appear and make submissions in relation to the application) is unclear. However, in the context of other applications (eg for a Norwich Pharmacal Order) it is clear that operators often do not object to the claimant's requests, as long as they have been ordered by the court, which was Google's position in this case—see paragraph 59 of the judgment. The advantages of such an approach are therefore clear.

What was the background?

The claimant is a university professor in politics and was a longstanding member of the University and College Union. The allegations complained of—to the effect that the claimant was guilty of rape and sexual assaults, is a sexual predator and covered up his crimes and humiliated survivors of his abuse, were published in three articles published from February until April 2020 on <https://MeTooUCU.blogspot.com>, a website hosted by blogspot.com. The articles were widely shared on Twitter and by email among colleagues of the claimant.

At the end of each article was an @protonmail.com email address, ProtonMail being an end-to-end encrypted email service based in Switzerland. The defendant did not respond to the claimant's letter of claim, and Proton Technologies AG, the company that operates ProtonMail, did not respond to the claimant's enquiries regarding the identity of the owner of the account. In those circumstances, the claimant issued a claim for libel, harassment and breach of the General Data Protection Regulation, [Regulation \(EU\) 2016/679](#), against persons unknown.

The defendant failed to file an Acknowledgment of Service or a Defence. The claimant therefore applied for default judgment, which was granted. The hearing before Mr Justice Saini was a remedies hearing, during which damages were assessed and ancillary relief was granted in the form of an injunction and order under [DA 2013, s 13](#).

What did the court decide?

There were three points for the court to determine.

First, in relation to quantum of damages, the court noted that in the light of the substantial (even if not complete) overlap of the matters relied on for constituting libel and constituting harassment, 'it would be wholly artificial to separate out the distress caused by the libels and the course of conduct amounting to harassment', and it therefore decided to make a single award as opposed to distinct ones.

The damages were assessed in the sum of £70,000 in the light of:

- the gravity of the allegations, which the court found to be entirely false
- the manner and extent of their publication (Saini J noted, in particular: the extensive dissemination of the allegations; the fact they had been published over a period of time; and the fact that they were publicised by association with the #metoo movement)
- the credibility of the defendant, who clearly had knowledge of the claimant, and
- the effect of the publications on the claimant, whose evidence was described as 'compelling'

Secondly, as to whether to grant an injunction, Saini J had no hesitation in granting such an injunction in the circumstances of the case, noting the fact that the identity of the defendant remained unknown.

Thirdly, referring to the judgment in *Summerfield Browne Ltd v Waymouth (Rev1)* [\[2021\] EWHC 85 \(QB\)](#), Saini J ordered Google LLC to take down the <https://MeTooUCU.blogspot.com> website. It did so, noting that:

'where [the defendant] has hidden their identity, a section 13 order is likely to be the only remedy that is capable of providing effective and meaningful protection to [the claimant's] civil rights'

Case details:

- Court: High Court of Justice, Queen's Bench Division, Media and Communications List
- Judge: Mr Justice Saini
- Date of judgment: 15 July 2021

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