

# Meghan Markle vs Associated Newspapers Ltd

## Table of Pleadings

<b>Particulars of Claim</b> <b>11 October 2019</b>	<b>Part 18 Ds Requests for further information and responses</b>  <b>Requests answered 11 November 2019</b> <b>Requests answered 28 November 2019</b>	<b>Amended Defence dated 24 January 2020</b>	<b>Reply</b>  <b>17 April 2020</b>
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Preamble - none

Preamble - none

### Overview

1. The Claimant joins issue with the Defendant on the entirety of its Defence, save for the admissions it contains and the non-admissions set out below.

2. Save where otherwise stated, reference to paragraph numbers below relates to paragraphs of the Defence.

3. The Claimant responds below to the Defence without prejudice to her contention that it is manifestly absurd as a matter of principle, and demonstrably unsustainable on the true factual position (as set out in this Reply), for the Defendant to suggest, as it appears to do, that:

3.1 The detailed contents of a letter written by a daughter, addressed and sent to her father, are *not* private, simply because that daughter is a member of the Royal family.

3.2 The contents of a letter are also *not* to be regarded as private by virtue of the fact that they were recorded in a private communication; instead a letter has to contain the author's deepest or most personal

<p><b>The Parties</b></p> <p>1. The Claimant is a well-known American actor, business entrepreneur, and women's rights activist. She was best known for her role on the NBC Universal television drama series, <i>Suits</i>, in which she played a leading role for several years. She has also been heavily involved in philanthropic and advocacy work with The United Nations and World Vision, of which she was global ambassador. The Claimant became Her Royal Highness, The Duchess of Sussex, following her marriage to His Royal Highness Prince Harry, The Duke of Sussex in May 2018.</p>	<p><b>The Parties</b></p> <p>2. As to paragraph 1:</p> <p>2.1 The third and fourth sentences are admitted. Prince Harry is sixth in the line of succession.</p> <p>2.2 Except that it is admitted that the Claimant is American by birth, well-known, and uses her high-profile position by speaking publicly in support of women's rights activism, the first sentence is denied. The Claimant is no longer an actor or (if she ever was) a business entrepreneur, as she claims in paragraph 1. She is a member of the royal family and does not undertake paid work.</p> <p>2.3 The second sentence does not fix the allegation at any particular time in the past and is therefore too vague to plead to. If it is alleged that prior to her relationship with HRH Prince Harry the Claimant was best known for her role in <i>Suits</i>, that is admitted. Her prominent public position and fame now, as the Duchess of Sussex and the wife of Prince Harry, far eclipse that which she previously enjoyed as an actor in <i>Suits</i>.</p> <p>3. In addition to the matters admitted in paragraph 2 above, the Defendant avers as follows. The Claimant is a high-ranking member of the royal family. By reason of her position as the Duchess of Sussex, the Claimant enjoys immense privilege and</p>	<p>The Parties</p> <p>6. As to paragraph 2, it is admitted that at the time of the Articles, the Claimant was a senior member of the Royal family (as was her husband, the Duke of Sussex), and that she did not undertake paid work. Following their decision to step away from official duties, which had been discussed in advance with both Her Majesty The Queen and the Prince of Wales (contrary to what has been falsely claimed by the Defendant in its reporting), the Claimant is no longer considered as a 'working' member of the Royal Family, and will resume her business activities, which the Defendant has gratuitously, as well as wrongly, denied.</p> <p>7. As to paragraph 3, insofar as it is relevant to any issues in the proceedings, it is again admitted that the Claimant was a senior member of the Royal family at the time of the Articles, and as such, in return for the official and public functions which she and her husband performed, they were given residence in Frogmore Cottage (one of Her Majesty The Queen's historic dwellings in Windsor Great Park). As already</p>
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<p>2. The Defendant is the publisher of The Mail on Sunday, a hugely popular and influential weekly tabloid newspaper which enjoys an enormous circulation and even greater readership within this jurisdiction. It is also the owner and operator of a website on which it reproduces material from the hard copy version of the newspaper which is readily accessible or available via the worldwide internet at the URL, www.thedailymail.co.uk ("the Defendant's website"). The Defendant's website is the most popular UK newspaper website with millions of daily users within this jurisdiction</p>		<p>7. Paragraph 2 is admitted, except that:</p> <p>7.1 The averment that the Defendant's website is accessible via the "worldwide" internet is admitted, but irrelevant, because the claim as understood from the Particulars of Claim is in respect of publication in the jurisdiction of the Court. If it is not, that should be made explicitly clear.</p> <p>7.2 The allegation that the website has millions of daily "users" is not admitted, because the word "users" is not understood in this context. The number of daily visitors to the website is not relevant to this claim, because most of these readers will read only a fraction of the content of the website.</p>	
<p>3. In August 2018, the Claimant wrote a private and confidential letter to her father, Thomas Markle, which detailed her intimate thoughts and feelings about her father's health and her relationship with him at that time ("the Letter"). The Claimant sent the Letter to her father on or around 27 August 2018</p>		<p>8. As to paragraph 3, it is admitted that in August 2019 the Claimant wrote a letter to her father Thomas Markle ("the Letter") and sent the Letter to him on or around 27 August 2018. Except as admitted in this paragraph, paragraph 3 is denied. The Claimant does not make any claim for breach of confidence against her father or the Defendant in respect of the publication of the Letter and it is not therefore open to her to allege confidentiality in the Letter.</p>	

4. The Articles complained of on 10 February 2019, the Defendant published or caused to be published a series of articles in The Mail on Sunday and on MailOnline in which substantial extracts of the Letter were reproduced or set out, as follows ("the Articles"):

(1) an article on pages 4 to 5 of The Mail on Sunday, under the heading: "Revealed: The letter showing true tragedy of Meghan's rift with a father she says has 'broken her heart into a million pieces'";

(2) an article on pages 6 to 7 of The Mail on Sunday, under the heading: "Meghan: Stop painful attacks on Harry; Her dad: I like him.... I'll always love you";

(3) an article on MailOnline, at the URL <https://www.dailymail.co.uk/news/article6686817/Letter-showing-true-tragedy-Meghan-Markles-rift-father.html>, entitled "Revealed: The Handwritten letter showing true tragedy of Meghan's rift with a father she says has 'broken her heart into a million pieces'";

(4) an article on MailOnline, at

**The Articles complained of**

9. Paragraph 4 is admitted. The Defendant adopts below the term "the Articles" to denote the five articles referred to in paragraphs 4(1) to 4(5), and "Article (1)" (or as appropriate) to refer to a particular one of the Articles. In Appendix A to the Response, the Claimant served marked-up copies of the Articles showing the words complained of in respect of each of the three causes of action in this claim (misuse of private information, breach of the GDPR and infringement of copyright). The Claimant's claim is therefore limited to the words that have been notified to the Defendant in this way ("the words complained of").

5. Pending full disclosure, the precise extent of publication and republication of the Articles is unknown, but it is likely that they were accessed or read by millions of people.

10. As to paragraph 5:

10.1 The allegation that the Articles were “accessed”, as distinct to read, is not understood. It does not appear to be relevant in this context.

10.2 The relevant readership figures are those within the jurisdiction of the Court.

10.3 The Defendant’s current information is that the print edition of the newspaper on 10 February 2019 (including digital copies) sold about 900,000 copies in the jurisdiction. The number of unique visitors in the jurisdiction to all three of the online Articles up to and including the date of issuing of this claim i.e. 30 September 2019 was about 1 million.

6. At no stage prior to publication of the Articles did the Defendant make any attempt to contact the Claimant, or any of her representatives, in relation to their proposed contents. In view of the self-evidently private and sensitive nature of the contents of the Letter, the Claimant will invite the Court to infer that this was a deliberate decision by the Defendant in order to avoid the risk of the Claimant seeking to prevent the publication (had she been so warned) and thereby secure the enormous 'scoop' which the Defendant wished to achieve with such a highly sensational story.

11. It is admitted that the Defendant did not contact the Claimant before publication. The Defendant was not obliged to do so. The rest of paragraph 6 is denied, except that the Defendant does not plead to the allegation as to the Defendant's motive for not contacting the Claimant before publication because to do so would refer to matters covered by legal privilege.

<p>7. As further particularised below, the publication of the Articles containing the detailed contents of the Letter blatantly constituted a misuse of the Claimant's private information, a breach of the Claimant's rights protected under the General Data Protection Regulation (EU) 2016/679 ("GDPR") and an infringement of the Claimant's copyright in the Letter. Further, the Defendant deliberately sought to mislead the public by selectively editing the contents of the Letter so as to suppress or omit parts of it which would undermine its negative characterization of the Claimant, even misrepresenting those extracts it chose to publish as being the "full content" of the "five-page" Letter (which they were plainly not, as demonstrated in paragraphs 19(4) and (5) below).</p>	<p><b>Of paragraph 7:</b></p> <p><i>"the publication of the Articles containing the detailed contents of the Letter blatantly constituted a misuse of the Claimant's private information, a breach of the Claimant's rights protected under the General Data Protection Regulation (EU) 2016/679 (GDPR) and an infringement of the Claimant's copyright in the Letter"</i></p> <p>11. (sic) Please state clearly and unambiguously, in respect of each cause of action relied on (misuse of private information, breach of GDPR rights, and infringement of copyright), whether the Claimant's claim in respect of the Articles is confined to the words that report the contents of, and contain extracts from, the Letter, or whether the claim is also in respect of other parts of any of the Articles.</p> <p><b>Response 1</b></p> <p><u>Misuse of Private information.</u> The Claimant's claim relates to the words in the Articles which report the contents of,</p>	<p><b>Alleged misuse of private information</b></p> <p>12. As to paragraph 7:</p> <p>12.1 In the Response the Claimant has made clear that she does not complain of the publication of the Articles as a whole, but only of certain words within them. It is denied that the publication of the words complained of constituted a misuse of the Claimant's private information, or a breach of the Claimant's GDPR rights, or an infringement of the Claimant's copyright in the Letter, as alleged or at all.</p> <p>12.2 The second sentence of paragraph 7 is denied. The Defendant did not seek to mislead the public as alleged or at all. The Articles stated, as was the case, that whilst Thomas Markle had disclosed the full content of the Letter to the Defendant, the Defendant was publishing extracts from it. It was also apparent from the Articles themselves that only extracts from the Letter were published by the Defendant. The Articles properly and accurately reported matters of public interest and current events, namely the Claimant's ongoing dispute with and estrangement from her father, and previous misleading or one-sided reporting of that dispute, and of the content of the Letter and of her father's letter in response, in the media. Further details of the Defendant's case on this matter are set out below in paragraphs 17.9 and 18.6</p>	<p><b>Misuse of the Claimant's Private Information</b></p> <p>11. Paragraph 12 is denied. In particular, it is denied that:</p> <p>11.1. The Articles "properly and accurately reported matters of public interest and current events".</p> <p>11.2. The Claimant's "ongoing dispute with and estrangement from her father" constituted a matter of public interest, as opposed to a topic which the public would want to read about and would therefore be commercially beneficial to the Defendant to publish.</p> <p>11.3. It was "apparent from the Articles themselves that only extracts from the Letter were being published by the Defendant". As already pleaded, the Defendant explicitly informed readers that it was publishing the "full content" of the "five-page" Letter, which was completely untrue, as it well knew.</p>
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<p><b>Misuse of the Claimant's Private Information</b></p> <p>8. The contents of the Letter are self-evidently private and confidential and/or fall within the scope of the Claimant's private and family life, home and correspondence under Article 8 of the European Convention on Human Rights; alternatively, the Claimant had a reasonable expectation that the contents of the Letter were private and would remain so. In further support of this contention, the Claimant will rely upon the following facts and matters:</p> <p>(1) The Letter was obviously private correspondence written by the Claimant to her father.</p> <p>(2) Further, it contained the Claimant's deepest and most private thoughts and feelings about her relationship with her father and were detailed by her at a time of great personal anguish and distress.</p> <p>(3) The Claimant intended the detailed contents of the Letter to be private, and certainly did not expect them to be published to the world at large by a national newspaper, and without any warning.</p>	<p>Of paragraph 8(3):</p> <p><i>"The Claimant intended the detailed contents of the Letter to be private"</i></p> <p>3. Please state whether it is alleged that the Claimant intended the existence of the Letter to be private.</p> <p><b>Response 3</b></p> <p>This request is unnecessary. The Defendant is reminded of the purpose of CPR Part 18 and its Practice Direction. As already clearly pleaded, the Claimant's case is that she intended the contents of her letter to be private. The fact that the Claimant also intended the existence of the Letter to be private is, however, irrelevant to the cause of action, and her case has not been pleaded in this way.</p> <p>4. Please state whether it is alleged that the Claimant intended the general (as opposed to detailed) contents of the Letter to be private.</p> <p><b>Response 4</b></p>	<p>13. Paragraph 8 is denied. The contents of the Letter were not private or confidential, self-evidently or at all. The third sentence of paragraph 8 above is repeated. The Claimant did not have a reasonable expectation of privacy that the contents of the Letter were private and would remain so. In support of these denials, the Defendant relies on the following facts and matters:</p> <p>13.1 The Claimant has failed to set out the particular information in the Letter in respect of which she alleges she has a reasonable expectation of privacy. In paragraph 9(6) she refers to "the Information" as if this were a defined term, but it is not defined in the Particulars of Claim. It is inferred that she has not set out the particular information alleged to be private because to do so would show that the information in the Letter was not private and/or not of the kind that, in all the circumstances, merits the protection of the Court. Much of the information in the Letter does not belong to or relate to the Claimant but is information about her father and his dealings with the media.</p> <p>13.2 As a general principle, a recipient of a letter is not obliged to keep its existence or contents private, unless there are special circumstances, such as a mutual understanding between sender and recipient that the contents of a letter should be kept private. The recipient of a letter is entitled to tell his or her own story</p>	<p>12. Paragraph 13 is denied. In particular:</p> <p>12.1. The Defendant's denial that "the contents of the Letter are not private or confidential", and "did not contain any deeply personal or private matters about the Claimant herself" is as disingenuous as it is false, and is expressly contradicted by the Defendant's own publication. For example, in an article published in the Daily Mail, on the following day (11 February 2019), the Defendant described the Letter as "Meghan pours out her heart in moving letter to estranged father", and further as "a deeply personal handwritten note."</p> <p>12.2. It is denied that unless there are "special circumstances", such as an express understanding that correspondence be kept private, a recipient of a letter is entitled to disclose its full contents to the entire world. This is wholly unsustainable both as a matter of law (on established authority) and as an issue of fact. It is trite that Article 8 of the European Convention on Human Rights protects "the right to respect for an individual's private and</p>
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<p>9. The publication of the contents of the Letter was wrongful and constituted an unjustified infringement of the Claimant's right to privacy and a misuse of her private information. The Claimant will rely on the following matters in support of this contention:</p> <p>(1) The facts and matters set out in paragraphs 8(1) to 8(3) above</p> <p>(2) The Defendant's actions were a very serious interference with the Claimant's right to respect for her private and family life. The publication of her private correspondence is manifestly a gross intrusion and invasion of privacy.</p> <p>(3) Although the Claimant is well-known to the public, the details of her feelings about her relationship with her father are not a matter of legitimate public interest, nor do they relate to her public profile or work.</p> <p>(4) The Letter was published by the Defendant as a "world exclusive", in the most sensational and inflammatory terms possible, and given huge prominence, including on the</p>	<p>Of paragraph 9(8):</p> <p><i>"The Defendant chose to deliberately omit or suppress parts of the Letter in a highly misleading and dishonest manner, including even cutting out words in the middle of a sentence or whole sentences out of a paragraph".</i></p> <p>7. Please identify in relation to each of the Articles each part of the Letter, which it is alleged the Defendant deliberately omitted or suppressed in a highly misleading and dishonest manner.</p> <p><b>Response 7</b></p> <p>The Claimant is not prepared to allow this request to be used by the Defendant as a vehicle for intruding further into her privacy. The Claimant has attached to this Response a confidential schedule setting out the parts of the Letter which were deliberately omitted or suppressed by the Defendant ("the Confidential Schedule of Deliberate Omissions").</p>	<p>16. Paragraph 9 is denied for the reasons set out above. The publication of the words complained of was not wrongful or an unjustified infringement of the Claimant's right to privacy or a misuse of her private information as alleged or at all. As to the matters alleged in paragraphs 9(1) to 9(12) (in so far as those matters have not already been responded to above):</p> <p>16.1 Paragraph 9(2) is denied. Even if the Defendant was responsible for any interference with the Claimant's right to respect for her private and family life, which is denied for reasons set out in this Defence, any such interference would not be "very serious". As set out in paragraph 13.4 above, the Letter was not a deeply personal letter nor did it contain sensitive personal information about the Claimant.</p> <p>16.2 Paragraph 9(3) is denied for reasons set out above. The Claimant issued a public statement on 17 May 2018, which was widely reported, commenting on the fact that her father would not be attending her wedding to Prince Harry, her sadness at this development, and how she had always cared for her father. This official public statement was made on the Claimant's behalf by Kensington Palace, recognising (correctly) that her relationship with her father and developments in that relationship are a matter of public interest and relevant to her public role and position. The official statement did not inform the public that Mr</p>	<p>14. (sic) As to paragraph 16, insofar as it is necessary to plead to it (since most of it is either repetitive argument or admissions), the Claimant responds as follows:</p> <p>14.1 It is denied that the Letter was not "deeply personal", or that it did not contain sensitive personal information about the Claimant, as is the suggestion in paragraph 16.1. As already stated above, this suggestion is as false as it is disingenuous, since it is expressly contradicted by the Defendant's own article published in the Daily Mail on the following day (11 February 2019), when the Defendant described the very same Letter as "Meghan pours out her heart in moving letter to estranged father", and further as "a deeply personal handwritten note."</p> <p>14.2 It is admitted and averred that a public statement was issued on the Claimant's behalf by Kensington Palace shortly before the wedding, as referred to in paragraph 16.2. Again, as explained above, this brief statement was issued as a response to the frenzied reporting in the British media</p>
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**Breach of the Claimant's Data Protection Rights**

10. Further or alternatively, the Defendant has breached the Claimant's right to data protection as set out in Article 8 of the EU Charter of Fundamental Rights ("the Charter"); the General Data Protection Regulation (EU) 2016/679 ("the GDPR") and the Data Protection Act 2018 ("the DPA").

10.1. The Letter was written by the Claimant and described in the Articles as being written by her. Accordingly, the Letter and the Articles publishing its detailed contents constituted the Claimant's personal data pursuant to Article 4(1) of the GDPR since they were, or they contained, information relating to the Claimant.

10.2. Storage and publication of the information constituted processing of the Claimant's personal data within the meaning of Article (aX2) of the GDPR.

10.3. The Defendant was the data controller within the meaning of Article 4(7) of the GDPR in respect of each of

**Alleged breach of the Claimant's data protection rights**

19. Paragraph 10 is denied. It is denied that the Particulars of Claim plead any claim for infringement of Article 8 of the Charter and denied that the Defendant has breached the Claimant's rights under the GDPR or the DPA as alleged or at all.

20. As to paragraph 10.1, it is admitted that the references to the Claimant in the Articles, including the reports of the words complained of in the Letter which related to her, constituted the Claimant's personal data.

21. As to paragraph 10.2, the Claimant has not defined the phrase "the Information". It is however admitted that storage and publication of the references to the Claimant in the Articles, including the reports of the words complained of in the Letter which related to her, constituted processing of the Claimant's personal data.

22. Paragraph 10.3 is admitted.

23. Paragraph 10.4 is denied. The Defendant has not acted in breach of Article 5 of the GDPR and the Defendant's processing was not unlawful or unfair as alleged or at all. Without prejudice to the generality of that denial:

23.1 The processing of the Claimant's personal data was not unlawful. The

**Breach of the Claimant's Data Protection Rights**

16. As to the Defendant's denial of her claim for breach of her Data Protection Rights, it is not necessary for the Claimant to plead either to the bare and unsupported denials (since they are deemed to be denied by this Reply in any event) or such admissions which the Defence contains (and as are plainly unavoidable for the Defendant).

17. Subject to this, the Claimant responds as follows:

17.1 It is denied that the Letter did not contain the Claimant's sensitive personal data; as already explained above, the Letter contained details of her most personal thoughts and distress about her relationship with her father (as the Defendant itself described in an article published the next day). The suggestion therefore in paragraph 23.2.1 that the Letter did not convey "any personal or sensitive information about the Claimant" is manifestly absurd.

17.2 It is also denied for the reasons amply set out above that the Claimant's personal

11. Further or alternatively, the processing has infringed the Claimant's rights as a data subject as set out in the GDPR. In particular, on 14 February 2019, the Claimant's solicitors wrote a letter to the Defendant which contained a notice of objection pursuant to Article 21 of the GDPR and a request that the Defendant cease processing the Claimant's personal data ("the Notice"). Contrary to the Notice, the Defendant has continued to process the Claimant's personal data. By failing to cease processing the Defendant has infringed the Claimant's rights pursuant to Articles 21 of the GDPR, in contravention of the statutory duty under GDPR Articles 5(2) and 12(2) of the GDPR.

24. It is admitted that by letter dated 14 February 2019 the Claimant's (former) solicitors demanded that the Defendant cease processing the Claimant's personal data pursuant to Article 21 of the GDPR. This demand was not limited to the Claimant's personal data contained in the words now complained of in this claim but was expressed as a demand for the cessation of processing of the Claimant's personal data generally. Such a demand was plainly not a demand that any UK media organisation could sensibly comply with. It is also admitted that the Defendant has continued to process that data. For reasons set out above, the Defendant is entitled to do so. Except to the extent admitted above, paragraph 11 is denied.

**Infringement of the Claimant's Copyright**

12. The Claimant is and has at all material times been resident in the United Kingdom and a citizen of the United States of America.

**Alleged infringement of the Claimant's copyright**

25. It is admitted that at all material times the Claimant has been a citizen of the United States of America. Save as aforesaid paragraph 12 is not admitted.

26. Copyright protects original literary works insofar as they are original. Originality as regards a literary work requires the literary work to be the author's own intellectual creation qua literary work. Moreover, the protection conferred by such copyright protects the author against unauthorised reproduction of a substantial part of that which is original in the work, namely a substantial part of that which is the author's own intellectual creation qua literary work.

27. Yet further the extent to which a work is the author's own intellectual creation and therefore original and the extent to which a substantial part of that which is original has been reproduced is a key element of the defences relied upon herein, namely the balance with the interference to rights under Article 10 ECHR and Article 11 Charter of Fundamental Rights of EU of each of the Defendant, its readers and Mr Markle, public interest and fair dealing. As explained below, if contrary to the Defendant's defence the Articles did reproduce a substantial part of that which was the Claimant's own intellectual creation qua literary work, the extent to which they did so is very slight and outweighed by the other

**Infringement for the Claimant's copyright**

18. As to the Defendant's denial of her claim for infringement of copyright, it is again unnecessary for the Claimant to plead to either the argument (most of which is entirely novel and contradicted by legal authority) or the admissions it contains, which the Defendant is unable to avoid making.

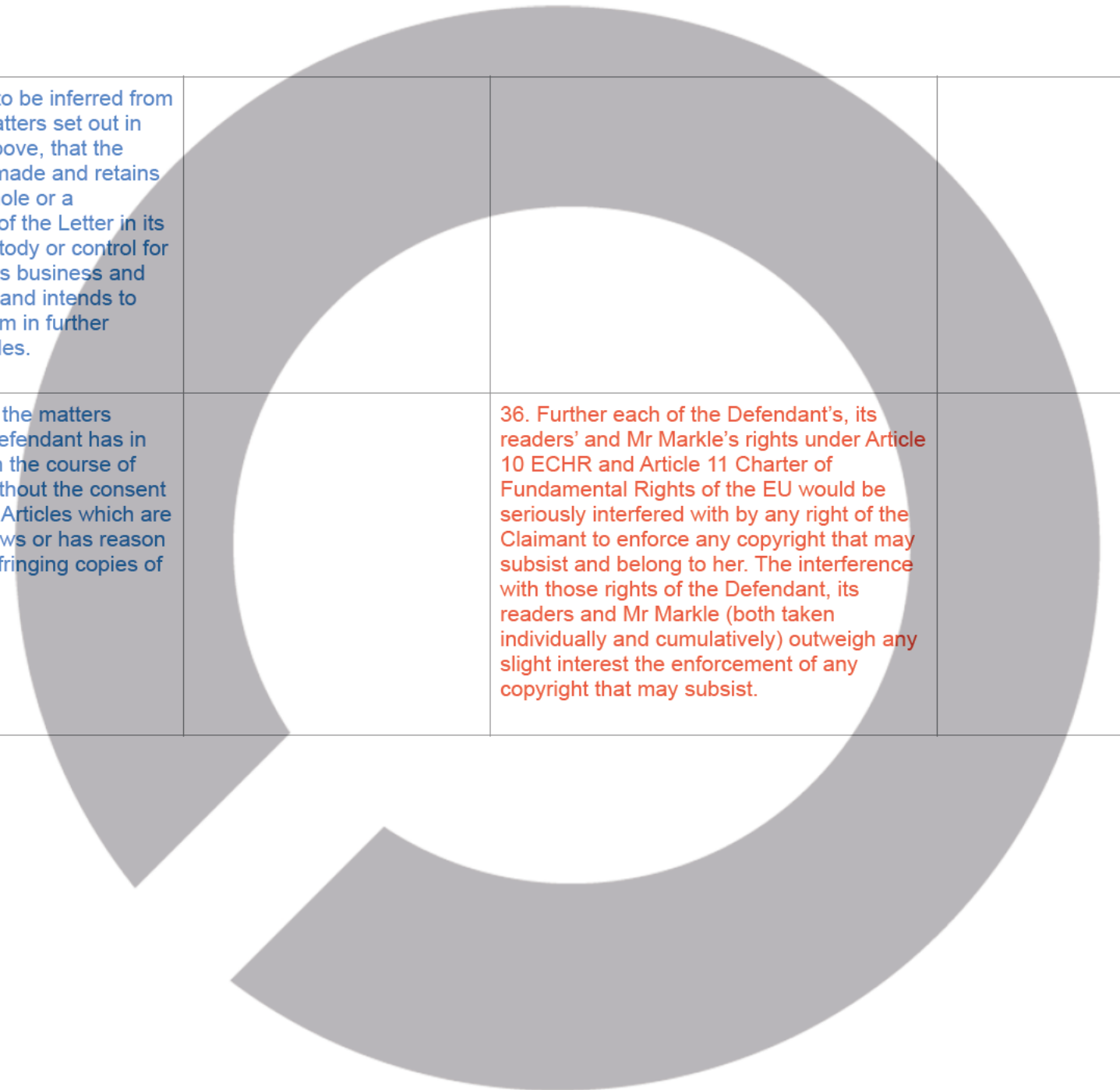
19. Subject to this, the Claimant responds as follows:

19.1 It is denied that the reproduction of a substantial part of the Claimant's work is "very slight" or that such reproduction without the Claimant's consent was outweighed by other rights and interests of the Defendant, as is suggested in paragraph 27.

19.2 It is further denied (if it be seriously alleged) that the Letter is not the Claimant's own intellectual creation or original literary work, or that the extent to which the Letter is the Claimant's own intellectual creation is limited in any way.

19.3 Further, and in any event, the detailed content of the

<p>13. Paragraph 3 above is repeated.</p>			
<p>14. The Letter is an original literary work in which copyright subsists and is owned by the Claimant.</p>			
<p>15.Paragraph 4 above is repeated. In the premises, the Defendant has without the licence of the Claimant:</p> <p>15.1. copied a substantial part of the Letter, by reproducing a substantial part of it in the Articles;</p> <p>15.2. issued copies of a substantial part of the Letter to the public, by supplying copies of its newspapers containing the Articles to the public</p> <p>15.3. communicated copies of a substantial part of the Letter to the public, by making the Articles available on the internet; and/or 15.4. authorised the aforesaid acts.</p>			



<p>16. Further it is to be inferred from the facts and matters set out in paragraph 15 above, that the Defendant has made and retains copies of the whole or a substantial part of the Letter in its possession, custody or control for the purpose of its business and that it threatens and intends to make use of them in further newspaper articles.</p>			
<p>17. By reason of the matters aforesaid, the Defendant has in its possession in the course of business and without the consent of the Claimant, Articles which are and which it knows or has reason to believe are infringing copies of the Letter.</p>		<p>36. Further each of the Defendant's, its readers' and Mr Markle's rights under Article 10 ECHR and Article 11 Charter of Fundamental Rights of the EU would be seriously interfered with by any right of the Claimant to enforce any copyright that may subsist and belong to her. The interference with those rights of the Defendant, its readers and Mr Markle (both taken individually and cumulatively) outweigh any slight interest the enforcement of any copyright that may subsist.</p>	

**PARTICULARS OF KNOWLEDGE**

17.1 The letter dated 14 February 2019 referred to at paragraph 11 above and subsequent pre-action correspondence between the parties.

17.2 The subsistence of copyright in literary works is common knowledge in the newspaper industry.

17.3 The Defendant has plainly had the benefit of legal advice concerning the retention and use of copies of the Letter.

**PARTICULARS**

36.1 Hereunder the Defendant relies upon paragraphs 3 to 6, 13, 15, 16.1, 16.6 and 16.7 above. In particular, the Defendant and its readers have rights under the aforesaid articles to report upon and scrutinise the royal family and its members and their conduct (and in the case of its readers to receive such reporting and scrutiny). The Defendant and their readers have a particular right to report upon and scrutinise (and receive such reports and scrutiny) when the Claimant had by her own actions deliberately caused or permitted the existence of the Letter and a description of its contents and a version of her conduct toward her father to be reported and placed in the public domain which her father claims was untrue and misleading.

36.2 Further, Mr Markle has rights under the aforesaid articles publicly to explain his relationship with and estrangement from his daughter. In particular he has a right publicly to describe his view of the Letter and his reaction and disappointment to receiving it, including where the contents of it are, in his view false or misleading. Moreover, Mr Markle has a particular right to explain these matters and correct what in his view was a misleading account of the contents of the Letter and the Claimant's conduct toward him that has been placed in the public domain by the Claimant's own



18. In the premises, the Defendant has infringed the Claimant's copyright in the letter and intends to infringe further the Claimant's copyright in the Letter.

39. In the premises paragraph 18 is denied.

<p><b>Remedies</b></p> <p>19. By reason of the matters set out above, the Claimant has been caused considerable distress, damage, humiliation and embarrassment. The Claimant will rely in support of her claim for general and/or aggravated damages, further or alternatively compensation pursuant to Article 82 of the GDPR and section 168 of the DPA, upon the following facts and matters:</p> <p>19.1 The Defendant's actions were flagrantly unlawful and constituted a gross invasion of the Claimant's privacy.</p> <p>19.2 The Claimant was shocked and deeply upset by the publication of the detailed contents of her private letter to her father. The fact that the Defendant deliberate chose to publish them in such a sensational and inflammatory manner, and without any warning or attempt to seek consent from her beforehand only served to make this far worse.</p> <p>19.3. Given the self-evidently private and sensitive nature of the contents of the Letter, the</p>	<p><b>Of paragraph 19.4:</b></p> <p><i>"the Defendant chose to selectively edit the extracts of the Letter in a calculated attempt to portray the Claimant in an unfavourable light".</i></p> <p>22. Please state in relation to each of the Articles precisely how it is alleged the Defendant selectively edited the extracts of the Letter in a calculated attempt to portray the Claimant in an unfavourable light, identifying the specific words from the Letter which are said to have been selectively edited and how such words were edited.</p> <p><b>Response 22</b></p> <p>The Claimant repeats and relies upon her responses in 7 and 11 above.</p> <p>Of paragraph 19.7:</p> <p><i>"The Claimant has been deeply shocked and upset by the Defendant's deliberate and blatant distortion and manipulation of the true sentiment of the Letter".</i></p>	<p><b>Remedies</b></p> <p>40. The first sentence of paragraph 19 is not admitted, except that that the Claimant has expressly disavowed seeking damages for compensation to reputation, or vindication of her reputation, and therefore the reference to "damage" in that sentence is not understood, is not relevant and is denied. The Claimant's entitlement to damages and/or aggravated damages and/or compensation is denied, as alleged or at all. As to the matters alleged under paragraph 19:</p> <p>40.1 Paragraph 19.1 is denied.</p> <p>40.2 As to paragraphs 19.2 and 19.3: The first sentence of paragraph 19.2 is denied. The Claimant had caused or permitted or authorised the existence of the Letter and a description of its contents to enter the public domain and therefore it is inherently unlikely that she was shocked or upset by those matters being disclosed. If and in so far as the Claimant was shocked or upset about the Articles, it is to be inferred from the Particulars of Claim that this was because she objects to her father's side of the dispute being published.</p> <p>40.2.1 As has already been stated, it is admitted that the Defendant did not ask for the Claimant's consent before publishing the words complained of. It was not obliged to do so, since, for</p>	<p><b>Remedies</b></p> <p>20. As to paragraph 40, and the response to her claim for remedies for the misuse of her private information, the breach of her Data Protection Rights and the infringement of her copyright, it is unnecessary for the Claimant to plead either to the Defendant's denials (since they are deemed to be denied by this Reply in any event) or such admissions which the Defence contains (and as are plainly unavoidable for the Defendant).</p> <p>21. However, for the avoidance of any doubt, the Claimant will rely, as she is entitled to do, on the manner in which, as a result of her bringing proceedings, the Defendant has sought to attack and intimidate her, both in the Defence and in print, including what amounts to little more than a gratuitously offensive (but utterly misconceived) 'tabloid' rant in paragraph 40.6, all of which has added to the distress she was caused by the original and unlawful publication of the detailed contents of a deeply private communication in which (to the use the Defendant's own words) she "pours out her heart in a moving letter to her estranged</p>
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20. Further, the Claimant is entitled to and claims additional damages pursuant to section 97(2) of the Copyright, Designs and Patents Act 1988 ("the CDPA"), having regard to all the circumstances, and in particular to the flagrancy of the infringement and the benefit accruing to the Defendant by reason of the infringement. Pending full disclosure and/or further information, the Claimant relies upon the facts and matters set out in paragraphs 9 and 19 above. In the premises, pending full disclosure by the Defendant, the Claimant will contend that the Defendant deliberately calculated that the benefit to them in infringing the Claimant's copyright in the Letter far outweighed any sanction (whether in terms of damages or howsoever) which it would have to face as a result.

41. As to paragraph 20:

41.1 It is denied that the Claimant is entitled to additional damages under section 97(2) of the Copyright, Designs and Patents Act.

41.2 The inference in the last sentence of paragraph 20 is denied.

<p>21. Further or alternatively, since the Defendant has knowingly, or with reasonable grounds to know, infringed the Claimant's copyright, the Claimant is entitled to and claims damages pursuant to article 13(1) of the Enforcement Directive having regard to all the circumstances, and in particular to the unfair profits made by the Defendant and the moral prejudice caused to the Claimant by reason of the infringement. Pending full disclosure and/or further information, the Claimant relies upon the facts and matters set out in paragraph 19 above.</p>		<p>42. As to paragraph 21:</p> <p>42.1 It is denied that the Claimant is entitled to damages under Article 13 of the Enforcement Directive as an alternative to ordinary damages. It is also denied that the Claimant is entitled to any award of damages that mixes up and comprises an element of damages and account of profits of the Defendant.</p> <p>42.2 The rest of paragraph 21 is denied.</p>	
<p>22. The Claimant is entitled to and claims interest on all sums found due to her (other than by way of general damages) pursuant to section 35A of the Senior Courts Act 1981 or under the equitable jurisdiction of the Court.</p>			

<p>23. In the absence of an undertaking to the Court, or alternatively an Order to the same effect, the Defendant threatens and intends to continue the acts complained of by the Claimant, whereby she will suffer further loss and damage. The Claimant will rely in support of this contention upon the Defendant's refusal to acknowledge the unlawfulness of its actions, as well as its deliberate decision not to contact the Claimant prior to publication of the Articles.</p>		<p>43. As to paragraph 23, the Claimant is not entitled to an undertaking or an order to cease publication of the words complained of, and the Defendant is entitled to continue to publish the same.</p>	
<p>24. Further or alternatively, the Claimant seeks an order pursuant to Article 79 of the GDPR and section 167 of the DPA to ensure that the Defendant will cease further processing of the Letter pursuant to Article 21 of the GDPR, erase the Letter without further delay pursuant to Article 17 of the GDPR and communicate each of these fact to any third party to whom it has disclosed the Letter pursuant to Article 19 of the GDPR.</p>		<p>44. Paragraph 24 is noted, and the entitlement to an order as sought is denied.</p>	

<p>AND THE CLAIMANT claims:</p> <p>(1) Damages (including aggravated damages) for misuse of private information</p> <p>(2) Further or alternatively, compensation under Article 82 of the GDPR and section 168 of the DPA.</p> <p>(3) Further or alternatively, an inquiry as to damages (including additional damages under section 97(2) of the Copyright, Designs and Patents Act 1998 and/or damages under article 13(1) of the Enforcement Directive), or alternatively at the Claimant's option an account of profits, for infringement of copyright, together with</p> <p>(a) an Order for payment to the Claimant of all sums found due to her upon the taking of such inquiry or account and</p> <p>(b) interest thereon pursuant to section 35A of the Senior Courts Act 1981 or under the equitable jurisdiction of the Court; ( ) An Order to restrain the Defendant whether acting by its directors, officers, servants or agents or otherwise howsoever from further</p>		<p>45. The Claimant is not entitled to the relief sought or any relief.</p> <p>46. Without prejudice to the generality of the foregoing the Claimant is not entitled to seek both damages and an account of profits in respect of the same acts, nor to seek to reserve the right to elect for an account of profits in the future. The damages and compensation which will be in issue at trial and which are sought in paragraphs 1 and 2 of the prayer for relief are in respect of the same acts said to comprise infringement of copyright.</p> <p>47. Further, and without prejudice to the contention that the Claimant is not entitled to any order for delivery up at all, the Claimant is not entitled to delivery up of the copy of the Letter made by Thomas Markle and given to the Defendant unless and until the Claimant alleges and proves that its making by Mr Markle was such that it is an infringing copy.</p> <p>48. Except in so far as admitted above, each and every allegation in the Particulars of Claim, the Response and the Second Response dated 9 December 2019 to the Defendant's 44 Second Request for Further Information dated 28 November 2019 is denied as if it had been expressly denied in this Defence.</p>	
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Statement of Truth

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