Neutral Citation Number: [2006] EWHC 1710 (QB)

Case No: HQ05X03648

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/07/2006

Before :

THE HON. MR JUSTICE EADY

- -

Between :

Muhamed Veliu	**Claimant**
- and -	
(1) Xhevdet Mazrekaj	**Defendants**
(2) Skender Bucpapaj	

- -
- -

Alexandra Marzec (instructed by **Carter-Ruck**) for the **Claimant**
Neither Defendant appeared
Hearing date: 26 June 2006

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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 HON. MR JUSTICE EADY

The Hon. Mr Justice Eady :

The nature of the claim

1. The Claimant is a young journalist who has been living and working in the United Kingdom for the past eight years. He was formerly of Yugoslav nationality (being an Albanian from Kosovo) and was granted exceptional leave to remain here in November 2003. His work includes investigative journalism and reporting on United Kingdom affairs for Albanian television and newspapers, as well as working for various media outlets here. He has been a member of the National Union of Journalists since November 2002.

2. In these proceedings, the Claimant sues in respect of an article published in Albanian on 20 July 2005 in *Bota Sot*, a Kosovan daily newspaper which is published from Zurich and sold in various countries including the United Kingdom. According to the evidence, it is widely read in this jurisdiction and particularly among the Albanian community in London, of whom I understand there are approximately 20,000. It is available in newsagents and public libraries, and has a substantial readership, measured almost certainly in thousands, among Albanian speakers. The first Defendant is the owner and publisher of the newspaper and the second Defendant its editor.

3. The translation of the headline of the article was "A scandal at the Albanian Embassy in London". The words complained of included the first paragraph which (in translation) was in these terms:

> "In one of its latest issues, the Daily Mail reveals one of those mysterious events of Albania which makes you think twice about the civilised identity of this country. An Albanian called Mohamed Veliu, who claims to be one of the most prominent journalists of his country, who resides in London, and is known for his close relations with the Pakistani Islamic community, has become one of the latest protagonists relating to the terrorist bombing attacks on the British capital's underground system".

The fourth paragraph includes the words:

> "The terrorist Mohammed Sidique Khan, the worst of the four killers who bombed the London underground, was a close friend of this Albanian, who claims to be one of the most prominent journalists in Albania".

There are a number of other disparaging references to the Claimant in the article but plainly the most serious aspect is the allegation that he was a "protagonist" in relation to the bombings in London in July 2005. (I was told by Mr Veliu that the relevant Albanian word translated as "protagonist" could equally well be rendered as "participant".) The natural and ordinary meaning was pleaded in the particulars of claim as being that "the Claimant, through his close friendship with and active support for Mohammad Sidique Khan, the worst of the four terrorist killers who bombed the

London underground, was closely involved with or implicated in the terrorist bombing attacks on the London underground".

4. There is no doubt that the allegation made against the Claimant in this article was one of the gravest imaginable. He confirmed that, as one would expect, he suffered great distress and embarrassment and was indeed anxious for his physical safety. The allegation became widely known among the Albanian and Kosovan residents in London. Apart from the impact on the Claimant personally, the allegations would plainly undermine his professional reputation and the extent to which people were prepared to trust him. Enquiries were made of his employers, so he was told, on behalf of the American government and he became concerned as to the possibility that steps might be taken against him by law enforcement authorities. The contact was made by the United States Embassy at Tirana in Albania, at the offices of *Gazeta Shqiptare,* who themselves felt obliged to launch an investigation into whether the allegations were true.

5. In fairness to the Claimant, it should be made clear that the allegations were published without any apparent investigation into them at all, or any prior contact with him, and there has never been any suggestion that the story was true. In particular, there was nothing in the *Daily Mail* about the Claimant (contrary to the suggestion in the article complained of). The Claimant was not a friend of Mohammed Sidique Khan. Nor had he any connection whatever with the terrorist attacks in London. It is probably significant that the authorship of the offending article was attributed to a fictitious person ("Janifer Partosh").

6. The second Defendant has taken no part in these proceedings and, although the first Defendant was until shortly before the hearing took place represented by solicitors and counsel, the Claimant's solicitor was notified on 23 June 2006 that they had come off the record. He too had apparently decided to take no further part in this litigation.

7. Nevertheless, the first Defendant had before his departure made an unqualified offer of amends on 27 February, which was accepted on 22 March 2006. One of the consequences of that development was that the first Defendant had to accept the defamatory meaning put forward in the particulars of claim.

8. It is perhaps surprising that the owner and editor of the newspaper should not have made common cause in the litigation, but the court has had to deal with this rather anomalous situation as it stands. By an order of Master Eyre dated 12 April 2006, judgment was entered against the second Defendant in default, with damages to be assessed. On the same occasion the Master ordered that the first Defendant was to pay compensation and costs pursuant to s.3 of the Defamation Act 1996 – the amount to be decided by a judge in accordance with the statutory procedure. The order also contained a provision that the amount payable by the second Defendant was to be decided by the judge on the same occasion.

Reconciling the statutory procedure and the assessment of damages

9. This case, therefore, gives rise to what is, so far, a unique situation. It became necessary for me to consider how the court should approach this task when one defendant has made an offer of amends under the statutory procedure and judgment has been entered against the other for damages to be assessed. Whenever two separate

jurisdictions require to be reconciled and to operate in harness, care needs to be taken in order to ensure that there are no rough edges in the form, for example, of inconsistencies or double counting. I am grateful to Ms Marzec for her analysis of the position and her submissions as to how the court should proceed.

10. It is now well known how the court assesses compensation under s.3 of the 1996 Act. I summarised it, for example, in *Campbell-James v Guardian Media Group plc* [2005] EMLR 24 at [17]:

> "There are two stages. First, I must identify in the light of the modern approach to libel damages (notably more moderate since the Court of Appeal decision in *John v MGN Ltd* [1997] QB 586) what is the starting point for this libel. That is to say, I must try to identify what the appropriate award would have been following a trial, but one in which there had been no significant mitigation or aggravation. Then I must move to the second stage, to consider the question of what reduction or 'discount' is appropriate, having regard to the use of the 'offer of amends' procedure, which is in itself conciliatory in character, and to any published apology".

What is unfamiliar, however, bearing in mind the general principle of joint and several liability as between defendants who are responsible for the publication of a single libel, is how this statutory procedure is to affect the position of another defendant who has made no such offer.

11. It is not permitted to make separate awards (in favour of the same claimant) against different defendants: see *Gatley on Libel & Slander* (10th edn) at paras. 8.2 and 9.22. Moreover, in so far as the court needs to take into account factors in aggravation of damages, the general practice is to apply the "lowest common denominator"; that is to say, the damages can only be fixed by reference to aggravating circumstances for which all defendants can properly be held responsible. It has generally been thought wrong in principle to render any individual defendant liable in respect of an award which would include compensation covering aggravating conduct for which he cannot be held responsible (whether directly or vicariously): see e.g. *Cassell v Broome* [1972] AC 1027, 1063 (Lord Hailsham), 1090 (Lord Reid). The relevant statements in *Cassell v Broome* were directly concerned with exemplary damages, but it is clear that Lord Hailsham was of opinion that the same principles applied to aggravated damages. That would certainly seem to accord with principle, since in both cases the court is concerned with assessing the conduct of an individual defendant or defendants over and above the mere publication of the libel.

12. It is right to say, however, that the application of the lowest common denominator to aggravated damages is not wholly free from doubt: see *Hayward v Thompson* [1982] 1 QB 47, 62, where Lord Denning MR specifically referred to the observations of Lord Hailsham in *Cassell v Broome* at p1063 and commented:

> "I do not think that this is at all satisfactory. Suppose there are some circumstances of aggravation available against 'The Sunday Telegraph'. There may be other circumstances of aggravation against [the journalist]. Likewise there may be

> mitigating circumstances in the one and not in the other. No one can say what is the 'lowest sum'".

13. Assessment of "compensation" under the 1996 Act (albeit to take place in accordance with the same principles governing assessment of "damages" in defamation proceedings) falls under its distinct regime. What has not hitherto been considered is what should happen where the claimant is *prima facie* entitled to recover both "compensation" under the statute and "damages", against another defendant, in accordance with the common law.

14. It is necessary to bear in mind certain other principles of general application:

    i) The fact that judgment has been obtained against one defendant in libel proceedings does not of itself preclude a claim being continued, or even launched, against a different person in respect of the same libel: s.3 of the Civil Liability (Contribution) Act 1978; and see *Gatley on Libel & Slander*, cited above, at paras. 8.2 and 33.58.

    ii) There can only be one sum of damages or compensation in respect of one libel: *Greenlands v Wilmshurst* [1913] 3 KB 507, CA; and see *Gatley on Libel & Slander*, at para. 9.22.

    iii) All persons who participate in the publication of a libel, and who are held liable, are jointly and severally liable for the whole damage suffered by the Claimant: see e.g. *Gatley on Libel & Slander*, at para. 6.4.

15. Ms Marzec highlighted the significance of s.3(8) of the 1996 Act, which is concerned with the consequences of accepting an offer of amends:

> "In England and Wales or Northern Ireland, for the purpose of the Civil Liability (Contribution) Act 1978 –
>
> (a) The amount of compensation paid under the offer shall be treated as paid in *bona fide* settlement or compromise of the claim;
>
> (b) Where another person is liable in respect of the same damage (whether jointly or otherwise), the person whose offer to make amends was accepted is not required to pay by virtue of any contribution under section 1 of that Act a greater amount than the amount of compensation payable in pursuance of the offer".

The provision clearly contemplates the possibility of one defendant falling within the statutory regime and another outside it. Its overall effect would appear to be at least to limit, by imposing a cap upon, the extent of the liability of that defendant who falls within the protection of the offer of amends regime.

16. As Ms Marzec points out, it appears also to be contemplated that defendants who fall to pay compensation under the offer of amends framework would be entitled to claim contribution towards that compensation from any other persons liable in respect of the

same damage in accordance with the provisions of the 1978 Act. There is something of a curiosity in the wording of s.3(8)(a) of the 1996 Act, since it does not appear to distinguish between the payment of compensation assessed by a judge and the payment of a sum which has been agreed between the parties without reference to the court. In each case, the amount of compensation paid "… shall be treated as paid in *bona fide* settlement or compromise of the claim". It is a little odd, as matter of first impression, that a sum ordered to be paid by the court should be treated as a settlement. I would be inclined, however, to accept Ms Marzec's submission that this is of no particular significance.

17. What emerges is that there is effectively a cap on the amount of compensation payable by a defendant who has the benefit of the statutory protection, but that there is room for the overall compensation in respect of the libel to be fixed at a higher figure. It is in this context especially that care is required to ensure that there is no double counting or other inconsistency in arriving at this total.

18. It is clear that a defendant who has not made an offer of amends is not entitled to the benefits which flow specifically from the statutory procedure. This is not because the defendant who makes an offer is entitled to a "reward" as such (although the outcome may lead to similar consequences) but rather because of the effects which such offers have, to a greater or lesser extent, by way of mitigation. That is for reasons identified by the Court of Appeal in *Nail v News Group Newspapers Ltd* [2005] 1 All ER 1040 at [19] and [22].

19. The matter was explained by reference to the two stage process. As I have said, the judge needs to focus first on what he or she would have been inclined to award for the libel following a trial (i.e. sitting as judge alone), in which there had been no significant aggravation and no significant mitigation. Then, at stage two, there will normally be a significant reduction to take account not only of any actual apology but also of the very willingness of the relevant defendant to use the offer of amends route. A defendant in those circumstances is effectively laying down arms and inviting meaningful negotiation over compensation and restoration of reputation. A claimant knows when an offer has been made and accepted that he has from that point effectively "won". The stress of litigation has at least has been significantly reduced. That is why it will generally be right for an offer of amends to be reflected in a significant diminution of damages from the notional starting point.

20. It will be observed, however, that when a judge is calculating the appropriate "discount" some of the relevant factors will be specific to the statutory procedure and others will not. It is necessary to remember this, especially, in a case such as the present where another defendant is on the scene who is outside the statutory framework. The fact that an apology has been published will, to an extent which depends on the individual case, have a mitigating impact by helping to assuage the claimant's hurt feelings and/or by restoring reputation. But that is not a factor which depends on the identity of the defendant who has published the apology (although it is certainly possible to imagine cases in which the identity of a defendant could have a significant bearing on the credibility attached to the statement by onlookers).

21. On the other hand, the general peace of mind which generally follows an offer of amends is likely to be undermined in a case (unlike the present) where the possibility is left open that another defendant may (say) plead justification, or in some other way

seek to diminish the claimant's reputation. It is not possible to predict every conceivable scenario and each case will turn upon its own facts.

22. Here, an apology was published in December 2005. Miss Marzec pours cold water on it as a mitigating factor for various reasons which I shall come to in due course, but that does not matter for addressing the principle. If and in so far as there *was* any mitigating effect from the apology, it cannot be left out of account in assessing the appropriate compensation to be paid by any defendant. It would not be right, for example, to give credit for the apology to the defendant who has made the offer of amends while proceeding to assess the damages against the other defendant on the hypothesis that no apology has been made at all.

23. When it comes to aggravation, it is obviously possible that there could be cases in which different defendants could have contributed separate aggravating factors: see [11]-[12] above. As it happens, that is not an issue which looms large on the present facts, but it is possible to imagine circumstances where a judge would take into account a number of aggravating features on the part of a defendant who has made an offer of amends when fixing upon the right percentage for the discount. In that context, the discount should not be reduced because of aggravation attributable to a different defendant. Nevertheless, when fixing the overall total for compensation, it would probably be right to apply the lowest common denominator.

24. How are the two principles to operate in harness? The answer would seem to be (on Lord Hailsham's analysis) that no inconsistency should arise since no aggravating factors should be taken into account at all unless responsibility can be attributed, by one means or another, to each and every defendant. Yet there is a case for treating the new process of fixing a suitable discount under the offer of amends procedure rather differently. Since the discount is specific to the individual defendant who has used the new statutory framework, there is no obvious policy reason why, when the discount comes to be assessed, he should escape responsibility for any aggravation which is also specific to him. In other words, even though his personal contribution to aggravating the hurt to the Claimant's feelings should be left out of account when quantifying the total compensation to be paid, yet it may be a factor in reducing his offer of amends "discount".

25. Fortunately, the point is not critical to resolving the present case. But it may be worth following it through a little further.

26. Where the offer of amends procedure is relevant, the notional starting point, at stage one is to select a figure which takes no account of aggravating (or mitigating) conduct. In a situation where the offer of amends framework has no application, there is no need to identify what I have called the notional starting point (although some may find it helpful to do so). Naturally, any aggravating factors would have to be acknowledged as tending to increase the damages. If the aggravation is not counter-balanced by mitigating elements, then the award is likely to be greater than would have been the notional starting point (for offer of amends purposes).

27. By way of illustration, this would seem to embrace the possibility in an appropriate case of the following scenario (where Defendant 1 has made an offer of amends and Defendant 2 has not):

(i) Notional starting point	£100,000
(ii) Offer of amends discount (taking into account aggravation and mitigation for using the statutory procedure).	40%
(iii) Maximum liability for Defendant 1	£60,000
(vi) Overall compensation (including aggravation)	£110,000
(v) Maximum liability for Defendant 2	£110,000

(Obviously, in any given case, depending on the presence of mitigating or aggravating conduct, the overall compensation could be larger or smaller than the notional starting point.)

28. There would still be joint and several liability in respect of the overall liability, in theory, but subject to the effect of the statutory interventions described above, by reason of the Defamation Act 1996 and the Civil Liability (Contribution) Act 1978. On the hypothetical scenario set out above, the extent of Defendant 1's liability has been capped. There would appear be no double counting or inconsistency.

29. I now come back to the present case in order to carry out the two separate exercises contemplated by the Master's direction of 12 April.

Applying the principles to the facts of this case

30. First I must assess the compensation due from the first Defendant. At stage one, I have to bear in mind the exceptional gravity of the libel. It is true that there is a limited circulation by the standards of national newspapers published in this jurisdiction, but I have no doubt in the light of the evidence that the impact of the story will have been significant among a large proportion of Albanian speakers in England and Wales, mostly in London. Also the distress occasioned to the Claimant will quite naturally have been real, lasting and severe. I bear in mind too how soon the allegations were made after the 7 July bombings, when wounds were still fresh, and feelings were running especially high as to the outrage which had taken place. I would fix the starting point at £180,000.

31. I must next address the discount. It would have been easy for the Defendants urgently to publish an unqualified apology in a position of prominence. They chose not to do so. An apology appeared eventually, without any reference to the Claimant or his advisers, in December 2005 (after a lapse of five months). Meanwhile, letters from the Claimant's solicitors were simply ignored between 15 September and 30 November.

32. Ms Marzec relied upon a number of aggravating factors prior to the making of the offer of amends on 27 February 2006. She argues that the only possible inference from the Defendants' behaviour is that the complaint was treated dismissively or even with contempt. Much of this conduct can be laid at the door of both Defendants. I need to bear in mind also that, by virtue of his role as owner and publisher of *Bota Sot*, the first Defendant would be regarded in English law as being vicariously responsible for the acts and omissions of the second Defendant as editor.

33. Nevertheless, there are certain relatively minor distinctions which could be drawn between the responses of the two Defendants. Effectively, the second Defendant has failed to respond in any way to the Claimant's complaint. Although the Claimant's solicitors only wrote to him directly for the first time on 1 December 2005, the likelihood is that as editor of *Bota Sot* he would have been informed on his return from holiday of the initial complaint by telephone and that he would have been kept in touch over the subsequent written complaints. He had lawyers acting for him at one stage, who gave him certain advice about English law and procedure, but the fact remains that he has never engaged with the complaint in any meaningful way.

34. Although the first Defendant has reacted, when driven to do so, albeit in a rather leisurely way, some of his conduct undoubtedly exacerbated the Claimant's anxiety and distress. It is appropriate to trace the matter through, summarising what happened chronologically.

35. It is accepted that the Claimant personally telephoned the newspaper shortly after the publication to register his complaint. Although it matters little, the Claimant's recollection is that the conversation took place in the first week of August 2005 rather than in July. What is important is that the complaint was made within days of the article coming to his attention. The Claimant's first step was to ring the Kosovo office of the newspaper, as a result of which he was advised to ring Zurich. On doing so he asked to speak to the second Defendant who, it emerged, was on holiday at the time. In his absence, he was put through to Lluckman Halili, who said that he would investigate and call the Claimant back. Meanwhile, he took his contact details, although the Claimant gained the distinct impression that Mr Halili was not really interested. Since no further response was forthcoming, the Claimant contacted solicitors in London.

36. A witness statement was served on behalf of the first Defendant. The effect of the Master's order of 12 April 2006 is that no such evidence should be admitted on the Defendants' behalf unless the relevant witness was tendered for questioning in court. Clearly, that has not happened and, accordingly, there is no reason why I should pay regard to the contents of the first Defendant's statement – save in so far as the content has had an impact on the Claimant's feelings, which would be relevant to the assessment of damages. It is clear to me that it did add to his frustrations.

37. The witness statement suggests that the first Defendant "understands" that Mr Halili, in the course of the initial telephone conversation, offered to publish an apology. The only direct evidence as to this conversation (there being no evidence from Mr Halili himself) is that of the Claimant. He told me that there was no question of an apology being mentioned in the conversation. No such offer was made. That is evidence which I have no hesitation in accepting.

38. In those circumstances, I need to bear in mind that, when an apology was eventually published in December, the suggestion was contained within it (no doubt in an attempt to put the Defendants in a more attractive light) that *Bota Sot* (presumably through Mr Halili) had expressed its readiness to publish immediately an answer from the Claimant as a reaction to the article published on 20 July 2005.

39. Two points arise on this. First, I accept the Claimant's evidence that no such conciliatory approach was adopted during the telephone conversation. Mr Halili showed a lack of interest and promised to ring the Claimant (which he did not). Secondly, the first Defendant's witness statement suggests that the "initial offer of an apology from *Bota Sot* in July 2005 was contemporaneously referred to in the printed apology that appeared in *Bota Sot* on 20 December 2005". That is plainly untrue in certain respects:

    i) There was no offer of an apology in the initial conversation (wrongly described as having taken place in July).

    ii) No reference was made to an offer of an "apology" in the article of 20 December (which was obviously not published "contemporaneously" in any event).

40. It is not clear whether the first and second Defendants was told about the initial complaint made over the telephone. Plainly he should have been. So far as the evidence discloses, I am left with this position: either the first and second Defendants did have the conversation reported to them, and did nothing, or members of their staff failed to report it to them for one reason or another. Either way, this would be an aggravating factor. If the first Defendant was told about the complaint and did nothing, that is his direct responsibility. The same would be true of the second Defendant. On the other hand, if the first Defendant was not told, because it was ignored or not thought sufficiently important by members of staff, that omission would be one for which he would be regarded as responsible under English law as a matter of vicarious liability.

41. The solicitors instructed on the Claimant's behalf wrote five letters from 15 September 2005. No response was received until 30 November. It is to be noted that when a response was actually elicited from the first Defendant the claim was denied. In the circumstances, that is astonishing. Both Defendants would have known perfectly well that the allegations were gravely defamatory and that they had not a shred of evidence to support them. The first Defendant's witness statement contained the feeble excuse for the long delay that it had taken some time to establish the meaning and content of the letters received from the English solicitors. That is poppycock. The letters could easily have been translated into Albanian, and their meaning was plain. This dissembling approach is borne out by the following sentence contained in the witness statement:

> "Once I became aware of the nature of the complaint and had had the opportunity to investigate it and gather information from the persons concerned I took a decision to do what I considered to be the right and proper thing and that was to publish a full and unreserved apology to Mr Veliu [on 20 December]".

As I have already said, however, the first response, on 30 November, was to contest the claim. That confrontational stance is simply not consistent with the case which the first Defendant wished the court to accept.

42. In the light of the Defendants' negative response, they were informed on 8 December 2005 that proceedings would be issued on behalf of the Claimant immediately. This was done on 9 December. I have little doubt that the commencement of the action was largely responsible for the timing of the apology published on 20 December in the newspaper. This was drafted in self-serving terms and, remarkably, without any prior reference to the Claimant or his English advisers. It did, nevertheless, acknowledge that the original publication had caused "undeserved troubles" to the Claimant and it contained an apology. The point was added that, at the time when the article was published, the Defendants did not know the name of the Claimant. The article went on to state that it was clear that the original article "does not have anything with the reality, but it's a pure fantasy of 'gonzo'". Although, as I have said, the apology was rather muddled and self-serving, it does at least accept (albeit in less than generous terms) that the original allegations against the Claimant were untrue. To that extent, there is a significant degree of mitigation.

43. After the proceedings were served, the first Defendant asked for an extension of time for the service of the defence, which was conceded by the Claimant's solicitors. Nevertheless, he waited until 27 February, which was the day before the defence was finally due, before making the offer of amends (i.e. some eight months after the offending publication).

44. Ms Marzec also relies by way of aggravation upon further factors subsequent to the making of the offer. The Master ordered on 12 April 2006 that the parties should serve witness statements by 1 May 2006 (which happened to be a bank holiday). The Claimant's witness statement was, accordingly, served on the following day. On 3 May the solicitors then acting for the first Defendant wrote to the Claimant's solicitors stating that they were not in a position to serve any evidence but would seek to do so "as soon as is practicable". A draft was eventually served of the first Defendant's statement on 18 May with the signed version following two days later (obviously three weeks late).

45. Ms Marzec also relies on the content of the witness statement itself, some of which I have already mentioned, as adding insult to injury. In particular, there is the untrue assertion that the Claimant turned down an offer of apology during a conversation in July 2005 (i.e. that with Mr Halili).

46. She also focussed upon the claim that *Bota Sot* is a newspaper "committed to the highest standards of journalism". She challenges this by reference to its track record and, in particular, to findings made against it by the temporary media commissioner (appointed by the United Nations) who has upheld violations of the local Print Code of Conduct in some sixteen cases. There have been fines and warnings from the commissioner in relation to false and biased reporting.

47. I am not very impressed by this material in the context of aggravation. It is true that it goes to rebut the rather grand claim about the "highest standards of journalism", but I must be careful not to take into account adverse findings in relation to wholly separate matters.

48. There is, at paragraph 20, a particularly dismissive and insulting suggestion, where the first Defendant asserts that the case could have been resolved at a much earlier stage had the Claimant been prepared to work with the Defendants constructively. Reference was made to the "initial offer of an apology" and the statement continued to the effect that, had Mr Veliu accepted that offer, and had he explained that "… as seems to be the case, the issue of damages was important for him, we would certainly have been prepared to consider agreeing some form of damages payment at the time in June 2005 [*sic*]". The suggestion is not only inaccurate but also insulting because it implies that Mr Veliu's request for financial compensation in some way mitigated the delay in publishing an apology.

49. I am particularly impressed by the delay and the dismissive attitude (relevant to both Defendants) and also, to an extent, by the disingenuous nature of some of the first Defendant's contentions, both in correspondence and in his witness statement, as constituting aggravating factors. They will undoubtedly have caused frustration to the Claimant and prolonged his anxiety and distress.

50. For these reasons especially, and also in the light of the misleading nature of the published apology and its general lack of candour, I am inclined to set the discount at what turns out to be a somewhat lower percentage than in any previous case. There is nonetheless a need to allow a substantial discount because of the fact that the first Defendant did, in the end, utilise the offer of amends procedure. It would have been possible to achieve a substantially larger discount, even in relation to these grave allegations, if the Defendants had acted promptly and generously. In this respect there are similarities with the description of the defendant's conduct in *Campbell-James v Guardian Media Group plc*, cited above, at [7]-[8].

51. My own assessment of the appropriate discount here is one third. The result is that I assess the compensation under s.3 of the 1996 Act at £120,000.

52. I must now address my second task, which is to assess the damages pursuant to the judgment entered in default against the second Defendant. In this context, I must take into account the elements of aggravation representing the lowest common denominator; in other words, the conduct for which both Defendants can be legitimately held responsible. In this case, as I have already pointed out, there is very little of significance to distinguish between them. On the other side, I must also take into account, for what it is worth, the mitigation flowing from the published apology of 20 December 2005. Even though it was in grudging and misleading terms, it seems to me that there was at least an acknowledgment that the grave allegation of involvement in the London bombings was without foundation. Albeit late in the day, that would go some way to restoring the Claimant's reputation among the Albanian/Kosovan community in this jurisdiction and, to a limited extent, also assuage the Claimant's hurt feelings. Even if the second Defendant was not responsible for the publication of the apology directly, it represents in a sense a windfall from his point of view of which he is entitled to take advantage.

53. I have come to the conclusion that the overall compensation, for which the second Defendant is liable, and in respect of which the first Defendant is jointly and severally liable (subject to the statutory maximum), should be set at £175,000.