Neutral Citation Number: [2013] EWHC 1427 (QB)

Case No: HQ12D03024

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05/06/2013

Before :

THE HONOURABLE MR JUSTICE TUGENDHAT

- -

Between :

Peter Cruddas	**Claimant**
- and -	
(1) Jonathan Calvert (2) Heidi Blake (3) Times Newspapers Ltd	**Defendants** **Defendants**

- -
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Desmond Browne QC and Matthew Nicklin QC (instructed by **Slater and Gordon**) for the **Claimant**
John Kelsey-Fry QC, Heather Rogers QC and Aidan Eardley (instructed by **Bates Wells and Braithwaite**) for the **Defendants**
Hearing dates: 21-22 May 2013

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HONOURABLE MR JUSTICE TUGENDHAT

Mr Justice Tugendhat:

1. This action for libel and malicious falsehood is listed for trial to start on 17 June. By application notice dated 27 March 2013 the Claimant sought a number of orders, including that the mode of trial (ordered last November to be by judge sitting with a jury), be varied to trial by judge alone. On Friday 17 May the Defendants agreed that the trial be by judge alone. That made possible the trial of a preliminary issue to determine the actual meaning of the words complained of. And the determination of meaning is now the principal issue before the court.

2. The application notice first came before Nicol J on 18 April. He made orders on the Claimant's applications for permission to amend. I gratefully adopt the summary of the dispute he gave in his judgment [2013] EWHC 1096 (QB).

3. The Claimant is a businessman. In March 2012 he was the Co-Treasurer of the Conservative Party. The Third Defendant is the publisher of the *Sunday Times.* The 1st and 2nd Defendants are journalists and part of that paper's 'Insight' team. The 1st and 2nd Defendants put together a plan whereby they would pretend to be agents for foreign investors who wanted to explore making donations to the Conservative Party. They hired a lobbyist called Sarah Southern and, through her, arranged to have a meeting ("the Meeting") with the Claimant on 15th March 2012. Unknown to him, each Defendant carried a concealed camera with an audio recording facility as well. Consequently, there is a comprehensive record of the meeting, some extracts from which I have viewed, and a transcript of it has been prepared and is annexed to the amended Particulars of Claim.

4. As a result on 25th March 2012 the *Sunday Times* published four articles. The first ("the First Article") began on the front page and continued on page 2 under the headline 'Tory treasurer charges £250,000 to meet PM.' The front page also had a photograph of the Claimant. A sub-heading further reported that the day before 'Cameron's fundraiser [had been] forced to resign'. The second article ("the Second Article") was on pages 8 and 9 under the headline 'Cash for Cameron: cosy club buys the PM's ear'. The third article ("the Third Article"), also on page 9, had the headline, 'Pay the money this way and the party won't pry'. Page 9 carried the fourth article as well. This was written by Mark Adams under the headline 'Rotten to the Core'. These four articles, in substantially the same form, were also carried by the newspaper's website ("the Website"). The *Sunday Times* also published an editorial ("the Editorial") in the same issue on the theme 'Sack the Treasurer and Clean Up Lobbying'. The reader of the Articles is referred to this by a direction printed at the end of the Second Article.

5. In addition, on page 2 there is printed an excerpt from the Claimant's letter of resignation, and on page 9 a report of a speech given in 2010 by David Cameron on lobbying.

6. The claim form issued on 24th July 2012 complained of the whole of the First and Second Articles together with most of the Third Article, and their republication on the Website. It did not complain of the Fourth Article, the Editorial or the other two items. The original Particulars of Claim were served two days later on 26th July 2012. The first three Articles were alleged to be defamatory of the Claimant. The first three Articles were also said to be malicious falsehoods. Malice is an essential ingredient of

malicious falsehood and it is the Claimant's case that the 1st and 2nd Defendants each published those first three articles maliciously and that the 3rd Defendant is vicariously responsible for their torts.

7. The Claimant pleads that the natural and ordinary of the Articles (for the purpose of his claims in both defamation and malicious falsehood) were as follows:

> "(1) In return for cash donations to the Conservative Party, the Claimant corruptly offered for sale the opportunity to influence government policy and gain unfair advantage through secret meetings with the Prime Minister and other senior ministers.
>
> (2) The Claimant made the offer, even though he knew that the money offered for secret meetings was to come, in breach of the ban under UK electoral law, from Middle Eastern investors in a Liechtenstein fund; and
>
> (3) further, in order to circumvent and thereby evade the law, the Claimant was happy that the foreign donors should use deceptive devices, such as creating an artificial UK company to donate the money or using UK employees as conduits, so that the true source of the donation would be concealed."

8. Mr Browne has referred to the Claimant's meaning in para 6(1) as "the Corruption meaning" and meanings in paras 6(2) and 6(3) as "the Breach of Electoral Law meanings".

9. The Defendants' Defence in summary takes issue with the meanings attributed to the words by the Claimant, pleads justification in alternative meanings to the defamation claims, and denies that the articles were false, or that they were published maliciously, or that they were calculated to cause him pecuniary damage in respect of his profession or business. While not accepting that the articles did have the following meanings, the Defendants stated that they are prepared to justify them if they did have those meanings. The Defendants do not raise a *Reynolds* defence in this case, nor any other defence of privilege (or public interest), nor do they raise a defence of honest comment. The issues on liability for defamation are (1) the meaning of the Articles, and, if the meanings are not higher than the meanings pleaded in paras 7 and 8 of the Amended Defence, then (2) whether in those meanings they are substantially true.

10. Two meanings which the Defendants are prepared to justify are set out in their Amended Defence at para 7 as follows:

> "7(1) That what the Claimant said in the course of a meeting on 15th March 2012, as co-Treasurer and Board member of the Conservative Party, in claiming:
>
> (a) that the Conservative Party would accept large donations from persons whose sole purpose in making the donations was to advance their business interests by obtaining direct access to the Prime Minister, by lobbying on policy areas affecting their

> business and by moving in circles where they would pick up useful intelligence to progress their business strategy;
>
> (b) That in return for six-figure donations, such persons would be able to achieve that purpose in the ways they wanted; and
>
> (c) That in return for donations of £250,000 a year, they would obtain special access to the Prime Minister and senior governments ministers, would get noticed and be taken really seriously, would be able to operate at a higher level within the Party (and, thus, the Government) and would have things open up' for them;
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> was inappropriate, unacceptable and wrong and gave rise to an impression of impropriety.
>
> 7(2) That the Claimant, when faced with the prospect of donations being made to the Conservative Party from an overseas fund (which was not itself eligible to make donations under the relevant law), was prepared to contemplate ways in which donations from that source could be made to the Party, namely;
>
> (a) Through using a legal loophole that would permit a UK company, carrying on business within the jurisdiction, to make donations from such a source; or
>
> (b) By having individuals on the UK electoral register make donations in their own name;
>
> even though the use of either route would result in the concealment of the true source of the donation, contrary to the spirit of the law which was intended to ensure that the source of any donation over £7,500 would be made public."

11. The third meaning which the Defendants say was also true (although they deny that the Articles bore this meaning) is:

> 8. … in return for cash donations to the Conservative Party, the Claimant corruptly offered for sale the opportunity to seek to influence government policy and gain unfair advantage through secret meetings with the Prime Minister and other senior ministers."

THE WORDS COMPLAINED OF

12. The First and Second Article, and the parts of the Third Article of which the Claimant complains, are as follows.

13. The First Article reads:

> **Tory treasurer charges £250,000 to meet PM**

[1] A CO-TREASURER of the Conservative party was forced to resign early today after being filmed selling secret meetings with the prime minister in return for donations of £250,000 a year and boasting: "It will be awesome for your business."

[2] Peter Cruddas, the multimillionaire Tory fundraiser, offered a lobbyist and her two overseas clients direct access to David Cameron if they joined a "premier league" of donors who give six-figure sums.

[3] The offer was made even though he knew the money would come from a fund in Liechtenstein that was not eligible to make donations under election law.

[4] Options discussed included creating a British subsidiary or using UK employees as conduits for the donation.

[5] Cruddas resigned within hours of this newspaper publishing details of its investigation.

[6] The overseas clients he met were, in fact, undercover reporters posing as wealth fund executives who had made clear they wished to develop contacts with the prime minister and other senior ministers to further their business.

[7] During a three-month investigation they had hired Sarah Southern, a former Cameron aide now working as a lobbyist, who advised them that making a "huge donation" was the best way to gain access to senior government figures.

[8] Her connections led to a two-hour meeting with Cruddas this month in which he laid bare the extent to which the party has been prepared to sell access to Cameron in exchange for cash. He revealed:

[9] ■ Donors who want to be "taken seriously" are told they should give £250,000 to join the "premier league", and then "things will open up for you". Cruddas warned that nothing could be gained by "scratching around" giving £10,000 a time.

[10] ■ The "premier league" can lobby the prime minister directly on business issues and their views are "fed in" to the Downing Street policy machine.

[11] ■ The party makes "well over" £5m a year selling private dinners with Cameron to its biggest donors, who can pick up "key bits of information" by asking him "practically any question that [they] want".

[12] ■ The prime minister entertains big donors at No 10 and Chequers, his official retreat. Donors are also invited to soirées at the Downton Abbey location, Highclere Castle.

[13] ■ Big donors are invited to bring their most important clients to exclusive events, where they can be introduced to ministers such as George Osborne, the chancellor, and William Hague, the foreign secretary.

[14] The disclosures appear to contradict claims by the Tory party that its high-value donor groups, such as the "leader's group", are for genuine supporters who do not seek to influence policy or gain unfair advantage in return for their cash.

[15] Last night a spokesman said the party would launch an urgent investigation.

[16] The revelations also raise questions about the role of the prime minister. Months before taking office, Cameron warned that this type of "secret corporate lobbying" was the "next big scandal waiting to happen".

[17] The meetings at which "premier league" donors could lobby the prime minister directly have not been declared to the public.

[18] Cruddas, who is 90th in The Sunday Times Rich List after building a £750m fortune through financial spreadbetting, was one of the party's co-treasurers and a member of its controlling board.

[19] The undercover reporters told him that they were British expats working for a company incorporated in Liechtenstein but they wanted to do business in the UK, buying up government assets such as the Royal Mail. They said their wealthy Middle Eastern funders expected them to have contacts with the prime minister and other key government figures.

[20] Cruddas initially gave them the party line that it was not possible to buy access to the prime minister, but then went on to suggest the opposite.

[21] He said the reporters could join the leader's group for £50,000, but that would not get them into the "premier league" of donors with special access.

[22] The reporters were told they had to come into the party at a "high-level" with a big donation. "Hundred grand [a year] is not premier league. It's not bad. It's probably bottom of the premier league. Two hundred grand, 250 is premier league."

[23] The reporters said that the sum was in their budget. The conversation continued:

[24] Reporter: "If we do become premier league, what would we get in addition?"

[25] Cruddas: "... The first thing we want to do is get you at the Cameron and Osborne dinners."

[26] He added later: "In fact, some of our bigger donors have been for dinner in No 10 Downing Street, in the prime minister's private apartment, with Samantha." They could ask the prime minister anything they liked about issues affecting their business. Told the reporters wanted to raise with Cameron the prospect of an overseas firm buying the Royal Mail, Cruddas responded: "Spot on ... You could ask him about that. That would be a very good thing."

[27] Cruddas, who has given £1.2m to the party, said he had used his access to Cameron to object to the Tobin tax on financial transactions: "He said don't even worry about it..."

[28] Cruddas said that big donors could not determine policy, but he would make sure that their suggestions were fed into the No 10 policy unit. "If you are unhappy about something ... we'll listen to you and we'll put it into the policy committee at No 10. We feed all feedback into the policy committee," he said.

[29] The meetings were also good for intelligence. "It's key bits of information that you can use ... Frequently I say, well, I was with the prime minister last week and he told me this.

[30] "You do really pick up a lot of information... You are not seeing the prime minister, you're seeing David Cameron. But, within that room, everything's confidential and you will be able to ask him practically any question you want."

[31] The reporters could also impress clients with their top contacts. "It'll be awesome for your business. You'll be ... well pleased. Because your guests will get photographed with David Cameron," he said.

[32] Business clients could also meet the chancellor. "If you ring me up ... and [say] I've got this really important guy coming to this event, you know, really need to make sure George Osborne says hello to him, and I'll make sure that happens, okay?"

[33] There was still one problem, however. The proposed donation was being paid from a Liechtenstein fund and

belonged ultimately to Middle Eastern investors. It was a foreign donation. Cruddas was happy for the reporters to find a way around this and said he'd arrange a meeting with the party's "compliance people" to check that it was legitimate. One option was to create a UK company to donate the money.

[34] He said: "Set up a company, employ some people to work here."

[35] Later, though, the reporters' lobbyist spoke to party officials and returned. As the reporters, posing as executives, were British, the money could be channelled through them.

[36] "[The company] would have to donate through an individual (perhaps a director of the company) who is registered on the UK electoral roll," Southern wrote. She later claimed on the phone: "[The party] don't pry as to where the money comes from, at all."

[37] Cruddas and Southern declined to comment.

[38] A Conservative party spokesman said none of the donations was ever formally considered and that donations had to comply with electoral law, which was strictly enforced by the party's compliance department. "Donations to the Conservative party do not buy party or government policy," he added. "We will urgently investigate any evidence to the contrary."

[The First Article included a large picture of the Claimant with the caption:]

"Peter Cruddas, main picture, and, inset, with the prime minister, said: 'You will get to meet George Osborne, you will get to meet David Cameron'"

[Inset with the picture on the front page was a large quotation:]

"200 GRAND IS PREMIER LEAGUE... IT'LL BE AWESOME FOR YOUR BUSINESS"

Peter Cruddas, the Conservatives' co-treasurer

[On page 2 of the print edition, another large "pull-quote" was included in the text of the article:]

"BIGGER DONORS HAVE HAD DINNER WITH CAMERON AND SAMANTHA"

14. The Second Article reads:

Cash for Cameron: cosy club buys the PM's ear

An undercover investigation reveals the hollowness of Tory pre-election promises to clamp down on lobbying. Insight reports

[1] IT WAS a sunny morning in the City of London and the co-treasurer of the Conservative party reclined on a chair in his plush glass office overlooking a sprawling trading floor.

[2] Through the glass Peter Cruddas could see the ranks of traders working hard for CMC Markets, his spread-betting firm. He, however, could afford to take a couple of hours out to devote to politics.

[3] Across the table were two international financiers representing a multi-billion-pound wealth fund based in the tax haven of Liechtenstein, accompanied by their lobbyist.

[4] They had come to the co-treasurer with a shopping list. In exchange for a large donation they wanted "face time" with David Cameron and his top team, insider intelligence and the opportunity to influence policy for their business.

[5] Cruddas, who with his co-treasurer Michael Farmer is in charge of filling the coffers of the Tory war machine and sits on the controlling party board, was the right man to ask.

[6] Pushing aside his iPad and leaning confidentially across the table, he explained how, for £250,000 a year, the financiers could join what he called the "premier league" of Tory donors who are able to lobby the prime minister directly.

[7] The Liechtenstein company was not eligible to make donations because it was based outside the UK. But Cruddas was confident that such problems could be circumvented.

[8] Cruddas told the financiers their cash would be the key to a secret world of soirees with Cameron at private venues which might include No 10 and even Chequers, the prime minister's country house.

[9] They would be allowed to ask the prime minister "practically any question that you want" and pick up "key bits of information that you can use".

[10] Their clients would be introduced to George Osborne, the chancellor, and their views would be fed into the Downing Street policy machine. It would be, Cruddas said, "awesome for your business". He added: "When we talk about your donations, the first thing we want to do is get you at the Cameron and Osborne dinners."

[11] Asked what they needed to give, Cruddas said: "Minimum 100 grand a year." He went on: "Hundred grand is not premier league. It's not bad. It's probably bottom of the premier league. Two hundred grand, 250 is premier league."

[12] He explained: "Things will open up for you but ... it's no good scratching around and, 'here's 10 grand now and then we'll send you five grand'. Minimum 100 grand ... But the nearer you can get to 200. "

[13] The two financiers were in fact undercover reporters who were secretly filming Cruddas as he laid bare the extraordinary extent to which the Conservative party is willing to work hand-in-glove with lobbyists to sell access to the prime minister and his cabinet.

[14] Whereas the last Labour government was accused of taking cash for peerages, the Tories are making £5m a year by taking cash for Cameron.

[15] The revelations are particularly damaging in the light of comments made by Cameron himself, just months before he was elected in 2010, in which he warned that "secret corporate lobbying" was the "next big scandal waiting to happen" in British politics.

[16] "It arouses people's worst fears and suspicions about how our political system works, with money buying power, power fishing for money and a cosy club at the top making decisions in their own interest. We must be the party that sorts all this out," he said The issue of party funding came to the fore last November when the committee on standards in public life warned that big donors were being given "preferential access to political decision makers" and recommended that donations should be capped at £10,000. Their report has so far been ignored.

[17] Giving evidence before the committee, Andrew Feldman, the Tory co-chairman, insisted: "There is no question of individuals either influencing policy or gaining an unfair advantage by virtue of their financial contributions to the party."

[18] However, Sir Christopher Kelly, chairman of the committee, said on Friday that this newspaper's investigation was further evidence that there was a "significant risk of both influence and access being granted in return for donations".

[19] The undercover investigation began after a tip-off from a lobbyist that a former Cameron aide was selling introductions to her old boss.

[20] Mark Adams, a former private secretary to John Major and Tony Blair, had met Sarah Southern, the former aide, at the Tory party conference. He said she had boasted that she had just made a

"tidy sum" out of introducing a client to Cameron. Her brazen sales pitch included handing out a business card with a photograph of herself with Cameron.

[21] Two undercover reporters posing as overseas financiers met Southern in a hotel overlooking Lake Zurich. They explained that their clients intended to buy distressed government assets, such as Royal Mail, and wanted to make some political connections.

[22] Southern, who had set herself up as a "political consultant" after seven years at the Tory party, told them she was uniquely well placed to arrange introductions to Cameron.

[23] "I spent more time in the first third of [2010] with DC than I did with anybody else in my life," she said. "I am friends with all the people who are now his closest advisers. I'm friends with the people who are chiefs of staff to members of the cabinet. I'm also friends with a number of people in the cabinet," she added.

[24] Such was Cameron's confidence in Southern that he entrusted his pregnant wife to her care on the 2010 election day. They had spent the day shopping, Southern boasted over dinner. She had introduced a client from an American firm to the prime minister at the party conference. The businessman was "especially delighted" because Cameron had "got the message that we wanted him to get", she said.

[25] For a fee of £15,000 a month, Southern promised to introduce the undercover reporters to top politicians, including the prime minister, and gather intelligence on policy. No fee was paid by The Sunday Times.

[26] In the following weeks she invited her new clients to exclusive donor lunches and dinners with eight ministers including Theresa May, the home secretary, Philip Hammond, the defence secretary, Eric Pickles, the communities secretary, and Michael Gove, the education secretary. She also said she had reserved a £10,000 table at the Conservative Black and White Ball in February and promised Cameron would be brought over to meet them. The reporters were unable to attend because of security protocols.

[27] However, the best way to gain access and influence, she advised, was to make a "huge donation". She proposed a meeting with Cruddas to discuss how the reporters could gain by donating to the party. She said Cruddas was a man tipped for greatness. "As far as I'm aware all treasurers at the party have always been given peerages as a thank you," she said.

[28] On March 15 the two undercover reporters were ushered into the co-treasurer's office, past photographs of the tycoon beside Cameron, the Prince of Wales and a host of royals.

[29] Southern sat next to the Tory grandee, nodding keenly as he explained to her clients how paying for a place at Cameron's top table would benefit their business. It was access that only money could buy.

[30] The first step was to join a secretive grouping of donors who pay £50,000 a head to attend dinners with Cameron in private houses. But Cruddas added that "if you really want to be taken seriously" it is necessary to donate a far larger sum.

[31] A gift of £250,000 would propel them into the "premier league" of businessmen who enjoy an astonishing amount of access to the prime minister.

[32] Cruddas said he had seen Cameron twice in the past month at an exclusive lunch and a dinner and was looking forward to a third meeting at a private dinner on March 29.

[33] Four of the party's biggest benefactors had even dined with the prime minister and his wife in their private apartment in Downing Street, Cruddas said. So close was Cameron to his top donors that he had seen in his birthday with a select group of them last October. The businessmen had presented him with a cake in the shape of the Commons.

[34] Cruddas assured the undercover reporters that their cash would buy far more than just hot dinners and social chit-chat. In return for large sums of money beyond the means of ordinary voters their views would be "fed in" to the policy unit at No 10. He described how he had used a party at Woburn Abbey last year to make sure Cameron knew he opposed the European Union-wide Tobin tax on financial deals.

[35] "I knew he was seeing [Angela] Merkel the next day, so when I'm having my photograph done I said, prime minister, for God's sake, don't let them bring in the Tobin tax where they tax financial transactions. He said, 'Don't even worry about it, don't even think about it, it ain't going to happen, not on my watch'. Thank you prime minister ... Bosh. Off we go."

[36] Cruddas said he was the Tories' biggest donor last year, having given £1.2m to the party and its No2AV campaign. He had also discussed the issue of Scottish independence with Cameron. They had jokingly described Alex Salmond, Scotland's first minister, as "the mad Scotsman", Cruddas said.

[37] There was insider information up for grabs as well. "You do really pick up a lot of information ... You're not seeing the prime minister, you're seeing David Cameron ... But within that room everything's confidential and you will be able to ask him practically any question that you want," Cruddas said.

[38] When the reporters asked whether they could use the dinners to question Cameron on the government's plans to sell off Royal Mail, Cruddas told them that would be "spot on".

[39] "You could ask him about that. That would be a very good thing," he said.

[40] The co-treasurer promised they would be invited to receptions at Downing Street and said that once they had become "part of the system" they could be invited to Chequers.

[41] Their new-found political connections could also be exploited to impress clients who could come to parties at stately homes such as Highclere Castle, the setting for the ITV drama Downton Abbey.

[42] So it was quite apt that Ed Miliband, the Labour leader, last week used the costume drama to joke about how the party is "out of touch".

[43] Cruddas would also make sure Osborne greeted the reporters personally and they could have their photographs taken with the prime minister. "If you want important clients to be at the Cameron dinners then ... we can easily get you to meet Cameron and Osborne and Hague and Gove, people like that, Theresa May," he said.

[44] He added: "There's a lot you can do from your clients' point of view."

[45] He later promised: "If I know what your expectations are, I can manage those. And I'll make sure, if you ring me up [or] Sarah rings me up one day and says I've got this really important guy coming to this event, you know, really need to make sure George Osborne says hello to him, and I'll make sure that happens ... not officially, but I'll make sure it happens."

[46] His willingness to put the cabinet up for sale was not for nothing. He said he was building a war chest to defend the proposed changes to constituency boundaries, which he said could gift the party an extra 50 seats.

[47] The reporters were then invited to sponsor the Conservatives' summer party for about £150,000. In return they could fill three tables with their clients and sit next to the prime minister.

[48] Last week Southern said she was negotiating the sponsorship deal with the party. She reported back that in exchange for the cash the reporters could host private drinks beforehand with their clients, Cameron and 20 members of the cabinet.

[49] Cruddas had started the meeting with the reporters on a cautious note, insisting there was "no cash for access", but he repeatedly contradicted himself by explaining exactly how much access they could get in return for their cash.

[50] "Because we depend on donors so much, we have to be very careful what we say. It sounds a lot worse than it is, I promise you ... You cannot buy access to the prime minister, full stop," he said.

[51] He went on: "If you donate, you will be invited to events where the prime minister is there. And frequently, if you get into the right club and I can advise you, you could well be at a private house having a private dinner with the chancellor, William Hague, David Cameron, Michael Gove, all the top ministers, the chairman of the party, where around that table there will be very distinguished business people."

[52] Asked whether a donation would buy the right to influence government policy, Cruddas again began cautiously but went on to assure the reporters that the prime minister "does tap into us on a regular basis".

[53] "If you're ... unhappy about something ... we'll listen to you and we'll put it into the policy committee at No 10. We feed all feedback into the policy committee. But just because you donate money doesn't give you a voice at the top table to change policy. That doesn't happen," he said.

[54] Cruddas said the party was having to fend off anger among donors about its proposals to legalise gay marriage and disclosed that one donor had written a paper on the subject for the No 10 policy unit.

[55] "We've fed that back into the party and there are some brilliant points in it and his voice has been heard. But it's been heard by a committee that will analyse his points against other points, but at least it's getting in there," he said.

[56] Giving an example of the kind of "key bits of information" they could pick up in discussions with politicians, he said he had been told that a tax cut which was good news for high earners was due to be announced in the budget the following week.

[57] The following day it emerged that Osborne was planning to scrap the 50p top rate of tax.

[58] Cruddas, who said he was dashing off that evening to have drinks at St James's Palace with Prince Charles, even offered to make sure the fake financiers and their clients were invited to events at Buckingham Palace and Windsor Castle if they made a donation.

[59] Only one problem remained. The money on the table came from a foreign wealth fund, which is not eligible to make political donations under UK law. But Cruddas and Southern were prepared to discuss a range of ways that the money could be brought onshore (see below).

[60] After the meeting Southern sent the reporters an encrypted document advising them how to make their donation. In a section titled "Worst case scenario", she warned that journalists were especially interested in those who had "donated huge amounts of money".

[61] She cautioned: "It should be considered that wider media interest into lobbying and what cash changes hands is the next 'MPs' expenses'." She was right to be concerned.

[The Second Article included another picture of the Claimant with the caption:]

"Peter Cruddas The Conservatives' co-treasurer who donated £1.2m to the party last year"

[underneath a pull-quote:]

"'If you're just going to give 10 grand a year, then it ain't gonna open up for you'"

15. The parts of the Third Article complained of are:

Pay the money this way and the party won't pry

[1] THE undercover reporters had told Peter Cruddas they wanted to buy access to the prime minister using cash from a foreign wealth fund that they managed in Liechtenstein on behalf of Middle Eastern clients.

[2] It should have been impossible to pay the cash to the Tory party because foreign donations are banned under British election law. However, Cruddas did not seem unduly perturbed by this or the fact that the money would be coming from a tax haven. He was sure there were "ways to work around it".

[3] He offered one solution: the reporters should establish a subsidiary company in the UK that could be used to give the cash. "Set up a company, employ some people to work here. They could be events people, they could be people that are making sure that your company is represented properly," he said.

[4] Though it is illegal for parties to receive donations from foreign firms, a loophole in electoral law means they can take money through functioning British subsidiaries. The Electoral Commission has proposed a change in the law to block this back-door route for UK political parties to bring in foreign cash.

> [5] A second solution had been suggested earlier by Sarah Southern, the lobbyist employed by the undercover reporters. She suggested that they make the donation themselves as British citizens using money drawn from their Middle Eastern clients' fund.
>
> [6] Donors are not supposed to hide the true source of the cash. It was proposed as an idea in the meeting with Cruddas, who agreed it could be "the answer", but warned it "might be an issue" because it would mean "funnelling money" through a third party.
>
> [7] He then told the reporters to discuss the issue with Mike Chattey, a Conservative party compliance officer. "My advice to you is that by meeting me you're in a very high level. Don't get swallowed up by the party," he said.
>
> [8] "Go and see Mike Chattey, talk to him about compliance and then come back to me . . . If you want to operate at a higher level, then you've got to write a bigger cheque, but I'll make sure you'll get through."...

16. The Claimant has also pleaded that the Fourth Article and the Editorial are part of the context relevant to the determination of meaning, as follows:

    i) the Fourth article, which is attributed to Mark Adams, and published on page 9 of the print edition of the *Sunday Times* that same day and which appeared next to the Second Article under the headline "Rotten to the core" included in particular:

    > "... The revelations on these pages prove that the problem is the ability of those with money to buy their way to the heart of government through political donations. Many of us have long suspected this. Today we have the smoking gun that proves it..."

    ii) the Editorial included in particular:

    > "SACK THE TREASURER AND CLEAN UP LOBBYING
    >
    > [1] When David Cameron warned political lobbying was "the next big scandal waiting to happen", you might have expected him to make sure his own house was in order. In promising to shine "the light of transparency" on "who is buying power and influence", many took him at his word.
    >
    > [2] Sadly, as our Insight investigation reveals, the reality has been very different. Through a lobbyist, Sarah Southern, a former Cameron aide, our reporters approached Peter Cruddas, the millionaire Tory co-treasurer. The reporters, posing as overseas wealth fund executives, were told by Ms Southern that a "huge donation" to the Tory party was the best way to gain access to senior government figures.

> [3] Sure enough, at a meeting with Mr Cruddas they were told that a £250,000 donation to the Tories would be "awesome for your business". They and the lobbyist were promised direct access to the prime minister in return for joining a "premier league" of donors. Mr Cruddas discussed ways of circumventing laws which ban foreign donations to political parties. He suggested that a donation could be channelled through UK employees or a British subsidiary though he acknowledged that needed approval by a compliance officer.
>
> [4] The more Mr Cruddas spoke, the more he revealed. Donors in the £250,000 "premier league" can lobby the prime minister directly and their views are fed into the No.10 policy machine. Each year the party makes £5m from donors by offering private dinners with Mr Cameron at which they can question him on any subject. Some are invited to Chequers, his official residence, others get to meet the foreign secretary or the chancellor.
>
> [5] The lesson of the Labour years was that the party's corrupt relationship with its donors had a corrosive effect on politics and government. Tony Blair himself was interviewed twice by police over "cash for peerages". The Tories appear to be hurtling down a similar path. Mr Cameron's responsibility is clear. Mr Cruddas has to be sacked as Tory co-treasurer. Then Mr Cameron has to make good on his promises. Let him indeed shine a light on the grubby dealings between lobbyists and politicians. Let him show he means it about cleaning up politics in Britain. There is no excuse for not doing so."

17. The Claimant also pleads in his Particulars of Claim that all four Articles were (and still are) published on the Website in substantially the same form as appeared in the print edition.

18. From on or around 25 March the Defendants have also made available (and continue to make available) on the Website five purported video extracts ("the Extracts") from the Meeting. The availability of the Extracts to be viewed on the Website was promoted at the foot of the Second Article.

LIBEL

The Law to be Applied in a Determination of Meaning

19. The principles of law to be applied by the court to determine the actual meaning of words complained of in a libel action are not controversial. But the principles to be applied in a malicious falsehood action are not agreed. The difference between the two causes of action, so far as meaning is concerned, is that in libel the single meaning rule applies, whereas in malicious falsehood it does not apply.

20. I shall consider first the claim in libel.

21. The legal principles to be applied when determining the question of meaning were summarised by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130 at [14]-[15] (where "he" means "he or she"):

> "The legal principles relevant to meaning have been summarised many times and are not in dispute.... They may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. …"

22. It is important to stress point (6). The three Articles are a publication to the world at large. The hypothetical reader must be taken to be a reasonable representative of readers of *The Sunday Times*. What the characteristics of such people might be is a matter of public knowledge. It is a newspaper directed to readers with an interest in and general knowledge of politics.

23. In *Charman v Orion Publishing Group Ltd* [2005] EWHC 2187 Gray J cited the guidance of Eady J in *Gillick v Brook Advisory Centres* which was approved by the Court of Appeal at [2001] EWCA Civ 1263 (it is the guidance that was subsequently repeated in *Jeynes*). Gray J then explained:

> "[11] It appears to me to be particularly important where, as here, a judge is providing written reasons for his conclusion as to the meaning to be attributed to the words sued on, that he should not fall into the trap of conducting an over-elaborate analysis of the various passages relied on by the respective protagonists. The parties are entitled to a reasoned judgment but that does not mean that the court should overlook the fact that it is ultimately a question of the meaning which would be put on the words of the book by the ordinary reasonable reader. Such a hypothetical reader is assumed not to be a lawyer. He or she is very unlikely to read the whole book in a single sitting or to compare one passage with another or to focus on particular phrases. The exercise is essentially one of ascertaining the broad impression made on the hypothetical reader by the book taken as a whole.
>
> [12] A feature of the present dispute on meaning is that each side has pointed to different passages in the book which it maintains is supportive of its case as to the degree of

> seriousness of the libel. That is commonplace and legitimate. It is well established that the tribunal of fact, whether judge or jury, must take the bane and antidote of the publication together: ... As Lord Nicholls pointed out in *Charleston v News Group Newspapers* [1995] 2 AC 65 at 73-74, there is an artificiality about this approach since, especially in the case of a book, not all readers will read it from cover to cover. It is, however, clear from that and earlier authorities that the publication must be taken as a whole."

24. The parties agree that the whole context is relevant to the determination of meaning. A claimant can (and usually does) select parts of a publication in framing his complaint. But the other parts remain relevant, for otherwise the parts selected might be read out of context.

The Submissions of the Parties

25. There is an issue specific to this case arising out of the use of the words "corruptly" in the first meaning which the Claimant attributes to the Articles (para 7 above). The word "corrupt" does not appear explicitly in any form in the Articles, although it does appear in the Editorial in the passage:

> "The lesson of the Labour years was that the party's corrupt relationship with its donors had a corrosive effect on politics and government. Tony Blair himself was interviewed twice by police over 'cash for peerages'. The Tories appear to be hurtling down a similar path"

26. The Defendants plead (in para 8.3 of their Defence):

> "For the avoidance of doubt, although the Claimant has not explained what he means by 'corruptly' in his meaning, it is denied (if it be alleged by him) that the words bore or could reasonably be understood as bearing any allegation of guilt of a criminal offence".

27. In response to this the Claimant pleaded in his Reply:

> "6.3 In relation to Paragraph 8.3, corrupt is an ordinary word; it was the adjective chosen in the Editorial to describe the relationship between the party and the putative donors. The word connotes bribery; the payment of money, secretly, to obtain something that could not be obtained openly or lawfully. What is more, corruption would be known, to most if not all readers, to be a criminal offence".

28. Mr Kelsey-Fry submits that para 6.3 of the Reply is an impermissible attempt to advance in the Reply a meaning which is different and more seriously defamatory than the meaning pleaded in the Particulars of Claim. Moreover, he submits that the use of the word "corrupt" by the Claimant in this context is impermissible for a further reason. He submits that since the passing of the Bribery Act 2010 there has

been no criminal offence of corruption and the Article cannot be taken to allege an offence under the pre Bribery Act criminal law. The Claimant could not rely on the word "corrupt" as imputing a crime without pleading a true innuendo, identifying the offence referred to, and proving that readers knew the extrinsic facts. If the Claimant wishes to put forward a case that the Articles meant he was guilty of a criminal offence, he must do so by application for permission to amend, and that application would be opposed. It would be opposed on the grounds that the words complained of are not capable of bearing the meaning that the Claimant had committed a criminal offence.

29. On 17 May the Defendant issued an application notice asking for an order striking out the last sentence of para 6.3 of the Reply. But once the Defendants had agreed that the trial is to be without a jury, Mr Kelsey-Fry accepts that that application no longer needs to be determined. The Defendants leave it to the court, in arriving at its decision on meaning, to take into account the submission that the Articles are not capable of meaning that the Claimant has committed a criminal offence.

30. Mr Browne distinguished in his submission "the Corruption meaning" and "the Breach of Electoral Law meanings". But the whole of the words complained of are to be read together. So what the Articles say in relation to the meetings with the Prime Minister and other Ministers is to be understood in the light of what the Articles say in relation to electoral law, and vice versa.

31. In relation to the Corruption meaning Mr Browne starts by referring to the headline on the front page "Tory Treasurer charges £250,000 to meet PM". What was allegedly being sold was secret meetings: see First Article para 1 ("selling secret meetings") and para 16 ("secret corporate lobbying") and the Second Article paras 8 ("secret world"), and para 30 ("secretive grouping"). The meetings are also private and personal: First Article ("dinner with Cameron and Samantha") in a "private apartment" (para 26) or "private venue" (Second Article para 8). As to the benefit that the donor would receive in exchange for the money, Mr Browne refers to the Claimant's words "it will be awesome for your business" (First Article para 1, and repeated more than once), "lobby the prime minister directly on business issues" (First Article para 10), "business clients" (First Article para 13), and "information" (First Article para 11 and Second Article para 37).

32. This is said to be a "scandal": it is what Mr Cameron in 2010 had referred to as "the next big scandal waiting to happen" (First Article para 16 and Second Article para 15). As explained in the Editorial to any reader who did not recall 2010, it was to be compared with the "cash for peerages" scandal under the previous Labour Government, over which the then prime minister had been questioned by police. It contradicts not only what Mr Cameron had said in 2010, but also what Lord Feldman had said did not happen when, the previous November, he had spoken to the Committee on Standards in public life, as set out in the Second Article paras 16-17 ("individuals either influencing policy or gaining unfair advantage by virtue of their financial contributions to the party"). It is "money buying power" and "individuals … influencing policy … by virtue of their financial contributions to the party…" (Second Article para 16).

33. Mr Browne submits that in using the word "corruptly" the Editorial is doing no more than expressing what a reasonable reader would have understood to be implicit in the

Articles that are complained of. The word "corruptly" is an ordinary English word. It connotes serious wrongdoing, sufficiently serious to amount to a criminal offence, although not, in the minds of the ordinary reader (who is not a lawyer), any criminal offence he could name.

34. Mr Kelsey-Fry emphasised those passages in the Articles which refer to matters which are not illegal. In the First Article at para 14 what is alleged is that the putative donors presented themselves not as persons who were "genuine supporters who do not seek to influence policy", but as persons with a "shopping list" (Second Article para 4) of commercial benefits. He emphasises that the Article records that the Claimant did tell them that "it was not possible to buy access to the prime minister" (First Article pra 20, Second Article para 50) and that "big donors could not determine policy" (First Article para 28). "Just because you donate money doesn't give you a voice at the top table to change policy. That doesn't happen" (Second Article para 53).

35. In relation to the Electoral Law meanings, Mr Browne submits that the Articles are explicit: there is an allegation of breach of the law. The "problem" that the funds originate from abroad non-British investors is one that the undercover reporters are recorded as making clear in a number of passages (First Article paras 3, 33, Third Article para 1). The Claimant is said to know that that was "banned under British election law" (Third Article para 2, and other passages). But the Claimant was said to be willing to proceed with the proposal because, as Ms Southern is recorded as having told the undercover reporters, "the party don't pry as to where the money comes from" (First Article para 36 and title to the Third Article), and because he was said to be "happy for the reporters to find a way round" (First Article para 33, Second Article paras 2, 7, 59, Third Article para 2). Given the description of themselves and their clients that the reporters are recorded as having given to the Claimant, it is clear that any way round the election law envisaged by the Claimant, such as the donations being given by the undercover reporters themselves, must be a sham.

36. Mr Kelsey-Fry submits that the Claimant is stated to have referred the reporters to the "'compliance people' to check that it was legitimate" (First Article para 33). The suggested solutions to the problem attributed to the Claimant in the Third Article paras 3 and 4 are, he submits, to be understood by the reasonable reader as suggestions as to how to find a lawful solution to the legal problem. The words quoted in the Third Article para 8 ("Go and see Mike Chattey, talk to him about compliance and then come back to me . . .") are to be understood as making that clear.

Discussion on Meaning

37. In my judgment the way that the reasonable reader is led to understand what is scandalous is the contrast between what it is alleged in the Articles that the Claimant was selling, and what he, Mr Cameron and Mr Feldman were and had been saying, as reported in the Articles.

38. In the First Article the explanation for the apparent discrepancy is at para 20 "Cruddas initially gave them the party line that it was not possible to buy access to the prime minister, but then went on to suggest the opposite". In the Second Article at para 52 the same contrast is made: "Asked whether a donation would buy the right to influence government policy, Cruddas again began cautiously but went on to assure the reporters that the prime minister 'does tap into us on a regular basis'".

39. The contrast between "the party line" and what it was alleged the Claimant was actually doing, or suggesting, is made again in relation to electoral law. The first suggested solution to the problem which is attributed to the Claimant (for the prospective donors to establish a UK company: the Third Article para 3) is described in the Third Article as a "loophole in electoral law". That might be discreditable, but it could not be understood as illegal: on the contrary.

40. But in the case of the second suggested solution to the problem attributed to the Claimant (for the prospective donors to funnel money through a third party, such as the reporters posing as executives: the Third Article para 6), the Third Article makes clear that this would be illegal to the Claimant's knowledge (see the Third Article para 6, and the words "the party won't pry" in the headline and in the First Article paras 35 and 36). While those words are attributed to Ms Southern, and not to the Claimant, nothing in the Articles can be understood as disassociating the Claimant from that illegal proposal.

41. In my judgment the single meaning of the Articles is clearly one of corruption. In reaching that conclusion I take into consideration what is, in my judgment, to be understood as an explicit suggestion by the Claimant to the reporters to adopt the illegal solution of funnelling their supposed clients' funds through themselves as the nominal donors.

42. All three meanings pleaded by the Claimant in para 6 of the Particulars of Claim are (subject to what is stated below) the actual single meanings which I find the words complained of bear, and these meanings are plainly defamatory.

43. I turn then to consider Mr Kelsey-Fry's submission that the meaning in para 6(1) of the Particulars of Claim cannot be relied on by him as an allegation of guilt of a criminal offence.

44. Words complained of in a libel action must, in accordance with the law set out above, be treated as bearing a meaning that would be understood by the reasonable ordinary reader, not a meaning that would be understood by a lawyer. In my judgment there must follow this conclusion. If a claimant attributes to words complained of in a libel action a meaning that the claimant is guilty of a crime (but without identifying a specific offence known to the law) that pleaded meaning is not defective. It would be inconsistent with the legal guidance set out above if such a pleaded meaning were defective.

45. By way of illustration, it would be possible for a defendant to allege explicitly that a claimant had committed a crime, albeit that the crime alleged was not a crime known to the law. That would be a defamatory allegation of criminal conduct, notwithstanding the defendant's error as to what the criminal law provides. Thus a defendant could say of a claimant who she alleged to be a stalker: "He is a criminal: he used to harass me when we were neighbours in the early 1990s, and when we met again in 2005 he indecently assaulted me". Harassment did not become a crime until the Protection from Harassment Act 1997, and indecent assault ceased to be the name of a crime after the Sexual Offences Act 2003.

46. The criminal law is subject to repeal and amendment, and the terms used in modern statutes to define offences often differ from the terms used in the preceding common

law, or in statutes that have been repealed. But the ordinary member of the public may continue to use the terms that have ceased to be used in the law. Even well informed journalists persist in referring to the issue of a writ, whereas writs were abolished (and claim forms introduced instead) over ten years ago.

47. In the present case the meaning I have found the words complained of to bear is expressed in ordinary language, and connotes conduct which is criminal in England and Wales. Whether the connotation is correctly made is another matter: but although that would matter on an indictment, it does not matter in a newspaper article.

48. Mr Kelsey-Fry submits that the connotation is wrongly made, because the word corrupt is not used in the Bribery Act 2010. But I note that, as it happens, the word "corrupt" is still used in the Representation of the People Act 1983 to define criminal offences in electoral law. And there are other offences, most notably under the Bribery Act 2010, which can also properly be described as offences involving corruption as that word is used in ordinary English, albeit that corruption is not part of the statutory definition.

Conclusion on meaning in libel

49. For these reasons I hold that the words complained of bear each of the three single meanings which the Claimant attributes to them in para 6 of the Amended Particulars of Claim.

MALICIOUS FALSEHOOD

Introduction

50. It is not very common for a personal claimant to advance a claim simultaneously in defamation and in malicious falsehood, but there are such cases from time to time. A claimant is entitled to choose his cause of action: *Joyce v Sengupta* [1993] 1 WLR 337. While writing this judgment I was also finalising a reserved judgment in *Euromoney Institutional Investor PLC v Aviation News* which I heard on 2 May 2013 ("*Euromoney*"). *Euromoney* is a claim by a corporation (or two, if I give permission) against a corporation and individual who are in competition with the claimant(s) in the provision of services. The complaint arises from comparative advertising. Malicious falsehood is one of the torts which is most commonly relied on in disputes between competitors in business (others being infringement of trade mark and passing off). But rival businesses can and do also sue each other in defamation. It so happens that there is some overlap in the arguments that I heard in this case and in *Euromoney*. Mr Barca's submissions on how *Ajinomoto* is to be interpreted are similar to Mr Browne's.

51. In defamation a defendant's liability does not depend upon fault (whether negligence or malice in fact). But in malicious falsehood it does depend on proof of malice. So a defendant may well ask a claimant, as the Defendants did in this case, to explain whether he maintains that he could succeed with the claim in malicious falsehood if the claim in libel were dismissed. The Claimant's solicitors replied as follows on 12 April 2013:

> "In a libel claim the court will determine the single meaning borne by the published words. As explained by the Court of Appeal in *Ajinomoto v ASDA* [2011] QB 497, the single meaning rule has no application in malicious falsehood. If, for the sake of argument, the Court were to accept that the single meaning of the words complained of for the purposes of the libel action was your clients' *Lucas Box* meaning and that that meaning was substantially true, it would nevertheless be open to the court to find that a significant number of the readers of the article would nevertheless have understood the words to bear the meanings pleaded by our client. Assuming the other ingredients of the tort were made out, he would be entitled to damages and the vindication that would come from the finding that those meanings were false".

52. In other words, a malicious falsehood claim may enable a claimant to prove false a meaning which he could not prove to be false in a defamation action. That may happen in a number of different circumstances. It may happen, as the Claimant feared in this case (unnecessarily as it has turned out, if I am right) that the meaning which he wishes to prove false is ruled out as not being a defamatory meaning which the words are capable of bearing, or, even if it is, on the ground that it is not the single meaning the court holds the words to bear. It may also happen in cases where the defendant elects not to plead a defence of truth. If the defendant does not allege truth the court will, of course, apply the presumption of falsity. But the presumption of falsity is a far cry from proof of falsity.

53. In the present case, as in many cases, the Claimant holds his reputation to be beyond price, or at least beyond any price that he could be liable to pay in the form of the costs of the litigation. Damages would be of value to him for what they symbolise in terms of vindication. It is not like a personal injury or other tort claim where damages are the main objective sought by the claimant. So even though any damages for malicious falsehood would be likely to be lower than any damages for libel, the proof that the allegations complained are false would more than make up for that in the Claimant's eyes.

54. In the light of the decision I have reached on meaning it may be that the claim in malicious falsehood will not need to be adjudicated upon. But the arguments that I heard on the law on malicious falsehood are of importance, if not for this case now, then certainly for other cases (including *Euromoney*). In any event, judges must always contemplate the possibility that they might be held to have erred in any decision, including a decision on the natural and ordinary meaning of words complained of. It is tempting not to try to resolve the difficult points raised, all the more so because this judgment had to be circulated in draft on Friday 24 May (the last day of term) if the parties were not to be delayed in their preparations for trial. Given more time the judgment might have avoided errors or omissions. But not to deal with all the points raised also carries serious risks for the parties.

55. Since the ruling on the actual meaning of the words complained only became possible on the Friday before the Tuesday of the hearing (with the concession that the trial be by judge alone) the arguments on meaning in malicious falsehood were prepared late. In the case of Mr Browne, they were prepared with Mr Nicklin over the weekend, and

in the case of Ms Rogers (who conducted this part of the oral argument) they were prepared with Mr Kelsey-Fry and Mr Eardley overnight after the adjournment on the Tuesday. The quality of the arguments on each side does not appear to me to have suffered one bit from the shortness of the time available.

56. Before rehearsing the submissions, it is helpful to summarise what happened in *Ajinomoto,* both at first instance, and in the Court of Appeal. Before that decision it had been understood that the single meaning rule applied not only to the determination of meaning in defamation but also to the determination of meaning in malicious falsehood: *Vodafone Group PLC v Orange Personal Communications Services Ltd* [1997] FSR 34 at p38 (albeit that in that case Jacob J expressed some doubt upon the point). I would add that a single meaning rule applies to issues of meaning in some other fields of the law, including the interpretation of deeds, contracts and statutes. As Diplock LJ said at p172: "the notion that the same words should bear different meanings to different men and that more than one meaning should be 'right' conflicts with the whole training of a lawyer". And even in libel the single meaning rule does not always apply (most notably, it does not apply in *Reynolds* privilege).

57. In *Ajinomoto* there was no claim in libel. The claim in malicious falsehood arose out of the words on the packaging of food containing a sugar substitute known as aspartame. The claimant pleaded that the words complained of bore a number of natural and ordinary meanings, which it set out, just as it would have done if the claim had been in libel: see [2009] EWHC 1717 (QB), [2010] QB 204 at para [5]. The court had ordered that there be a trial of a preliminary issue on meaning, again just as is commonly ordered in defamation actions: *ibid* para [10]. That issue came before me. At first instance I held that the single meaning rule which applies in defamation also applies in malicious falsehood: para [39]. Applying the same principles as set out in *Jeynes*, I then arrived at the single meaning.

58. The Court of Appeal held that the single meaning does not apply to malicious falsehood. But that was the only point on which the Court of Appeal overturned my judgment. That court did not hold, and was not asked to hold, that the exercise of determining meaning by a trial of a preliminary issue should have been conducted differently, or should not have taken place at all.

59. The process by which I reached the single meaning is described by Sedley LJ as follows:

> "7. Three possible meanings were ascribed to this packaging by the claimant: A: That aspartame is harmful or unhealthy. B: That there is a risk that aspartame is harmful or unhealthy. C: That aspartame is to be avoided. The defendant averred that it meant D: That these foods were for customers who found aspartame objectionable.
>
> 8. … Tugendhat J rejected meaning A outright. It accordingly leaves the stage. He found that a substantial number of consumers would derive meaning B from the packaging. He also found that a substantial number would derive meaning D

> from it. Meaning C, he found, added nothing to meaning B, and it too accordingly leaves the stage.
>
> The judge then applied to meanings B and D the single meaning rule."

60. The submission for the claimant on the appeal did not include an argument that meaning A should not have been excluded. The appeal proceeded on the basis that the court was concerned only with those meanings which reasonable people might put upon the words complained of.

61. At para 1 Sedley LJ had said:

> "In defamation cases, both civil and criminal, there has for centuries been a rule that the question libel or no libel is to be answered in respect of a single meaning. This is unproblematical where there is only one thing that the words can sensibly mean, but it can be highly problematical where reasonable people might put more than one construction on the words read in their proper context." (emphasis added)

62. At para [33] he said:

> "On the judge's unchallenged findings, the meanings which reasonable consumers might put on [the Defendant]'s health-food packaging include both the damaging and the innocuous. Why should the law not move on to proof of malice in relation to the damaging meaning and (if malice is proved) the consequential damage without artificially pruning the facts so as to presume the very thing – a single meaning - that the judge has found not to be the case?" (emphasis added)

63. As I understand it, the decision of the Court of Appeal in *Ajinomoto* does not expressly cast any doubt on the correctness of the reasoning at first instance up to the point at which I held that I was bound to choose only one of the two meanings which I had held a reasonable reader could understand the words complained of to mean. The Court of Appeal held that any meaning which a reasonable reader could understand the words complained of to bear should go forward. But there was no suggestion that there should also go forward any meaning which the court has held only an unreasonable reader could understand.

64. Nor does the judgment of the Court of Appeal in that case cast any doubt on the correctness of importing the principles set out in *Jeynes* into a decision on meaning in a malicious falsehood claim, in order to exclude an unreasonable meaning (as I did: [2009] EWHC 1717 (QB); [2010] QB 204 at para 28).

65. The principles in *Jeynes* were formulated for hearings in defamation actions under PD 53 para 4. In those hearings the question is what meaning words complained of are capable of bearing, not what meaning they actually bear. At that stage of a defamation action the court is not concerned with the single meaning rule, but to delimit a range of possible meanings. The court is concerned to exclude any meaning which the

words complained of are not capable of bearing. The single meaning rule applies at the trial of a defamation action when the court must decide what the words complained of actually mean. For that purpose, the first words in principle (7) do not apply ("In delimiting the range of permissible defamatory meanings…"), because the court is not finding a range of permissible meanings, but one single meaning.

66. At the stage of PD 53 para 4 the court is regularly engaged in the exercise of determining the range of possible reasonable meanings. So the exercise which the Court of Appeal in *Ajinomoto* contemplated should be carried out at the trial of a malicious falsehood action is one with which the court is familiar.

67. Sedley LJ set out the status of the single meaning rule, and some (but not all) of the well known criticisms of it made by Diplock LJ as follows:

> "3. The fiction that there is a single reasonable reader, so that words, duly taken in context, have only one meaning, has remained embedded in the law of defamation. In his classic judgment in *Slim v Daily Telegraph* [1968] 2 QB 157, 172 endorsed in *Charleston v News Group Newspapers* [1995] 2 AC 65, 72 Diplock LJ said:
>
> > "the argument between lawyers as to the meaning of words starts with the unexpressed major premise that any particular combination of words has one meaning which is not necessarily the same as that intended by him who published them or understood by any of those who read them but is capable of ascertainment as being the 'right' meaning by the adjudicator to whom the law confides the responsibility of determining it".
>
> He said, at p173:
>
> > "Where, as in the present case, words are published to the millions of readers of a popular newspaper, the chances are that if the words are reasonably capable of being understood as bearing more than one meaning, some readers will have understood them as bearing one of those meanings and some will have understood them as bearing others of those meanings. But none of this matters. What does matter is what the adjudicator at the trial thinks is the one and only meaning that the readers as reasonable men should have collectively understood the words to bear. That is 'the natural and ordinary meaning' of words in an action for libel".
>
> He said, at p174:
>
> > "Juries, in theory, must be unanimous upon every issue on which they have to adjudicate; and since the damages that they award must depend upon the defamatory meaning that they attribute to the words, they must all agree upon a single meaning as being the 'right' meaning. And so the

> unexpressed major premise, that any particular combination of words can bear but a single 'natural and ordinary meaning' which is 'right,' survived the transfer from judge to jury of the function of adjudicating upon the meaning of words in civil actions for libel."
>
> 4. In the circumstances it is surprising – it might even be thought gratifying - that neither of the very experienced leading counsel appearing in the present appeal could recollect a case in which a judge had had difficulty in directing a jury in accordance with the single meaning rule, or in which a jury had evinced difficulty in applying it."

68. The Court of Appeal declined to apply the single meaning rule to malicious falsehood for reasons explained by Sedley LJ as follows:

> "27. The choice we are presented with is constrained by an immovable object, the single meaning rule in libel. Nothing we decide can have any impact on this: as Diplock LJ said in *Slim*, it has passed beyond redemption by the courts. What we have in the first instance to decide is whether, given its presence, it ought to be equally applied to the tort of malicious falsehood.
>
> 28. …. I find much more realistic Mr Caldecott's approximation of the two torts with which we are concerned on the ground that both concern the protection of reputation, albeit one protects the reputation of persons and the other the reputation of property, typically in the form of the goodwill of a business.
>
> 29. Both also attract similar human rights considerations because both involve a value protected by ECHR article 10(1). The brief debate about the presence of a countervailing article 8 value in libel and its possible (but to my mind doubtful) replication in relation to malicious falsehood by the property right in article 1 of the First Protocol is far less relevant than the controls built into both torts by article 10(2).
>
> 30. But when all this is said, the two are not so close as to be variants of a single tort, as libel and slander might be said to be. For historical reasons they have developed with different characteristics; they make different demands on the parties; and they offer redress for different things. This is the gap across which it is sought to make the single meaning rule jump.
>
> 31. In my judgment the powerful reasons advanced by Mr Caldecott for doing this are outweighed by one dominant fact: the rule itself is anomalous, frequently otiose and, where not otiose, unjust.

> 32. The anomaly is very nearly common ground. With the help of counsel's scholarship we have seen how a pragmatic practice became elevated into a rule of law and has remained in place without any enduring rationale. It is frequently otiose, as counsel's own experience testifies, because in the great majority of defamation cases the choice between libel and no libel, by the time the case goes to a verdict, is an either-or choice.
>
> 33. But where it is capable of being applied, as it is in the present claim, the rule is productive of injustice. On the judge's unchallenged findings, the meanings which reasonable consumers might put on Asda's health-food packaging include both the damaging and the innocuous. Why should the law not move on to proof of malice in relation to the damaging meaning and (if malice is proved) the consequential damage without artificially pruning the facts so as to presume the very thing – a single meaning - that the judge has found not to be the case?
>
> 34. I do not accept that doing this will make trials of malicious falsehood claims unwieldy or over-complex. This is not because these claims are always tried by a judge alone: the experience of common law judges is that juries are on the whole very good at assimilating and applying sometimes complicated directions. It is because it makes the trial of the issues fairer and more realistic. Instead of (as here) denying any remedy to a claimant whose business has been injured in the eyes of some consumers on the illogical ground that it has not been injured in the eyes of others, or alternatively (and Mr Caldecott's case necessarily involves this) giving such a claimant a clear run to judgment when in the eyes of many customers the words have done it no harm, trial of plural meanings permits the damaging effect of the words to be put in perspective and both malice and (if it comes to it) damage to be more realistically gauged.
>
> 35. For these reasons I would hold that the single meaning rule is not to be imported into the tort of malicious falsehood."

69. Rimer LJ gave similar reasons, but with more emphasis on the injustice that the rule might cause. He said:

> "41. The potential for injustice in the present case flows from the fact that, before discarding it as legally irrelevant, the judge made the finding he did as to meaning B. If the case were allowed to go to trial and the claimant were able to prove that such meaning was false, uttered with malice and calculated to damage it, why should it not be entitled to damages for the injury which the falsehood will have caused it? More importantly – and this is the primary remedy the claimant wants – why, if it can prove its case, should it not be entitled to have

> the defendant restrained by injunction from doing that which it wants to do, namely (presumably for its own commercial benefit) to continue to publish a falsehood that will continue to damage the claimant in the eyes of a substantial body of consumers? The result, however, of the application by the judge of the single meaning rule is that that body of consumers is removed from the court's radar. The court instead satisfies itself with the fiction, contrary to its own finding, that the entire consuming public will interpret the defendant's packaging as bearing a single innocuous meaning.
>
> 43. … The application of the rule can also be said to carry with it the potential for swinging the balance unfairly against one party of the other, resulting in no compensation in cases when fairness might suggest that some should be due, or in over-compensation in others. No doubt it would keep the common law tidy if the single meaning rule were also applied in malicious falsehood claims, particularly because there will be cases in which a claim might be brought either in defamation or malicious falsehood. The common law has, however, never worried about tidiness. It has always been more concerned with meeting the justice of the particular case and developing itself accordingly. If the single meaning rule did not exist, I doubt if any modern court would invent it, either for defamation or any other tort. If the resolution of the present claim has to be forced into the artificial straitjacket of that rule, it will, I consider, carry with it the potential for the production of an injustice. The court ought only to risk the suffering by the claimant of such injustice if there are compelling policy reasons why the single meaning rule, itself an anomaly, ought to prevail in malicious falsehood claims as in defamation."

Submissions for the Claimant

70. Mr Browne submits (for reasons explained more fully below) that it follows (or ought logically to follow) from *Ajinomoto* that:

> "As the issue is whether any substantial number of readers of the words complained of would understand the words complained of in the meaning(s) alleged by the Claimant, the focus moves away from the *notional* meaning attached by a hypothetical reader, to the *actual* meaning understood by real readers (or a substantial number of them). Evidence on this issue is therefore admissible."

71. He referred to the evidence of Mr Adams, all of it in documentary form derived from documents produced on disclosure. Mr Adams, was, as stated in the article written by himself, a lobbyist (and Labour Party supporter), a former private secretary to two Prime Ministers, and the person who was given credit for having alerted *The Sunday Times* to the story, after he had heard remarks by Ms Southern which raised his suspicions. As stated in the Skeleton Argument Mr Adams:

> "thought that what the Claimant had done was (a) corrupt and (b) a breach of electoral law"

72. Mr Adams' belief was, he submits, based, as Eady J said, "simply on the content of *The Sunday Times* articles": *Cruddas v Adams* [2013] EWHC 145 (QB) para [23]. (After provoking the Claimant to sue him, Mr Adams did not in the event plead truth, and Eady J awarded damages to the Claimant).

73. To prove these matters the Claimant seeks to rely upon e-mails and text messages exchanged between Mr Adams and the Defendants before and after publication of the print issue of the Articles, upon the fact that, after reading the Articles he "promptly reported the Claimant to the police on the evening following publication", and upon the transcripts of two interviews on Monday 26 March 2012 broadcast on Radio Four and Five Live. Extracts of these interviews are quoted in the Skeleton Argument.

74. Mr Browne in his Skeleton argument sought to rely, in addition, on publications by other readers in order to prove what they had understood the Articles to mean. The Skeleton Argument includes the following:

> "The Claimant relies upon these publications to establish that a substantial number of readers understood the Articles to bear the meanings pleaded by the Claimant.
>
> a) *Sunday Mirror* (25 March 2012):
>
> > "Cruddas was allegedly prepared to go ahead with the arrangement even though he was told the money would be from a fund in Liechtenstein that would not be eligible to make donations under electoral law."
>
> b) David Miliband appeared on the *Andrew Marr* programme on the BBC on the Sunday morning (the day of publication). He said, "*the idea that policy is for sale is grotesque*". Asked by Andrew Marr what was different about this case from the usual lobbying in politics, Mr Miliband said it was "the secrecy".
>
> c) The *Mail on Sunday* (25 March 2012) made David Miliband's quote one of its sub-headlines for the story:
>
> > • David Miliband says idea that policy is for sale is 'grotesque'
> >
> > " ... According to *The Sunday Times*, he believed that any prospective donations from the reporters - pretending to be wealth fund executives - would come from Liechtenstein and would be ineligible under election law. They are said to have discussed the creation of a British subsidiary and the possibility of using UK employees to make the donation."
>
> d) *Birmingham Mail* (26 March 2012):

> "... According to *The Sunday Times* [Cruddas] believed that any prospective donations from the reporters would come from Liechtenstein and would be ineligible under election law."

e) *The Herald* (26 March 2012):

> "... With Westminster fighting to recover its reputation following the MPs' expenses scandal, evidence of influence-peddling emerged at the weekend. Recently appointed Peter Cruddas resigned within hours of being exposed soliciting large donations in return for meetings with ministers and the chance to influence policy... He is said to have been led to believe the donations would come from Liechtenstein and would therefore be ineligible under election law. The discussion is said to have included the creation of a British subsidiary and the possibility of using UK employees to make the donation..."

f) Jack Straw MP on the *Today* programme on Radio Four (27 March 2012:

> "... there is a prima facie case for the Electoral Commission to investigate whether there has been a breach of rules, potentially a breach of the criminal law by Miss Southern and Mr Cruddas."

g) *Belfast Telegraph* (27 March 2012):

> "... former Tory co-treasurer was caught on film telling undercover reporters that 'premier league' gifts could secure meetings with ministers and influence policy... Labour will today keep up the pressure on the Prime Minister by challenging him over Mr Cruddas's suggestion to undercover reporters from *The Sunday Times* that the Tories might be able to find a way around the law banning foreign donations..."

h) Melanie Phillips (writing in the *Western Morning News* 28 March 2012):

> "... it beggars belief that anyone in politics would ever again explicitly solicit party donations in return for political access and influence... [Mr Cruddas] was forced to fall upon his sword because he was bang to rights."

i) Radio Four *You and Yours* (27 March 2012) caller in to the programme, Carol:

> "...the lobbying, which seems to me to give so many opportunities for corruption. And also one of your contributors said that there had been no wrongdoing in this case when in fact there had as the Tory party treasurer had offered to disguise donations that had come from outside the UK which I understand is, so it's leading to all kinds of corrupt practices."

j) Mary Riddell in the *Daily Telegraph* (27 March 2012):

> "This scandal looks different. Mr Cruddas's suggestion that policy is for sale to the highest bidder makes most political bagmen look like St Augustine..."""

75. In a third category of evidence Mr Browne sought to rely on the following, as set out in the Skeleton Argument:

i) "On 9 June 2012, *The Independent* reignited interest in the *Sunday Times* exposé by reporting – on its front-page – that "Scotland Yard launches investigation into Tory 'cash-for-access' affair" :

> "Mr Cruddas's claims that donations of £250,000 and more would be 'awesome for your business' was made despite him being told the money would be coming from a Liechtenstein-based fund. Under electoral law it is illegal to accept donations from foreign funds. Options alleged to have been discussed in the sting operation are said to have included the creation of a British subsidiary front company and also the potential use of UK employees who would act as financial conduits..."

ii) A complaint by the Claimant to *The Independent* led to the making of a Statement in Open Court by the publishers and a donation to the Claimant's charity. In the statement, *The Independent* acknowledged that its articles had, "*followed what had been published by the Sunday Times.*"

iii) Then on 9 November 2012, the First and Second Defendants nominated themselves for *Private Eye's* Paul Foot Award. Together with their nomination form, they sent full copies of the Articles. The accompanying précis included the following:

> "... [Cruddas] boasted that it would be "awesome" for the reporters' business. What's more, he made the offer even though the reporters would be making the donation from a Liechtenstein fund which was not eligible to finance a political party under UK electoral law..."

iv) In consequence, *Private Eye* reported the First and Second Defendants' nomination. In their summary of the Articles, Private Eye described the allegations against the Claimant in the following terms:

> "Going undercover, Calvert and Blake filmed Tory co-treasurer Peter Cruddas offering secret meetings with David Cameron and other cabinet ministers in return for 'premier league' donations of up to £250,000. He was even prepared to receive a donation illegally from a Liechtenstein fund..."""

76. Mr Browne submitted that these publications are evidence which demonstrate the meanings that those who have read the Articles have in fact put upon them. They provide a compelling basis on which the Court can safely conclude that a substantial (i.e. more than minimal) number of readers would have understood the Articles to bear the meanings pleaded in Paragraphs 6(1) to 6(3) of the Amended Particulars of Claim.

77. These submissions were at that stage based solely on what Mr Browne submitted must be inferred from *Slim* and *Ajiniomoto*. He relied in particular upon the passage in *Slim* at p172G-173A:

> "However innocent an impression of the plaintiff's character or conduct the publisher of the words intended to communicate, it does not matter if, in the opinion of the adjudicator upon the meaning of words, they did bear a defamatory meaning. This would be rational enough if the purpose of the law of libel were to afford compensation to the citizen for the unjustifiable injury to his reputation actually caused by the publication of the words to those to whom they were communicated. But although in assessing damages the courts now accept this as the purpose of the civil action … , we refuse to accept its logical corollary that the relevant question in determining liability for libel is: "What did those to whom the words were published actually understand them to mean?" The best evidence of that would be the evidence of the persons to whom the words were actually published. Yet, save in exceptional cases where a "legal" innuendo is relied on, it is not even permitted to ask a witness to whom the words were published: "What did you understand them to mean?" What he did actually understand them to mean does not matter. This too might be rationalised on the ground that the publisher of the words ought to be responsible in law only for the injury caused to the plaintiff's reputation by those defamatory inferences which a reasonable man might draw from the words published, and the witness to whom the words were published may not have been reasonable in drawing the defamatory inferences which he in fact drew. But this rationalisation breaks down once it is conceded, as it has been by the House of Lords in *Lewis v. Daily Telegraph* that one man might be reasonable in drawing one defamatory inference from the words and another man might be reasonable in drawing another defamatory inference." (emphasis added)

78. Mr Browne submitted that it follows from what the Court of Appeal did say in *Ajinomoto* that it is now permitted in a malicious falsehood case to ask the witnesses

to whom the words were published "What did you understand them to mean?". That is the "logical corollary". The inference that this is so is also to be drawn because the considerations of justice that led to the rejection of the single meaning rule also mandate that the court at a trial should receive evidence of what people actually understood the words complained of to mean. As Mr Browne put it, the ban on evidence is born of the single meaning rule and must go with that rule.

79. He referred in reply to cases where the court had heard evidence. In *Clark v Associated Newspapers Ltd* [1998] 1 WLR 1558 it is recorded at 1566E-1569A that

> "the plaintiff had called 22 witnesses who gave witness statements to the effect that they, when they read the articles by reason of the heading they believed that it was written by the plaintiff."

80. Mr Browne submitted orally that evidence which is relevant to meaning is commonly admitted in passing off actions, and in the trial of libel actions. The claimant in a libel action commonly calls evidence from family and friends. That evidence goes to damages, but damages must be assessed in the light of what they understood the words to mean. In some cases the claimant claims damages for republications (*Slipper v BBC* [1991] 1 QB 283), and in those cases the meaning of the alleged republications may need to be determined, for if the meaning is different from that of the words complained of, then they are not republications and can be sued on (if at all) only as independent torts.

81. Mr Browne submitted that the meaning rules in defamation and malicious falsehood should be the same, for the reasons given by Diplock LJ in *Slim* at p172G-173A. It is anomalous that they should remain different.

Submissions for the Defendants

82. In the Skeleton Argument prepared overnight the Defendants submitted that the following questions arise, and that the answer should be:

> (1) In principle, is evidence admissible on the issue of whether, for the purposes of malicious falsehood, the words complained of conveyed the meanings which a claimant contends were false and published maliciously? No
>
> (2) If yes, are there nevertheless limits as to the circumstances in which evidence is admissible on that question? (If this arises: which it does not, if the Defendants' answer to (1) is correct): evidence is admissible only where (without evidence) judge would be at a disadvantage vis-à-vis the likely readership of the words complained of.
>
> (3) If evidence is ever admissible, are there nevertheless circumstances in which the court should exclude it pursuant to CPR 32.1(2)? Yes, in particular where the Claimant seeks to prove his case without calling the publishees and/or the publishees may be pursuing their own agendas.

> (4) Can/should any of the Claimant's evidence on meaning be admitted in this case? No
>
> (5) If yes, does that evidence support the Claimant's case? No

83. Ms Rogers accepts that on an issue of innuendo, and an issue of reference (identification of a claimant), evidence is admissible in libel actions. But, so she submits, the explanation for that is the special knowledge in question which would be outside the knowledge of the judge (or jury). Even in such cases the evidence is not conclusive (Gatley paras 34.27 to 34.28).

84. In the course of Mr Browne's submissions I had reminded him that in *Lewis v Commissioner of Police of the Metropolis* [2011] EWHC 781 at [56]-[72] I had held that evidence could be relied upon in the circumstances of that case, citing *Garbett v Hazell, Watson & Viney Ltd* [1943] 2 All ER 359. He made no submissions on *Lewis*, but Ms Rogers did. She submits that the decision I reached was wrong. She submits that the report of *Garbett* does not record whether the trial judge had taken the evidence of the witnesses into account on meaning or, if so, whether that was relied on as constituting a ground for appeal. Evidence as to the meaning of the words complained of in malicious falsehood was not admissible, *except* where the words were incapable of being understood without extrinsic evidence (i.e. a situation similar to innuendo in libel): *The Royal Baking Powder Company v Wright, Crossley & Co* (1900) RPC 95 (HL): see 98, lines 8-12; 99, lines 50-54; 101, lines 24-26 & 52-55; 102, lines 30-34.

85. Ms Rogers submitted that the references to passing off made by Mr Browne in his oral submissions were erroneous. She cited *Interflora Inc v Marks and Spencer Plc* [2012] EWCA Civ 1501; [2012] FSR 21 at [26]-[34], *Parker-Knoll Limited v Knoll International Limited* [1962] RPC 265 (HL) at 289, lines 23-27, *Clark v Associated Newspapers Ltd* (also reported at [1998] RPC 261, at 271 (lines 27-36)) and *Dalgety Spillers Foods Ltd v Food Brokers Ltd* [1994] FSR 504, at 527.

86. On the effect of acceding to Mr Browne's submission Ms Rogers argued:

> "Admitting evidence of the readers of the words would greatly lengthen and complicate proceedings. In particular, any mass media publication on a matter of public interest is likely to be followed by all sorts of republication, reaction and comment, as well as further investigations and publications by third parties. All of this materially would have to be looked at on the issue of meaning if C were right.
>
> (5) Taking the step advocated by C would involve a further divergence from the position in libel (despite there being "powerful" arguments against even taking the first step of jettisoning the single meaning rule: see *Ajinomoto* above), with particular potential to complicate matters in cases where libel and malicious falsehood are pleaded in tandem.

> (6) Points (4) and (5) above raise serious issues as to compatibility with Article 10 of the European Convention on Human Rights. It is well established that the cost of and complication of dealing with a case may amount to a disproportionate infringement of Article 10(1). Publications on public interest matters routinely spark extensive further debate: that is part of their value. There would be a significant chilling effect if the original publisher not only had to answer for their own words but also had to address, in the course of defending liability, how subsequent publishers had understood the original publication (whether by reference to calling the publishers of, or by seeking to build a case based on an interpretation of the precise meanings of, what may be a large number of subsequent publications). It is no answer to say that such material would have to be looked at on damages in any event: the court can control material relating to damages on case management grounds in a way that it cannot on questions of liability: see e.g. *Clarke v Bain* [2008] EWHC [2008] EWHC 2636 at [54]-[61].
>
> (7) Similarly, the court ought to be concerned with the increase in costs to the court and the parties of reviewing potentially large amounts of evidence which, ultimately, do not determine the issue the court has to decide.
>
> (8) C's concerns about any potential infringement of Article 8 are not to the point. If there were to be any concern about article 8 (or, in the context of a malicious falsehood claim, perhaps more pertinently Protocol article 1) raised by the single meaning rule, then it is addressed by the abandonment of that rule in malicious falsehood (*Ajinomoto*) and the move to a position where variant meanings conveyed to reasonable readers are taken into account. Article 8 and the protocol cannot possibly be relied upon to mandate a rule of evidence in domestic law, where the substantive law is compliant."

87. Ms Rogers submits that under CPR 32.1(2), the court will have regard to the overriding objective and, accordingly, the need for evidence to be restricted to matters which will be of real assistance to the court on the matters in dispute and which can be accommodated without unnecessary complication and proliferation of side issues. The likely exclusion of survey evidence in trademark cases, where the party seeking to rely on the evidence cannot vouch for it as being representative, or there are otherwise doubts about its reliability, is an example. Here, the following consideration will be relevant:

> "(1) There is a relevant distinction between evidence from a witness, who says that s/he read the article and understood it to mean x or y, and a document created by a person which, though it does not directly address meaning, is relied upon as evidence of what that person has understood. In the first case, the witness's evidence will be directly on point and there can be

> cross-examined to establish whether s/he is reasonable or not. In the second case, the meaning which the writer is said to have derived from the article can only be inferred, and unless s/he is called, it will be difficult or impossible for the court to assess whether (i) what s/he has written does indeed reflect the writer's understanding of the article; and (ii) if so, whether the writer is to be regarded as a reasonable person.
>
> (2) The problem is particularly acute (and the value of the evidence correspondingly diminished) in the case of newspaper articles (or broadcasts) which report or follow up an article published by a newspaper which is defending a malicious falsehood (and libel) claim. The question is whether the evidence shows that a significant number of reasonable readers understood the (first) newspaper article to bear the meanings alleged by the claimant. The court would first have to interpret what the second article meant (which begs the question: by what standard? Presumably *not* a single meaning rule?). Even then, how can the court conclude (absent evidence from the writer or editor responsible for the publication) that, having read the first article (if they did), they (reasonably) understood it that first article to bear the same meaning(s) as are conveyed by the second article? The second article may be the product of multiple sources, or a desire of the second newspaper to put a particular "spin" on facts alleged by the first newspaper, or its writer may be wholly unreasonable. None of this can be established unless the claimant calls the writer/editor/publisher of the second article.
>
> (3) Similarly, statements by individuals, made in response to the publication, must be treated with the greatest caution if they have personal or political agendas which may be served by putting a particular gloss on the words. Again, such evidence is unlikely to be of any real value to the court unless, at least, the individual is called by the claimant and established to be a reasonable person whose reaction reflected their genuine understanding of the article.
>
> (4) The court is unlikely to be assisted by the evidence of individual publishes unless they can be shown to be representative of a ***substantial*** proportion of the readership.

88. Ms Rogers then advanced submissions directed to each of the pieces of documentary evidence relied on by Mr Browne, including points which she said undermined the weight of the evidence of the individuals who expressed views in the various circumstances relied on. Further, she submitted that the court could not just rely on the extracts set out in the Claimant's Skeleton Argument. It would be necessary for the court to listen to the whole of the broadcasts, and, where these had become available, read the transcripts.

89. She noted that Mr Adams' involvement with the journalists, and the campaign that he conducted against the Claimant as recounted in the judgment of Eady J mean that he is not a witness whose evidence on meaning can be relied on. As to the newspaper articles sought to be relied on, Ms Rogers asks what the court is to do. It is not clear from those articles what the writer had understood from *The Sunday Times*. She notes that there are no witness statements from the other individuals whose comments are sought to be relied on (the time for service of witness statements has passed). Mr Miliband and Mr Straw are politicians with a political agenda to advance. There is no evidence as to who "Carol" in the radio phone in is, or even whether she read the Articles. She was one of a number of participants in the broadcast, but only her words are sought to be relied on. The authors of the opinion pieces are arguing a case on the role of the press. It is unclear upon what the article in *The Independent* was based on, and it is to be inferred it was based on information in addition to the Articles. Until receipt of the Claimant's Skeleton Argument, the Defendants had understood *The Independent* to be relied on only in aggravation of damages. The evidence relating to the *Private Eye* papers is also incomplete.

Discussion

90. The judgment of Lewison LJ in *Interflora* at p 460 of the report is of particular assistance:

> "135 The upshot of this review is that courts have allowed the calling of evidence of the kind that Interflora wishes to call and have considered it, either in conjunction with or in the absence of a statistically valid and reliable survey. But it is generally of little or no value. Sometimes it does no more than confirm the conclusion that the judge would have reached without the evidence. In passing off cases it sometimes has greater effect, but as I have said more than once, passing off raises a different legal question. Unless the court can be confident that the evidence of the selected witnesses can stand proxy for the persons or construct through whose perception the legal question is to be answered it simply represents the evidence of those individuals. In a case in which the witnesses are called in order to amplify the results of a statistically reliable survey their evidence may be probative. But unless the court can extrapolate from their evidence, it is not probative.
>
> 136 Mr Silverleaf argued that if we acceded to Mr Hobbs' submissions then evidence from consumers would never be admitted in a case of trade mark infringement in the absence of a statistically valid and reliable survey. I do not think that follows. One of the objections to the witness collection exercise, as Rimer J pointed out in *UK Channel Management* is that the evidence thus collected is not the spontaneous reaction of members of the public who have been exposed to the allegedly infringing sign or advertisement, but is evidence obtained under artificial conditions by applying artificial stimuli. If there is evidence of consumers who have been confused in the real world, there can be no objection to calling

it. He also submitted that the calling of evidence from witnesses identified by means of a witness collection exercise was quite independent of the process by which they had been identified. That may be so in some cases; but in the general run of cases where witnesses have been identified by a tailored series of questions, they will have been led towards a particular mindset which no longer represents the unstimulated evidence of people in the real world.

137 That is not to say that there can never be evidence called in a case of trade mark infringement. The court may need to be informed of shopping habits; of the market in which certain goods or services are supplied; the means by which goods or services are marketed and so on. In addition I must make it clear, however, that different considerations may come into play where:

i) Evidence is called consisting of the spontaneous reactions of members of the relevant public to the allegedly infringing sign or advertisement;

ii) Evidence from consumers is called in order to amplify the results of a reliable survey;

iii) The goods or services in question are not goods or services supplied to ordinary consumers and are unlikely to be within the judge's experience;

iv) The issue is whether a registered mark has acquired distinctiveness; or

v) Where the cause of action is in passing off, which requires a different legal question to be answered.

138 Outside these kinds of cases there may be others where a judge might think that it would be useful to hear from consumers. I would not wish to rule out the possibility. So I would not accept the proposition that evidence from respondents to a questionnaire can never be called in the absence of a statistically valid and reliable survey. But (apart from those I have mentioned) the cases in which that kind of evidence might be of real use are difficult to imagine. I would not therefore hold that such evidence is inadmissible as a matter of law.

139 However, it does not follow that if evidence is technically admissible, the court in civil proceedings must admit it. CPR 32.1 provides:

‘(1) The court may control the evidence by giving directions as to –

> (a) the issues on which it requires evidence;
> (b) the nature of the evidence which it requires to decide those issues; and
> (c) the way in which the evidence is to be placed before the court.
> (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.'

140 CPR Part 1.4 provides:

> '(1) The court must further the overriding objective by actively managing cases.'

141 This is a positive duty placed on the court. CPR Part 1.4 (2) goes on to say that active management of cases includes:

> '(h) considering whether the likely benefits of taking a particular step justify the cost of taking it'".

91. I preferred the submissions for the Defendants. The Court of Appeal in *Ajinomoto* did not mention the possibility of evidence on meaning, and did not criticise the application of the *Jeynes* principles to arrive at a range of reasonable meanings. Sedley LJ did not include in the passages he cited from *Slim* the passages at p172G-173A relied on by Mr Browne. The selection he made was a considered, not an accidental, one.

92. The Court of Appeal was explicit as to the limited effects their judgment would have on case management: Sedley LJ para 34. Rimer LJ in particular cannot have overlooked the trade mark and passing off cases in reaching the decision he did. If he had expected his decision to lead to the calling of documentary evidence, and even oral evidence, on meaning, it is to be expected that he would have said so.

93. Further, as stated in *Jeynes*, the reader must be assumed to have read the article as a whole, and any "bane and antidote" taken together. That principle was re-affirmed in *Charleston*. It seems to me that that is as unrealistic an assumption as any that is required to be made, whether in defamation or in malicious falsehood (applying a multiple meaning rule), albeit that that assumption is necessary to do justice to a defendant. But as the facts of *Charleston* illustrate, whether a person has read the whole of the article complained of, or not, may be critical as to the meaning the reader understands the words complained of to bear. In that case the defendant newspaper had published an article with a headline and illustrated by photographs. The plaintiff complained of the meaning which they said was conveyed to a publishee who read the headline and looked at the picture, but did not read the article.

94. Before the court can place weight on the evidence sought to be relied on by the Claimant in this case, the court would have to find that the persons concerned had indeed read the whole of the words complained of in their context, and that they each fell within the description of the reasonable person laid down in *Jeynes*. On the facts of this particular case, where the Articles are so long and detailed, I find it unlikely that all readers would have read all that I have read in order to arrive at the natural and ordinary meaning, and which I would have to read to determine the range of possible meanings. Speaking for myself, I have to say that (when not acting as a judge) I

frequently read newspaper articles only in part, in the manner suggested by the claimant in *Charleston*. There must be many cases in which I read the bane but never reached the antidote.

95. I accept Mr Browne's submission that, without evidence from readers (as envisaged in *Slim* at p 172G-3A) the outcome which Ms Rogers submits was reached by the Court of Appeal in *Ajinomoto* is not an adoption of what Diplock LJ said would be "the best evidence". If the Court of Appeal did not permit the "best evidence" to be called, then they did not go as far as Diplock LJ suggested, or as the Claimant might wish, in order to achieve the justice which the Court of Appeal sought. Without "the best evidence" there remains a risk of injustice of the kind that court describes.

96. Where the court has ruled out as unreasonable a meaning in a malicious falsehood claim, a claimant may in fact have evidence from just one reader, but a very important reader, who did understand the discarded meaning. And it may be a reader who, if given the opportunity, could prove himself or herself to be reasonable. Where, as in *Tesla Motors v BBC* [2013] EWCA Civ 152, the goods allegedly slandered are cars costing nearly £100,000 each, the loss of even one customer may be important.

97. These are points which, in my judgment, the Court of Appeal cannot have overlooked. I should not speculate as to why the Court did not follow Diplock LJ's suggestion that the readers' evidence be admitted. Rimer LJ expressly stated at para [43] that "The common law has … never worried about tidiness". The fact that the Court of Appeal was prepared to advance some way away from what Diplock LJ said was "the artificial and archaic" cannot mean that they were prepared to go all the way he suggested that the law should go, if it was to be both realistic and logical. And to do that would be inconsistent with the judgment of Lewison LJ in *Interflora*.

98. The finding of a court, one way or the other, as to whether a reasonable person might (or would not) put a particular meaning upon the words complained of (when arrived at without evidence) could prove to be erroneous if tested empirically. The smaller the readership the easier it would be to conduct the empirical test. And, in some cases, the smaller the readership the greater the risk that the court's determination of what a reasonable reader might understand might prove to be both verifiable and wrong. In *Euromoney* the alleged publishee of one of the alleged falsehoods is a single person. And the readers of the other alleged falsehoods could (I speculate) prove to be a number small enough to make it practical and proportionate to ask each one of them for a witness statement. But at a hearing on meaning the court is not normally required also to determine the number of readers. If it were, it would not be able to order as often as it now does that meaning be tried as a preliminary issue, with all the case management advantages such orders bring with them. There would be likely to be too much overlap between issues of meaning and issues of damage.

99. The parties can, of course, conduct their own research on what readers claim to have understood a publication to mean (whether on the internet or by surveys). And if they come upon a meaning which they consider reasonable, but which they had not themselves already thought of, they can plead it in their particulars of claim. The court will then determine whether that meaning is within the range of reasonable meanings, applying the *Jeynes* test. The court would, in my view, rarely be assisted by reading transcripts and other material of the kind sought to be relied on in this case. If the court does read them, the court still has to go on to determine whether any meaning

supported by readers' evidence is within the range of reasonable meanings. The cost of the review of the transcripts and other evidence is likely, in most cases, to be out of all proportion to any benefit.

100. One of the greatest concerns today is the cost of all litigation in general, and the cost of libel actions in particular. One of the measures which the court has adopted to try to limit the costs is to order the trial of preliminary issues on meaning. These will be more frequent after the Defamation Act 2013 has brought into force the amendment to s.69(1) of the Senior Courts Act, to abolish the right to trial with a jury in a libel action. If the effect of *Ajinomoto* is to encourage claimants to join in their claim for defamation a second claim for malicious falsehood in order to escape the effect of the single meaning rule, and if readers' evidence is then admissible, then in practice it is less likely that the trial of a preliminary issue will be ordered.

101. There is a difference between the views on the single meaning rule expressed by the Court of Appeal in *Ajinomoto* and what appears to be the view of Parliament. If the single meaning rule in libel is as bad as Sedley LJ said it is ("anomalous, frequently otiose and, where not otiose, unjust … without any enduring rationale"), and as Mr Browne submitted to me that it is, then it might have been expected that Parliament, in considering the Defamation Bill, would have repealed the rule in what has just become the Defamation Act 2013. But notwithstanding *Ajinomoto,* Parliament has not done this. So far as I, and counsel, are aware there was not included in the Bill, or in any amendment, a provision that the single meaning rule be overturned by the statute. After the most comprehensive review of the law of defamation in a generation, which has resulted in that Act, it is regrettable that the law of defamation should remain open to criticism as having a serious defect which Parliament has chosen not to remedy.

102. I would not therefore hold that readers' evidence of what they understood words to mean is inadmissible as a matter of law in a malicious falsehood action. There may cases where it should be admitted, for example the cases where the evidence is of "the spontaneous reactions of members of the relevant public" (*Interflora* para 137(i) cited above). *Garbett* may perhaps be an instance of this. Mr Browne observes that Mr Diplock was counsel for the defendant appellant in that case, and that it is the only libel case reported in a law report in which evidence appears to have been given at trial as to meaning: see p359H. I do not need to, and do not, decide one way or the other that such evidence is inadmissible as a matter of law.

103. What I do decide is that the Claimant's evidence on meaning should not be admitted in this case. I reach that conclusion on the ground that, if I did not find that the meanings in para 6 of the Particulars of Claim were the natural and ordinary meaning under the single meaning rule, the evidence would not materially assist me to decide whether the meaning was within the range of reasonable meanings.

104. In this case the Articles are long and detailed, the issues are political, and the readers whose views are relied on include a number of supporters of the Labour party (including Mr Adams) and two former members of the Cabinet in the last Labour government (one of them not just a lawyer, but a former Lord Chancellor). There is at least a perception of possible bias: their partisan view of a political opponent might mislead such persons to see wrongdoing in the Conservative Party, and might mislead them to understand the Articles to bear a meaning that would not be understood by an ordinary member of the reading public.

105. As to the other readers whose evidence is sought to be relied on, there might be a danger that journalists looking for a story might misunderstand there to be a scandal alleged which was worse than the scandal (if any) that would be understood by an ordinary member of the public. And I have seen no evidence as to whether each of the readers whose evidence is referred to by the Claimant read all the passages of the Articles, including those passages which Mr Kelsey-Fry relies on as being exculpatory. If they did not, then they were applying a test different from the test which the law prescribes as the relevant test. So their understanding would be irrelevant, unless the law is to abandon not only the single meaning rule, but also the rule that the reader is assumed to have read the whole of the words complained of.

106. A further and important ground for my decision is this. When a course of action becomes permissible under the law, it may also become a matter of obligation, as a matter of practice rather than as a matter of law.

107. Mr Cruddas may be in the fortunate position of being able financially to instruct his lawyers to do whatever they advise is permissible and which may advance his case. If those lawyers may adduce in court all the evidence from readers that they have collected, then they may consider it their professional duty to advise their client that the exercise in collecting and distilling such evidence should be carried out. I have not been told the cost of searching for all the evidence of third party readers, of listening to the audio recordings of interviews, and then of transcribing them and putting them into the court bundles. But that exercise in selection must itself have required many hours of highly skilled preparatory work. I say nothing of the time taken to argue the point once it had been skilfully condensed into the very clear Skeleton Argument prepared for this hearing (from which I have cited at length above).

108. If this exercise can be done by claimants, it can also be done by defendants (albeit that, if it has been done by the Defendants in this case, I have not been told). Defendants might do it with a view to persuading the court that a suggested meaning has been understood by so few readers that that fact should lead to the inference that those few readers are unreasonable or untypical.

109. This is all most unlikely to be compliant with the overriding objective.

110. I note that a further judgment in *Inteflora* [2013] EWHC 1291 (Ch) was handed down by Arnold J on 21 May. That was the first day on which this case was argued before me. Having reached my decision that (if the question arose, which it does not) I would not admit on the issue of meaning in malicious falsehood the evidence from persons who claim to be readers, which the Claimant seeks to rely on, I did not consider it necessary to invite submissions on this new judgment. Following the circulation of this judgment in draft, the parties did not ask to make submissions on Arnold J's judgment. I believe that my decision is consistent with the law as stated by Arnold J in his recent *Interflora* judgment.

Conclusion on evidence of meaning in malicious falsehood

111. If I had not reached the decision which I have reached on the meaning in defamation, I would not admit the evidence the Claimant seeks to rely on in support of my finding that meaning as one of a range of permissible meanings for the purposes of malicious falsehood.

Conclusion on meaning in malicious falsehood

112. Having considered the submissions of counsel set out above in relation to meaning for the purposes of libel, but at this stage applying the multiple meaning rule, I find that, subject to one point, the meanings pleaded by the Claimant in para 6 of the Amended Particulars of Claim, and the meanings pleaded by the Defendants in paras 7 and 8 of the Amended Defence, are all meanings within the range of meanings which reasonable readers could understand the words complained of to bear. Given the large circulation of *The Sunday Times,* the words complained of probably were so understood by a substantial number of readers. At this hearing I have not been asked to find how many such readers there were.

113. There is one point in which I do not find that. In my judgment, for reasons discussed at para 40 above, the words complained of are not capable of meaning that the suggestion attributed to the Claimant that the undercover reporters' clients' funds be funnelled through the reporters is no more than a suggested breach of the spirit of the legislation. The allegation can only reasonably be understood to mean that the Claimant was suggesting a breach of electoral law, not just a breach of its spirit.

CLAIMANT'S APPLICATION TO STRIKE OUT PARA 8 OF THE DEFENCE

114. Para 8 of the Defence is set out at para 11 above. The Facts and matters relied on in support of that plea are:

> "8.1 The Defendants rely upon what the Claimant said during the meeting on 15 March 2012, which is contained in the recording and transcript of the meeting with the Claimant. They repeat paragraphs 7.1 -7.51 above [that is whole of the particulars of justification to the meanings pleaded in paras 7(1) and 7(2) of the Defence which are set out at para 10 above].
>
> 8.2 The Defendants' case is that the Articles do not allege that the Claimant made such offer 'corruptly'. If (which is denied) any ordinary and reasonable reader understood the Articles to include such an imputation, the same could only have been derived as a result of their concluding that what the Claimant had said in the course of the meeting (as reported in the Articles) amounted to corruption. That being so, since the Articles are a true report of the meeting and accurately quote what the Claimant said, it follows that if any such reader understood the words in that sense (which the Defendants deny), that same reader would necessarily conclude that the Defendants have proved the truth of the Articles in that sense.
>
> 8.3 For the avoidance of doubt, although the Claimant has not explained what he means by 'corruptly' in his meaning, it is denied (if it be alleged by him) that the words bore or could reasonably be understood as bearing any allegation of guilt of any criminal offence".

115. On 17 May 2013 the Claimant issued a notice applying for paragraphs 8 to 8.3 to be struck out pursuant to CPR r.3.4(2)(a) because the facts relied on do not justify the meaning pleaded.

116. The Claimant had already set out the grounds in the Reply at para 6:

> "6.1 Paragraphs 7.1 to 7.51 (being Particulars of Justification advanced to support a wholly different and lesser meaning) cannot support and are irrelevant o the meaning sought to be justified.
>
> 6.2 Paragraph 8.2 is denied. The readers of the Articles (and visitors to the Website) did not have access to what the Claimant had said during the meeting. They had only the distorted account of what had taken place in the Articles and the Extracts. The Defendants are obliged to specify the basis on which they will contend that the Claimant corruptly offered for sale the opportunity to influence government policy and gain unfair advantage through secret meetings with the Prime Minister and other senior ministers. They have not done so. Paragraph 8.2 is tantamount merely to setting out the words complained of and averring that they are true in the meanings sought to be defended. That is impermissible.
>
> 6.3 In relation to Paragraph 6.3, corrupt is an ordinary word; it was the adjective chosen in the Editorial to describe the relationship between the party and the putative donors. The word connotes bribery; the payment of money, secretly, to obtain something that could not be obtained openly or lawfully. What is more, corruption would be known, to most if not all readers, to be a criminal offence".

117. I have set out above (paras 37 to 49) my conclusions on the meaning of the words complained of, and why I reject the Defendants denial that the words bore, or could reasonably be understood as bearing, any allegation of guilt of any criminal offence. That is all that needs to be said in relation to para 8.3 of the Defence.

118. As to para 8.1, as I understand the Defendants' case, the facts relied on to support the meanings pleaded in para 7 are not said by themselves to support the more serious meaning pleaded in para 8. The case in relation to para 8 depends on the plea in para 8.2.

119. In a witness statement made on 15 May 2013 Mr John Witherow who was the Editor of the Sunday Times when the Articles were published, wrote:

> "In my view, blatantly selling access was not corrupt, but unethical. I did not take the view, and still do not, that the articles suggested that Mr Cruddas had acted illegally".

120. Mr Browne submits in the light of that passage that by para 8 of the Amended Defence the Defendants are trying to achieve what the Editor has said is not the Defendants' case.

121. The difficulty with the Defendants' case in para 8.2 of the Amended Defence is that the Articles (and the Extracts) do not consist solely of extracts from what the Claimant said to the reporters, and they do not set out the whole of what he said to the reporters. In arriving at my conclusion on meaning I have referred to words in the Articles which are not quotations from what the Claimant said, but are the Defendants' description and interpretation of what he said.

122. It would be essential for the Defendants' argument that they should establish that 'the Articles are a true report of the meeting and accurately quote what the Claimant said'. But they cannot do that. All they can do is state that, in so far as they Articles contain quotations from what the Claimant said, then those quotations are true and accurate. But since the Articles contain both more than what the Claimant said, and less than the totality of what he said, the argument in para 8.2 of the Amended Defence is logically defective.

123. In my judgment the arguments of the Claimant are to be preferred, and for these reasons I would strike out para 8 of the Amended Defence.

CONCLUSION

124. For these reasons I decide that:

i) For the purposes of the single meaning rule in libel the words complained of bear each of the natural and ordinary meanings pleaded by the Claimant in para 6 of the Amended Particulars of Claim (see para 7 above);

ii) For the purposes of the meaning rule in malicious falsehood the words complained of are reasonably capable of bearing not only those meanings, but also (and subject to one point) the meanings pleaded by the Defendants in paras 7 and 8 of the Amended Defence (see paras 10 and 11 above). The exception is set out in para 113 above. The words complained of probably were so understood by a substantial number of readers. At this hearing I have not been asked to find how many such readers there were.

iii) Para 8 of the Amended Defence must in any event be struck out.