

IN THE HIGH COURT OF JUSTICE  
BUSINESS AND PROPERTY COURTS  
INTELLECTUAL PROPERTY LIST  
CHANCERY DIVISION

B E T W E E N:-

H.R.H THE DUCHESS OF SUSSEX

Claimant

- and -

ASSOCIATED NEWSPAPERS LIMITED

Defendant

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REPLY

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**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 feelings to make it private (even though the Defendant itself described the letter to its readers in an article the next day as "*Meghan pours out her heart in moving letter to estranged father*").

3.3. The author of a letter has no reasonable expectation that it will remain private unless he or she expressly requires the recipient not to publish it to the media or the world at large.

3.4. The author of a letter has no reasonable expectation that it will remain private if it contains no amendments, is presented in neat handwriting (despite the author being well known for her penmanship skills, as the Defendant has itself reported on) or was originally drafted in electronic form and then written out in longhand.

3.5. There is legitimate interest in a UK newspaper revealing the detailed contents of a highly personal letter because a friend of the author had made a brief and passing reference to it in the course of a lengthy interview to a US magazine, even in circumstances where the truth is that the author did not know that such an interview had been given or, more importantly, that any reference would be made to the letter (or the response to it), nor was the reference an accurate one, as it plainly would have been if it had been authorised or procured by her (which it was emphatically not).

3.6. In revealing the detailed contents of this letter, the UK media publisher was simply seeking to 'set the record straight' on behalf of the author's father as to a "*dispute*" which had arisen as to the correct version of events surrounding their relationship (as opposed to self-serving commercial interest), when in fact it was the same publisher which had first harassed and humiliated the author's father (despite him trying to avoid the limelight), had then exposed him to the world as a "*Royal scammer*" for staging 'fake' paparazzo photographs (in order, he claimed, to counteract the humiliation of him in the UK press) and had finally manipulated this vulnerable man into giving interviews, which he later described as "*lies and bullshit*", thereby causing the very "*dispute*" which they claim justified the publication of this letter, as well substantial damage to his relationship with his daughter.

4. In fact, despite the terms of the Defence, it is unarguable that the Letter was plainly private both in terms of its contents (as it contained the Claimant's deepest and most personal thoughts about her relationship with her father)

and the method in which these thoughts were communicated, regardless of how neatly they were presented or the fact that a copy of the communication was retained by her. Further, the Claimant's right to privacy is neither proportionate to, nor dictated by, the (perceived) amount of money or privilege she has, nor can it be as a matter of law. The Claimant will refer in support of these propositions, to the decision of the Court in *HRH The Prince of Wales v Associated Newspapers Limited* [2006] EWHC 522, and the Court of Appeal judgment upholding this decision [2006] EWCA Civ 1776, ("*the Prince of Wales case*"), in which this Defendant advanced the same arguments (in relation to the heir to the throne who recorded his thoughts on politics in his personal diaries), and these arguments were emphatically dismissed.

5. Moreover, as set out in detail below, the central premise of the Defence, which underpins almost the entirety of the Defendant's denial of her claims for misuse of private information, breach of Data Protection Rights and infringement of copyright, is that she procured or authorised the reference in *People* magazine to the existence and content of the Letter she wrote and the response she received from her father, albeit that the Defendant has no proof of the same. The true position is that the Claimant did not procure or authorise this reference, and that is why there is obviously no proof that she did so anywhere in the lengthy document which has been served by the Defendant, despite the fact that almost its entire Defence is based upon this. The Claimant did not know that her friends were giving an interview to *People* magazine, let alone that one of them would refer to the Letter. Had she done so, she would not have agreed to such a reference (any more than she would have consented to the detailed contents of the Letter being published by the Defendant in the Articles, had it bothered to ask for such consent, which the Defendant conspicuously did not, knowing full well that it

would not receive consent and for fear of being prevented from publishing). Indeed, when the Claimant discovered that such reference had been made, she was extremely upset. In any event, had the reference to the Letter been procured or authorised by her (which it was not), then the reference would at least have been correct (which it was not).

## **The Parties**

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.
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 stated in the Particulars of Claim, the Defendant has already published articles containing false or misleading information, as it well knew, in relation to their residence in Frogmore Cottage and its funding (articles which the Defendant is itself trying to strike out as being irrelevant, whilst at the same time seeking to introduce the

Claimant's residence there now as part of its case). Further, if and insofar as it is relevant, the Claimant will refer to the true position as to the nature and extent to which she and her husband were 'publicly funded' as working members of the Royal family, including the pressing need for security and protection which is generated as a result of their position, as opposed to the way in which this has been and continues to be portrayed by the Defendant. However, if the Defendant's contention is that the Claimant's place of residence, method of travel or apparent wealth means that she has forfeited her right to privacy, then that contention is denied. As stated above, the Claimant's right to privacy is neither proportionate to, nor dictated by, the (supposed) amount of money or privilege she has, nor could it possibly or sensibly be so as a matter of law.

8. Save that it is admitted that there is a legitimate public interest in the public duties undertaken by the Royal family, as well as the roles and functions they perform, the extravagant submissions of paragraph 4 are denied. In particular, it is denied that legitimate public interest extends to all aspects of their personal and family relationships (as opposed to the public being interested in knowing the same, which is plainly different as a matter of law), or that every detail of such relationships is "*integral to the proper functioning of the monarchy*". Indeed, as the Lord Chief Justice stated in the *Prince of Wales* case, at paragraph 70, in dismissing a similar argument by the Defendant of there being public interest in the entries made by the Prince of Wales in his private diaries, given that "*the public takes an interest in information about [the Royal family] that is relatively trivial, for this reason the public disclosure of such information can be particularly intrusive.*"

9. As to paragraph 5, it is admitted that the Claimant used her social media platform to advance the good causes which she champions, as she did prior to becoming a member of the Royal family. At the point that she became engaged to the Duke of Sussex, the Claimant closed down both her personal social media accounts and her lifestyle website and has chosen not to reveal any private or sensitive personal information about her family relationships since that date. It is further admitted that a brief public statement was issued by Kensington Palace on the Claimant's behalf shortly before the wedding. However, this statement, referring to her father's non-attendance at the wedding, was solely a response to her father's public announcement through TMZ, an American tabloid website, first that he was having a heart attack and then surgery, and the frenzied reporting of this which followed in the British media (including the Defendant's titles). Further, it was deliberately intended to limit and control the amount of press intrusion or speculation, particularly in relation to her father's health or other private matters. This was, and remains, consistent with the proactive steps taken by the Claimant to protect her privacy, and those of her family (including repeated requests to the media to leave her father alone), insofar as this has been possible and within her control.

10. Save that it is admitted that the Claimant is a public figure whose performance of her public duties is a matter of legitimate public interest, paragraph 6 is denied. The fact that she is a member of the Royal family, or any form of public figure, does not remotely mean that the intimate details of her private relationships with her family or her personal feelings about them is a "*proper matter for public scrutiny*", nor is that correct as a matter of law. The Claimant will refer in support of this contention, by way of example, to the

decision of the Court in the *Prince of Wales* case, as well as the Court of Appeal's unequivocal upholding of that decision.

### **Misuse of the Claimant's Private Information**

11. Paragraph 12 is denied. In particular, it is denied that:

11.1. The Articles "*properly and accurately reported matters of public interest and current events*".

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.

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.

12. Paragraph 13 is denied. In particular:

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*."



- 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 family life, home and correspondence*” (emphasis added), which right would be rendered almost meaningless if the Defendant’s novel contention here was correct (which it is obviously not).
- 12.3. It is further denied that the Letter needed to contain deeply private matters about the Claimant, such as her private medical information, in order to benefit from a reasonable expectation of privacy. In any event, as the Defendant itself recognised, the Letter encapsulated the Claimant’s deeply personal thoughts to her father (as well as medical information about him). That information is inherently private. However, the recording of it in a private method of communication is in any event sufficient, as the Court held in the *Prince of Wales* case, dismissing the Defendant’s argument to the contrary, and as upheld by the Court of Appeal.
- 12.4. It is denied that the Claimant knew or believed that her father would seek to publicise the contents of her letter or disclose it to the media for financial reward. The Claimant did not suspect (let alone *expect*) that he would do so, not least because of its contents and how they reflected upon him. The Claimant did have a *fear* that the letter might be intercepted or stolen by a third party (which was the reason why she had it sent by recorded delivery). However, that is not the same

as, nor could it possibly amount to, a *reasonable expectation* that the contents of the Letter would be published in a newspaper.

12.5. The Claimant denies that her handwriting or the lack of amendments demonstrate that she expected the contents of the Letter to be disclosed to the world at large. This was the Claimant's usual style of handwriting, as she had trained in calligraphy since she was at school and practiced it professionally to support her early acting career, as had been widely reported including by the Defendant in an article published in the Mail Online on 26 November 2018.

12.6. It is also denied that the tone and contents of the Letter in any way suggest that the Claimant expected it to be published. The Letter is a true and accurate reflection of the Claimant's personal thoughts towards her father, and the implicit suggestion to the contrary is as misconceived as it is offensive. As already stated, the Defendant correctly recognised that the Claimant "*pours her heart out in a moving letter*" in its article of 11 February 2019. Further, and in any event, the Claimant's expectations as to the consequences for her relationship with her father are deeply personal and are matters as to which she plainly had a reasonable expectation of privacy.

12.7. It is further denied that the fact that the Claimant retained a draft of the Letter in electronic form (since it was originally drafted in electronic form and then written out in longhand) demonstrates that she intended to publicise it herself.

12.8. Specifically, as to paragraphs 13.8.1 to 13.8.11:

- (a) It is admitted that People magazine, a US title, published articles based on interviews given by five unnamed friends of the Claimant in its 18 February 2019 hard copy and online edition and that these interviews contained the text quoted therein.
- (b) It is further admitted that in the course of these lengthy articles, a brief and passing reference was made to the Letter (as well as the response from the Claimant's father). This reference was neither the main focus nor any substantial part of the articles. Further, it did not contain the detailed contents of the Letter and insofar as it purported to summarise the Letter and the Claimant's purpose in sending it was completely wrong.
- (c) In fact, the Claimant did not know that a number of her friends agreed to give an interview about her to People magazine.
- (d) As she later discovered, following visits to see her in London at the beginning of 2019, some of her close circle of friends became extremely concerned at the aggressive attacks upon her in the media and the palpable and profound impact which this was having upon her, especially as she was vulnerable as well as heavily pregnant at the time. As a result, one of her closest friends decided that they should help by arranging to give anonymous interviews to this American magazine whose Editor was a very good friend of hers in which they might explain what the Claimant was truly like (as opposed to the tabloid portrayal of her).
- (e) In particular, the Claimant had no knowledge that her friends would make any reference to the Letter or its contents, the

intention of sending it, or the response that her father sent, nor would she ever have agreed to this being done had she been made so aware.

- (f) Further, and in any event, had any such reference to the Letter been procured or known about by the Claimant, then of course the reference to its contents and the objective in sending it in the People interview would have been correct and accurate which it clearly was not.
- (g) The Claimant did not state in her Letter that she felt her father had "*victimised*" her, nor did she state that she had "*only one father*" as is reported in the interview. Instead, she raised concern that he had consistently allowed himself to be manipulated by the tabloid media (especially the Defendant), despite her trying to persuade him to not to speak to them for his own good, and rightly so.
- (h) For example, in his letter of response to his daughter, which he provided to the Defendant and to which the Articles make explicit reference (as well set out various passages), Mr Markle refers to the behaviour of the Defendant's journalists, and in particular, Peter Sheridan who manipulated him into speaking to the Mail Online, a conversation which was then presented in an article on 28 July 2018 as an interview of "*almost nine hours*" and as a full-scale attack upon the Claimant. As Mr Markle states in this letter (thereby contradicting a number of false assertions in the Defence, as the Defendant is well aware):

*"The next day [Peter Sheridan] announced and bragged that he got a 9 hour interview. He said a few things I said in confidence, but 85% were lies and bullshit! I called him and told him he was a thief, a liar and a coward and I would GET EVEN! ....*

*"I didn't want or intend to give him an interview and I certainly would not do 9 hours for free!....*

*"When I was asked if I tried to borrow money from you, three days before the wedding? I said, "no I did not, but I know she would have helped me if I would have asked." I made a comment about Tom Jr not paying me back, "not one red cent", and they changed it to Meghan's dad complaining that his kids won't pay him back one red cent!! That comment came from Peter Sheridan's 9 hour interview....*

*"I never said anything about your grandma, never!! I know you took care of her, I don't know where that comes from? I appreciate that you have always been concerned for my health and you were trying to get me help".*

(parts of this passage of the letter, relating to the Defendant's journalists, have been deliberately omitted to protect Mr Markle's reputation)

- (i) Whilst she appreciated that her close friends were concerned and distressed at the media coverage about her and were trying to help, the Claimant was distressed when she discovered that someone had made reference to the Letter (and her father's response), albeit in passing and incorrectly.

12.9. Save that the Claimant admits the factual assertions set out in paragraphs 13.8.12.1 to 13.8.12.4, paragraph 13.8.12 is denied. In particular, the Claimant denies the inference which the Defendant seeks to draw from them. The Claimant's friend was seeking to protect the Claimant from what she believed were untrue and defamatory statements that the newspaper was intending publish. However, this

paragraph is entirely irrelevant to the Claimant's claim. Further, and in any event, the Defendant's contention here is utterly misconceived because the Claimant did not seek or intend the existence or contents of her Letter to be published in People magazine (or anywhere else), as explained above. Far from it. Once she discovered that mention had been made to her Letter, she was distressed. As already stated, it is denied that the Claimant caused or permitted the existence or contents of the Letter to be published in People magazine, nor did she "*acquiesce or was she content for it to happen*" (the lowering of the Defendant's case being notable, but still untrue). Similarly, the Defendant's assertion that the publication of the People interview waived any privacy or confidence in the contents of the Letter is denied. In the premises, paragraph 13.8.13 is also denied.

12.10. Save that it is denied (a) that Mr Markle was entitled to give the Letter to whomever he chose; (b) that any false or damaging information had been put into the public domain about him through the People interview or that he needed to correct the same and (c) that the Defendant was in any way genuinely seeking to assist Mr Markle in achieving that aim (as opposed to its self-serving commercial purpose of satisfying the curiosity of its readership in discovering details of the Claimant's private and family life), no admissions are made as to paragraph 13.8.15. The Defendant is put to strict proof as to the nature and details of its approach to and communications with Mr Markle. For the avoidance of any doubt, as already stated above, the Claimant will refer to the fact that the Defendant deliberately manipulated and exploited a vulnerable and fragile individual (as it was well aware), having previously published highly damaging and distressing stories

about Mr Markle, exposing him to the world at large as a *'Royal Wedding scammer'* for having agreed to pose for *'fake'* photographs and then suggesting in its reporting that his *'heart attack'* was also fake (apparently contrary to the Defendant's position in this litigation), thereby creating the *"dispute"* which it (falsely) claims gave rise to the legitimate reason to publish the detailed contents of the Letter. It is noted that nowhere in the Defence does the Defendant admit that *it* was responsible for exposing the Claimant's father in this way, with the enormous impact that this had (particularly on Mr Markle and his relationship with his daughter), preferring instead to refer to it disingenuously in the Defence as simply a story which *"came out in the press"*. The Claimant also repeats and relies upon the reference to Mr Markle's letter in paragraph 11.8(g) above.

12.11. Paragraph 13.8.16 is denied. Given that the entire premise for its Defence is false or misconceived, and in particular that the Claimant did not know of the People interview, let alone procure or consent to any reference to the Letter, the Claimant plainly had a reasonable expectation that its detailed contents would not be (further) published in the media.

13. As to paragraph 14.2, the Defendant's contention that the letter does not contain the Claimant's deepest and most private thoughts is utterly unsustainable. As referred to above, the Defendant itself chose to describe it in this way in an article the very next day (11 February 2018), reporting that the Claimant *"pours her heart out in a moving letter"* to her estranged father. The fact that the pleading chooses to state the contrary now only serves to highlight further both the artificial and the disingenuous nature of the Defendant's case. Given the repeated attempts by the Claimant to contact her

father (as detailed below) which sadly went unanswered, a private letter was the only form of communication that the Claimant believed might work.

14. As to paragraph 15, it is denied that any claimed right to freedom of expression by the Defendant in relation to publication of the detailed contents of the Letter (whether in its own right or somehow assumed on behalf of Mr Markle) outweighs the Claimant's reasonable expectation of privacy in the same, whether as alleged therein or at all. The Claimant repeats and relies on paragraphs 10 to 12 above. As to the particulars under paragraph 15, the Claimant responds (where necessary) below:

14.1. As to paragraphs 15.3 to 15.5, it is denied that the characterisation of the People interview is correct, any more than this characterisation justified the Defendant publishing the contents of the Letter in the way that it did, especially without any attempt made to contact the Claimant beforehand.

14.2. As to paragraphs 15.6.1-15.6.7:

- (a) It is admitted that Mr Markle planned and intended to attend the Claimant's wedding, and that he and the Claimant exchanged messages about the arrangements for the wedding. The Claimant took great steps to ensure his attendance, as she did to protect him from the media intrusion he was suffering.
- (b) It is further admitted that Mr Markle was admitted to hospital with acute chest pain on 3 May 2018.
- (c) As to communications between the Claimant and Mr Markle in the lead-up to the wedding, the full position is not correctly set out in these sub-paragraphs of the Defence. For that



reason, rather than respond to the Defendant's tendentious and highly partial summary of them, the full exchanges between the Claimant and her father during this period are set out in the Appendix to this Reply.

(d) For example, the Claimant will refer to the fact that the Defendant omits several messages between the Claimant and her father during this period. This includes one from 5 May 2018 where the Claimant writes *"I've called and texted but haven't heard back from you so hoping you're okay"*. The Claimant then messages her father on 6 May 2018 after learning of photographs being taken which had been staged for a paparazzo photographer. The Claimant explains that she had attempted to arrange logistics and supplies for her father discretely and with privacy, with care taken not to feed the press; that she is trying to protect her father from heightened press intrusion and scrutiny and that he should keep a low profile until the wedding.

(e) Further examples of the Defendant's selective account of these messages include:

(i) It is correct that on 14 May 2018, Mr Markle did send the Claimant a text message to apologise and confirm that he would not be attending the wedding, and approximately 30 minutes later (after several calls to him went unanswered) the Claimant's husband sent a message to Mr Markle from the Claimant's telephone. However, the Defendant's summary of these messages contains

significant omissions. Rather than merely saying that Mr Markle did not need to apologise and that he should call, the Claimant's husband in fact stated as follows:

*"Tom, it's Harry and I'm going to call you right now. Please pick up, thank you" / "Tom, Harry again! Really need to speak to u. U do not need to apologize, we understand the circumstances but "going public" will only make the situation worse. If u love Meg and want to make it right please call me as there are two other options which don't involve u having to speak to the media, who incidentally created this whole situation. So please call me so I can explain. Meg and I are not angry, we just need to speak to u. Thanks" / "Oh any speaking to the press WILL backfire, trust me Tom. Only we can help u, as we have been trying from day 1".*

- (ii) Rather than call or pick up the phone to either the Claimant or her husband, Mr Markle then issued a public statement through TMZ that he had gone to hospital because he had suffered a heart attack, which is how the Claimant first learned about this.
- (iii) On 15 May 2018, in reply to one from her father, the Claimant sent a text message, but it did not merely ask him to call her, as described by the Defendant. In fact, the Claimant's response read as follows:

*"I've been reaching out to you all weekend but you're not taking any of our calls or replying to any texts... Very concerned about your health and safety and have taken every measure to protect you but not sure what more we can do if you don't respond...Do you need help? Can we send the security team down again? I'm very sorry to hear you're in the hospital but need you to please get in touch with us... What hospital are you at?"*

(iv) Approximately 10 minutes later, the Claimant again messaged, this time saying: *“Harry and I made a decision earlier today and are dispatching the same security guys you turned away this weekend to be a presence on the ground to make sure you’re safe... they will be there at your disposal as soon as you need them. Please please call as soon as you can.. all of this is incredibly concerning but your health is most important”*. Mr Markle responded to this simply saying he would be in hospital for a few days and was okay but refused the offer of security.

(v) The Claimant’s husband then sent a further message from the Claimant’s phone in order to provide Mr Markle with the details of the security team, and asked Mr Markle to speak to him about letting the security guard who they had sent to help Mr Markle return to his house. The Claimant’s husband pleaded with Mr Markle to let them help him. While Mr Markle responded later that evening to say that he appreciated the offer but did not feel in danger and would instead recover at a motel, the Claimant responded 10 minutes later to make a further request for the hospital details so that she would know where he was. The Claimant will refer to the fact that the Defendant’s description of this exchange intentionally omits any reference to the Claimant or her husband attempting to protect Mr Markle and ensure that he was safe.

- 14.3. Paragraph 15.6.8 is admitted.
- 14.4. As to paragraph 15.6.9, the Defendant's summary of the Claimant's text is misleading; the full message is enclosed in the exchanges set out in the Appendix. However, it is not admitted that the response she received was in fact from Mr Markle, as opposed to someone pretending to be him. As a result of this, and the unpleasant nature of the message she received on 16 May, the Claimant called Mr Markle a further four times within 5 minutes of the message being sent, but he declined to pick up. Her husband even texted Mr Markle from the Claimant's phone to say *"Tom, it's Harry, please answer your phone. I need to know this is actually you because it doesn't sound like you at all"*. No response was received.
- 14.5. As to paragraph 15.6.10, it is admitted and averred that following this unpleasant message (which she was unsure came from her father), her repeated telephone calls to him, his failure to pick up the phone to her many calls or even respond to the message to him from the Claimant's husband pleading with him to do so, the Claimant did not speak to her father before her wedding, which took place shortly after on 19 May.
- 14.6. Paragraph 15.6.11 is denied. The Claimant's phone received a missed call at 4.57am on 19 May 2018 (the morning of her wedding) but did not receive any text messages or further missed calls from Mr Markle at any point afterwards. The Claimant did not receive the text message claimed to have been sent on 25 November 2018.

14.7. As to paragraph 15.6.12, it is admitted that the Claimant and her father have not been in contact with each other since the events referred to above.

14.8. As to paragraphs 15.7 to 15.12:

(a) The Defendant's whole premise for the assertions contained in these paragraphs is entirely false: the Claimant did not provide the statements referred to, or indeed any statement, to People magazine, nor did she procure or authorise such statements, as already explained. She did not know that unnamed friends of hers were giving an interview to the US magazine.

(b) Nevertheless, the statement referred to in paragraph 15.7 accords with the Claimant's understanding, since the reference in People magazine to '*never called...never texted*' related to the period after the wedding.

(c) As to paragraph 15.8, it is correct that due to the aggressive press intrusion, the Claimant did organise a car to take Mr Markle to an alternative location for some time before the scheduled flight to London, and prior to Mr Markle's cardiac problems, but he would not get into the car.

(d) As explained above, the statement referred to in paragraph 15.9 was not provided or authorised by the Claimant and does not accurately reflect either the true contents or purpose of her Letter. Of course, had the Claimant in fact provided such a

statement, or authorised it, then it would obviously have been correct (which this was not, as explained above).

(e) Again, as explained above, the statement referred to in paragraph 15.10 was also not provided or authorised by the Claimant. Whilst it is correct that her father's response to her heartfelt letter and the distress it contained was, amongst other things, to suggest that they should pose together for a photograph, the remainder of the paragraph is simply the Defendant's characterisation of something which she neither wrote nor had anything to do with, and she does not need to plead to the same.

(f) As to paragraphs 15.11 and 15.12, since the Claimant did not procure or authorise the Letter being referred to in the People interview, the Defendant's contentions are entirely false or misconceived.

14.9. Save that it is admitted and averred that despite plainly suggesting the contrary to its readership, the Defendant did not publish the *whole* Letter, deliberately distorting its true contents (as referred to in the Confidential Schedule of Deliberate Omissions), paragraph 15.13 is denied. A brief passing reference to the Claimant's Letter and her father's response to it made by unnamed friends of hers (especially without her authorisation or knowledge) in the course of a lengthy interview about the Claimant given to a US magazine simply did not justify the Defendant's flagrant invasion of her right to respect for her private life and correspondence in publishing the detailed contents of an obviously private Letter, nor did it destroy her reasonable

expectation of privacy in relation to the same. In any event, whilst the Claimant's intentions in writing the Letter to her father were mischaracterised in the magazine, the stated facts were substantially true. In particular:

- (a) Mr Markle did not answer truthfully when asked about the photographs taken and staged by a paparazzo photographer (even though the Claimant and her husband had explained that on the basis of his assurance that the photographs were *not* staged, they had taken steps to protect her father which would seriously jeopardise their ability to protect their children's privacy in the future).
- (b) Despite discovering that he had not told her the truth, with all the distress this caused her, the Claimant was still focused on finding a way for him to travel to London safely, and the Claimant tried to reassure her father that there was no ill feeling between them.
- (c) Mr Markle refused to answer *any* of the Claimant's many calls during the relevant time, or even requests from both her and her husband for him to call them instead.
- (d) The Claimant made several calls to Mr Markle after learning of his cardiac issues that were neither answered nor returned.
- (e) Contrary to what the Defendant states in paragraph 15.8, Mr Markle had in fact already stated that he would not attend the wedding prior to his admission to hospital on 16 May, namely in a text to the Claimant sent on 14 May (two days earlier than

the text sent by him on 16 May which is the one mentioned in the Defence). His refusal to attend the wedding on 14 May was the result of him being so publicly shamed by *the Defendant* for having staged paparazzo photographs, a fact which the Defendant deliberately seeks to ignore in the Defence.

- (f) The letter from Mr Markle did in fact end by asking for them to pose for a “*photo for the whole world to see*”.
- (g) The Claimant received no communication by telephone or text from Mr Markle after the unsuccessful attempts both she and her husband made to reach him on 16 May 2018, as described above (save for the single missed call in the early hours of the morning of the wedding).
- (h) The Claimant has not spoken publicly about her father since 2014, well before the start of her relationship with her husband.

In the premises, and in any event, the Claimant denies that the Defendant published (as it has now been forced to accept) the “*limited*” extracts of the Letter necessary in order to “*tell the complete story and/or set the record straight*”. As referred to in the Particulars of Claim and the Confidential Schedule of Deliberate Omissions, the parts of the Letter (as well as of the text message communications between her and her father as set out above) that have been deliberately omitted by the Defendant demonstrate the falsity of the account given in the Articles, as well as in the Defence, about the Claimant’s contact with her father and her concern for his welfare.



13.10 In the premises, paragraphs 15.15 and 15.16 are denied. Nothing pleaded in those paragraphs (or anywhere in the Defence) justifies the Defendant's gross invasion of the Claimant's right to privacy which the Articles represent.

14. 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:

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.*"

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 following her father announcing through the TMZ website first that he had had a heart attack and then secondly that he was having heart surgery. The statement was deliberately intended to limit and control the amount of press intrusion or speculation. Whilst it is wrong to allege (as the Defendant does once again here in this Defence by deliberately omitting the relevant parts of documents) that the statement did not inform the public that Mr Markle would not be attending the wedding for health reasons (for example, "*sadly, my*

*father will not be attending our wedding. I have always cared for my father and hope he can be given the space he needs to focus on his health”), the statement did not provide details of her father’s medical condition. This was deliberate, in order to avoid further intrusion and to protect his privacy. This is consistent with the proactive steps which the Claimant had taken (and has continued to take) in order to protect the privacy of her family, as well as of herself, so as far as is possible and within her control.*

14.3 Paragraph 16.4 is denied. For the reasons set out above, it is simply false to suggest that the Claimant caused, permitted or authorised publicity in relation to her relationship with her father, either in the public statement referred to therein or in the People interview.

15. As to paragraph 17, insofar as it is necessary to plead to it (since most of it is repetitive argument), the Claimant responds as follows:

15.1 It is denied that the facts and matters set out in paragraphs 9(8) to 9(10) of the Particulars of Claim are irrelevant. They plainly relate to the Defendant’s assertion (albeit unsustainable) that the Claimant did not have a reasonable expectation in relation to the contents of the Letter and/or that there was a legitimate public interest in publishing the same since the Articles were (allegedly) ‘setting the record straight’, as is clear from the way in which the Defendant has deliberately chosen to plead its Defence.

15.2 It is further denied that the Articles contained “*an accurate and impartial account of a dispute to which the Claimant was a party*”. The Defendant selectively extracted passages from a private letter sent by the Claimant to her father (amounting to roughly half, as opposed to the

*“full content”* of the Letter, as it explicitly claimed to its readers) and gave its own highly partial analysis of those extracts. Further, as set out in paragraph 12.10 above, it was the Defendant that created this *“dispute”* between the Claimant and her father.

15.3 The Claimant has already set out the true position as regards what are said to be *“the alleged imputations”* referred to in paragraph 17.7. The Defendant’s contentions therein are denied.

### **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 data concerned topics that she herself had permitted to be put into the public domain. Further, and in any event, it is denied that it was reasonable to assume, as the

Defendant suggests in paragraph 23.2.2, that she would not object to matters concerning her relationship with her father being published. She plainly would have done so, and the Defendant knew that she would, as is clear from its conduct (as referred to below) in deliberately choosing not to notify her in advance of the Articles or seek her consent to the processing.

17.3 It is further denied that the Claimant *implicitly* consented to the processing of her personal data by the media, as alleged in paragraph 23.2.3, since the Defendant is forced to admit that it cannot allege that she actually consented to the processing. The Claimant will refer to the fact that the Defendant cannot do so because it deliberately chose not to seek comment from her or seek her consent (or even notify her at all), prior to publishing the Letter. The reason it did not do so is that (a) it knew perfectly well that it would not have been granted consent (a fact which it has consistently refused to deal with, even in the Defence) and (b) it rightly feared that the Claimant would take action to prevent this obvious misuse of private information, breach of her Data Protection Rights and infringement of copyright.

17.4 Further, the Defendant's assertion that (a) it reasonably believed that the publication was in the public interest; (b) it would have been incompatible with the purposes of journalism to have to obtain the Claimant's consent to the processing of her personal data in publishing the Articles and (c) her demand to stop processing her personal data could not sensibly be complied with, is as bare an assertion as it is unsustainable.

## **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 Letter, and/or whether that content is correctly characterised as an admonishment of Mr Markle (as the Defendant contends) or not, has no bearing on the fact that it remains the Claimant's own literary work. The Letter contained the Claimant's personal (and private) views of Mr Markle's conduct, articulated in a way that had not been expressed in writing to him or anyone else before

19.4 Further, if and insofar as it is being alleged that the state of the Claimant's relationship with her father was a pre-existing topic and that this therefore removed any copyright protection in the Letter,

then this contention (which is both novel and entirely unfounded on legal principle) is also denied.

19.5 It is further denied that the enforcement of the copyright in the Letter would seriously interfere with the Defendant's rights under Article 10 ECHR and Article 11 of the Charter of Fundamental Rights of the EU, or those of the Defendant's readers or Mr Markle, whether as alleged in paragraph 36 and the particulars thereunder or at all, as to which the Claimant responds as follows:

- (a) Paragraph 36.1 is denied. In particular, the Claimant did not by her own actions deliberately cause or permit the existence of the Letter or a description of its contents or a version of her conduct towards her father to be reported and placed in the public domain, as already explained above. In any event, by the time of the People interview, her Letter had been sent five months before and had she wanted to publicise its contents (which she emphatically did not) there is no sensible explanation for why she would have waited so long to do so. It is further denied that the Defendant had any particular right to report upon and scrutinise the Claimant's conduct on that basis, or indeed in relation to any intimate details of her private life, unrelated to her public office or duties.
- (b) As to paragraph 36.2, it denied that on the true facts Mr Markle had any right (or if he had been aware of the true facts he would have sought in the way alleged) to "*explain his relationship with his daughter*". In any event, it is denied that those rights outweigh the Claimant's rights to privacy, or that

the Defendant needed to disclose the detailed contents of the Letter in order to enable Mr Markle to provide that explanation.

- (c) Paragraph 36.3 is denied, as is the suggestion that the rights of the Defendant, its readers and/or Mr Markle are particularly “weighty” in this regard, whether for the reasons referred to therein or at all.

19.6 Paragraph 37 is denied. In particular, it is denied that anything referred to in the Defence could possibly make the Defendant’s blatant acts of copyright infringement “*fair dealing for the purposes of reporting current events*”. In particular and without limiting the generality of this denial, it is denied that a brief and passing reference in a US magazine to the Claimant’s Letter and her father’s response could render the Claimant’s private relationship with her father a “*current event that formed a legitimate subject of news reporting*”, or similarly that the Defendant’s desire to publish Mr Markle’s dispute with the version of their relationship constituted a “*current event that formed a legitimate subject of news reporting*”, or that the use of the detailed contents of the Letter for that purpose was “*fair*”.

19.7 Paragraph 38 is also denied. In particular, it is denied that the Defendant’s use of the Letter, or the Defendant’s reporting of the intimate details of the Claimant’s relationship with her father was in the public interest, or that the Claimant had by her own actions placed the existence of the Letter and/or a description of its contents in the public domain.

## Remedies

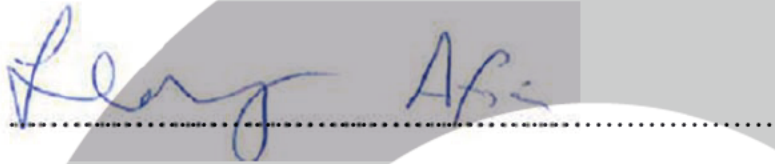
20. As to paragraph 40, and the response to her claim for remedies for the misuse of her private information, the breach of her Data Protection Rights and the infringement of her copyright, it is unnecessary for the Claimant to plead either to the Defendant's denials (since they are deemed to be denied by this Reply in any event) or such admissions which the Defence contains (and as are plainly unavoidable for the Defendant).
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 father*". It was the Defendant's publication of these contents, and the highly manipulated, sensational and deliberately inflammatory way in which this was done that so deeply upset her, not the fact that the newspaper published "her father's side of the dispute" (a "*dispute*" which the Defendant itself created), as is suggested in paragraph 40. It is the Defendant's (unlawful) actions that give rise to the Claimant's claim, and not her father's conduct.

**DAVID SHERBORNE**



## Statement of Truth

The Claimant believes that the facts stated in this Reply are true. I am duly authorised to sign this statement on behalf of the Claimant. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Jenny Afia

Served this 17 day of April 2020 by Schillings, 12 Arthur Street, London, EC4R 9AB, Solicitors for the Claimant.