Neutral Citation Number: [2022] EWHC 3030 (KB)

Case No: QB-2020-002233

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/11/2022

Before :

MR JUSTICE JULIAN KNOWLES

- -

Between :

JOHN WARE	**Claimant**
- and -	
PADDY FRENCH	**Defendant**

- -
- -

William Bennett KC (instructed by **Patron Law**) for the **Claimant**
The Defendant did not appear and was not represented

Hearing date: **7 November 2022**

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

1. For many years *Panorama* has been one of the BBC's flagship current affairs programmes. The edition broadcast on 10 July 2019 was entitled 'Is Labour Anti-Semitic ?' (the Programme). It was watched by about two million people. Its subject was the perceived growth in antisemitism in the Labour Party in recent years, and the concerns of Jewish Labour activists and others about it. At the time, the Leader of the Labour Party was Jeremy Corbyn MP. The central thrust of the Programme was that antisemitism within Labour had markedly increased under his leadership, and that neither he, nor other senior Labour figures close to him, had done enough to eradicate it. The Party was described by one contributor as 'institutionally racist' with regards to Jewish people.

2. The Programme's reporter was the Claimant, John Ware. He is a well-known and award-winning journalist with a long and distinguished career. He used to be on the BBC's staff, but for the last decade or so has been freelance. He works for a number of news organisations as well as the BBC. He sues the Defendant, Paddy French, for libel in respect of an article published in various forms which criticised the BBC and himself over the Programme (the Article).

3. The Defendant is a retired television current affairs producer. He has also had a long career in the media, in many different roles. He is the editor of the investigative website Press Gang (www.pressganguk.wordpress.com). Its slogan is 'Exposing rogue journalism'.

The words complained of

The Article was published online on a magazine website called *Coldtype*. There were various other online links to the Article. It was also published by the Defendant as part of a pamphlet in hardcopy form (the Pamphlet, also referred to in the evidence as 'the Report') called 'Is the BBC Anti-Labour ? Panorama's biased AntiSemitism Reporting - A Case to Answer, an Investigation by Paddy French'.

4. The Article is quite long, but its flavour is given by the following. As it appeared on *Coldtype*, the Article had the strap-line, 'Dirty Tricks and the UK General Election'. The headline was 'Political storm rages over BBC's 'rogue' journalism.' The Defendant wrote that the programme was:

> "… a piece of rogue journalism that presented just one side of the argument, ignored basic facts and bent the truth to breaking point."

5. He went on:

> "Having purged his narrative of any meaningful statistics and presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of antisemitism."

6. A central thesis of the Article is that the Claimant was motivated by bias, and by hostility towards Mr Corbyn and the Labour Party. The Defendant wrote that the Claimant 'openly despises' Mr Corbyn. There was a suggestion that the Programme had been intended to harm Labour's chances in the general election (which was held on 12 December 2019) and to advantage the Conservative Party. In the middle of the Article was a photo of the Claimant with the following caption underneath:

> "BIASED? Panorama reporter John Ware was accused of producing an 'authored polemic' by Labour"

7. The contents page of the Pamphlet was as follows:

> "Introduction 3
>
> How the BBC broke its own Editorial Guidelines – the charge sheet…
>
> Charge 1 – Painting Without Numbers 4
>
> Charge 2 – The Wrong Kind Of Jew 4
>
> Charge 3 – Witness Protection Programme 5
>
> Charge 4 – The Name Of The Rose 6
>
> Charge 5 – Beware John Ware? 7
>
> Charge 6 – The Accumulator 7
>
> Charge 7 – Prejudged? 8
>
> Charge 8 – Misleading Statistic 8
>
> Charge 9 – He said, she said 9
>
> Charge 10 – The Milne Email 9
>
> Political storm rages over BBC's 'rogue' journalism. . . 10
>
> A Case To Answer – The Ofcom Equation . . . . . 15"

8. The Defendant's self-penned biography in the Pamphlet was this:

> "Paddy French edits the website Press Gang. He has been an investigative reporter for four decades, founding and editing the magazine *Rebecca* and its Corruption Supplement in the 1970s. He also worked on investigations for BBC's Man Alive series, Thames Television's This Week strand and for the Sunday Times (when Harold Evans was editor). In the 1990s he was an

> independent television producer making documentaries for Channel 4 (Dispatches), BBC and ITV. He was a current affairs producer at ITV Wales for ten years before retiring in 2009. In 2012 he and researcher Chris Nichols gave evidence to the Leveson Inquiry revealing that *News of the World* reporter Mazher 'Fake Sheik' Mahmood lied to the inquiry about the number of convictions he'd secured. He warned current *Times* editor John Witherow that Mahmood was a 'serial perjuror' – four years before the Fake Sheik was gaoled for perverting the course of justice in the Tulisa Contostavlos trial. Earlier this year he co-authored, with Professor Brian Cathcart, *Unmasked: Andrew Norfolk, The Times Newspaper And Anti-Muslim Reporting: A Case To Answer* (Unmasked Books). T*he Times* published an editorial condemning French and Cathcart as 'politically motivated campaigners … trying to smear and suppress fine reporting'. Paddy French joined the Labour Party after the 2017 manifesto *For The Many, Not The Few*."

9. The Claimant says the Article was defamatory of him at common law and has caused him serious harm, as required by s 1 of the Defamation Act 2013 (DA 2013). He seeks substantial damages (including aggravated damages); an order requiring the Defendant to publish a summary of this judgment under s 12 of the DA 2013; a permanent injunction; and costs.

10. In 2021 there was a trial of meaning before Saini J. His judgment is reported at [2021] EWHC 384 (QB). The *Coldtype* version of the Article is appended to his judgment. Mr Bennett KC represented the Claimant, as he did before me. The Defendant was then represented by leading and junior counsel (Mr Tomlinson KC and Mr Hutcheon).

11. Saini J found that the Article was, indeed, defamatory of the Claimant at common law and that its meaning was as follows (at [21]):

> "That Mr Ware is a rogue journalist who had engaged in dirty tricks aimed at harming the Labour Party's chances of winning the General Election by authoring and presenting an edition of Panorama in which he presented a biased and knowingly false presentation of the extent and nature of antisemitism within the party, deliberately ignoring contrary evidence."

12. He also found that the Article contained statements of fact, and rejected the Defendant's argument that it merely contained statements of honest opinion (which is a defence under s 3 of the DA 2013). Saini J wrote at [26]-[29]:

> "26. Leading Counsel for Mr French argued that the statements in the Article are recognisable as comment, as distinct from imputations of fact. He submitted that the text sets out inferences, criticisms and observations about the Programme rather than factual contentions.
>
> 27. I reject that submission. In my judgment, the allegations conveyed statements of fact and not opinion. Claimed

misrepresentation by presenting one side of a story for a particular purpose, and deliberate suppression of an alternative narrative were, in the context of the Article, plainly imputations of fact.

28. I also consider that in the context of the Article as a whole the accusation of 'rogue journalism' was an imputation of fact. I agree with the submission on behalf of Mr Ware that readers did not conclude that he was a rogue journalist because he produced a one-sided television programme, they concluded that he was a rogue journalist because that is what the Article told them he was, as well as setting out evidence in support of that conclusion.

29. Finally, to accuse a journalist of behaving in the manner alleged is clearly defamatory at common law. The specific allegations made in relation to a broadcast journalist such as the Claimant are serious matters going to his reputation. I note that the accusation of 'rogue journalism' is in any event accepted by Mr French as being defamatory."

13. In his witness statement at [8], [10] and [14] the Claimant described his reaction to the Article as follows:

"8. The allegation that I am an unscrupulous, dishonest journalist prepared to engage in dirty tricks by disseminating information I knew to be untrue to Panorama's 2 million viewers for the preeminent purpose of advantaging the electoral chances of a political party is the antithesis of everything I have stood for in my 52 years as a journalist. These allegations are false. I have never approached any journalistic project in that dishonest and propogandist frame of mind. It has never even entered my head to do such a thing. I am infuriated, frustrated and extremely distressed by the Defendant's publications and the [proliferation] it has received by supporters of Mr Corbyn.

…

10. Whilst I was aware that Mr French was proposing to publish a series of articles about the programme, when I read the article on 8 December 2019, I was taken aback by the vehemence with which he attacked my integrity. To be put in the same camp as the notorious 'Fake Sheikh' [a *News of the World* reporter found guilty of conspiracy to pervert the course of justice] as a 'Rogue reporter' cynically resorting to 'dirty tricks' to essentially act as a political propagandist disseminating information which I knew to be untrue, frankly took my breath away …

…

14. One of the reasons why I find the article so disturbing and upsetting is that it singled me out. Journalists are legitimate

> targets for criticism but sometimes the aim of such criticism is to shut down legitimate work carried out by that journalist. My personal conclusion is that this is what Mr French set out to do to me by trashing my reputation for integrity. Unfortunately by doing so he was also wrongly discrediting an important investigation into antisemitism in the Labour Party."

14. The Claimant went on to say at [20] that his perception was that the Defendant saw the Programme as being part of 'some sort of anti-Labour plot'.

15. I will come to the Claimant's evidence in a moment, but it is appropriate to note here the obvious sense of indignation and outright anger that he feels about the Defendant's accusations and the content of the Article. This was palpable in the way that he gave his evidence before me.

The Defendant's position

16. The Defendant filed and served his Defence in April 2021, following the ruling of Saini J. He pleaded the defences of truth (s 2, DA 2013); and public interest (s 4, DA 2013). He also denied that the Claimant had suffered serious harm as a result of the Article, as required by s 1 of the DA 2013.

17. Extensive work was done by the Claimant and his legal team responding to the truth defence.

18. In June 2022 the Defendant's solicitors informed the Claimant's solicitors that that defence was no longer being pursued. The Defendant made a public statement announcing his withdrawal of that defence. An Amended Defence was served in September 2022 deleting it.

19. On the withdrawal of the truth defence, the Claimant sought the substantial costs thrown away of having to deal with it. On 30 September 2022 Master Thornett ordered by consent that the Defendant pay the Claimant his costs of and occasioned by the pleading of the truth defence. This included an order that the Defendant pay £15 000 on account of those costs. By CPR r 40.11 this amount fell due to be paid within 14 days of the order. The Defendant has not paid any part of that amount.

20. The Defendant has chosen not to appear further in these proceedings in order to defend the claim. On 24 October 2022 he sent an email to the Court in the following terms:

> "I am writing to inform you that I will no longer be contesting this claim. Please let me know if there's a form I need to complete to confirm this. I will not be attending the court hearing …"

21. The Defendant also made a statement on his crowdfunding platform and on the Press Gang website to the same effect.

22. On 26 October 2022 Tipples J made an order, *inter alia*, requiring that the Claimant file and serve: (a) a draft order identifying all the relief he will be seeking at the trial; (b) a

Skeleton Argument explaining the relief sought; and (c) a paginated electronic trial bundle in support of the relief sought. These directions have been complied with.

23. Paragraphs 2 and 3 of her order gave the Defendant the opportunity to file a Skeleton Argument in response, and to attend the trial if he so chose, notwithstanding his stated intention not to do so.

24. On 27 October 2022 the Defendant further emailed the Court:

> "I have just seen the order made by Mrs Justice Tipples yesterday.
>
> I should have made it clear in my earlier email that I have decided to take no further part in these proceedings.
>
> As you can see, I have also included the Claimant's solicitors in this current email so that they are aware of mypositio n.
>
> Many thanks
>
> Paddy French
> Defendant
>
> I'm sorry will take no further part in the proceedings."

25. The Defendant had crowdfunded to raise money for the case, and collected a substantial amount (over £90 000). There was at least one high profile donor, the musician Roger Waters, formerly of *Pink Floyd*. On 28 October 2022 the Defendant made the following statement on www.justgiving.com:

> "… in February 2021, Mr Justice Saini ruled that this article meant that John Ware was a rogue journalist who engaged in 'dirty tricks' by presenting "a biased and knowingly false presentation of the extent and nature of antisemitism within the party, deliberately ignoring contrary evidence" in order to harm Labour's electoral prospects.
>
> This was not my intention — my concern was about the quality of the journalism. I argued that Ware had authored and presented an edition of Panorama that was one-sided and strongly advocated the position that Labour was anti-Semitic. This was, in my opinion, rogue journalism.
>
> But as a result of the court's ruling I was not permitted to defend the case on this basis and could not present evidence that the broadcast was one-sided."

26. On the same day there was a press release on the Press Gang website in very similar terms.

The Claimant's preliminary applications

27. The Defendant kept his promise not to attend the trial. Hence, on behalf of the Claimant, at the outset Mr Bennett submitted that pursuant to CPR r 39: (a) the trial should continue in the Defendant's absence; and (b) I should strike out his Amended Defence.

28. This rule provides:

> "*Failure to attend the trial*
>
> (1) The court may proceed with a trial in the absence of a party but –
>
> . . .
>
> (c) if a defendant does not attend, it may strike out his defence or counterclaim (or both).
>
> (2) Where the court strikes out proceedings, or any part of them, under this rule, it may subsequently restore the proceedings, or that part.
>
> (3) Where a party does not attend and the court gives judgment or makes an order against him, the party who failed to attend may apply for the judgment or order to be set aside."

29. I acceded to the application that the trial proceed. I also strike out the Defendant's Amended Defence. In so ordering, I adopted and adopt the same approach as Collins Rice J in *Sahota v Middlesex Broadcasting Corporation Ltd* [2021] EWHC 3363 (QB), [10]-[20], where counsel for the defendants had sought an adjournment for various inadequate reasons (such as needing 'more time', and the unevidenced ill-health of his clients). The judge said at [15] onwards:

> "15. I confirmed that in all the circumstances I was unable to give real weight to these inexplicably late and unsubstantiated assertions of indisposition, and that there would be no adjournment. I also rose a second time, to give Counsel a further opportunity to reflect on whether the claim was being defended in practice as opposed to theory, and whether his proposed course of conduct was consistent with the Defendants' own best interests (and his professional obligations), and if necessary to obtain further instructions.
>
> 16. He returned after an interval of some 45 minutes to confirm that he had been de-instructed with immediate effect. I directed myself to my discretion under CPR 39.1. Proceeding to trial in the absence of a party is an exceptional step. In the circumstances, however, I could not but be satisfied that the Defendants' failure

> to attend trial (whether in person or through Counsel), and failure to engage in a meaningful way with the trial process, was a deliberate step for which no good reason had been provided or was discernible, and which had at least the appearance of being oppressive to the Claimant.
>
> 17. I concluded in these circumstances that the interests of justice, and considerations of the proper use of court time, justified proceeding to trial in the Defendants' absence. I reminded myself (and Counsel for the Defendants) of the provision made at CPR 39.3(3) and (5) for a defendant to seek relief on the basis that there was after all a better reason for not attending trial than had been put before me. I also bore in mind that this is a long-delayed trial of a claim in which the Claimant's principal objective is vindication; that vindication delayed is vindication denied; and that appreciable responsibility for the delay (including the late trial date itself) could fairly be laid at the Defendants' door. I also bore in mind that in a defamation trial Defendants' fundamental rights to freedom of expression are in issue, and that in proceeding in their absence it was incumbent on me to subject the Claimant's case to a corresponding degree of anxious scrutiny.
>
> ..
>
> 19. CPR 39.3(1)(c) provides that if a defendant does not attend trial, the Court may strike out his defence. I was invited to do so, on the basis that this is a jurisdiction which arises not on a merits assessment, but simply by way of confirmation that the claim is not being *actively* defended in accordance with the rules and procedures of court. That was the view I had formed for the reasons already set out, and I ordered the Defendants' defence to stand struck out …
>
> 20. The consequence of striking out the Defendants' defence was that the issues of the truth of the factual defamatory statements, and the defensibility of the statements of opinion, as to which a defendant bears the burden of proof, did not need to be addressed by the Claimant. He was, however, required to satisfy the Court as to the outstanding components of the Defendants' liability, as to which the burden of proof was on him, in order to succeed on his claim."

30. It seems to me that this case is *a fortiori Sahota* because, here, the Defendant positively asserted several times that he would not attend the trial, and that he did not contest the claim. Hence this is a plain case where it was right that the trial should proceed in the Defendant's absence, and that his Amended Defence should be struck out.

The evidence

31. The Claimant gave evidence before me. He adopted his witness statement and I permitted him to give evidence outside of that statement, pursuant to CPR r 32.3, because I considered there was good reason not to confine his evidence to its contents. The following is an outline summary of his written and oral evidence.

32. The Claimant's career as a journalist began in 1971. He became a producer of Granada's 'World in Action' in 1981, and joined the BBC shortly thereafter, working in News and Current Affairs. He has been freelance since 2012. He is a past winner of the James Cameron Memorial Trust award 'for work as a journalist that combines moral vision and professional integrity.'

33. He said that the Article was published by the Defendant on or about 7 December 2019, including in the Pamphlet.

34. He found the Defendant's plea of truth distressing, and described how much time had been spent by him responding to it, and to the many requests for further information made by the Defendant.

35. On 23 June 2022 his solicitors were sent a cursory email by the Defendant's solicitors saying that the truth defence had been dropped. There was no apology or retraction.

36. The Claimant said that the allegation that he had deliberately disseminated false information, and so been unscrupulous and dishonest, for the pre-eminent purpose of advantaging the electoral chances of a political party (by harming another) is the antithesis of everything he has stood for in his 50-odd years as a journalist. The Defendant's allegations are false. He has never approached any journalistic project in that dishonest and propogandist frame of mind and, 'it has never even entered my head to do such a thing.' His profession as a journalist is of the utmost importance to him, and he has always striven to uphold proper journalistic standards. He was, he said, 'infuriated, frustrated and extremely distressed' by the Defendant's publications.

37. He said that on 8 December 2019 he saw a demonstration outside New Broadcasting House (the BBC's headquarters) that had been organised by the Defendant in connection with the Article/Pamphlet. When he became aware of its contents he decided that he would take legal action, whatever the risk.

38. The Claimant said that he was proud of the work that he and his colleagues had done on the Programme, which had been a 'well-timed' production on a matter of considerable public interest. He pointed out that the Programme had been the product of work by a large number of people, not just himself, and so the Defendant's accusations were effectively that there had been a conspiracy among this group to produce a biased and dishonest film, albeit he alone had been singled out in the Article as having been responsible. He said the Programme had been carefully and fully researched. The commentary delivered by him was the work of a number of people, including the producer, the executive producer, a legal adviser, an editorial policy adviser, and others, as well as himself. The Programme had taken months of preparation. The Claimant said that all of this would - or should - have been obvious to the Defendant, given his claimed background as an experienced current affairs documentary maker.

39. The Claimant then went on to describe how those mentioned in the Programme, including Mr Corbyn, had been given a right of reply, and how statements made by the Labour Party on their behalf had been given fair prominence in the Programme. By contrast, the Defendant had never put his accusations to the Claimant before publishing the Article, and so the Claimant had not been given a right of reply, which is a fundamental principle of proper journalistic practice. The Claimant said that the Defendant had breached a basic journalistic rule not to attribute malign motives to allegations with which one disagrees, absent 'cast iron' evidence, which the Defendant did not have, as evidenced by his belated withdrawal of the truth defence.

40. Next, the Claimant referred to material that had been sent out by the Defendant in which the Defendant had said the Pamphlet had been published urgently in order to try and help the Labour Party in the imminent general election, and said that it had been 'more a blueprint than the real thing'. The Claimant said that the Defendant was perfectly entitled to conduct his own investigation into antisemitism, to publish his results and to point out that they differed from those reached by Panorama but:

> "… it was outrageous of him to further conclude that because his conclusions were different from the material set out in the programme that therefore I had acted in the manner alleged in the article."

41. Turning to the issue of serious harm, the Claimant said at [23]-[24]:

> "23. Since 2012 I have worked as a freelance journalist. My reputation as a journalist is the key to obtaining further work. The article seriously impinged upon that reputation. The allegations could not have been more serious. They were presented in an apparently credible manner. Paddy French is described in the pamphlet as an investigative reporter for four decades who had had extensive experience working at the higher levels of television and print journalism (the BBC, Thames Television, Channel 4, ITV and the Sunday Times). He was further described as a journalist who now directed his energies into exposing bad journalism and had given evidence of such to the Leveson Inquiry. The article itself described him as a 'retired television current affairs producer' i.e. an expert who knew what he was talking about. The Press Gang website (and its Twitter homepage) describes the website as 'exposing rogue journalism'.
>
> 24. My concern is that people reading the article are bound to take it at face value, particularly given the certainty and credibility with which the evidence is presented. Few will have analysed it in detail. It is upsetting to know that many thousands of people will have read it. My heart sank when reading the Defendant's disclosure and seeing his email of 8 December 2019 to a Charlotte Williams stating that there had been a huge response to the report (which means the pamphlet) and that there had already been 'Huge Response to the Press Gang report. Thousands of hits on the website: people are also reading it'"

42. Dealing with publication, the Claimant said that the Defendant had gone out of his way to inflict as much damage as possible on his reputation, by deliberately targeting those on whom he is dependent for his livelihood as a freelance journalist, including by sending the Pamphlet to over one hundred senior managers at the BBC.

43. In response to a question from me, the Claimant accepted that some of the recipients would have known the allegations in the Article to be false, but he also said that the BBC was a large and 'balkanised' organisation, and hence that some of them may not have known him, and were therefore potentially more likely to take the Defendant's accusations seriously, and to have discussed them with others.

44. Copies of the Pamphlet were also sent to Channel 4 News, Sky News, LBC, *The Guardian*, *The Times*, *The Sunday Times*, and *The Sun on Sunday*, and other media organisations. The Claimant referred to an email sent by the Defendant which boasted of how widely circulated among senior journalists the Pamphlet had been, and that it was going to be a 'well-produced, authoritative demolition of the anti-Labour propaganda machine.'

45. The Claimant reiterated that he believed it to be likely that some of the commissioning editors targeted by the Defendant would have been persuaded that he cannot be trusted as a journalist, and so decided not to send him work, and that it was also unlikely that he would ever get to hear about any such decisions. He said that although no-one had said to his face that they believed the Defendant's allegations, the effect of them upon his reputation was 'insidious'.

46. I accept this evidence. In his submissions, Mr Bennett referred to the well-known statement to the same effect by Bingham LJ (as he then was) in *Slipper v British Broadcasting Corporation* [1991] QB 283, 300:

> "Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."

47. The Claimant encapsulated his case on serious harm this way:

> "30. I am a freelance journalist entirely dependent on my reputation for integrity for my livelihood. The Defendant's allegations were inherently serious and struck at the heart of my professional reputation as a journalist and caused, or were likely to cause, serious harm to my reputation both in terms of the general public and those on whom I am dependent for my professional livelihood."

48. As to the scale of the publication, the Claimant referred to an email sent by the Defendant in which he said he had sent out 300 copies of the full Pamphlet, and distributed 1000 flyers containing the front and back of it (i.e., effectively the title page).

49. The Claimant said that he thought that there also would have been distribution of the Pamphlet by email, because it would be very unlikely of the Defendant not to have used this simple means of publishing it. Notes made by the Defendant and disclosed appear

to show a list of further publishees who do not fit into the categories of publishees of the 300 copies of the hard copy Pamphlet. The Claimant said that given that each name was preceded by a @, they may be Twitter addresses. However, he noted that the Defendant's witness statement was silent in regard to the meaning of these entries and publication by email.

50. Overall, Mr Bennett said that there was no precise method of arriving at a figure for the readership of the Article, as published in the Pamphlet or on *Coldtype*, or otherwise distributed, but it would reasonable to conclude that the publication is likely to have been in excess of 15 000 within this jurisdiction. He said that given the gaps in the Defendant's evidence, and because his actions have prevented the Claimant from cross-examining him on this issue, any doubt about it should be resolved in favour of the Claimant.

51. The Claimant's witness statement dealt with the various ways in which the Defendant drove traffic to the Pamphlet as it appeared on the Press Gang website. The Defendant published a series of articles on the website drawing attention to the Article. Each was headed, 'Is the BBC Anti-Labour?'. Part 3 was called 'Indictment' and stated that a 'Press Gang team' would be leafleting BBC staff as they entered and left New Broadcasting House in London. The leaflet which the Claimant believes the Defendant was referring to encouraged people to read the full Article.

52. As an example of how some people would have reacted to the Article, I was shown a tweet by Professor Brian Cathcart, who is a Professor of Journalism at Kingston University, and apparently reputable. He has 19 000 Twitter followers. He wrote in the tweet, 'If your view of Labour was influenced by the Panorama programme 'Is Labour Anti-Semitic?' you should read this report now. I don't see how the BBC can defend this kind of journalism', and the tweet was followed by a hyperlink to the Pamphlet on the Press Gang website.

53. Justin Schlosberg, Reader in Journalism and Media at Birkbeck College, and another apparently reputable expert, also tweeted in support of the Defendant, with a link to the Press Gang website. In the Claimant's view, this also implied that the Article was accurate. There were also comments posted beneath the tweet which were supportive of the Article.

54. An organisation called Jewish Voice for Labour tweeted a link to the Article on the Press Gang website on 8 December 2019, and by the Claimant's calculations this has been re-tweeted to over 100 000 people (calculated by reference to the number of followers of those who actively re-tweeted it).

55. Overall, the Claimant's evidence is clear (and I so find) that the Article has been widely disseminated including by the following methods: (a) by being published on the website *Coldtype* (that is a Canadian website and I note the Claimant only sues for publication in this jurisdiction); (b) by being emailed to an unknown number of people; (c) by a link on the Press Gang website directly, and other articles on that site referring to it; (d) by a link to that website being circulated and distributed via Twitter; (e) by hard copies of the Pamphlet being sent to senior figures (including commissioning editors) in many different news organisations; (f) by copies of the flyer being handed out encouraging people to read the Article online; (g) via a link which someone added to *Panorama's* Wikipedia page; and (h) by the contents of the Article/Pamphlet being

discussed by people face-to-face, in other words, as Mr Bennett put it, 'at the watercooler'.

56. As Mr Bennett said, the exact number of people who read the Article or who have otherwise become aware of the Defendant's allegations cannot be precisely determined. However, I am satisfied that it runs to the thousands, if not the tens of thousands. That said, as I will discuss further in relation to serious harm, determining whether such harm has occurred is not a 'numbers game', a phrase that appears to have been coined by Eady J in *Mardas v New York Times Co* [2009] EMLR 8, [15]. The quality of the publishees is just as important. Here, I find the Defendant deliberately targeted publication in a manner calculated to inflict serious damage on the Claimant's reputation among the journalistic community generally, and in particular among those on whom he depends for future commissions.

57. At [48] of his witness statement the Claimant said this, which I accept:

> "48. There is also the unquantifiable damage done to my reputation generally with the public. It is clear from the evidence of the extensive proliferation of the defamatory article that many will have read it and amongst those will be many who will now doubt the veracity of what I say in any future broadcasts and articles I write. The article was not just saying that I made a one-off mistake, it was saying that I have a dishonest character trait that I will willingly deploy in order to deceive viewers/readers in order to fulfil an ulterior motive, particularly when I deal with the Labour Party and antisemitism."

58. The Claimant went on to say that he is currently writing a book about the emergence of antisemitism within the Labour Party under Jeremy Corbyn, and that readers of the Article (or at least those who take its allegations seriously) will be far less likely to buy his book as a consequence.

59. The Claimant then dealt with the Defendant's conduct of these proceedings. As I have said, he withdrew his truth defence on 23 June 2022. It follows that for many months he had insisted his defamatory allegations were true and that he could prove them to be so. He publicly maintained this position in the following way.

60. Firstly, on 15 April 2020, responding to the Claimant's threat of proceedings, he posted Part 6: 'John Ware v Paddy French' on the Press Gang website. This included the following statement:

> "Press Gang feels equally strongly that the report met the highest standards of ethical journalism — and we will be defending it strongly. We're confident our report was a fair criticism of a contentious piece of broadcasting and that a court will agree with us."

61. Then, on 21 April 2020, the Defendant reiterated the truth of his Article on his crowdfunding website with a link to the Press Gang website which said that his solicitors had replied to the Claimant's solicitors that he had 'complete defences' to the proposed libel claim.

62. In July 2020 the well-known film director Ken Loach (with 88 000 Twitter followers) posted a comment encouraging people to help fund the Defendant, which the Claimant believes would have lent credibility to the Defendant's case.

63. On 24 February 2021, the Defendant published Part 9 on the Press Gang website, referring to the outcome of the meaning hearing before Saini J. That was the day before Saini J handed down his judgment, and so was a contempt of court, although Mr Bennett (fairly) did not take a point on that. The Defendant reported that Saini J had held that the Article contained statements of fact rather than opinion. He stated:

> "I am disappointed by the decision. However, I remain resolutely committed to defending this action. My legal team believe I have a strong defence and the formal documents will be served within the next few months."

64. The Claimant said that by then the Defendant had raised £25 000. The Defendant's Defence including truth was filed and served in April 2021.

65. In July 2021 the Defendant's (then) crowdfunding effort was closed, apparently without explanation. The campaign had, by then, raised £27 086 from 1,041 supporters. The Claimant said that he could 'only assume that his supporters offered financial support because they believed that the Article was true.'

66. Next, in August 2021, the Defendant opened a second crowdfunding effort, and told potential funders:

> "This case provides a unique opportunity for the issue of antisemitism in Jeremy Corbyn's Labour Party to be explored in a forensic setting … my legal team, the solicitors Bindmans and barristers Hugh Tomlinson QC and Darryl Hutcheon of Matrix Chambers are confident I have a strong defence."

67. He stated that by this time he had raised money from over 1,200 contributors. The Claimant comments, rightly, that only a truth defence could have enabled the examination of the issue of antisemitism in the 'forensic' manner suggested by the Defendant.

68. On 30 May 2022 the Press Gang Twitter account tweeted:

> "BREAKING Landmark John Ware v Paddy French libel action starts Nov 7 4 day hearing will decide who was right in Labour antisemitism issue £90,000 already raised from supporters inc Roger Waters (Pink Floyd) But more is needed Donate! Retweet!"

69. To be clear, there was and is nothing 'landmark' about this libel action. This was hyperbole on the part of the Defendant, plainly intended to raise money. Also, following the abandonment of the truth defence, and the Defendant's withdrawal from the case, the trial before me lasted substantially less than half a day.

70. At [56] of his witness statement the Claimant set out some of the comments made online about him on the Defendant's crowdfunder websites. Just three give the flavour:

> "Ware is a rogue scumbag, who, along with Zionist, anti-socialist interlopers in the Labour Party, need exposing for the frauds they are."

and:

> "Don't let the bastards grind you down! Let's get Ware."

and:

> "Ware is evidently a questionable journalist on his validity time and time again recently !" (sic)

71. In his witness statement the Claimant made clear that his motive in making the programme was not to harm the Labour Party, as the Defendant claimed, but was journalistic, because the BBC had access to new and important information. He said that the BBC does not produce programmes with the aim of harming any political party. To do so would produce 'political ire', and in the Claimant's view the suggestion is therefore 'unworldly and offensive.' He told me that the BBC does not try and fix elections: 'It's not what we do.'

72. The Claimant also made the point that the Defendant's thesis that he wanted to harm the Labour Party's general election chances is disproved by the chronology. The programme was commissioned in February 2019. It was broadcast on 10 July 2019 (two weeks before Boris Johnson became Leader of the Conservative Party, and Prime Minister, which happened on 23 and 24 July 2019 respectively). But the 2019 general election was not called until 31 October 2019 (following the passing of the Early Parliamentary General Election Act 2019, which was necessary to bypass the provisions of the Fixed-term Parliaments Act 2011) and Parliament was dissolved on 6 November 2019. The election took place on 12 December 2019. So, the programme was commissioned some eight months before it even became legally possible for there to be a general election in December 2019.

73. The Claimant also pointed out (and emphasised to me orally) that the Defendant's thesis is also inconsistent with the fact that on 17 November 2019, roughly three weeks before the general election, ITV broadcast the documentary, 'When Jennifer met Boris', again with Mr Ware as the reporter. This was widely publicised. In [63] of his witness statement Mr Ware explained what the programme was about:

> "It showed how the Prime Minister, Boris Johnson, was in breach of the Nolan principles of public office by not declaring to the Greater London Authority Monitoring Officer that he been guest speaker at Jennifer Arcuri's ticket sales Tech Conferences whilst also being in a sexual relationship with her. The pre-title commentary said: 'Tonight - the inside story of a relationship which raises questions about the Prime Minister's conduct as a public servant - and his tenuous relationship with the truth.' Put

bluntly, the documentary concerned corrupt acts by Boris Johnson."

74. Mr Johnson's relationship with Ms Arcuri was clandestine, he still being married at the time.

75. The Claimant said that he had worked hard since September 2019 at getting an exclusive interview with Ms Arcuri, and had gone to the United States three times in the space of a few weeks in pursuit of the interview. He commented to me that if he had been out to help the Conservatives and harm Labour in the general election, he would not have done that. He also said that he has written about Mr Johnson's lack of integrity on several occasions and how, in his opinion, he was (and is) unsuited for public office. He told me had he written more pieces critical of Mr Johnson than Mr Corbyn.

76. The Claimant then dealt with the antisemitism issue within the Labour Party. Taking matters briefly, he said that the issue had started to come to the fore partly as a result of speeches made by Labour Jewish MPs such as Luciana Berger (then the MP for Liverpool Wavertree) in early 2019 drawing attention to it, and to the leadership's perceived failure to deal with it. She made a speech in February 2019 following her resignation from the Labour Party which documented her personal experience of antisemitism. Ms Berger's speech received widespread publicity. Others also spoke up on the topic.

77. The Claimant then went on to mention that the Defendant had referred in his Pamphlet to the fact that the Claimant's former wife, and his current partner, are Jewish, and that his children had been brought up in the Jewish faith.

78. I find this particularly distasteful on the part of the Defendant. No credible or reputable journalist could possibly have thought that the Claimant's family's faith had any relevance to the accuracy, or otherwise, of the Programme. The Defendant may have thought the Claimant and the Programme were legitimate targets for criticism; on no view could he reasonably have thought that the Claimant's family was.

79. The Claimant then dealt with the issue of impartiality. He said that the Programme did not 'present one side of the argument' as the Defendant alleged. Both sides of the argument were fairly covered. The Programme included statements from Mr Corbyn himself in either archive footage, eg, 'the idea that I'm some kind of racist or antisemitic person is beyond appalling, disgusting and deeply offensive; or were paraphrased by the Claimant, eg, 'Mr Corbyn has recently apologised for what he says are 'occasional appearances on platforms with people whose views I completely reject''. As I have already said, Mr Corbyn and Labour were given the right of reply.

80. The Claimant went on to point out that the Programme had been judged by the broadcast regulator Ofcom to have complied with the Broadcasting Code on impartiality and accuracy.

81. Finally, the Claimant said that the Defendant did not have access to, and so could not have known, all of the information to which the Programme's production team had access to, and so was not in a position to make the criticisms that he did – in other words, he should not have 'assumed the worst'.

82. In his oral evidence before me, the Claimant made the following additional points. As Mr Bennett explained, this evidence largely went to the question of damages (and aggravated damages) in the event that I found for the Claimant on liability.

83. The Claimant said that when the Defendant withdrew his truth defence in June 2022 he was 'bewildered', because up until then, the Defendant had been saying he would vigorously defend it. But, he noted, the Defendant had not apologised or paid any costs.

84. The Claimant said that as a journalist he expects to receive robust criticism – 'trenchant' was the word he used – and that he upholds the right of people to do criticise him. However, what the Defendant had published was not acceptable.

85. The Claimant said he was frustrated by the way the Defendant had behaved in these proceedings because he wanted his allegations to be tested – including by way of cross-examination by Mr Bennett – so that they could be 'held up to the light' and shown to be untrue. He said that the Defendant had 'thrown down the gauntlet', which he would have been only too happy to have picked up, but, he said, the Defendant had now 'slithered away' and behaved in a 'cowardly' fashion.

86. He said that the Defendant had a credible record as a television journalist, which would have added lustre to his allegations, as shown by his self-penned biography in the Pamphlet.

87. However, the Claimant said that he did not regard the Defendant as an ethical journalist, witnessed by the fact that he had not given him the right of reply, which is a fundamental principle of journalism.

88. He also commented that: 'You don't know whether some people who don't know me might wonder whether there is something in it.'

Submissions on behalf of the Claimant

89. Mr Bennett submitted that my task had been simplified by Saini J's ruling, which had found the Article to be defamatory. He said (and I agree) that the only two remaining issues for me were serious harm, and remedies (assuming I found for the Claimant on liability).

90. In relation to serious harm, s 1 of the DA 2013 provides:

> "(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

91. Mr Bennett said this test was satisfied. He said that the gravity of the allegations was the paramount consideration. The Defendant's allegations of dishonesty and bias were extremely serious ones to make against a journalist. They had been widely published, including specifically to people on whom the Claimant depended for work. The mischief of the Article was that it might have affected the trust afforded to the Claimant's work.

92. Although the Claim Form limits the damages sought to £50 000, Mr Bennett said that the claim was worth in excess of that. He said the award of damages needed to 'send a message' about the gravity of what the Defendant had done. The emotional effect on the Claimant also served to increase the award of damages.

93. Mr Bennett also said that the way in which the Defendant had conducted himself in these proceedings served to aggravate matters and should lead to an award of aggravated damages. Even though he had withdrawn the truth defence, he had not retracted his allegations or apologised. Mr Bennett said that the Defendant had 'spun a false narrative' that somehow he had been deprived of an opportunity to run a defence of truth by the decision of Saini J. He said his behaviour and conduct of the litigation had been 'contemptuous'. Here, he referred to the press release and crowdfunding statement on 28 October 2022, which I quoted earlier.

94. Mr Bennett said it was not true that Saini J's ruling had deprived the Defendant of the opportunity to advance a truth defence. The Defendant could have defended the claim on the basis of truth, but had voluntarily withdrawn that defence. Mr Bennett said this was proved by a 'killer document' published by the Defendant on the Press Gang website as Part 9 of his series of articles on 24 February 2022 (when Saini J's ruling was available in draft but before it had been handed down) in which the Defendant said:

> "In a statement, French stated:
>
> > 'I am disappointed by the decision.
> >
> > However, I remain resolutely committed to defending this action.
> >
> > My legal team believe I have a strong defence and the formal documents will be served within the next few months.'
>
> The overall cost of the full libel trial could rise as high as £1,000,000.
>
> The Press Gang fighting fund, which has already raised nearly £25,000 from a thousand supporters, can be found here … [URL given]."

95. Hence, even knowing of Saini J's ruling, the Defendant still, in 2021, maintained that he would prove the truth of his allegations.

96. Mr Bennett said that what the Defendant had subsequently tried to do was to cheat the Claimant of vindication by pretending that he had been unfairly prevented from mounting the defence he wanted to mount. Implicit in that was the claim that if the Defendant had been able to do what he wanted to do, he would have won the case.

97. I agree. Saini J's ruling was on the meaning of the Article, and on meaning alone. His function was to identify 'what is the natural and ordinary meaning of the Article, as it relates to the claimant': *Allen v Times Newspapers Ltd* [2019] EWHC 1235 (QB) [39]. The principles to be applied are conveniently collected in the judgment of Nicklin

J in *Koutsogiannis v The Random House Group Limited* [2019] EWHC 48 (QB) at [11-13]. It is unnecessary to rehearse them all here. They are not controversial. The primary question is: 'What is the meaning that the hypothetical reasonable reader would understand the words in question to bear ?' That is a primary starting point for a claim in libel.

98. However, a ruling on meaning will generally leave untouched any proposed defences to the claim. That was the case here. Whether the meaning found by Saini J was substantially true remained for trial. The ruling did not deprive the Defendant of *any* ability to defend himself on the grounds of truth, public interest, or any other defence he wished to plead and advance (apart from honest opinion (s 3, DA 2013), which the judge rejected, it having been expressly raised by the Defendant for determination at that stage).

99. I therefore find the claims by the Defendant that he had somehow been prevented from advancing a truth defence by Saini J's ruling were untrue. Moreover, I find that they were a knowing, deliberate and cynical distortion of what the Defendant must have known to be true. He was then represented by exceptionally distinguished leading counsel and I have no doubt he would have been advised that the ruling did not foreclose a defence of substantial truth under s 2 of the DA 2013.

100. The relevant statements by the Defendant also contained a basic error, namely, that just because the Claimant delivered the commentary on the film, he must therefore have 'authored' it. As I set out earlier, the Programme was the product of many people's work. With the Defendant's experience of making documentaries, he must have known that, and it was a serious distortion of reality for him to have pretended otherwise.

101. A further point made by Mr Bennett, which he said went to aggravate the seriousness of the Defendant's libel, is that the hard copies of some of the Defendant's press releases had on their 'Red Top' mastheads a picture of Mazher Mahmood, the so-called 'Fake Sheikh'. He is a former undercover journalist who worked for the tabloid press (most particularly, the defunct *News of the World*), and was convicted of conspiracy to pervert the course of justice in connection with his work. The masthead also had pictures of other controversial media figures such as Rupert Murdoch and Rebekah Brooks. Mr Bennett said that the Defendant did this deliberately, intending to associate the Claimant with such people.

Discussion

Liability

Defamatory at common law

102. The Claimant needs to establish the following in order to prove liability: (a) that the Article defamed him at common law in the meaning attributed to it by the Court; and (b) that its publication was likely to cause or has caused serious harm to his reputation (s 1, DA 2013).

103. The first element requires the Claimant to show that the Article substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do.

In *Allen v Times Newspapers* [2019] EWHC 1235 (QB), [19], Warby J summarised the common law test as follows:

> "(1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it '[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do': *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).
>
> (2) Although the word 'affects' in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence': *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)]."

104. This issue was determined in the Claimant's favour by Saini J, and so I move on to the second issue, that of serious harm.

Serious harm

105. The leading authority on serious harm and the correct approach to s 1 of the DA 2013 is the Supreme Court's judgment in *Lachaux v Independent Print Ltd* [2020] AC 612. Lord Sumption summarised the position at [21]:

> "21. On the footing that (as I would hold) Mr Lachaux must demonstrate as a fact that the harm caused by the publications complained of was serious, Warby J held that it was. He heard evidence from Mr Lachaux himself and three other witnesses of fact, and received written evidence from his solicitor. He also received agreed figures, some of them estimates, of the print runs and estimated readership of the publications complained of and the user number for online publications. He based his finding of serious harm on (i) the scale of the publications; (ii) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux and (iii) that they were likely to have come to the attention of others who either knew him or would come to know him in future; and (iv) the gravity of the statements themselves, according to the meaning attributed to them by Sir David Eady. Mr Lachaux would have been entitled to produce evidence from those who had read the statements about its impact on them. But I do not accept, any more than the judge did, that his case must necessarily fail for want of such evidence. The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the

> inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind. Warby J's task was to evaluate the material before him, and arrive at a conclusion on an issue on which precision will rarely be possible."

106. If I may respectfully say so, Collins Rice J gave a neat distillation of the principles in *Sahota*, [24]:

> "24. I have directed myself to the guidance given by the Supreme Court in *Lachaux v Independent Print Ltd* [2019] UKSC 27 on how to apply this test. It does not require specific instances of harm to be evidenced. It is based on inferences of fact from a combination of the meaning of the words (as established by Steyn J), the situation of Mr Sahota, the circumstances of publication and the inherent probabilities, to arrive at a conclusion about which precision is not expected. Relevant factors may include: the scale of publication; whether the statements have come to the attention of at least one identifiable person in the UK who knew Mr Sahota; whether they were likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the statements themselves."

107. There are also helpful summaries of the relevant principles by Steyn J in *Banks v Cadwalladr* [2022] EMLR 21, [51], and in *Riley v Sivier* [2022] EWHC (QB), [103].

108. *Duncan & Neill on Defamation* (5th Edn), [4.16] - [4.17] states as follows (footnotes omitted):

> *"*4.16 The claimant may produce evidence from publishees of the statement complained of about the impact (actual or likely) on the claimant, but the case will not necessarily fail for want of such evidence. It is well-recognised that a claimant may find it difficult, if not impossible, to identify or produce evidence from publishees in whose eyes their reputation has been damaged. In some cases, where the allegation is grave and publication extensive, the natural inference may be that its publication has caused immediate and serious harm to the claimant's reputation. And, in an appropriate case, evidence may be available to reinforce that inference. Equally, there may be cases where the evidence shows that, no matter how serious the allegation, its publication has not caused, and is not likely to cause, any serious harm to the claimant's reputation.
>
> 4.17 Publication to a small number of people, even to one person, may cause or be likely to cause 'serious harm'. The assessment of harm to reputation is not a 'numbers game'. In an appropriate case, the claimant may be able to rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications. This has been 'immeasurably enhanced' by social media and

> other methods of electronic communications. It is is submitted that evidence to show further dissemination of the defamatory allegations, beyond the original publication, would be required, although in an appropriate case, the court may be willing to infer substantial 'grapevine' dissemination."

109. Applying the approach in *Lachaux*, I have no hesitation in concluding that the Article did cause, or was likely to cause, the Claimant serious harm within s 1 of the DA 2013. I accept the Claimant's evidence in full.

110. The starting point is the gravity of the allegations which the Defendant made against the Claimant, according to the meaning found by Saini J, that the Claimant had given a 'biased and knowingly false' presentation of the extent and nature of antisemitism within the Labour Party and was a 'rogue journalist'. To accuse a lifelong professional journalist of being a 'rogue' journalist, who had acted dishonestly in order to further a political agenda, was an accusation of the utmost seriousness. As I remarked during the hearing, if a journalist loses his or her reputation for truthfulness, honesty and integrity, then their journalistic currency is effectively worthless.

111. The reasons why the Article bore such a serious meaning were summarised by Saini J at [17] of his judgment:

> "17. I was taken sequentially through the text and stress was placed on the following main points by Leading Counsel for Mr Ware:
>
> (i) The top of the first and every other page refers to 'THE DIRTY TRICKS ELECTION'.
>
> (ii) The strapline just above the main headline reports that the Labour Party ('LP') has stated that the edition of Panorama in issue 'was a deliberate attempt to sabotage its electoral prospects' (§2). By these words the article summarises its message. Paraphrasing Lord Nicholls in *Charleston*, Mr French has 'played with fire' and not included any curative words in the text of the article which detract from or qualify the message in the strapline.
>
> (iii) At §4 the BBC is said to have 'crossed a line' with the broadcast of *'Is Labour Anti-Semitic?'* The producer/author is identified as Mr Ware i.e. he is said to have created the programme. The LP is reported to have said that the programme was an 'authored polemic' and 'an overtly one-sided intervention in political controversy'. The BBC is quoted as rejecting 'any accusation of bias and dishonesty.'
>
> (iv) Having quoted the BBC's denial of bias and dishonesty, the Article sides with the BBC's accuser: 'The evidence though strongly favours the Labour Party: this was a piece of rogue journalism that presented just one side of the argument, ignored basic facts and bent the truth to breaking point.' The latter

> expression can only amount to an accusation of lying because of the implication that Mr Ware "broke" the truth.
>
> (v) Reliance is placed on the fact that in the bottom right of the page the following caption appears next to a cartoon of Jeremy Corbyn: 'JEREMY CORBYN: Openly despised by Panorama reporter John Ware.' Mr Ware's motive is thereby given; this reinforces the credibility of the accusations being made against him.
>
> (vi) The article then proceeds to set out how Mr Ware deliberately used the programme to sabotage the LP's election prospects. Instances are given where he included inculpatory evidence and knowingly/deliberately excluded exculpatory evidence concerning the charges against the LP. See §23 where he is said to have 'purged his narrative' and 'presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of antisemitism'.
>
> (vii) At §36 the Article alleges that Mr Ware's 'authored polemic' was so one-sided that it broke one of Ofcom's cardinal rules on programmes carrying an appropriately wide range of significant views and ensuring facts are not misrepresented. It was said this was in effect a serious allegation of wrongdoing for which Mr Ware was to be held responsible (wrongdoing which could have serious implications for the BBC: see §§37-38)."

112. This is a case, *per* Nicklin J in *Monir v Woods* [2018] EWHC 3525 (Admin), [196(ii)], where, because the meaning found by Saini J is seriously defamatory, an inference of serious reputational harm can and should be drawn.

113. There will have been many who read the Article and/or the Pamphlet who would not have believed the Defendant's accusations, for example, those of the news executives targeted by the Defendant who know the Claimant and his reputation for honesty and integrity. But, equally, there will have been many who did believe them – as evidenced by comments posted online, some of which I quoted earlier - which were notable for their vehemence, their unquestioning acceptance of the Defendant's case, and their hostility towards the Claimant. The Claimant was only able to raise over £90 000 in crowdfunding from something over 1000 people because they believed his accusations that the Claimant was a dishonest and rogue journalist whose intention had been to harm the Labour Party. This, therefore, is a case where there is direct and tangible evidence of the effect which the Defendant's libel had on the minds of some, to the serious detriment of the Claimant's reputation. I also have in mind the reaction of Professor Cathcart and Mr Schlosberg both of whom, one might have expected (and hoped), to have been less quick to rush to judgement and to have noted, for example, that the Claimant had not been given a right of reply pre-publication.

114. I also accept the Claimant's evidence that there may well have been those in the world of journalism who did not know him, and whose views of him might therefore have

been adversely affected, particularly given the Defendant's own pedigree as a journalist.

115. As I have said, I accept the Claimant's case on the scale of publication of the Article and the Pamphlet (some of which, as Mr Bennett pointed out in his Skeleton Argument at [7]-[13]) comes from the Defendant's own witness statement, he generally being in a better position than the Claimant to know how he went about publishing this material. The Claimant can rely on what the Defendant said under CPR r 32.5(5) (where a party serves a witness statement but does not call the witness or put it in as hearsay evidence, 'any other party may put the witness statement in as hearsay evidence.')

116. I set out the evidence in detail earlier and do not repeat it. It is plain that the Defendant's material will have been read by an unknown number of people, but which I find is likely to run to many thousands of people. There has been widespread dissemination via social media and publication online. There were the 300 copies of the Pamphlet to senior news executives, and the picket and distribution of flyers outside the BBC.

117. These latter methods of distribution are relevant to the issue of the quality of publishees, as well as to their number. I conclude the Defendant intentionally targeted these recipients so as to inflict the maximum harm on the Claimant. This targeting was likely to have had a particularly serious effect upon his reputation in the eyes of those on whose estimation the Claimant depends for his living.

118. To my mind, this is an obvious case where the 'grapevine effect' may well have operated, given the widespread dissemination of the Defendant's publications; the widespread interest in antisemitism within the Labour Party; and the Claimant's high profile as a journalist on national television who often fronts a well-known programme.

119. For all of these reasons, I conclude that the Claimant's case on serious harm is overwhelming. The Defendant's allegations were of the utmost seriousness; they were published to many, many people, some of whom were targeted because they had the ability to directly impact the Claimant's ability to earn a living; the Defendant continued to publish them from December 2019 to June 2022; the Defendant continued right up to trial to (at least) imply that he could prove the truth of his allegations but had been unfairly prevented from doing so. Furthermore, there is evidence that some individuals believed the Defendant's allegations and therefore thought the worse of the Claimant.

Remedies

120. The Claimant seeks damages including aggravated damages; an order under s 12 of the DA 2013; and an injunction; and costs. I will deal with each in turn.

Damages

121. In *Barron v Vines* [2016] EWHC 1226 (QB), [20]-[21], Warby J set out some principles relating to awards of damages in libel cases, as follows:

> **"**20. The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had

awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. Sir Thomas Bingham MR summarised the key principles at pages 607 – 608 in the following words:

> 'The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must **[1]** compensate him for the damage to his reputation; **[2]** vindicate his good name; and **[3]** take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is **[a]** the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. **[b]** The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that **[d]** compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as 'he' all this of course applies to women just as much as men.'

I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

(a) Their role in society. The libel of Esther *Rantzen* was more damaging because she was a prominent child protection campaigner.

(b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

(c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

(d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at [2013] 1 WLR 1051) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages …

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

(a) ‘Directly relevant background context’ within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

(b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

(c) An offer of amends pursuant to the Defamation Act 1996.

(d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John*, 612; (b) the scale of damages awarded in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: see *John* 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998."

122. *Gatley on Libel & Slander* (13th Edn), [34-068] - [34-078], provides a useful outline of the relevant law. Nicklin J gave a comprehensive account of the principles of assessment of damages in libel in *Turley v Unite* [2019] EWHC 3547 (QB), [171] - [176] (including reference to some recent awards cited by each party). The principles identified by him are: (a) damages must compensate the Claimant for the damage to his reputation; (b) damages must vindicate the Claimant's good name; (c) damages must take account of the distress, hurt and humiliation which the defamatory publication has caused to the Claimant; (d) in assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; (e) the extent of publication and the relationship of the pubishees with the claimant is also relevant; (f) a successful Claimant may properly look to an award of damages to vindicate his reputation. The significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place; (g) it is well established that compensatory damages may and should compensate for additional injury caused to the claimant's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise; (h) the impact of a libel on a person's reputation can be affected by their role in society; (i) the impact of a libel on a person's reputation can be affected by the extent to which the publisher of the defamatory imputation is authoritative and credible; (j) the impact of a libel on a person's reputation can by the 'hidden springs' point (which I referred to earlier); (k) a reasoned judgment may affect the level of damages awarded, though the impact of this will vary according to the facts and nature of the case; and (l) in arriving at a figure it is proper to have regard to previous awards by a judge sitting without a jury.

123. With regard to the second principle, that damages must vindicate the Claimant's good name, this will depend on the size of the award. Lord Hailsham discussed this in *Broome v Cassell & Co Ltd* [1972] AC 1027, 1071 (emphasis added):

> "Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, *he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge*."

124. Of course, awards are now made by judges, but Lord Hailsham's point remains a valid one.

125. Mr Bennett said that this passage is of particular relevance to the Claimant's need for vindication. The Court's judgment cannot deal with the substance of the truth or the public interest defence because they have been abandoned or struck out (although it may state that they have been abandoned). There is also the significant problem that the Defendant has used his Press Release and crowdfunding statements (as set out above) to communicate to the publishees that he has declined to participate in this trial because he has been prevented from presenting the evidence he wanted to present. Mr Bennett therefore said that the amount awarded will need to convince people that in fact the allegations in issue are baseless.

126. In relation to aggravated damages, *Gatley* says at [10-016] (footnotes omitted):

> "10.016 In assessing damages the court is entitled to look at the whole conduct of the defendant 'from the time the libel was published down to the time they give their verdict.' The general conduct of the defendant, his conduct of the case, and his state of mind (or how it is perceived by the claimant) insofar as it affects the feelings of the claimant are all matters which the claimant may rely on as aggravating the damages in so far as they bear on the injury to him.
>
> '[I]t is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.'
>
> 'The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology and withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding;

persistence, by way of a prolonged or hostile cross-examination of the claimant, or in turgid speeches to the jury, in a plea of justification which is bound to fail; the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and persecution of the plaintiff by other means.'

While there is some authority for the proposition that persistence in a bona fide plea of a truth or an opinion defence can of itself aggravate damages, it has been said repeatedly that it is wrong in principle to award aggravated damages solely because of the bona fide persistence with such a plea, provided it is conducted reasonably.

Aggravated damages have on occasion been awarded (or identified) as a sum separate from general compensatory damages. However, in *Lachaux v Independent Print Ltd* ([2021] EWHC 1797 (QB) [2022] EMLR 2, [227]) Nicklin J described the practice as 'unnecessary … generally unwise', for the following reasons:

> 'The Court's task is to assess the proper level of compensation, taking into account all the relevant factors, which include any elements of aggravation. If, as the authorities recognise, the assessment of libel damages can never be mechanical or scientific, attributing a specific figure to something as nebulous as 'aggravation' has an unconvincing foundation. Worse, as it would represent the imposition of a clearly identified additional sum of money, it risks the appearance of being directly attributed to the conduct of the defendant. That comes perilously close to looking like a penalty. For these reasons, I consider the better course is to fix a single award which, faithful to the principles by which damages in defamation are assessed, is solely to compensate the Claimant. The award can properly reflect any additional hurt and distress caused to the Claimant by the conduct of the Defendants. To speak in terms of whether a claimant is 'entitled' to an award of aggravated damages is misleading. Every claimant who succeeds in a claim for defamation is 'entitled' to an award of damages which may reflect any proved elements of aggravation. The real question is whether the claimant can demonstrate, by admissible evidence which the court accepts, that the damage to his/her reputation and/or his/her distress or upset has been increased by conduct of the defendant.'"

127. I propose to adopt the approach of Nicklin J in *Lachuax* and award a global sum which reflects compensatory damages and the Defendant's aggravating conduct.

128. In my judgment the following matters, in particular, are relevant to the *quantum* of compensatory damages: (a) the seriousness of the Defendant's defamatory allegations having regard to the Claimant's profession; (b) the widespread dissemination of the Article and Pamphlet; (c) the intentional targeting of those on whom the Claimant relies for work, and the deliberate picketing of the BBC; (d) the Claimant's palpable anger and distress.

129. The following features of the Defendant's conduct which serve properly to aggravate the level of damages are, in particular: (a) the maintenance of the truth defence from April 2021 until June 2022, followed by its abandonment; coupled with (b) the Defendant's cynical and untrue portrayal that the reason for doing so was Saini J's judgment; coupled with (c) his continued public statements in which he continued to maintain, notwithstanding his withdrawal of the defence, that his allegations were, in fact, true. Not only did he not seek to set the record straight at that point, which he could easily have done, and which would have gone some way in mitigation, he did the opposite.

130. The public maintenance of a plea of truth even after it has been dismissed (or, I would also say, abandoned), has been recognised to be an aggravating factor: see eg, recently, *Riley v Sivier*, [192] ('It is an aggravating feature that the defendant has continued to maintain the truth of his untrue allegations even after the summary dismissal of his defence of truth was upheld by the Court of Appeal.')

131. Expanding on aggravating element (b) above, I find that the Defendant issued the Press Release and crowdfunding statement in October 2022 maliciously to, as Mr Bennett put it, create 'a myth, a false narrative', to explain away what I find he must have known would likely be his defeat at trial. The myth was that he could/would have won the case but for the ruling of Saini J, who had wrongly stymied his chance to properly defend the claim and prevented him from adducing the evidence he wanted to adduce.

132. Inevitably, the effect of these statements was to cause some readers to reach exactly that conclusion. For example, there was the following:

> "Terry Clarke @terry_clarke – 3h
>
> After being prevented by a judge from producing evidence, journalist Paddy French says: 'I will now concentrate on producing a full report into the Panorama programme.
>
> This report will include new material that has yet to see the light of day."

133. A similar conclusion was reached by 'The Skwawkbox', a left-leaning website which featured in *Turley* (see at [2]). In *Breaking: French and Press Gang withdraw from Ware libel case*, it summarised the Press Release thus (emphasis added):

> "In a statement released this morning, French laid out the progress made in the case – pointing out that Ware's legal team was not contesting Press Gang's 'charge sheet' that French had laid out against Ware's BBC documentary on antisemitism in the Labour

> party – *and his reasons for the withdrawal, specifically a judge's ruling that he could not present evidence of the one-sidedness of the Panorama programme at trial*"

134. Further, even on his own evidence, it would appear that the Defendant never had the necessary evidence to prove that the allegations were true, but instead hoped that the Claimant's disclosure might reveal that to be the case. He said in his witness statement:

> "172. By 18 February 2021, I knew that the Judge had determined the meaning of the Article to be something that I had not intended to say. Despite the Judge's ruling, and in light of these new documents, particularly Labour's response to the Right to Reply letters which would have been seen by Mr Ware before publication, I considered that it would be reasonable to continue with the truth Defence and review it in light of Mr Ware's disclosure which I anticipated would deal with the internal decision-making process. In the event, after reviewing disclosure and in consultation with my legal team, I took the decision to withdraw my truth defence and immediately removed any remaining links to the Article."

135. I agree with Mr Bennett that the Defendant's whole attitude to these proceedings – at least from the date of the abandonment of the truth defence - has been one of contempt.

136. The Defendant's behaviour in publishing the Press Release and crowdfunding statement has very seriously exacerbated the damage caused to the Claimant, by seeking to ensure that any judgment in his favour would be seen by his publishees as arising from some sort of unwarranted or unfair judicial intervention, as opposed to the reality, namely, that the Defendant had no defence.

137. I turn to the question of *quantum.* Mr Bennett said that awarding damages in a defamation claim is an 'inexact science', and I agree. His Skeleton Argument set out some helpful examples of damages awards. Obviously, facts always differ, and so caution must always be exercised, but I think that these cases usefully illustrate the general sort of 'ballpark figures' involved in this sort of case.

138. In *Turley v Unite the Union* [2019] EWHC 3947 (Admin), the claimant (the former Labour MP for Redcar) sued over a statement alleging there were reasonable grounds to suspect her of dishonestly and fraudulently joining a trade union in order to vote in its leadership election. Nicklin J awarded her £75 000, including aggravated damages for the defendants' conduct of the trial.

139. In *Harrath v Stand for Peace Ltd* [2017] EWHC 653 (QB) a prominent article on a widely known and authoritative website accused the claimant of being a terrorist. The readership was held to have been in the hundreds or low thousands. The defendants' conduct, including reliance on a truth defence without solid evidence, was held to be an aggravating feature. Whilst the Claim Form was limited to claiming £10 000, the trial judge awarded £140 000. This was appropriate because the judgment had to set out the right amount to award. Whether or not the full amount could be enforced, given the Claim Form limit, was a separate issue.

140. In *Sloutsker v Romanova* [2015] EMLR 27, damages of £110 000 were awarded over online allegations by the defendant, a Russian journalist, accusing the claimant, a former Russian senator, of having taken out a contract for the murder of the defendant's husband, fabricating evidence and bribing officials. Damages were awarded by reference only to publication in England and Wales. Of the extent of publication in this jurisdiction it was held it might have been to as many as 60 000 people.

141. In *Tardios v Linton* [2015] EWHC 2552 (QB) damages of £95 000 (between two claimants) were awarded. One claimant was the head teacher of a school run by the second claimant, a company. The defendant, a pupil's parent, published an online petition accusing the first claimant of mistreating pupils. There were a substantial number of publishees, 'well into four figures' – '…considerably greater overall than 474, and I am confident that it is likely to have been well into four figures before the petition was taken down from the website' ([21]).

142. The allegations made by the Defendant against the Claimant were not as serious as an accusation of being a terrorist, or organising a contract killing, but in their context they were still extremely serious. I think they were more serious than the allegations in *Turley*. The Defendant's conduct was intentionally calculated to harm the Claimant. There was extensive publication running into the many thousands. There are serious aggravating features. Taking matters in the round, I award the Claimant total damages for publication of the Article in all its forms, and for the Defendant's aggravating conduct, of £90 000.

143. As this figure exceeds the £50 000 maximum pleaded in the Claim Form, *per* Steyn J in *Riley v Sivier*, [195], I will give the Claimant the opportunity to consider whether to seek leave to amend the Claim Form.

Statement pursuant to s 12 of the DA 2013

144. The Claimant seeks an order under s 12 of the DA 2013. This is entitled 'Power of court to order a summary of its judgment to be published' and provides:

> "(1) Where a court gives judgment for the claimant in an action for defamation the court may order the defendant to publish a summary of the judgment.
>
> (2) The wording of any summary and the time, manner, form and place of its publication are to be for the parties to agree.
>
> (3) If the parties cannot agree on the wording, the wording is to be settled by the court.
>
> (4) If the parties cannot agree on the time, manner, form or place of publication, the court may give such directions as to those matters as it considers reasonable and practicable in the circumstances.

(5) This section does not apply where the court gives judgment for the claimant under section 8(3) of the Defamation Act 1996 (summary disposal of claims)."

145. An order under s 12 is discretionary. Section 12 orders were made in *Turley* and in *Sahota* but no reasoning was set out. However, in *Monir*, Nicklin J set out the test at [239] - [242]:

> "239. The purpose of this section is to provide a remedy that will assist the claimant in repairing the damage to his reputation and obtaining vindication. Orders under the section are not to be made as any sort of punishment of the defendant.
>
> 240. Orders under s 12 are discretionary both as to whether to order the publication of a summary and (if the parties do not agree) in what terms and where. Exercising the power to require a defendant to publish a summary of the Court's judgment is an interference with the defendant's Article 10 right. As such, the interference must be justified. The interference may be capable of being justified in pursuit of the legitimate aim of 'the protection of the reputation or rights of others'. Whether an order under this section can achieve this aim will be a matter of fact in each case. If the interference represented by a s 12 order is justified, then the Court would then consider whether (if the parties agree) the terms of the summary to be published is proportionate. The Court should only make an order that the defendant publish a summary of the Court's judgment if there is a realistic prospect that one or other of these objectives will be realised and that the publication of a summary is necessary and proportionate to these objectives.
>
> 241. There is an obvious purpose, in an appropriate case, for ordering a newspaper to publish a summary of the judgment because there is a realistic basis on which to conclude that the published summary will come to the attention of at least some of those who read the original libel and others who may have learned about the allegation via the "grapevine" effect. In a smaller scale publication, where it is possible for the original publishees (or at least a substantial number of them) to be identified, again an order requiring the publication to them of a summary of the judgment may well help realise the objectives underpinning s.12. Each case will depend upon its own facts. If the defendant has already published a retraction and apology then, depending upon its terms, that may mean that an order under s.12 is not justifiable or required. The claimant will be able to point to that to assist in his vindication or repair to his reputation.
>
> 242. It is difficult to justify ordering a defendant to publish a summary of the court's judgment when there is no realistic prospect that by doing so it will come to the attention of any of those to whom the original libel was published (or republished). Put simply, the legitimate aim cannot be realised, and the order

> will either not be necessary at all or the requirements as to publication will be disproportionate."

146. I agree with the Claimant that applying these criteria, the publication of a judgment summary would be appropriate. There are mechanisms available by which such an order could reach the Defendant's publishees, or at least a substantial number of them. He knows to whom he sent the Pamphlet, and so he can send the summary to them. The summary could also be prominently displayed on the Press Gang website. Requiring *Coldtype* to publish a summary may be more problematical, as it is owned by a third party and operated from abroad (as I understand it). However, that does not represent a bar to s 12 order in the present circumstances.

147. In short, such an order would serve to help vindicate the Claimant's reputation by making clear to publishees how seriously the Court views the Defendant's conduct, and how he tried to paint a false narrative in the face of likely defeat.

Injunction

148. The Claimant seeks a permanent injunction in order to prevent the defamatory material in the Article being published again by the Defendant.

149. Like a s 12 order, an injunction is a discretionary remedy. It is to be granted only where it has been demonstrated, by evidence, that the defendant threatens to republish the libel and the injunction is necessary to prevent the commission of further torts: *Monir*, [237].

150. In my judgment, it is appropriate to grant a permanent injunction against the Defendant. The publication of the Press Release and crowdfunding statement demonstrated not only a disregard for the Claimant's reputation, but also included the words: 'I will now concentrate on producing a full report into the Panorama programme.' According to [173] of his witness statement, the Defendant continues to believe that publication of the Article was, and continues to be, in the public interest. Hence, there is plainly a risk of re-publication by him so as to make the grant of an injunction appropriate.

Costs

151. The Defendant must pay the Claimant's costs, to be the subject of a detailed assessment if not agreed. I will consider any submissions in writing on what basis those costs should be assessed, and the amount of any payment on account.

Conclusion

152. Accordingly, there will be judgment for the Claimant in these terms.

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DECEMBER 2019

DIRTY TRICKS AND THE UK GENERAL ELECTION

STORM OVER BBC'S 'ROGUE' JOURNALISM

Paddy French / Page 4

CHIEF RABBI STOKES NEW RACE ROW

Jonathan Cook / Page 9

JOURNALISTS' LIES SUPPORT BORIS JOHNSON

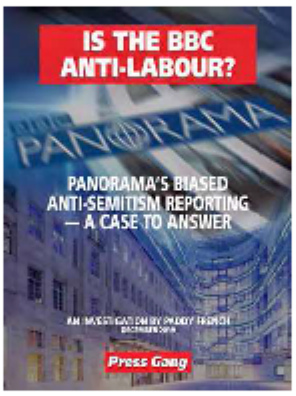
Nicholas Jones / Page 12

Paddy French examines an extraordinary battle between the British Broadcasting Corporation and the Labour Party over a controversial programme about antisemitism, which Labour says was a deliberate attempt to sabotage its electoral prospects . . .

Political storm rages over BBC's 'rogue' journalism

THE BBC has always been something of a political football in the UK – the left considers it too right wing, the right believes it's full of left-wingers. But on July 10 the corporation crossed a line when its flagship current affairs series *Panorama* broadcast a programme entitled *Is Labour Anti-Semitic?* Veteran reporter John Ware – a man who openly despises Labour leader Jeremy Corbyn – was allowed to produce a programme Labour branded an "authored polemic" that was "an overtly one-sided intervention in political controversy . . ." The BBC hit back saying it stood by its journalism – "we completely reject any accusation of bias and dishonesty." The evidence, though, strongly favours the Labour Party: this was a piece of rogue journalism that presented just one side of the argument, ignored basic facts and bent the truth to breaking point.

Part of the BBC's defence of the programme was that "it explored a topic of undoubted public interest, broadcasting powerful and disturbing testimonies from party members who'd suffered anti-semitic abuse." The programme begins with an unnamed young woman who tells viewers "I've been the victim of a lot of antisemitism within the Labour Party" and "I wouldn't say to a friend go to a Labour Party meeting if you are Jewish, I couldn't do that to someone I cared about."



EXPOSED: Cover of the report into the *Panorama* programme.

After she speaks, award-winning reporter John Ware says "Labour says anti-racism is at its very core. Why then is there a constant stream of complaints by party members?"

The programme then presents the testimony of a further nine witnesses saying that antisemitism is a serious problem in the Labour Party. Since they are not identified by the programme – apparently to protect them from threats and harassment – viewers are inevitably led to believe they're just ordinary members of the Labour Party. In fact, of the "anonymous ten," most are high-profile Labour Jewish members – and all of them are opposed to Jeremy Corbyn's leadership.

Take Ella Rose, the

JEREMY CORBYN: Openly despised by *Panorama* reporter John Ware.

Art: Tony Jenkins / www.jenkinstoons.com

young woman who opens the Panorama programme as an anguished victim of anti-semitism.

Eighteen months earlier she was playing – without being aware of it – an equally high profile role in the sensational Al Jazeera documentary *The Lobby* about Israel's clandestine attempts to shape British politics. At the time she was Director of the Jewish Labour Movement, having moved into the job from her previous post as a public affairs officer at the Israeli Embassy. She was filmed discussing the case of the black Labour activist Jackie Walker who was under investigation for antisemitism. Rose was caught on camera saying she could "take" Walker using martial arts techniques developed by the Israeli military. The Jewish Labour Movement denied that it was close to the Israeli Embassy.

Another of the "anonymous ten" is Phil Rosenberg, Director of Public Affairs at the Board of Deputies of British Jews which is also opposed to Corbyn. I asked Rosenberg why *Panorama* thought it necessary to anonymise him; after all his job, it would seem, is to represent the Board in public. He didn't reply.

But there's a more serious problem than just the identity and the affiliations of the ten. They all come from the right wing of Labour's Jewish membership which supports Israel and opposes Corbyn. Eight of them are, or have been, officials of the Jewish Labour Movement (JLM) which insists that antisemitism is a serious problem in Labour and that the leadership isn't doing enough to deal with it.

In November 2018 it asked the UK's Equalities and Human Rights Commission (EHRC) to investigate the party's "institutional antisemitism." In April 2019 it passed a motion of no confidence in Jeremy Corbyn over his alleged failure to deal with the issue. JLM chairman Mike Katz has made it clear the group will not be campaigning in this month's General Election for any Labour election candidate who supports Corbyn.

There is an alternative narrative coming from pro-Corbyn Jewish organisations which says that, while there is antisemitism in Labour, it's not a widespread problem. And it would have been a simple matter to obtain the testimonies of ten Jewish members who have never experienced antisemitism in the party.

Moreover, anecdotal evidence suggests many of the complaints are made about Jewish members by other Jewish members – and that a large number of them relate

to criticism of Israel's policies towards the Palestinians. But this side of the issue is unrepresented in the *Panorama* programme.

And then there's the scale of the problem. Ware asserts that before Corbyn complaints about antisemitism "were rare" but after he became leader there was a "constant stream of complaints." He states that many British Jews "once saw the Labour Party as their natural political home. No longer". As well as the "anonymous ten" who give personal experiences, a former Labour Party insider says "the problem was massive ..." Ware adds that by the spring of this year "there were still several hundred antisemitism cases waiting to be resolved". He says the Labour Party "won't give us precise figures ..."

In fact, Ware did have access to figures which throw genuine light on the scale of the problem – statistics he chose to ignore. In February, Labour Party general secretary Jennie Formby released figures for a ten-month period from April 2018 to January 2019. There were 673 complaints of antisemitism against party members, of which 394 – more than half – were found not to involve a breach of party rules and were dismissed. Leaving aside 30 cases which were not completed, there were 249 cases where sanctions were imposed or where members resigned before their cases were determined. Given that the Labour Party has 500,000 members, these 249 cases amount to 0.05 percent – a tiny fraction. The problem is, then, statistically small.

VICTIM? Ella Rose was featured in the Al Jazeera film *The Lobby*.

BIA$ED? Panorama reporter John Ware was accused of producing an "authored polemic" by Labour.

Not only does *Panorama* fail to give viewers the only reliable statistics on the scale of the problem, John Ware then goes on to talk about "Mr Corbyn's failure to drive out antisemitism", as if this was an accepted fact. As proof of this, he seizes on the fact that "only around" 15 people have been expelled from the party for antisemitism in a three year period. But Ware should have known this proves nothing – and to understand why he only had to look at the BBC's record when it comes to complaints. In its annual report for 2018-2019 the Corporation records more than 210,000 "editorial and general complaints" of which 56 were found to be in breach of BBC editorial guidelines – a fraction of one percent. In the antisemitism statistics for April 2018-January 2019, the number of people expelled from Labour is close to 2 percent.

This pattern is common in all regulatory regimes: the number of complaints upheld is usually a small percentage of the total. And Ware could have also looked at the issue of Labour's antisemitism in another way. In the ten months to January 2019, the party took action against 249 individual members out of a total number of 768 complaints. In other words, in more than a third of all cases Labour took some form of disciplinary action – an extraordinary figure in any regulatory regime. The evidence, then, suggests that the party is bending over backwards to address the concerns of Jewish members.

Having purged his narrative of any meaningful statistics and presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of antisemitism. In

Photos: TV screen shot

one case, he examined the experience of a Labour Party dispute official called Ben Westerman when he went to Liverpool to investigate problems in the city. There had been friction between supporters of the Riverside MP, Louise Ellman, and critics over the issue of Labour policy on the Israel-Palestinian question. Westerman is Jewish and among the people he interviewed was Helen Marks, a pensioner.

Of this interview, John Ware states: "While interviewing one member he was confronted with the very antisemitism he'd been investigating."

Westerman says: "We finished the interview, the person got up to leave the room and then turned back to me and said where are you from? And I said what do you mean, where am I from? And she said I asked you where are you from? And I said I'm not prepared to discuss this. They said are you from Israel? What can you say to that? You're assumed to be in cahoots with the Israeli government, it's this obsession with that that just spills over all the time into antisemitism."

Aside from the fact that it's difficult to see how asking someone if they come from Israel can be, of itself, antisemitic, this account is disputed. Helen Marks says it never happened. She says that, during the interview, she was accompanied by a friend who asked Westerman what branch of the party he was in. A transcript of the interview confirms this – and the fact that Westerman's response was "I don't think that's relevant."

John Ware states: "While interviewing one member he was confronted with the very antisemitism he'd been investigating"

Neither Helen Marks nor her friend were contacted by *Panorama* to give their side of the story. Nor did the programme reveal the fact that they are both Jewish. When Helen Marks complained to the BBC, a Corporation executive said he was satisfied Westerman's "account is his genuine memory of what he heard and we confirmed that it was as he reported it at the time." Just what is meant by the words "we confirmed that it was as he reported it at the time" is not explained.

Having posed the question – is Labour antisemitic? – the BBC was duty-bound to give both sides of the argument. In fact, apart from an interview with Labour shadow communities secretary Andrew Gwynne and statements from the party, *Panorama* devotes the majority of the programme to voices claiming the problem was serious and critical of Labour's handling of the problem. Of 22 people interviewed for the broadcast, 21 fell into this bracket.

The BBC sets itself high standards. In June 2018, just a few weeks before the *Panorama* broadcast, it published a new set of Editorial Guidelines. Chairman Sir David Clementi was emphatic: " ... nothing is more important than the BBC's reputation for independence, impartiality and editorial integrity ..." Director General Tony Hall was even more forthright: "It's just a few short years since the terms 'fake news' entered our lexicon. It's now a weapon of choice used worldwide. In a world of misinformation, our values have never been more important. That's why accuracy, impartiality and fairness are given such prominence in these Guidelines."

After the *Panorama* programme, the BBC recorded 1,593 complaints alleging "bias against the Labour Party." The BBC's initial response – it stood by its journalism and rejected "any accusations of bias or dishonesty" – was enough to dissuade most of these from proceeding any further. However, at least 49 appealed the decision. These were rejected by the Corporation's Executive Complaints Unit. The Unit also dismissed a detailed complaint from the Labour Party itself.

Until recently, that would have been the end of the matter. For nearly a century the BBC has been judge and jury in its own case. In April 2017, however, this self-regulation came to an end and the statutory broadcasting regulator Ofcom took over the role. Ofcom is one of the UK's most powerful watchdogs and its complaints system is rigorous. Ofcom has already received 26 appeals about the BBC's rejection of their com-

plaints. Given that the Labour Party – Her Majesty's Loyal Opposition with more than 12 million votes in the 2017 election – will also join this list, it's inevitable that Ofcom will open an investigation under its own Broadcasting Code.

This is what Ofcom did when there were complaints about the 2017 Al Jazeera series *The Lobby* about Israel's clandestine attempts to influence political policy in the UK. The sensational four-part series, screened in January 2017, caught an Israeli Embassy employee trying to "take down" the then Conservative Foreign Office minister Sir Alan Duncan, an outspoken critic of Israel who said in 2014 of the settlements in the West Bank: "Occupation, annexation, illegality, negligence, complicity – this is a wicked cocktail which brings shame on Israel." Israeli Ambassador Mark Regev was forced to apologise, insisting that taking down the minister was not official Israeli policy. The Israeli Embassy employee was sacked.

The Jewish Labour Movement complained about the programme on the grounds that it was not impartial. Ofcom rejected the complaint: it concluded the programme had "included a range of viewpoints on this matter of political controversy" and had, therefore "maintained due impartiality". The Movement's then Director Ella Rose also complained that Al Jazeera, in using undercover film of her, had treated her unfairly and had invaded her privacy. Again, Ofcom rejected the complaints. The BBC is disdainful of Al Jazeera: in a comment to one of the *Panorama* complainants, it noted that the channel: "... has very different editorial processes to the BBC". Now it's the turn of the BBC's editorial processes to come under the Ofcom microscope.

The *Panorama* programme – still available on iPlayer – has done significant harm to Labour's reputation on antisemitism

Labour has not revealed the contents of its complaint but the general outlines are clear. The party says it was perfectly acceptable for *Panorama* to examine the issue of antisemitism among its membership – it's a clear matter of public interest. However, John Ware's "entitled polemic" was so one-sided that it broke one of Ofcom's cardinal rules. This is clause 5.12 of the watchdog's broadcasting code: "In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme ... Views and facts must not be misrepresented."

Moreover, the party is also likely to argue that the BBC, in first approving and then defending the *Panorama* programme, was partisan at a time when an election was likely to take place within a matter of months. And, given the slowness of the BBC's complaints system (even after four months the process is still not complete) combined with the length of time Ofcom requires, the chances of Labour obtaining a correction before any election in 2019 were always remote. And this is what has happened. *Panorama*'s programme is still available on iPlayer and significant harm has been done to Labour's reputation on the antisemitism issue.

Although any Ofcom ruling will not come until next year, the stakes are still high. If Ofcom finds against the BBC – it can also impose a fine of up to £250,000 – it will be a huge blow for the Corporation's reputation for impartiality. The jobs of chairman Clement and Director General Tony Hall could be on the line. For Ofcom to make such a sensational ruling against the UK's state broadcaster may also have serious political repercussions for the watchdog itself, especially if the Conservatives, who are the main beneficiary of Panorama's rogue journalism, are returned to power. But if Ofcom decides that the BBC has not broken its code, then it could face a challenge in the courts ... CT

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