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Case No: HQ14D01146

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL
Date: 20/08/2014

Before :
MR JUSTICE WARBY

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Between :

TIM YEO MP	**Claimant**
- and -	
TIMES NEWSPAPERS LIMITED	**Defendant**

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- -

Matthew Nicklin QC and Victoria Jolliffe (instructed by **Carter-Ruck Solicitors**) for the **Claimant**
Gavin Millar QC (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**
Hearing date: 30 July 2014

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Judgment

Mr Justice Warby:

1. In this libel action the Claimant, Tim Yeo MP ("Mr Yeo"), sues the Defendant, Times Newspapers Ltd ("TNL"), in respect of articles on the front and inside pages of the issue of the *The Sunday Times* for Sunday 9 June 2013, a further article published in the issue for Sunday 23 June 2013, and online publication of those articles since the dates of print publication in June 2013.

2. The claim form was issued on 19 March 2014. On 2 May 2014 a Defence was served. As yet, no Reply has been served. That step has been deferred pending determination of the two main applications issued on 15 July 2014 which arise for determination at this, the first Case Management Conference in the action. The first of these is an application by TNL for an order that the case be tried with a Jury. That application is supported by a witness statement of Martin Ivens, editor of *The Sunday Times.* TNL's application is resisted by Mr Yeo who applies, in the event that trial by Jury is rejected, for the determination of what defamatory meanings were conveyed by the words of which he complains. The parties both propose that if I do determine meaning I should also determine the extent to which any defamatory meaning which I do find to be conveyed by the words complained of is a factual allegation or a comment or opinion. In addition to the principal applications, Mr Yeo applies for relief from sanctions in respect of a failure to serve a notice of funding.

An outline of the action

3. Mr Yeo has been the Member of Parliament for South Suffolk since 1983. He held office as Minister for the Environment in 1992-1994 and held a number of Shadow Cabinet positions between 1997 and 2005. He also took leading roles on Parliamentary Select Committees. These included chairing the Environmental Audit Committee from 2005 and, from 2010 and at the times relevant to this claim, being the Chairman of the House of Commons Energy and Climate Change Select Committee ("ECCSC"). As is well-known, TNL is one of the United Kingdom's major newspaper publishers, responsible for *The Times* and *Sunday Times* print and online editions. The *Sunday Times* has a circulation of over 800,000 and a readership of around 2.5 million. In addition to hard copy publication, *Sunday Times* content is made available via TNL websites and other media.

4. One long-standing feature of *The Sunday Times* is its "Insight" team of investigative journalists. On 21 May 2013 two members of the Insight team, Heidi Blake and Jonathan Calvert, met Mr Yeo over lunch by prior arrangement. The journalists were working undercover, posing as representatives for a solar technology developer in the Far East. The lunch had been arranged to discuss an opportunity for Mr Yeo to provide consultancy work with an extremely generous remuneration package. The lunch meeting was covertly filmed.

5. The first of the articles of 9 June 2013 ("the Front Page Article") was the paper's front page lead, continuing onto page 2. It was headed "Top Tory in new Lobbygate row" and there was a sub-headline: "MP coached client before committee grilling". The article, 27 paragraphs long, gave an account of the arrangements for the lunch meeting, and what took place at the meeting. It referred to a House of Commons Code of Conduct prohibiting paid advocacy by MPs, and described Mr Yeo as "the latest politician to be implicated in a 'Westminster for sale' scandal that has engulfed Parliament" after revelations in The Sunday Times the previous week. After referring to what had happened to other parliamentarians so "implicated" it described an email exchange between the "lobbyists" and Mr Yeo the day after the lunch meeting, and quoted a statement from Mr Yeo.

6. The second article of 9 June ("the Inside Article") appeared on pages 6 and 7 of the print edition. It was headed "I told him in advance what to say. Ha-ha" and had a sub-headline "The chairman of a Commons committee has boasted of how he can promote businesses in which he has an interest". Over 57 paragraphs it gave a more elaborate account of the matters covered in the Front Page Article, with some additional material. It included a graphic with the words "Westminster for Sale".

7. Mr Yeo's case is that the Front Page and Inside Articles, which it is agreed should be read together, contained a defamatory factual meaning to the effect that in breach of the rules of the House of Commons he was "prepared to act, and had offered himself as willing to act, as a paid Parliamentary advocate" in certain ways. This is what is known as a "Chase Level 1" meaning, that is to say a meaning that he is guilty of wrongdoing, as opposed to a meaning that there are reasonable grounds to suspect him of wrongdoing (Level 2) or reasonable grounds to investigate whether he has engaged in wrongdoing (Level 3): *Chase v News Group Newspapers* [2002] EWCA Civ 1772, [2003] EMLR 11.

8. TNL denies that the Front Page and Inside Articles were defamatory of Mr Yeo but in the alternative pleads defences of justification, fair comment and *Reynolds* privilege. (The appropriate label for the common law defence for comment was the subject of some debate: see *Joseph v Spiller* [2011] 1 AC 852, [117]. The defence is however pleaded by reference to its traditional name of fair comment and that is the name I shall adopt as it also helps distinguish it from the new statutory defence referred to below). The defence of justification is not directed at a meaning that Mr Yeo was prepared to or offered to act in breach of the rules of the House of Commons. It asserts the truth of meanings of lesser gravity, including but not limited to meanings that Mr Yeo's conduct at the lunch meeting "gave reasonable grounds to suspect (alternatively to investigate)" that he was willing to lobby in a way which would breach the House of Commons prohibition on paid advocacy. These are meanings at "Chase" Level 2 or alternatively 3. The meanings which TNL defends as fair comment include these same "Chase" Level 2 or 3 meanings.

9. The article of 23 June 2013 ("the 23 June Article") appeared over some 5 paragraphs on the front page and a further 21 on page 2 of the paper and was headed "Lobbyist 'wrote peer's speech'". It was not specifically concerned with Mr Yeo, and did not mention him by name. It contained, however, a paragraph referring to an investigation by the parliamentary authorities of "three lords and a select committee chairman … after The Sunday Times revealed that they were selling themselves as parliamentary advocates for paying clients". Mr Yeo's case is that those who had read the Front Page and Inside Articles will have understood the 23 June Article to refer to him. He says that it meant that "in breach of the rules of the House of Commons he was selling himself as a Parliamentary advocate for paying clients". This is put forward as a natural and ordinary meaning or alternatively one that arises in the context of or by way of true innuendo based on the Front Page and Inside Articles.

10. TNL does not admit that the 23 June Article was understood to refer to Mr Yeo and denies that the article defamed him, but in the alternative pleads defences of justification and *Reynolds* privilege. Again, the meanings defended as true are lesser meanings than the one of which Mr Yeo complains. They are at Chase Level 2 or alternatively 3. There is no plea of fair comment.

11. Additional issues arise from Mr Yeo's claims in respect of the online versions of the Front Page, Inside and 23 June Articles. The online versions require separate consideration when it comes to meaning because each of them incorporated additional wording. This included, in the case of the Front Page and Inside Articles, the text of a statement made by Mr Yeo in response to publication of the print version. Mr Yeo's case is that the online versions of the articles bore the same meanings as the print versions. TNL does not accept this. Moreover, the defences to the claim in respect of online publication on and after 1 January 2014 are different, because with effect from that date ss 2, 3 and 4 of the Defamation Act 2013 abolished the common law defences of justification, fair comment and *Reynolds* privilege and replaced them with statutory defences of truth, honest opinion and publication on matters of public interest. TNL relies on these in place of the corresponding common law defences relied on respect of earlier publication.

12. In support of its defences of justification/truth and fair comment/honest opinion TNL relies on the communications between the journalists and Mr Yeo in the run up to, at and after the lunch meeting, together with provisions of the Code of Conduct for Members of Parliament and a resolution of the House of Commons of 6 November 1995 as amended on 14 May 2002. In aggravation of damages Mr Yeo relies on "the failure of [TNL] to publish a fair and accurate report" of a report by the House of Commons Committee on Standards ("the Standards Report") dated 19 November 2013 which Mr Yeo says "exonerated [Mr Yeo] of any breach of the MPs' Code of Conduct." TNL does not admit that the report exonerated Mr Yeo, asserts that its ambit was narrow, and that its conclusions do not match nor can they affect the resolution of the issues in the action.

13. This brief and incomplete outline of the issues as they stand is enough to show that the action raises important and sensitive questions on political matters. They concern the conduct of a senior Member of Parliament, and his compliance with applicable standards. These questions arise in circumstances where some issues relating to that conduct have been examined by Parliament itself. Those features of the case must have some bearing on the decision I have to make about whether the trial should be by jury or by judge alone. No issue has so far arisen as to whether any of the issues in this case are, on account of their connection with Parliamentary proceedings, fit for adjudication by a court at all.

14. Mr Millar QC for TNL submits rightly that there is a human rights context to this case to which attention must be paid. On one side are the rights of TNL and its readers under Article 10(1) of the Convention to impart and receive information and ideas, which may only be interfered with to the extent necessary in a democratic society in pursuit of one of the legitimate aims recognised by Article 10(2). On the other side of the equation is the protection of reputation. Not only is this one of the legitimate aims identified in Article 10(2), it is also now recognised that an attack on reputation may engage Article 8(1) of the Convention, if serious enough in its effects on the enjoyment of private life: see, for instance, Axel *Springer v Germany* [2012] EMLR 15. Human rights are therefore engaged, and may be engaged on both sides. There is a need for a careful and sensitive assessment. The common law and relevant statutory provisions must be interpreted and applied in a way consistent with the appropriate balance between the competing rights.

15. An important aspect of this balancing process in this case, is the correct characterisation of the statements complained of as factual or as comment, opinion or value judgment. The common law has always been fiercely protective of comment and opinion. The Strasbourg jurisprudence has reminded us forcefully of the importance of freedom of political debate in a democratic society, and that it is a violation of the right to freedom of expression to require a person sued for defamation to prove the truth of a statement which, on a proper analysis, amounts to a value judgment and is therefore not susceptible of proof: *Lingens v Austria* (1986) 8 EHRR 407, [42], [46]. The most recent decision on this topic is *Axel Springer AG v Germany (No 2)* Application 48311/2010, Judgment of 10 July 2014. The Court, among other things, revisited its established case law concerning fact and value judgment and reiterated its jurisprudence to the effect that statements about the motives and intentions of a third party are to be categorised as value judgments rather than factual assertions lending themselves to proof: see [63].

Mode of trial

16. This issue falls to be decided under the law as recently amended by the Defamation Act 2013. The Act of 2013 made a fundamental change to the law relating to the mode of trial of actions for defamation by abolishing the long-standing right to jury trial. It did so by amending s 69 of the Senior Courts Act 1981. The significance of the amendment is controversial on this application and it is necessary to place it in its context by reviewing the law as it stood beforehand.

The pre-amendment law

17. For centuries, a party to a civil action for libel or slander had a right to trial by jury sometimes referred to as a "constitutional right": see *Rothermere v Times Newspapers Ltd* [1973] 1 WLR 448, 453, where Lord Denning gave an account of the history of the right. From 1933 to 2013 this right existed and was regulated by statute. Section 6 of The Administration of Justice (Miscellaneous Provisions) Act 1933 removed the right to trial by jury for most civil cases whilst retaining it for certain specific causes of action, including libel and slander. Section 6 provided so far as is material as follows:-

> "(1) Subject as hereinafter provided, if, on the application of any party to an action to be tried in the King's Bench Division of the High Court made not later than such time before the trial as may be limited by rules of court, the Court or a judge is satisfied that—
>
> (*a*) a charge of fraud against that party; or
>
> (*b*) a claim in respect of libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage,
>
> is in issue, the action shall be ordered to be tried with a jury unless the Court or judge is of opinion that the trial thereof requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury; but, save as aforesaid, any action to be tried in that Division may, in the discretion of the Court or a judge, be ordered to be tried either with or without a jury"

18. The effect of these provisions was that a party to any action which included a claim for libel or slander (or any of the other kinds of claim specified in s 6(1)) was entitled to an order for jury trial provided they applied within the prescribed time, unless one of the specified exceptions was found to apply. If one of the exceptions did apply there was a residual discretion to order jury trial.

19. These provisions were considered in *Rothermere*. Lord Rothermere and others sued TNL, the editor of *The Times*, and the journalist Bernard Levin over an article by Mr Levin headed "Profit and dishonour in Fleet Street". This attacked Lord Rothermere and colleagues for closing the Daily Sketch newspaper in an allegedly shameful and brutal manner for motives of profit. The newspaper pleaded justification and fair comment. In reply to the latter defence Lord Rothermere alleged malice. The Court of Appeal, reversing the Judge, decided by a majority that the trial should be by jury. Lord Denning MR and Lawton LJ both concluded that even if the case was one requiring prolonged examination of documents which could not conveniently be made with a jury the discretion in favour of jury trial should nevertheless be exercised. Cairns LJ dissented.

20. Lord Denning adopted as the test for whether a jury trial should be ordered a criterion identified by Sir Patrick Devlin in Trial by Jury (1956) p158: whether it was "specially important to one or other of the parties that he should have a judgment that fits the merits of his particular case." Lord Denning gave three main reasons why this was so in the case of the defendants. The first related to the defence of fair comment. It was the high constitutional importance of the right of a defendant charged with libel to a trial by jury. At 452G-H he said this:

> "It is one of the essential freedoms that the newspapers should be able to make fair comment on matters of public interest. So long as they get their facts correct, they are entitled to speak out. The editor of "The Times" sees this case as a challenge to this freedom. He asks that this challenge should be tried by a jury. He himself came before us. He reminded us of the right given by our constitution to a defendant who is charged with libel, either in criminal or in civil proceedings. Every defendant has a constitutional right to have his guilt or innocence determined by a jury. This right is of the highest importance, especially when the defendant has ventured to criticise the government of the day, or those who hold authority or power in the state."

21. Lord Denning then conducted the historical review of the constitutional right to which I have referred above saying this at 452H-453C:

"At one time there were those who would take away this right. There were judges who claimed that it was for them to declare whether a paper was a libel, or not. On the trial of the Seven Bishops in 1688 [*The Seven Bishops' Case (1688) 3 Mod.Rep. 212; 12 St.Tr. 183–524*], Wright C.J., who is described by Lord Campbell as "the lowest wretch that had ever appeared on the bench in England" (see The lives of the Chief Justices of England, (1849), volume II, p. 104) told the jury that the question whether the petition presented by the bishops was a libel was a question of law, and that in his opinion it was a libel [see p. 109 and *12 St.Tr. 183 , 426*]. Nearly one hundred years later — in 1784 — Lord Mansfield, one of the greatest ornaments of his day, repeated the error. He held on several occasions that the question of libel or no libel was for the judge. But his views were disputed by Willes J., who held that the jury have "a constitutional right, if they think fit, to examine the innocence or criminality of the paper…": see *Rex v. Shipley (1784) 4 Doug. K.B. 73, 171*. Eight years later, in 1792, the legislature, at the instance of Charles James Fox, adopted the view of Willes J. It gave every defendant on a libel charge the right to have his guilt or innocence determined by a jury: see the Act of 32 Geo. III, c. 60; and Lord Stanhope's celebrated broadside on the rights of juries in 1792 [see e.g., Dictionary of National Biography (1898), vol. 54, p. 3]. Fox's Libel Act 1792 was in terms confined to criminal proceedings, but it has been universally accepted that the same right applies to civil proceedings also."

22. Lord Denning's second main reason for ordering jury trial related to Mr Levin. At 453E-F Lord Denning said:

> "He says that he has often in the past criticised the judiciary, and that is one of the reasons why he would wish to be tried by a jury. If he means by this that he thinks the judges, or any one of them, would be prejudiced against him, he would be entirely wrong. Every single one of them would be most scrupulous to be fair to him. No judge whom he had criticised would dream of sitting on the case. But I would not let him have any disquiet on this score. One of the advantages of trial by jury — as proclaimed by Blackstone — is in case the judges should cease to be impartial: see his *Commentaries* , 8th ed. (1778), III, p. 380, IV, p. 349. So Mr. Levin too, asks for a jury here."

23. Summarising, Lord Denning said at 453F-G:

> "I find these reasons compelling. Looking back on our history, I hold that, if a newspaper has criticised in its columns the great and the powerful on a matter of large public interest — and is then charged with libel — then its guilt or innocence should be tried with a jury, if the newspaper asks for it, even though it requires the prolonged examination of documents."

24. The third main reason identified by Lord Denning for granting jury trial was the allegation of malice made against the defendants, which he likened to a charge of fraud. He held at 453H that "It is almost like a charge of fraud. Faced with such a charge, I think 'The Times' are entitled to ask that their guilt or innocence should be tried by a jury." The overall conclusion drawn by Lord Denning at 454A-B was

> "… In my opinion, the judge has failed to give sufficient weight to the national importance of the subject matter, to the gravity of the charges made against the defendants, and to their legitimate desire to have them tried by a jury."

25. Lawton LJ at 456F-G identified two questions for consideration, the first of which was the construction of s 6(1) of the 1933 Act. In this respect he, like Lord Denning, attached considerable importance to the fact that the right to trial by jury had become associated with constitutional rights and liberties, and he drew from that fact inferences as to the intention of Parliament in making libel and slander exceptions to the new rule of mere discretion. At 456G-H he said this:

> "Section 6 effected a great change in the way actions at common law were tried. The right which litigants had enjoyed for centuries of having their cases tried by a jury if they so wished was extinguished save in a few cases. The discretion of the court or judge was put in its place.
>
> Why did Parliament make special provision for cases in which there was a charge of fraud against a party or there was a claim in respect of libel, slander, malicious prosecution, false imprisonment and the now obsolete claims in respect of seduction or breach of promise of marriage? All these cases have a common characteristic, namely, that the trial is likely to end with the honour, integrity and reputation of either the plaintiff or the defendant being tarnished or even destroyed. Parliament must have thought that in common law claims in which issues of this kind arose it would be wrong to get rid of a mode of trial which had become identified in the minds of many with constitutional rights and liberties. In my judgment this factor must be considered whenever the court, on being satisfied that the trial will require prolonged examination of documents or accounts, comes to exercise its discretion."

26. Lawton LJ went on to identify a second facet of the "constitutional" character of trial by jury and Parliament's presumed intention in that regard, saying at 457C:

> "Another facet of the same factor is the importance to the public of the honour, integrity and reputation of the parties in a libel action. The wiping out of a litigant's reputation may be of no consequence to anybody save himself, his family and his friends, but the wiping out of another's, for example, a cabinet minister's, may have consequences for the whole nation. When the public is likely to be affected by the result of an action for defamation it may be advisable to bring the public into the administration of justice by ordering trial by jury, even though the trial may be long, the issues complex and the documentary evidence massive and formidable."

27. Unlike Lord Denning, Lawton LJ was unimpressed by Mr Levin's reservations about judicial impartiality in his case. He dismissed as of "no substance" this point, and the argument of the editor that the case would come to be seen as a guide through the thicket of defamation law as it affects newspapers. He also said at 458H:

> "The defendants have not satisfied me that a judge sitting alone could not deal adequately and fairly with issues involving their professional competence and integrity …."

28. Lawton LJ went on to deal with the second of the issues he had identified at the outset of his judgment, namely "how [the construction of s 6(1)] should be applied to this case". At 458H-459B he said:

> "There remains the question whether the issues in this case are likely to affect the public to such an extent that through a jury they should be involved. This factor does not seem to have been considered by Ackner J. Stripped of all the detail the charges come to this. The plaintiffs are alleged by the defendants to have put profits before people. If the facts upon which they have based this allegation are true, the court may have to decide whether the imputation of dishonour was one which the defendants could fairly make against the plaintiffs. Jobs for men or profits for shareholders is the Morton's fork of our times. I have no doubt that many judges would welcome the help of a jury on a problem of this kind. The opinions of 12 jurors may reflect the public's view more accurately than the assessment of any judge.
>
> The public, through the jury, would be concerned in yet another way. If the defendants lose this action and heavy damages are awarded against them, the newspaper scene in this country may never be the same again. The reputation which "The Times" has enjoyed for so long around the whole world for responsible journalism will be badly dented, if not destroyed. The destruction of its reputation would be the destruction of a national institution. In my judgment a trial which could have this result should not be the responsibility of one man."

29. The law as to mode of trial was amended by s 69 of the Senior Courts Act 1981, which until 1 January 2014 provided as follows:-

> "(1) Where, on the application of any party to an action to be tried in the Queen's Bench Division, the court is satisfied that there is in issue—
>
> a) a charge of fraud against that party; or
>
> b) a claim in respect of libel, slander, malicious prosecution or false imprisonment; or
>
> c) any question or issue of a kind prescribed for the purposes of this paragraph,

> the action shall be tried with a jury, unless the court is of opinion that the trial requires any prolonged examination of documents or accounts or any scientific or local investigation which cannot conveniently be made with a jury ...
>
> (2) An application under subsection (1) must be made not later than such time before the trial as may be prescribed.
>
> (3) An action to be tried in the Queen's Bench Division which does not by virtue of subsection (1) fall to be tried with a jury shall be tried without a jury unless the court in its discretion orders it to be tried with a jury."

30. The effect of these provisions was the same as those of s 6(1) of the 1933 Act, except that there was now a presumption against an order for trial by jury if the case fell outside s 69(1): *Goldsmith v Pressdram Ltd* [1988] 1 WLR 64, 68 *per* Lawton LJ. In *Goldsmith* the court considered *Rothermere* but declined to exercise the residual discretion in favour of jury trial.

31. The discretion was next considered in *Aitken v Preston* [1997] EMLR 415. Mr Aitken had been an MP since 1974 and a minister since 1992. He had been the subject of a number of defamatory allegations concerning his alleged involvement in the arms trade and connections with senior figures in Saudi Arabia, the underlying thrust of which was considered by the Court of Appeal to be a charge of unfitness for public office: see Lord Bingham CJ at 420. The defence was one of justification. The Judge held that the trial would require prolonged examination of documents and ordered trial without a jury. The defendants appealed.

32. At 421-2 Lord Bingham noted that the Judge below had observed correctly that the ultimate exercise of discretion will in each case depend substantially on the circumstances of each individual case, and it would be idle to attempt to enumerate all the factors which might arise. He said that four factors had, however, been identified in the earlier cases, which have some general application in relation to the discretion:-

> "(1) The emphasis now is against trial by juries, and this should be taken into account by the court when exercising its discretion (*Goldsmith v Pressdram* (supra)) …
>
> (2) An important consideration in favour of a jury arises where, as here, the case involves prominent figures in public life and questions of great national interest (*Rothermere v Times* (supra)).
>
> (3) The fact that the case involves issues of credibility, and that a party's honour and integrity are under attack is a factor which should properly be taken into account but is not an overriding factor in favour of trial by jury (*Goldsmith v. Pressdram* (supra) at page 71H per Lawton L.J).
>
> (4) The advantage of a reasoned judgment is a factor properly to be taken into account (Beta Construction v. Channel Four Television (supra))..."

The Court of Appeal dismissed the appeal, accepting that the trial would require prolonged examination of documents and, so far as the discretion was concerned, relying heavily on the desirability of a reasoned judgment on issues of the nature raised by that action.

33. In *Armstrong v Times Newspapers Ltd* [2006] 1 WLR 2462 at [15] the Court of Appeal observed that "the discretion is now very rarely exercised". According to the argument on this application and to the best of my knowledge the only case since *Rothermere* in which the court has exercised the discretion in favour of jury trial is *McPhilemy v Times Newspapers Ltd* (July 1999, Eady J). No transcript or report of that decision is available. I was told by Mr Nicklin QC however that the order for jury trial was granted in that case on the application of the claimant, who told the court that he did not trust a judge to give him a fair trial. If that is so, this would seem to have some similarities with the response of Lord Denning but not Lawton LJ to the application of Mr Levin in *Rothermere*.

34. Since *Armstrong* the discretion has been considered in a number of defamation cases. Those cited or referred to on this application were *Fiddes v Channel Four Television Corporation* [2010] 1 WLR 2245 (CA), *Cook v Telegraph Media Group* [2011] EWHC 763 (QB) and *Lewis v Commissioner of Police of the Metropolis* [2012] EWHC 1391 (QB). Others are cited in a passage in *Gatley* 12th ed para 31.64 n 288, to which Mr Nicklin QC referred. In none of these cases was the discretion exercised in favour of jury trial.

35. In most of these decisions the discretion was considered in circumstances where the reason it arose was not that the court had held that the case required prolonged examination of documents or otherwise fell within the exceptions in s 69(1), but that there had been no timely application for an order for jury trial as required by s 69(2). The importance of this point was first identified by Tugendhat J in *Cook* where he referred to CPR 1.1 and 3.1 and held at [83] that:

> "The implication is that, once the 28 days provided for in CPR 26.11 have expired, it is for the court to decide the mode of trial, and the court must do so starting with the predisposition in favour of a trial without a jury. And this is so whatever the parties may have agreed or may wish. The wishes of the parties are of course a factor. But the court should not abstain from addressing its mind to all the relevant factors, including in particular those of case management, simply because the parties agree between themselves."

36. Tugendhat J went on to identify and analyse the principles, other than the overriding objective, that should guide the exercise of the discretion under these circumstances. At [89]-[89] he cited the four *Aitken* principles, noting that they had been reiterated in *Fiddes*. He focused on principle (2), pointing out at [91] that Lord Bingham's words are not in a statute and must not be construed as if they were.[1] They derived from *Rothermere* and to identify their true ratio it was necessary to analyse the decision in that case. That is the exercise undertaken by Tugendhat J at *Cook* [89]-[109].

37. One main conclusion of a closely-reasoned analysis was that the crucial distinction underlying Lord Denning's reason for favouring jury trial "when the Defendant has ventured to criticise the government of the day, or those who hold authority or power in the state" was that the state was a party. The cases cited by Lord Denning at 452H-453B were criminal cases and Fox's Libel Act of 1792 had served to put right an anomaly whereby juries in criminal libel cases were deprived of the right they enjoyed in civil cases to decide the meaning of the words complained of. Thus, concluded Tugendhat J at [100], "the crucial distinction is … between cases in which the state is opposed to the individual on the one hand and, on the other hand, cases in which individuals or other non-state parties are opposed to one another." See also [103].

[1] The judgment refers to *Rothermere* but the reference is clearly meant to be to *Aitken.*

38. A second main conclusion was that the perceived importance of jury trial in cases involving "prominent figures in public life" (see *Aitken* principle (2)) derived from a concern identified by Blackstone in the passage cited by Lord Denning in *Rothermere* at 453F: the risk that a judge, "selected by the prince or such as enjoy the highest office in the state" may have an "involuntary bias towards those of their own rank and dignity": see *Cook* [101]-[102]. Tugendhat J went on to provide reasons why this was unlikely to be a significant factor in many cases in modern conditions. Those reasons included the independent appointment procedures for judges, appeal rights and other guarantees of judicial impartiality.

39. In *Cook* the claimant was a former MP and the case concerned the expenses scandal. The Judge held that neither party was the state or a public authority, there was nothing in the case which could lead to an appearance of bias, however involuntary, on the part of a judge sitting alone, and that all the relevant factors tended to favour trial by judge alone.

40. The discretion to order jury trial under s 6(1) of the 1933 Act and s 69(3) of the Act of 1981 also applied, and still applies, to causes of action other than libel and slander. However, to the best of my knowledge an order for jury trial of a claim in any cause of action other than those listed in s 69(1) has been unheard of for many decades. Two cases where the issue arose are referred to in *Lewis.* In *H v Ministry of Defence* [1991] QB 103 the Court of Appeal held that it was not appropriate to order jury trial of a personal injury claim by a serviceman in which the defendant was accused of negligence. In *Racz v Home Office* [1994] 2 AC 245 the Supreme Court upheld decisions of the judge and Court of Appeal not to order trial by jury of claims, including claims for aggravated and exemplary damages, for assault, battery and misfeasance in respect of injuries allegedly suffered by the claimant at the hands of prison officers.

The abolition of the right to jury trial

41. It was against this background that Parliament enacted s 11 of the Defamation Act 2013, which provides as follows:

> **"Trial to be without a jury unless the court orders otherwise**
>
> (1) In section 69(1) of the Senior Courts Act 1981 (certain actions in the Queen's Bench Division to be tried with a jury unless the trial requires prolonged examination of documents etc) in paragraph (b) omit "libel, slander,"

42. This straightforward amendment, which applies to actions commenced on or after 1 January 2014, removes libel and slander from the list of what Mr Nicklin QC on behalf of Mr Yeo called the "special" causes of action in s 69(1). The starting point for actions which include libel or slander claims is reversed. No longer is there a right to jury trial, subject to a timely application and exceptions with a residual discretion. Instead such actions are subject to the general rule contained in s 69(3) that an action "shall be tried without a jury unless the court in its discretion orders it to be tried with a jury". The CPR were also amended with effect from 1 January 2014 so that CPR 26.11(2) now provides:

> "A claim for libel or slander must be tried by Judge alone, unless at the first case management conference a party applies for trial with a jury and the court makes an order to that effect."

The effect of the amendment

43. Mr Millar QC accepts that "jury trial in libel will be the exception rather than the rule under the new statutory regime". However, he submits that the fact that Parliament retained the "bare discretion" in s 69(3) without adding any statutory guidance "suggests that the sorts of considerations discussed in the pre-amendment case law should continue to apply." His argument as to the exercise of the discretion in this case relies heavily on the judgments of Lord Denning and Lawton LJ in *Rothermere* and on *Aitken* principle (2). Mr Nicklin QC submits, by contrast, that the effect of the statutory amendment is that the court should no longer look to the guidance to be found in the earlier defamation authorities, as these were all decided against the backdrop of a constitutional right which has now been abolished.

44. There is some force in Mr Millar QC's argument. Parliament could have legislated expressly to control, limit or direct the exercise of the discretion under s 69(3) but did not do so. This is in contrast to the approach taken elsewhere in the 2013 Act which, as mentioned above, expressly abolished the common law defences of justification, fair comment and *Reynolds* privilege. But if the court is to apply the same considerations as those identified before the amendment then the authorities of particular relevance to this case include not only *Rothermere* and *Aitken* but also *Cook.* And if Tugendhat J's analysis of *Rothermere* and *Aitken* is correct, as I believe it is, then the criteria that continue to apply in this regard would be the two identified by Tugendhat J in his analysis of the underlying ratio of *Rothermere* and *Aitken* principle (2).

45. In my view, however, the amendment to s 69(1) must be treated as affecting the considerations to be taken into account by the court to this important extent: a principle identified in the pre-amendment authorities cannot hold sway after the amendment to the extent that it rests on the existence of a constitutional right to trial by jury, or a presumption in favour of such a mode of trial. And that is the case in relation to a substantial part of the reasoning in *Rothermere* on which in turn *Aitken* principle (2) is based, as appears from the passages set out above.

46. The reasoning of Lord Denning at 452G-453C and at 453G all relies heavily on the existence of a "constitutional right … of the highest importance" to a trial by jury in defamation cases. The summary at 454B refers back to that same reasoning. Behind this in Lord Denning's view lay the dangers posed by judges to freedom of speech as shown by the criminal defamation cases of the 17th and 18th centuries which led to Fox's Libel Act of 1792. The approach of Lawton LJ to the interpretation of s 6(1) at 456G-457C also depends heavily on the existence of a right identified by many with constitutional rights and liberties and the reasons why, he inferred, Parliament had spared defamation cases from the general removal of the right to jury trial. This approach cannot survive the unequivocal expression of Parliament's intention to remove any right to trial by jury in defamation cases, leaving only a discretion to be exercised by a judge, with a presumption against jury trial.

47. Many legal actions involve prominent figures or issues of considerable public and national interest or both and many of these are brought in the Queen's Bench Division so that the discretion under s 69(3) of the 1981 Act is available in respect of them. As noted above it appears that an order for jury trial is unknown in such cases. Parliament has now chosen to accord defamation cases the same status, so far as jury trial is concerned, as these other kinds of claim. I conclude that the statutory amendment means that much of the reasoning in *Rothermere* has lost its force, as has that part of *Aitken* principle that derives from the passages just mentioned. Parliament no longer regards jury trial as a right of "the highest importance" in defamation cases. It is no longer a right at all.

48. The government itself cannot now sue in defamation: *Derbyshire CC v Times Newspapers Ltd* [1993] AC 354. Even if the claimant is a person who "holds power or authority in the state" that now gives neither the claimant nor the defendant any special claim on jury trial. The fact that the case involves "questions of great national interest" no longer constitutes an "important consideration" in favour of a jury. All these factors, if present, will be relevant but will now be of no greater intrinsic weight in a defamation case than they would be in any other class of case that enjoys no right to trial by jury. As to the importance of jury trial in a case which concerns "a prominent figure in national life", Tugendhat J's analysis of *Rothermere* identifies the true criterion. This is whether, despite all the modern safeguards of judicial impartiality, there are in the particular case such grounds for concern that judge might show involuntary bias towards one or other of the parties on grounds of their status or rank that "a judge might not appear to be as impartial as a jury": *Cook* [108]. Such cases will be rare.

Approach to the discretion

49. Mr Millar QC submits that in deciding the issue as to mode of trial the court should not only hear argument on meaning, as I have, but also allow "the thinking of the court on meaning", and in particular on whether this is a case about factual allegations or value judgments, to inform the decision about whether to grant TNL a jury trial. I do not believe that is appropriate. A party seeking an order for jury trial is inviting the court to allocate all the factual issues in the case for decision by that tribunal. It would be inconsistent to invite a judge to decide, or half-decide, some of those issues as a step on the way to ruling whether they should be decided by a different tribunal. I therefore approach the application on the assumption that a trial by jury would involve all the issues of fact that arise on the present statements of case.

Subject-matter and the parties' roles

50. Mr Millar QC puts at the forefront of his argument in favour of jury trial the subject matter of the action, the identity and status of Mr Yeo, and the offices or positions he holds. Mr Ivens' statement points out the importance of elected members of Parliament abiding by democratic principles and ensuring transparency. He highlights the significance of the topic of Parliamentary standards, including lobbying. It is unnecessary for me to detail further the points he makes as Mr Millar is fully entitled to submit that there is a strong public interest in the general subject-matter of the articles in issue in this case, that is to say the standards of conduct which are or should be followed by Members of Parliament, and in the specific subject-matter, namely the conduct of Mr Yeo as an MP. Mr Ivens catalogues in detail Mr Yeo's various parliamentary roles which I have summarised above, together with his interests in green energy companies and various prominent positions in public companies including Groupe Eurotunnel SA, the parent company of Eurotunnel plc. None of this is disputed. Nor is there any challenge to Mr Millar's submissions that the position of Chair of a Select Committee is a powerful one.

51. The question is however whether and if so why and to what extent those strong public interests and the prominent status and powerful position of Mr Yeo provide support for an order for trial by jury as opposed to the preferred mode of trial without a jury, in this case. For the reasons given above, I do not believe that these factors are now to be regarded as inherently important factors in favour of trial by jury. In order to displace the presumption of non-jury trial it is necessary not only to identify specific considerations of this kind that arise in the particular case but also to examine whether these make jury trial more appropriate in that case than trial without a jury.

52. In his statement, under the heading "Why the Sunday Times seeks a jury", Mr Ivens suggests that "members of the public are best placed to decide whether publication was legitimate given [Mr Yeo's] role in public life and the role of the press in holding those in public life to account." This seems to overlook that some of the important issues in this action are matters allocated to the judge to decide in any event. I refer to the *Reynolds* and s 4 defences. Mr Ivens does not explain why it is that the respective roles of Mr Yeo and TNL mean that a jury is better placed than a judge to reach conclusions on the other issues raised by the action. To my mind those roles, both of which are undoubtedly important in public life, can at least equally well be said to make it more appropriate to have a trial by a judge with detailed reasons given for the court's conclusions, a point to which I shall return.

53. Mr Millar QC's submissions do not identify any skills, knowledge, aptitudes or other attributes likely to be possessed by a jury which would make it better equipped than a judge to grapple with the issues that arise and may need to be tried. He does suggest that the verdict or judgment in this case could have consequences so profound for public life that it would be appropriate to involve a jury. In this regard he relies on the words of Lawton LJ in *Rothermere* as to the consequences of "wiping out … a cabinet minister's [reputation]" and the desirability of bringing in the public in such a case. Those remarks were linked to Lawton LJ's views on the importance of and reasons for the right to jury trial that then existed. In any event, these points strike me as arguments that tend to favour trial by judge alone, with the reasoned judgment that only such a mode of trial would bring. There are real risks of a jury verdict being unclear or misunderstood or both.

54. These same points apply to Mr Millar QC's submission that there should be a jury decision in this case because the court at trial would have to decide the extent to which Mr Yeo's conduct at the lunch matched up to the principles of selflessness and integrity identified by the Committee on Standards in Public Life in its First Report (otherwise known as the Nolan principles). If that is so – and TNL's pleading does include reliance on those principles – I can see how a judge might be tempted to allocate the responsibility of deciding the issue to a jury. But the issue is but one of a number raised by the pleaded Defence. It is surely one that deserves a clear and reasoned answer. An inscrutable jury verdict, open to interpretations, would not be desirable.

55. Mr Millar QC also submits that a relevant factor here is the identity of TNL as the defendant. It is a publisher with a long history of serious public interest journalism which has undertaken a series of investigations into "cash for questions", the lobbying of peers and other issues. Mr Ivens' statement set out detail in support of these submissions. All of this too is unchallenged and I accept it. The central proposition as to why these factors made jury trial more appropriate is however that TNL seeks vindication of its journalism for which purpose "it may need a determination of whether value judgments that it made about [Mr Yeo] were fair and in good faith…" Mr Millar QC continues that "for the reasons given by Lord Denning in *Rothermere* there would be a particularly strong case for a jury to decide these issues." This is a reference to Lord Denning's view that the charge of malice in that case merited jury trial as it was akin to fraud.

56. That reasoning was not part of the ratio of *Rothermere*; Lawton LJ viewed the significance of the malice charge differently. Both sets of reasons were based on or heavily influenced by the existence of a right to jury trial. In recent years judges have on several occasions decided issues of malice in defamation actions against journalists and newspapers. Issues of responsibility now arise often in Reynolds defences, decisions on which are made by judges, and can encompass issues close to malice. But it is not necessary further to evaluate the weight to be given in contemporary conditions to Lord Denning's views of 40 years ago, as so far there is no issue raised as to TNL's good faith nor is there a threat to plead malice. In the absence of a plea of malice decisions as to the "fairness" of any value judgments made by TNL are made objectively, the test being a generous one allowing very considerable latitude to the commentator. Mr Millar QC's arguments do not seem to me to offer persuasive reasons in favour of a jury rather than a judge.

Enhanced impartiality

57. Mr Millar QC further submits that judges like Select Committee Chairs are powerful figures in public life such that although there is no suggestion of bias on that account "sometimes justice has to be seen to be done in a particular way". He submits that "if the decision takers are members of the public the decision in the case, whichever way it goes, will be free of any suspicion of bias of this sort." This is a version of the point that appealed to Lord Denning in respect of Mr Levin and it survives the statutory amendment with undiminished force. As I have indicated, however, it will be a rare case in which this consideration has real weight. Mr Yeo has a prominent position but it does not afford any grounds for giving this factor any substantial weight here. As Lord Bingham pointed out in *Aitken* at 427, where issues are controversial there are risks of adverse perception going both ways:

> "Those convinced that the charges made against the plaintiff were true might be tempted to criticise a judicial decision in the plaintiff's favour as a whitewash. Similarly, those convinced that the charges against the plaintiff were false might criticise the jury's verdict as a lottery or the product of incomprehension (a not unfamiliar complaint when a jury returns a surprising or unpopular verdict)."

58. I turn to factors which in my judgment not only tend to support the statutory presumption but point strongly in favour of an order for trial without a jury in this case. There are three: the advantage of a reasoned judgment; proportionality; and case management. The last of these includes the prospect of early rulings on meaning, fact and comment and some points of concern arising from the interplay of the various defences.

A reasoned judgment

59. The advantage of a reasoned judgment was identified as a factor of general application in *Aitken*: see principle (4). This point, unaffected by the statutory amendment to s 69, appears to me to be significant here in relation to each of the issues of meaning, justification and fair comment (and the statutory counterparts of those defences, which I shall not mention on every occasion I refer to them). In upholding the order for trial by judge alone in *Aitken* the Court of Appeal attached considerable weight to the desirability of a clear and reasoned outcome. Lord Bingham said at 427:

> "Furthermore, it seems to me important in the public interest and in the interest of each of the parties that the case should culminate in findings, for or against the plaintiff, on each of the main issues in controversy. A general verdict of a jury could well leave room for doubt and continuing debate whether, on hotly contested issues, the plaintiff or the defendants have been vindicated. A reasoned judgment, giving the judge's conclusions and his detailed reasons for reaching them, would by contrast settle, one would hope once and for all, whether or not the plaintiff had misconducted himself in each and every one of the ways charged."

60. These observations related to the case at hand. They may not apply to all defamation cases. It is possible to envisage a simple libel action concerning a single factual allegation in which meaning is not in dispute and the sole issue is truth. In such a case the meaning of a general jury verdict for or against the claimant would, when considered in conjunction with the judge's directions, be clear enough. Such actions are rare in practice, however. In a case involving disputes as to meaning and alternative defences of justification and fair comment a general jury verdict would be open to a variety of interpretations. A general verdict based on a conclusion as to meaning or a finding of fair comment could be misinterpreted as one based on a finding of truth, or vice versa.

61. This is unsatisfactory in all cases and from all reasonable perspectives but the greater the public interest in the subject-matter of a particular dispute the more unsatisfactory this will be from the perspective of the public. Where, as in *Aitken* and the present case, the subject-matter is political it is especially desirable that the court's judgment explains what conclusions it has reached and why. In *Lewis* Tugendhat J held at [29(iii)] that the "significant national interest" in that case, which concerned the phone hacking scandal, made it "all the more important that there should be a reasoned judgment". In my view the same is true in this case.

62. Mr Millar QC submits that this case is simple enough for the court's reasoning to be apparent from a combination of the summing up (which might include a written "route to verdict") and the jury's answers to questions put to them for determination. Such special verdicts have been sought and obtained from time to time in defamation cases. They are capable of eliciting clear reasons in more straightforward cases and on occasion in more complex ones. However, not all the questions that arise for determination in a multi-issue libel action admit of a yes or no answer and juries are not generally expected to provide narrative verdicts. In this case a jury would be entitled to conclude that the Front Page and Inside Articles bear a defamatory factual meaning representing part but not all of the meaning complained of by Mr Yeo, or a meaning similar to but less serious than that, or that they convey defamatory comment to part but not all of the effect defended by TNL. A jury could find these articles included a mixture of defamatory factual meanings and defamatory comment.

63. In these circumstances I cannot envisage a set of questions that could be asked of a jury in this case, which could be confidently predicted to yield a clear statement of the reasons for their verdicts. If I am wrong and such a set of questions could be devised it would doubtless be a complex one, of the kind which practitioners (echoing Lord Denning MR in *Rothermere* at 454D) have tended to call an 'examination paper'. It would need to be accompanied by detailed directions, written or oral or both, on the approach to be taken to each question. It is generally undesirable to set a jury such a task, with the accompanying risk of confusion and error; and the outcome would still fall well short of providing the explanatory detail afforded by a reasoned judgment.

64. If the content of the relevant legal rules is complex or debatable this can also favour the reasoned judgment that comes with a trial without a jury, as explained by Tugendhat J in *Cook* at [111]:

> "The disadvantages of trial with a jury in cases where the law is complicated were noted as long ago as *Richards v Naum* [1967] 1 QB 620, 626 and 627. These disadvantages have increased in recent years with the increasing development and complexity of the law of defamation. This is in part due to the continuing need to develop the law to bring it into harmony with the European Convention on Human Rights. This has led to such major developments as the *Reynolds* defence, and the new understanding of malice for honest comment in *Cheng* (an improper purpose no longer counts as malice in honest comment). Where there is uncertainty as to the law, as there so often is today, a judge can formulate his reasons on alternative bases, and the Court of Appeal can substitute one disposal for another, according to the correct view of the law. It is less likely to be necessary to order a retrial, as may be inevitable if a jury has been misdirected as to the law."

65. These points have resonance in the present case given the human rights context referred to above and the need for care in assessing whether statements are fact or comment in the light of the Strasbourg jurisprudence. These suggest that a reasoned judgment is preferable to a jury verdict or verdicts based on directions which, if held wrong on appeal, could be corrected only by a re-trial. The fact that this case involves the new statutory defences under the 2013 Act is a further factor in favour of a reasoned judgment.

Proportionality

66. This is not a factor mentioned in *Aitken*, which was decided before the Civil Procedure Rules were introduced. It is however a factor highlighted by the Court of Appeal in *Armstrong* at [15] and [19], when explaining why the rarity of orders for jury trial under s 69(3) reflected contemporary practice:

> "Contemporary practice has an eye, among other things, to proportionality; the greater predictability of the decision of a professional judge; and the fact that a judge gives reasons…
>
> The overriding objective in rule 1.1 and rule 3.1(2)(m) are there for general case management purposes."

67. Trial by jury invariably takes longer and is more expensive than a trial without a jury, not least because there is no scope for the pre-reading that is standard for trial by judge alone, and the evidence in chief will be led orally. There is more to it than that however. There are real risks of extra time and costs resulting from applications and appeals that would not be made, because they would not be relevant or necessary, if trial were to be by judge alone. As Tugendhat J pointed out in *Cook*:

> "114. … Trials by jury in libel cases now commonly involve the arguing of the same point at least twice and sometimes several times over. It is often not one trial by a judge with a jury, but one trial by a judge followed by another trial by a jury. Each party commonly seeks a ruling from the judge on as many issues as possible to the effect that the opponent's case on that issue should be withdrawn from the jury. That is what is happening in this application that is now before me. If that application is unsuccessful (as this application has been in part), and there is a trial by jury, very similar arguments are redeployed before the jury. All too often there is a third or subsequent set to this match, when the same point is argued before the Court of Appeal, or even the Supreme Court as happened in *Spiller*. That is a real risk in the present case, where Mr Price wishes to argue the applicability of *Reynolds* to comments. There is not uncommonly a further set in the form of a retrial. There have been a worrying number of retrials in recent years where juries have been unable to agree. That is not a risk where trial is by judge alone.

> 115. This multiplicity of opportunities to argue the same point is one of the major reasons why the costs of libel actions have become so disproportionate as to risk condemnation as an interference with freedom of expression and the right of access to the court (see *MGN v UK* [2008] ECHR 1255). In these circumstances the effect of the Human Rights Act 1998 is to require judges and Parliament to continue to develop the law to make it Convention compliant. Trial with a jury makes such development more difficult."

68. Whether or not the risk of multiple opportunities to argue the same point would mature into reality in this case, there can be no doubt that a trial would be significantly longer and more costly with a jury than without. TNL is evidently prepared to accept such additional cost. Mr Yeo has a funding arrangement, as indicated above. It does not necessarily follow that he is indifferent to cost however. Even in a case where both parties can view the extra cost and time involved in jury trial with equanimity it would not follow that the court should be unconcerned. The overriding objective includes the need to allot to a given case only "an appropriate share of the court's resources while taking into account the need to allot resources to other cases": CPR 1.1(2)(e). There may be cases in which the argument in favour of jury trial is strong enough to justify the additional time and cost involved. As Mr Millar QC pointed out, proportionality is not just a cost assessment it involves evaluation. But the extra time and cost require justification.

Case management

69. The case management advantages of an order for judge alone trial go beyond those identified above. As pointed out in *Cook*, it may be possible to avoid or limit the need to try some issues. At [112] Tugendhat J said this:

> "112. There are very great case management advantages in trial by judge alone. Issues can be tried in a convenient order, for example in particular, the judge can rule on meaning in advance of a trial, and before much of the costs associated with a full trial have been incurred. If the judge rules on meaning shortly after the service of a defence, then there may be very large savings in costs indeed. If, as is commonly the case, and is the case here, the defence of justification or honest comment is to a meaning which is less serious than the meaning contended for by the Claimant, then if the judge upholds the Claimant's meaning, there may then be seen to be no defence at all. Correspondingly, if the judge were to uphold the Telegraph's meaning, then it may be argued that the Claimant has no real prospect of defeating the defence.

70. Early rulings on meaning are likely in general to give effect to the overriding objective in various ways including in particular by "saving expense" (CPR 1.1(2)(b))and "ensuring that [the case] is dealt with expeditiously" (CPR 1.1(2)(d)). Early determination of meaning, including whether it is factual or comment, is a way in which the court is likely to meet the requirements of CPR 1.1(4) that the court should further the overriding objective by "identifying the issues at an early stage" (CPR 1.4(b)) and "deciding promptly which issues need full investigation and trial and accordingly disposing summarily of the others" (CPR 1.4(c)).

71. Where there is to be a trial by jury the court is largely if not completely disabled from exercising its powers in these ways. The parties are entitled to complain of and defend any meaning which a reasonable jury properly directed could find the words complained of to bear. By definition, this may not be the true meaning of the words. One consequence is that a claimant may pursue up to verdict a claim in respect of a defamatory imputation which is not in fact borne by the words complained of. A defendant may expend considerable resources unnecessarily and wastefully, seekingto prove the truth of such an imputation. Equally, a defendant may advance a defence of justification in respect of a meaning less grave than the true meaning of those words, the truth of which if proved could therefore not afford a defence. Further problems arise if the case involves a defence of fair comment and a dispute over whether the words are fact or comment or both. Where trial is to be by jury these issues will, if arguable, remain open until verdict. A libel trial with a jury may thus be largely concerned with irrelevant evidence and argument, and evidence which may also be wholly or at least partly irrelevant or excessive for the purposes of assessing damages. These drawbacks of an order for trial by jury risk involving a disproportionate interference with Convention rights under articles 8 and 10.

72. The summary of the issues in the present case set out above shows that resolution of the issues relating to meaning, fact and comment could be critical to the outcome of the action as a whole, or at least affect in important ways the shape of the case and the issues that need to be tried. If, for instance, it was held that the words complained of do not consist of or contain any defamatory comment, opinion or value judgment but convey only Chase Level 1 factual defamatory meanings as alleged by Mr Yeo it would seem that the only remaining issue as to liability would be the validity of the *Reynolds* defences. It would seem unnecessary to try any issue of justification/truth, fair comment/honest opinion.

73. If on the other hand TNL are right to submit, as they do, that the Front Page and Inside Articles conveyed no defamatory factual meaning at all but only comment, opinion or value judgment then the need to justify or prove the truth of those articles would fall away. As the statements of case stand, the dispute in relation to those articles would then be likely to focus on whether there was objectively a sufficient factual foundation for the comment, opinion or value judgment; that is to say, whether an honest person could have formed that opinion. It might in that event be argued that Mr Yeo has no answer to the comment/opinion defences in respect of those articles. There are various permutations in between these extremes. A publication may of course include both defamatory factual meanings and defamatory comment: *British Chiropractic Association v Singh* [2011] 1 WLR 133, [16] per Lord Judge CJ.

74. A further advantage of trying issues of meaning as preliminary issues is that the exercise can be carried out in isolation from other issues, without the distraction that could flow from awareness of evidence relevant only to those other issues. This is a point made by Gray J in *Charman v Orion Group Ltd* [2005] EWHC 2187 (QB) at [2], when he observed that trying meaning as a preliminary issue means that "the argument on meaning will be determined as it should be, without the mind of the tribunal being clouded by evidence bearing on the issue of justification, which is of course irrelevant so far as the meaning of the words is concerned." In the present case the bundle for the hearing before me includes two items which would probably be before a jury at trial but are irrelevant to meaning: a transcript of the edited sequence of events from the covert filming and a copy of the Standards Report. These could be relevant to one or more of the issues but not to the meaning of the published articles. Bearing that in mind I have avoided reading either of these documents.

75. The case management arguments in favour of non-jury trial have been reinforced by the amendment made to the definition of the overriding objective in 2013 when the words "and at proportionate cost" were added.

The Reynolds/public interest defences

76. I have so far focused on the issues of meaning, justification and fair comment, leaving to one side the public interest defences under *Reynolds* and s 4 of the 2013 Act. These defences raise different considerations. The desirability of a reasoned decisionposes no difficulties here. Such a defence will always be the subject of a reasoned decision by a judge. If there is a jury it may be required to return special verdicts on specific issues of fact but it will not return a verdict on whether the defence is made out. *Reynolds* defences can however pose case management challenges if there is a jury.

77. The distinction between the roles of judge and jury in these cases is not always an easy one, and in *Jameel (Mohammed) v Wall Street Journal* [2005] QB 904, [70] the Court of Appeal suggested that this casts doubt on whether jury trial is appropriate in *Reynolds* cases. Here, the fact that the *Reynolds* defence is run in tandem with defences of justification and fair comment seems to me to risk undesirable complexities.

78. For example, whilst s 4(5) of the 2013 Act makes clear that the defence under that section "may be relied on irrespective of whether the statement complained of is a statement of fact or a statement of opinion" the question of whether *Reynolds* is available as a defence to comment seems to remain open: *Singh* [31], *Cook* [69]. The interplay between the two defences at common law and under the Act would need attention and seems rife with the potential for complications. In addition, if there is an order for jury trial the court's freedom as to the order in which issues are tried and their timing would be limited, for practical reasons, for as long as any factual issue arose or might arise that was relevant to the *Reynolds* s 4 defences.

Conclusion

79. For the reasons I have given I decline to exercise the discretion to order jury trial. The factors supporting the statutory presumption in favour of an order for trial by judge alone are powerful and are not outweighed by those relied on as supporting jury trial, which are unpersuasive. I would have reached the same conclusion if approaching the case on the basis of the analysis in *Cook.* Neither party is a public authority. Mr Yeo, whilst holding an influential position, is not in government and exercises no state power. I have already held that there is no risk of "involuntary bias towards those of their own rank and dignity" such as referred to by Blackstone in the passage relied on by Lord Denning. An order for trial without a jury is more proportionate, there are major potential case management advantages, and the significance of the issues raised means in any event that a reasoned judgment is important.

80. Mr Millar QC points out that Parliament envisaged that the discretion to order jury trial might be exercised in some cases and suggests that if it is not exercised in this case it is difficult to see when it might be exercised. One answer is that there may be cases in which it would be desirable to introduce a jury to avoid any perception of "involuntary bias". This is not the time to attempt any definition of when that might be. An instance could however be a libel claim brought by a judge, of which there have been examples in recent history though none that have reached trial. There could be other cases not involving "rank or dignity" but subject matter.

Meaning

The issues and the approach to be adopted

81. Mr Yeo's application was for an order that "the question of meaning in this libel action be determined by a judge as a preliminary issue and the court go on to determine it at the hearing." The matter comes before me on the basis of an agreement, endorsed by the Master, that the first case management conference be released to a judge for the purpose of determining TNL's application for an order for trial by jury and "an application by the Claimant for a determination of the actual meaning of the articles and a ruling on whether the words complained of are fact or comment".

82. Where the court is ruling on what meanings words are *capable* of bearing it may rule on whether they are capable of bearing "any meaning attributed to them in a statement of case" or "any other meaning defamatory of the claimant": CPR 53PD paras 4.1(1) and (3). I take the right approach to be similar when as here a judge is adjudicating at an early stage on what meanings the words complained of actually bear. The judge is not confined to the precise meanings advanced by the parties or to the wording of those meanings set out in the respective statements of case. The judge may find the words to bear some different meaning or meanings. But the judge should not normally make a finding of any meaning which is not either advanced to some extent in the statement of case or submissions of one or other party, or within the same class or range as a meaning so advanced.

83. As to fact or comment, the Court of Appeal has held that "If the judge is going to make a definitive determination of meaning, he should normally deal with comment at the same time": *Cammish v Hughes* [2013] EMLR 13, [43]. I agree that it is right to do so in this case.

Principles

84. The starting point is that in a libel action where meaning is disputed the court must settle on a single meaning ("the single meaning rule"). Defamation law ignores the fact that different people may take different meanings from the same set of words. It treats a given set of words as having only one meaning. The court must identify this meaning, which may be inferential or implied, by considering the words used and identifying what the hypothetical reasonable reader would have understood them to mean. See *Slim v Daily Telegraph* [1968] 2 QB 157, 172 *per* Diplock LJ, *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, 72.

85. This does not mean that a newspaper article or broadcast can only ever convey a single defamatory charge. More than one charge can be contained in a single publication. As already noted, there may be both a defamatory factual meaning and a defamatory comment. The single meaning rule is that the same words cannot be treated as conveying two or more charges which are different from and inconsistent with one another such as, for instance, both a meaning that the claimant is guilty and that he is reasonably suspected of some particular wrongdoing.

86. The correct approach for a judge to take to the determination of defamatory meaning was described by Sir Anthony Clarke MR in *Jeynes v News Magazines Limited* [2008] EWCA Civ 130, [14]:

> "(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... (8) It follows that "it is not enough to say that by some person or another the words *might* be understood in a defamatory sense."

87. Where the question is what if any defamatory natural and ordinary meaning was borne by a statement no evidence is admissible other than the words themselves and any contextual material, such as a related article in the same newspaper. Evidence from readers of what they understood the words to mean is not admissible. A claimant or defendant may however allege a "true innuendo" meaning, which depends on at least some readers knowing extrinsic facts. In such a case evidence is required of the facts and that those readers knew those facts, and evidence may be led as to what those readers who knew the extrinsic facts understood the words to mean.

88. Some key points of relevance in the law of comment are well-established and on the face of it straightforward. I draw the following points from passages in *Gatley* 12th ed and *British Chiropractic Association v Singh* which were cited in argument. The statement must be recognisable as comment, as distinct from an imputation of fact: *Gatley* para 12.7. Comment is "something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.": *Branson v Bower* [2001] EWCA Civ 791, [2001] EMLR 15, [26]. The ultimate determinant is how the words would strike the ordinary reasonable reader: *Grech v Odhams Press* [1958] 2 QB 275, 313. The subject-matter and context of the words may be an important indicator of whether they are fact or comment: *Singh* [26], [31].

89. The requirement that comment be recognisable as comment as distinct from a factual imputation is not as straightforward as at first it might seem. Some defamatory statements which are by their nature and appearance comment are nevertheless treated by the law as statements of fact and will therefore need to be defended by way of justification, or some other defence other than fair comment. This is the position where the statement consists of a comment which implies that the claimant has done something, but does not indicate what that something is.

90. The classic illustration is the example given by Ferguson J in *Myerson v Smith's Weekly Publishing Co Ltd* (1923) 24 SR (NSW) 20, 26: "To say that a man's conduct was dishonourable is not comment it is a statement of fact. To say that he did certain specific things and that his conduct was dishonourable is a statement of fact coupled with a comment." As Lord Phillips of Worth Matravers PSC said in *Joseph v Spiller* [2011] 1 AC 852, [5],

> "[this] is not wholly satisfactory. To say that a man's conduct was dishonourable is not a simple statement of fact. It is a comment coupled with an allegation of unspecified conduct upon which the comment is based. A defamatory comment about a person will almost always be based, either expressly or inferentially, on conduct on the part of that person. Judges and commentators have, however, treated a comment that does not identify the conduct on which it is based as if it were a statement of fact. For such a comment the defence of fair comment does not run. The defendant must justify his comment. To do this he must prove the existence of facts which justify the comment."

91. The rule that in order for a statement to be treated as comment it must identify the facts on which it is based is not, however, as exacting as at one stage it was thought to be. In Tse Wai Chun Paul v Cheng [2001] EMLR 777 it was held by the Hong Kong Court of Final Appeal that "the comment must explicitly or implicitly indicate, at least in general terms, what are the facts on which the comment is being made. The reader or hearer should be in a position to judge for himself how far the comment was well founded": *Cheng,* [19] *per* Lord Nicholls. This was reviewed in *Joseph* where the issue before the Supreme Court was "the extent to which it is a proportionate element of the law of fair comment to require that a statement of defamatory opinion should include or identify the facts upon which the opinion is based": Lord Phillips, [79]. The Court concluded that it was not necessary to enable readers to assess the comment in the way described by Lord Nicholls. A proportionate balance was struck by a simple requirement that "...the comment must explicitly or implicitly indicate, at least in general terms, the facts on which it is based": Lord Phillips, [105]. What is required is "that the reader can understand what the comment is about and the commentator can, if challenged, explain by giving particulars of the subject matter of his comment why he expressed the views that he did": ibid [104].

92. It has not been suggested that the Strasbourg jurisprudence to which Mr Millar QC referred is inconsistent with these rules of the common law. Mr Millar QC's submissions did however draw particular attention to four aspects of that jurisprudence. First, the essential role of the press in a democratic society and its duty to impart information and ideas on all matters of public interest: *Bladet Tromso and Stensaas v Norway* (1999) 29 EHRR 125, [59] and [62]. Secondly, Mr Millar QC drew attention to the principle that the scope for interference with freedom of expression is limited where political speech is concerned: *Lingens v Austria*, [42] where the court held that

> "… Freedom of the press furthermore affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders. More generally, freedom of political debate is at the very core of the concept of a democratic society which prevails throughout the Convention.
>
> The limits of acceptable criticism are accordingly wider as regards a politician as such than as regards a private individual. Unlike the latter, the former inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10(2) enables the reputation of others—that is to say, of all individuals—to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues."

93. Thirdly, Mr Millar QC emphasised the distinction between fact and value judgment to which I have referred above, and the care need in approaching the task of categorisation, given that a mischaracterisation of a statement as factual will lead to infringement of article 10. Fourth, Mr Millar QC highlighted the consistent jurisprudence of the Strasbourg court to the effect that statements impugning motive should be treated as value judgments, a point made repeatedly in the context of political speech.

94. Lord Phillips referred to the third and fourth of these aspects of the Strasbourg case law in *Joseph* at [76]-[77]:

> "76. The relevant principles are helpfully summarised at paras 28 and 29 of *Sorguç v Turkey* (Application No 17089/03) (unreported) given 23 June 2009. Freedom of speech may be restricted in order to protect reputation where this is necessary in a democratic society to meet a pressing social need. Thus a test of proportionality has to be applied. In applying that test there is a significant distinction between a statement of fact and a value judgment. A statement of fact will be true or untrue and the law can properly place restrictions on making statements of fact that are untrue. A value judgment is not susceptible of proof so that a requirement to prove the truth of a value judgment is impossible to fulfil, and thus infringes article 10.
>
> > "However … even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive: *Jerusalem v Austria* (2001) 37 EHRR 567 , para 43."
>
> 77. In *Nilsen and Johnsen v Norway* (1999) 30 EHRR 878, para 50 the court equated the imputation of improper motives or intentions with value judgments rather than statements of fact, having regard to the fact that from the wording of the statements and their context it was apparent that they were intended to convey the applicants' own opinions."

95. The importance of context as a factor in assessing the character of a statement was referred to in *Singh*: above. As Lord Phillips' paragraph [77] shows, the context may indicate to the reader what form of statement, fact or opinion, the writer intends to make. It follows that the context may indicate either that the intention was to assert an opinion or to assert a fact.

96. Finally, it is to be noted that the Court of Appeal also observed in *Singh* at [32] that whilst it is conventional for the judge to determine meaning first and then decide whether that meaning is factual or an expression of opinion "this may not always be the best approach because the answer to the first question may stifle the answer to the second".

97. It seems to me that in seeking to place itself in the position of the ordinary reasonable reader the court should take as its starting point the general features of the article and the impact these are likely to have on how the words used strike the mind of the ordinary reader. It should bear in mind the positioning within the paper of the article under examination (for instance whether it is in the news section or in an "op ed" piece or magazine); the general nature of the subject matter dealt with in that article (news, political, social, financial or other); who has written the material, if this is apparent (is it for example the paper's political correspondent or an established commentator?); and the form of expression the reader would be likely to expect from an article on this subject matter, positioned as it is, and by this or these author(s). It is against that background that the court should consider the particular statements in the article and assess, as far as possible at the same time, what if any defamatory meaning it conveys and the extent to which this is factual or comment. In performing this last task the court should be alert to the importance of giving free rein to comment and wary of interpreting a statement as factual in nature, especially where as here it is made in the context of political issues. In drawing the distinction the court should consider what the words in their context indicate to the reader about the kind of statement the author intends to make.

98. In this case, I am to place myself in the position of a reader of *The Sunday Times* (print or online), a serious-minded weekly newspaper, reading lengthy articles prominently positioned in the news section of the paper on a serious topic of evident political and public importance. In the case of the Front Page and Inside Articles, they are articles published under the Insight brand which I as the reader am told result from an undercover investigation in the course of which the key conversation has been recorded. I would expect the article to be largely comprised of factual revelations though I would also expect some indication of the paper's viewpoint on what it had uncovered.

The Front Page and Inside Articles: print versions

99. The print version of the Front Page article read as follows (the numbering is added for ease of reference):-

> **"Top Tory in new Lobbygate row**
>
> **MP coached client before committee grilling**
>
> [1] THE Tory MP in charge of scrutinising new energy laws has been caught boasting about how he can use his leadership of a powerful Commons committee to push his private business interests.
>
> [2] Tim Yeo told undercover reporters — posing as representatives of a firm offering to hire him — that he was close to "really all the key players in the UK in government" and could introduce them to "almost everyone you needed to get hold of in this country".
>
> [3] He said he could not speak out for them publicly in the Commons because "people will say he's saying this because of his commercial interest". But he assured them: "What I say to people in private is another matter altogether."
>
> [4] Yeo, chairman of the energy and climate change committee, was approached by reporters claiming to represent a green energy company.
>
> [5] He was filmed revealing that he had coached a paying client on how to influence the committee.
>
> [6] The former environment minister described how he had advised John Smith, managing director of GB Railfreight, before the executive gave evidence to the committee last month. Yeo is a paid director and shareholder of Eurotunnel — the firm's parent company.
>
> [7] Yeo publicly excused himself from asking questions because of the conflict of interest. However, he did not tell his fellow MPs that he had coached the executive. "I was able to tell him in advance what he should say," Yeo later confided to the reporters.
>
> [8] Yeo has earned about £530,000 from private firms since taking over the committee in 2010, and has shares and options worth about £585,000 in low-carbon companies that have employed him.
>
> [9] He has always insisted that his views as an MP have "never been influenced at any time or in any way by my financial interests".
>
> [10] The reporters approached Yeo posing as representatives of a solar energy company offering to hire him as a paid advocate to push for new laws to boost its business for a fee of £7,000 a day.

[11] He told them he could commit to at least one day a month, despite the fact that he already held four private jobs and was in negotiations to take a further two. Setting out what he could offer, the MP said: "If you want to meet the right people, I can facilitate all those introductions and I can use the knowledge I get from what is quite an active network of connections."

[12] Asked if that extended to government figures, Yeo replied: "Yes."

[13] The House of Commons code of conduct forbids members from acting as paid advocates, including by lobbying ministers.

[14] Yeo also said he could help them by guiding them on submitting evidence to his own committee, which he described as "a good way of getting your stuff on the map".

[15] Yeo is the latest politician to be implicated in the "Westminster for sale" scandal that has engulfed parliament after The Sunday Times revealed last week that three peers had agreed to ask parliamentary questions, lobby ministers and arrange events in the Lords for paying clients.

[16] The Lords authorities launched an investigation into Lord Mackenzie of Framwellgate, Lord Cunningham and Lord Laird. All three deny wrongdoing.

[17] McKenzie and Cunningham were suspended by the Labour party pending the outcome of the investigation, while Laird resigned from the Ulster Unionist party.

[18] The MP Patrick Mercer also resigned the Tory whip after being implicated in a separate investigation into parliamentary questions for cash.

[19] Last night a fourth peer, Lord O'Neill of Clackmannan, referred himself to the parliamentary commissioner for standards after being contacted by this newspaper in relation to comments he made in a meeting with the undercover reporters.

[20] The morning after the meeting with Yeo, the reporters emailed to withdraw their offer of work. Six hours later, Yeo wrote back to say that he was relieved to hear that the work was no longer available because: "It spares me some embarrassment."

[21] He wrote: "It was increasingly apparent to me during our talk that what you were seeking was someone to advance your interests by lobbying. This is a function which is not compatible with my position as an MP and chair of a select committee. I was going to email you later today to explain this but your email has removed the need for me to do so."

[22] Yeo last night denied "absolutely" that he had breached the MPs' code of conduct, or offered to do so in the meeting with the undercover reporters.

[23] He said the meeting had only been a "preliminary discussion" about what appeared to be a worthy cause, and denied having committed to working for the reporters' fake company for one day a month.

[24] The MP denied offering to provide parliamentary advice or advocacy, which he said were roles he had never performed for any company, because he said that would be a breach of the code.

[25] He said that he had not tutored Smith on what he should say to his select committee.

[26] Yeo said he had decided to withdraw from any further discussions with the reporters before receiving their email on the morning of May 22 because he had concluded that what they were suggesting he do for their company amounted to "an impermissible lobbying role".

[27] A spokesman for GB Railfreight said: "At the evidence session of the energy and climate change committee, GBRf made the same arguments that we consistently make in submissions, articles and on the record time and again."

100. The Front Page Article also included a picture of the Claimant with two captions. Overlaid on the photo were the words "I told him in advance what to say. Ha-ha." Beneath it were these words: "Tim Yeo offered to arrange meetings with the 'right people'".

101. The print version of the Inside Article read as follows (again the numbering is added):

"'I told him in advance what to say. Ha-ha'

The chairman of a Commons committee has boasted of how he can promote businesses in which he has an interest.

[1] TIM YEO watched silently as the sharp-suited freight executive testified to his powerful committee of MPs in the House of Commons.

[2] It was unlike the vocal Tory MP to take a back seat in his role as chairman of the energy and climate change select committee (ECCC) — but, for today, he had excused himself from joining his colleagues in questioning the executive to avoid accusations of a conflict of interest.

[3] Before the MPs was John Smith, managing director of GB Railfreight, making the company's case against steep new levies on cargo trains transporting biomass.

[4] The firm is owned by Eurotunnel, of which Yeo himself is a paid director and shareholder, so he could not be seen to help Smith push its commercial interests before the committee.

[5] But Yeo had devised another way to ensure his colleagues got the right message. He would later reveal how before the hearing he had tutored the executive on what he needed to say to win over his fellow MPs.

[6] At a lunch immediately after the hearing with two strangers offering him a new job as their parliamentary advocate and adviser, Yeo could not resist boasting about what he had done. As he explained what he was willing to do for them behind the scenes, he confided: "This morning I had a case, in front of the committee we had a company called Great British Railfreight who have big contracts for moving coal and biomass around the country. And I said, because GB Railfreight is a subsidiary of Eurotunnel, I could not ask this guy any questions in public because it would look as though I might be biased about that. But what I do for him in private is another matter altogether, obviously."

[7] Asked to elaborate, he leant forward: "I was able to tell him in advance what he should say," he confided, before rolling back in his chair in a gust of laughter.

[8] Unfortunately for Yeo, the two strangers he chose to let in on his secret were undercover reporters from The Sunday Times who were filming him on hidden cameras as he explained how he could secretly help push private business in parliament for cash.

[9] Companies giving evidence to select committees frequently hire former MPs to coach them on their submissions — but it would be regarded as highly irregular for a serving member of the committee to tutor private clients on what to say.

[10] House of Commons rules ban MPs from accepting "any fee, compensation or reward" in connection with the promotion of any matter "submitted, or intended to be submitted . . . to any committee of the house".

[11] The reporters had approached Yeo as part of a wider investigation into how MPs and peers are selling their power and influence in Westminster to private clients.

[12] Posing as representatives of a solar energy company pushing for new laws to boost its business, they had spoken to a number of companies and peers about how to buy their way into the heart of parliament. When they inquired about who they should be speaking to on the subject of green energy, Yeo's name kept coming up.

[13] Yeo has been a key figure in green politics since he served as environment minister under John Major in the 1990s. As chairman of the ECCC, he is in charge of overseeing government policy and he has played a key role in formulating the Energy Bill currently passing through the Commons.

[14] But the 68-year-old MP has been dogged by repeated allegations that he is compromised by his array of green business roles, which have proved lucrative. So rather than hiring another politician to help them lobby the powerful committee chairman, the reporters decided to cut out the middleman and go straight to the top with their offer of paid work.

[15] Yeo has always strenuously denied that his extensive business interests affect his conduct in parliament in any way. But his remarks to the reporters during a 90-minute lunch meeting suggested otherwise.

[16] They had contacted him out of the blue to ask if he would meet them to discuss becoming their point man in the Commons, paid to use his position to push for new laws to benefit their business.

[17] MPs are forbidden to act as paid advocates in parliament, which includes making any approaches to ministers, civil servants or other MPs to promote a private agenda for cash.

[18] Yeo was waiting for the reporters in Mayfair's exclusive Nobu restaurant when they arrived for the hastily arranged meeting last month. It was a busy day in parliament for the MP, who was still wrapping up a hands-free phone call as the group shook hands.

[19] The morning's committee hearing would be followed by meetings with the energy and climate change secretary, his junior minister and the department's permanent secretary that afternoon. But that did not stop him finding time to squeeze in lunch with some potential new business clients.

[20] Sipping on a cranberry and apple smoothie and tucking into a deluxe bento box, Yeo began his sales pitch. He told the reporters he could advocate for their company behind the scenes, introduce them to ministers and guide them on submitting evidence to his own committee.

[21] "I've got a very close relationship with really all the key players in the UK government and all the departments," he said. He cautioned that he could not "get up and make a speech" for them in the Commons because "people will say he's saying this because of his commercial interest." But he assured them: "What I say to people in private is another matter."

[22] Yeo elaborated: "If you want to meet the right people, I can facilitate with introductions and I can use the knowledge I get from what is quite an active network of connections. So really, almost anyone you needed to get hold of in this country, I should be able to help you do that."

[23] Asked if that offer extended to government figures, he replied: "Yes."

[24] Yeo told the reporters that submitting evidence to his own committee was a good way to get noticed as a new company.

[25] "The opportunity initially is to send in a memorandum saying, 'We are producing this sort of stuff, this is why it's good, it's costing this much . . . that's quite a good way of getting your stuff on the map."

[26] Asked by the reporters if he would be able to "guide us through that process", Yeo replied: "Yes". He also said that, as their parliamentary adviser, he could "help define how to influence the policy process here, at national level" and "contribute to the sort of way in which you might get a campaign going behind this".

[27] As he expanded on his pitch, Yeo shed new light on his reasons for stepping back from the Tory front bench in 2005. At the time, he said he wanted to play a more independent role in shaping the future of the party. But he explained over lunch: "I decided consciously that I would go to a job in parliament that would allow me to do some business things as well."

[28] After a stint on the environmental audit committee in which he began to accumulate financial interests in the green energy sector, Yeo secured a new role on the more influential ECCC in 2010.

[29] He explained how, alongside his packed Commons schedule, he is now chairman of AFC Energy, a company developing fuel cell technologies, TMO Renewables, a biofuels firm, and Eurotunnel, which markets itself as the lowest-carbon route between the UK and mainland Europe.

[30] Yeo is also a consultant to Edulink, a Dubai-based operator of private universities, which he described as "not very time-consuming but moderately lucrative". Until recently he was also a director of Eco City Vehicles, a green taxi company,

[31] The former environment minister has received more than £530,000 in fees from his outside interests on top of his £81,124 Commons salary since taking over the ECCC in 2010. He currently holds an estimated £313,000 in shares and has options worth £270,000 in the low-carbon companies that have employed him.

[32] Yeo explained that he channels "several sources of income" through a service company which he said was "slightly more efficient from a tax point of view".

[33] When one reporter remarked that all his jobs seemed to be linked to renewable energy — the cornerstone of his committee's remit — he replied briskly: "Pretty much."

[34] Despite already juggling four directorships with his parliamentary duties, Yeo had no qualms about the possibility of adding to his green business portfolio.

[35] "I'm not overstretched at the moment," he told them. "I could certainly do one day a month."

[36] He agreed that the offered fee of £7,000 a day was "in the right ball park", but added: "If you're getting value and I know you're getting value then we'll negotiate."...

[42] As the clock struck 2pm, Yeo leapt to his feet and told the reporters he had to dash to his next appointment. Shaking them warmly by the hand, he told them he would think further about how he could help them and would like to discuss their offer of work further.

[43] "We can either have a conference call or we can meet up and have another chat or exchange an email or whatever you think really," he said.

[44] Told "We would be very keen to engage you," he replied: "OK, terrific" before breezing out of the door into the May sunshine and vanishing down the street.

[45] On May 22, the morning after the meeting, the reporters emailed to withdraw their offer of work. Six hours later, Yeo wrote back to say that he was relieved to hear that the work was no longer available because "it spares me some embarrassment".

[46] He wrote: "It was increasingly apparent to me during our talk that what you were seeking was someone to advance your interests by lobbying. This is a function which is not compatible with my position as an MP and chair of a select committee. I was going to email you later today to explain this but your email has removed the need for me to do so."

[47] Two weeks after the meeting, he spoke in parliament introducing a controversial amendment to the Energy Bill as it passed through the Commons. Last Tuesday, Yeo proposed the addition of a 2030 decarbonisation target to the bill, designed to force electricity suppliers to turn to renewable sources.

[48] He said the target would make green energy technologies more appealing to investors. Critics said the target would inflate energy bills, hamper industry and cause power cuts, and the amendment was defeated.

[49] Speaking in the Commons Yeo said: "I draw attention to my entry in the register especially my interests in energy industry."

[50] However, he did not specifically mention what he had earlier told the reporters — that he was about to become chairman of a fund set up to invest in the technologies his amendment was designed to promote. He had disclosed his new business interest during the meeting with the undercover reporters in which he explained that the fund was set up to invest in four renewable energy technologies — wind, solar, hydropower and biogas.

[51] Members of the public would not have been able to see he was about to take this job because it does not appear on parliament's online register of interests, last updated two weeks before he spoke.

[52] Yesterday a statement from Yeo's solicitors made clear that he had not been aware of the new job when he first tabled the amendment in February. It said he had complied fully with his obligations to declare the interest "which has been registered" when he spoke in the House last week.

[53] In the statement his solicitors denied "absolutely" that he had breached the MPs' code of conduct, or offered to do so in the meeting with the undercover reporters.

[54] According to Yeo, the meeting had only been a "preliminary discussion" about what appeared to be a worthy cause, and he denied ever offering to commit to working for the reporters' fake company for one day a month.

[55] He did not accept that "a preliminary exploratory and inconclusive conversation over lunch constitutes an agreement or offer of services". The MP denied offering to provide parliamentary advice or advocacy, which he said were roles he had never performed for any company or organisation with which he was associated.

[56] He said he had never tutored Smith, privately or otherwise, on what he should say when giving evidence to any select committee.

[57] Yeo said he had decided to withdraw from any further discussions with the reporters before receiving their email on the morning of May 22 because he concluded that what they were suggesting he do for their company amounted to "an impermissible lobbying role"."

102. The Inside Article included another picture of Mr Yeo and a picture of Mr Yeo's house with the caption "Tim Yeo, who owns a home in Suffolk, below, agreed with undercover reporters that a suggested fee of £7,000 a day was in the right ball-park". Within the text were a graphic with the words "WESTMINSTER FOR SALE" and there was a pull-quote, "ALMOST ANYONE YOU NEEDED TO GET HOLD OF, I SHOULD BE ABLE TO HELP". There was also a graphic showing "Yeo's outside interests".

103. In determining the meaning of the print versions of the Front Page and Inside Articles I shall have regard to all of the material mentioned above. The Inside Article also included at the end the words "Video: view footage of the Insight Investigation at www.sundaytimes.co.uk/news. I take account of those words, which are pleaded by TNL in its Defence. However, there is no pleaded case nor was any submission made by either party that the video itself should affect the court's conclusions as to the meaning of the print publication. I have not been shown it.

104. Mr Yeo alleges that the Front Page and Inside Articles bore the following natural and ordinary meaning:-

"in breach of the rules of the House of Commons, [Mr Yeo] was prepared to act, and had offered himself as willing to act, as a paid Parliamentary advocate who would:

(a) push for new laws to benefit the business of a client for a fee of £7.000 a day; and

(b) approach Ministers, civil servants and other MPs to promote a client's private agenda in return for cash."

105. TNL sets out the meaning it is prepared to justify in respect of the Front Page and Inside Articles as follows:

"at a lunch meeting on 2 May 2013 [Mr Yeo] had to his discredit:

(a) boasted that he had privately told a witness for a commercial group in which he is a paid director and shareholder what the witness should say in evidence to his Select Committee and/or

(b) made a sales pitch to consultants seeking to hire him to lobby in a way which was incompatible with his position as an MP and Chairman of the ECCSC which gave reasonable grounds to suspect (alternatively to investigate) that he was willing to lobby ministers, civil servants and MPs in a way which would breach the House of Commons prohibition on paid advocacy."

106. The meaning which TNL defends as fair comment is as follows:-

a. at the said meeting [Mr Yeo] had to his discredit:

(i) boasted that he had privately told a witness for a commercial group in which he is a paid director and shareholder what the witness should say in evidence to his Select Committee and/or:

(ii) made a sales pitch to consultants seeking to hire him to lobby for a company in a way which was incompatible with his position as an MP and Chairman of the ECCSC which gave reasonable grounds to suspect (alternatively to investigate) that he was willing to lobby ministers, civil servants and MPs in a way which would breach the House of Commons prohibition on paid advocacy.

b. C's conduct at the lunch meeting showed a scandalous willingness to use his position in Parliament to further his own financial and business interests in preference to the public interest."

107. In my judgment these articles clearly did contain defamatory comment or opinion, both explicit and implicit. First, there is explicit comment in paragraph [15] of the Front Page Article, where Mr Yeo was said to be "implicated" in a "scandal". The ordinary reader would understand this as a comment or opinion or value judgment about Mr Yeo's behaviour as alleged in the article, to the effect that this was scandalous. The use in the headline of the term "Lobbygate" supports the suggestion of involvement in scandalous behaviour. The "facts on which the comment was based" are amply indicated within the articles. They consist of the role of Mr Yeo as an MP and chairman of the ECCSC and his alleged conduct as described in some detail in the two articles. The comment that Mr Yeo's behaviour was scandalous is defamatory.

108. Secondly, I agree with TNL that the ordinary reader would understand these articles to contain an implied defamatory comment about Mr Yeo's use of his Parliamentary position to further his own financial and business interests. That meaning, in my view, is that Mr Yeo had shown willing to abuse his position in Parliament to further his own financial and business interests in preference to the public interest. This is similar to but slightly different from TNL's pleaded meaning. The meaning is not express, but in my judgment clearly implied by the articles. It derives principally from paragraphs [1], [8], [9] of the Front Page Article, the sub-headline and paragraphs [1], [6], [8], [12], [14], [15], [19] of the Inside Article, together with the "Westminster for Sale" graphic and outside interests graphic. Paragraphs [20], [27], [29], [30], [31], [32] and [36] of the Inside Article and the photograph caption relating to the £7,000 a day fee also have a bearing on this meaning. There is no indication in the words that Mr Yeo had any other motivation.

109. The meaning referred to in the previous paragraph is a defamatory imputation concerning the motives or intentions behind Mr Yeo's behaviour, which is and would be understood by the reader as a comment or opinion in the nature of an inference drawn by the *Sunday Times*. Paragraph [15] of the Inside Article is perhaps the clearest indicator to the reader that he or she is being presented, among other things, with the *Sunday Times'* evaluation of Mr Yeo's motivations for engaging with the journalists in the way described. That paragraph contrasts Mr Yeo's strenuous denials that his business interests affect his Parliamentary conduct with his "remarks during a 90-minute lunch meeting" which "suggest otherwise".

110. I agree with TNL that the term "sales pitch" is in the nature of opinion or value judgment. But in itself it is a neutral term; it depends on what is being sold. The term is only defamatory here because of the context in which it is used. It is part of the wording that contributes to the second defamatory meaning I have identified. It is artificial to regard it as a separate and distinct defamatory imputation which the ordinary reader would take from the articles.

111. In his Skeleton Argument Mr Millar QC described the meaning complained of by Mr Yeo as "a single, narrow factual meaning". I agree. Mr Millar identified the essential sting of this meaning as being Mr Yeo had been "in breach of the rules of the House of Commons by offering himself at the lunch as a paid Parliamentary advocate who would do" the things described in the meaning pleaded by Mr Yeo. Again, I agree. Mr Millar submits that the ordinary reader would not take that meaning from the articles because they make clear that it is performing the specified activities that is in breach of the paid advocacy rule, not having a discussion over lunch with lobbyists at which an offer to do so is made. I agree with this also. The account of the House of Commons rules given in paragraphs [13] and [24] of the Front Page Article and paragraphs [10] and [17] of the Inside Article depicts them as prohibiting conduct not offers of conduct. The ordinary reader would understand this.

112. The articles do however suggest to the ordinary reader a meaning which differs from but is similar to Mr Yeo's meaning and falls within the same class or range: that Mr Yeo was prepared to and had offered himself as willing to act in a way that was in breach of the rules of the House of Commons by acting as a paid Parliamentary advocate who would do the various things listed in Mr Yeo's meaning at (a) and (b). This is also a meaning which closely resembles part of TNL's pleaded case of justification, save that the meaning is a "Chase" Level 1 rather than Level 2 or 3.

113. This corresponds to the impression I gained on my initial reading of the words complained of, and after revisiting them in the course of the hearing it remains my impression. Without, I believe, engaging in over-elaborate analysis I can explain this conclusion as follows. Paragraphs [10] to [12] of the Front Page Article describe the offer made by the journalists and Mr Yeo's response. The natural reading of these paragraphs is that Mr Yeo was expressing a readiness and willingness to do the very things that he was being asked to do: act as a paid advocate. Paragraph [12] quotes Mr Yeo making clear, in response to a specific question, that his offer to facilitate introductions extends to "government figures". Paragraph [13] then immediately introduces the code of conduct and describes its prohibition on "acting as paid advocates, including by lobbying ministers." Paragraph [15], referring to the "scandal", places Mr Yeo in the same category as three peers said to have "agreed to ask parliamentary questions, lobby ministers and arrange events in the Lords for paying clients." The natural reading is that the peers had agreed to act as paid parliamentary advocates and that Mr Yeo was offering to do likewise. Paragraph [24] reports a denial by Mr Yeo, but one that makes clear through his mouth that providing parliamentary advice or advocacy "would be a breach of the code".

114. The matter is made the more explicit in the Inside Article. At [8] it is said that over lunch Mr Yeo had "explained how he could secretly help push private business in parliament for cash". The offer made to him is described at [16] of the Inside Article: he would be "paid to use his position to push for new laws to benefit their business". Paragraph [17] reminds the reader that "MPs are forbidden to act as paid advocates" and explains that this prohibition extends to making approaches to ministers, civil servants or other MPs. At [20] the reader is told expressly that Mr Yeo "told the reporters he could advocate for their company behind the scenes". In context "could" means "would", subject to details.

115. An imputation of this kind is a defamatory imputation. In this instance it is not in my judgment one that would strike the reader as an expression of opinion or a comment. It is not the law that an imputation of a state of mind amounts in all circumstances to a comment. It depends on the context. The passages I have identified do not appear in a leader column or opinion piece but in the context of a report of an undercover investigation from which the reader's primary expectation is of factual revelations. The relevant passages are presented as straightforward statements of fact. They go beyond suggesting that there are reasonable grounds to investigate or to suspect a willingness to breach the rules. They clearly suggest an actual preparedness and a willing offer to do so.

116. This case is very different from *Axel Springer (No 2)*, where the key words referred to a "nasty suspicion" entertained by a rival politician about former Chancellor Schroeder's motives in stepping down early. The article quoted that politician as raising questions including, "Did Schroeder want to rid himself of his position because he had been offered lucrative positions?" Here no reference is made to suspicion, and no questions are raised. Nor is there any reference to any need for further investigation, beyond the one undertaken by the reporters. No room for doubt or uncertainty is indicated or implied about the conflict between the rules and what Mr Yeo has offered to do. There is no question on the face of the article that there was any kind of misunderstanding on Mr Yeo's part of the rules. His statement as quoted suggests the contrary. His denials as quoted do not serve to draw the defamatory sting of the passages I have referred to.

117. As indicated above, TNL accept that an imputation of being prepared to act and offering oneself as willing to act as a paid Parliamentary advocate is a defamatory factual imputation, if such conduct is presented as involving an actual breach of the parliamentary rules. I do not see why an allegation of a willing offer to act in breach of the rules in those same ways should be any the less a factual allegation. The truth or falsity of such an allegation is no less verifiable.

118. I have left on one side so far the question of the "coaching" of the witness and the "boasting" about that activity which are prominent features of these articles. The reasons are these. First, I accept Mr Millar's submission that this whole topic is quite separate, in both form and substance, from any suggestion of willingness to engage in acts that would be in breach of the prohibition on paid Parliamentary advocacy. That is how it struck me on reading the articles for the first, as well as for the second time. As to form, it is notable for example that the first ten paragraphs of the Inside Article deal with coaching alone. As to substance, witness coaching is also something distinct from Parliamentary advocacy, as a reader would understand.

119. This is underlined by the way the articles deal with the relevant House of Commons rules. Paragraph [10] of the Inside Article quotes in the context of "tutoring" a rule other than the rule against paid Parliamentary advocacy. Further, paragraph [9] of the Inside Article does not suggest a breach of that rule but that "tutoring" of a witness by a committee member is something that "would be regarded as highly irregular". The reader would understand the *Sunday Times* to be holding back from alleging or implying a breach in this respect. Whatever meaning is borne by the parts of the articles which refer to this aspect of the alleged conduct of Mr Yeo, therefore, it is not in my judgment one that falls within the scope of the meanings which Mr Yeo has pleaded or argued for, or a meaning within the same class or range.

120. At the same time, however, whilst TNL offer to defend a meaning that Mr Yeo "boasted that" he had told the witness what to say it is clear from the Defence and TNL's submissions that this is a meaning of *mere* boasting of such conduct. It does not encompass nor is it accompanied by any imputation to the effect that Mr Yeo in fact told the witness what to say. This is not a natural and ordinary defamatory meaning which the ordinary reader would draw from these articles. It is an artificial and unreal meaning, which plucks an element of the articles out of its proper context. These articles do not present the "boast" as false, or depict it agnostically as one which might or might not be true. Mr Yeo is said to have "revealed" and "confided" to the reporters what he had done. The articles might be held to contain a factual meaning that Mr Yeo had engaged in witness coaching in the way he is said to have revealed, coupled with a comment that he had then boasted to the reporters of that behaviour. These might be held to be defamatory meanings. But neither side has argued for such conclusions.

121. My conclusion based on the parties' stated cases and the arguments advanced at the hearing is therefore that the Front Page and Inside Articles bore the defamatory meanings that Mr Yeo:

> (1) was prepared to act, and had offered himself as willing to act in a way that was in breach of the Code of Conduct of the House of Commons by acting as a paid Parliamentary advocate who would:
>
> a. push for new laws to benefit the business of a client for a fee of £7,000 a day; and
>
> b. approach Ministers, civil servants and other MPs to promote a client's private agenda in return for cash;
>
> (2) by behaving in the manner referred to in the articles had acted scandalously, and shown willing to abuse his position in Parliament to further his own financial and business interests in preference to the public interest.

122. Element (1) is factual. Element (2) consists entirely of comment.

Front Page and Inside Articles: online versions

123. The online versions of these two articles contained substantially the text referred to above as contained in the print versions. There was however additional material inserted at some point from which it follows that the meaning of the online versions needs to be assessed separately. Each article carried a headnote beneath the headline, sub-headline and photograph of Mr Yeo, stating "This article is the subject of a legal complaint from Tim Yeo". A new paragraph was added to the Inside Article between numbered paragraphs [10] and [11] above, containing the sentence: "There is no suggestion that Yeo has broken any law". Each article carried the following text at the end:

> "Mr Yeo made the following statement today (Sunday) in response to the allegations in the Sunday Times.
>
> "I want to make clear that I totally reject these allegations," he said.
>
> "The Sunday Times has chosen to quote very selectively from a recording obtained clandestinely during a conversation of nearly an hour and a half in a restaurant with two undercover reporters who purported to be representing a client from South Korea.
>
> "My lawyer requested the whole recording from which these extracts were obtained but this has not been given.
>
> "The whole recording would show the context of the conversation and demonstrate clearly that at no stage did I agree or offer to work for the fictitious company these undercover reporters claimed to be representing, still less did I commit to doing so for a day a month as the article claims.
>
> Specifically addressing the allegation that he coached a client, Mr Yeo said it was "totally untrue".
>
> "The person concerned is John Smith, Managing Director of GB Rail Freight, a subsidiary of Group Eurotunnel SA, of which I have been a director and shareholder since 2007," he said.
>
> "I travelled with John Smith and two other people in the cab of a freight train for three hours on May 16, five days before he appeared before my Committee.
>
> "I spoke briefly to Mr Smith about his forthcoming appearance in front of the Committee to explain that because of the business connections between us I would not take part in questioning him. I did not want him to think that my silence indicated a lack of interest in what he was saying.
>
> "I did not 'coach' John Smith on this or any other occasion. He is not a 'paying client' as the Sunday Times alleges but a business colleague.
>
> "Like many other business executives giving evidence to Select Committees he sought advice from the public affairs company retained for the purpose by GB Rail Freight."

124. The Defence pleads that the online versions of the Front Page and Inside Articles also each had a video clip inserted showing part of the audio-visual recording of the lunch meeting. This is not evident from the print outs I was provided with, but again neither party suggested that I should view the video as part of the process of determining meaning and I was not shown the video clip.

125. Mr Yeo's case is that the online versions of the Front Page and Inside Articles bore the same defamatory meaning as he complains of in respect of the print versions. TNL do not accept this. The meanings which it seeks to justify or defend as fair comment are the same in respect of online publication as they are for the print version.

126. I do not consider that the changes made to the online versions affect the meaning that the ordinary reader would take from the articles. The mere fact that the articles were the subject of a complaint would not impact on the reader's assessment of what *The Sunday Times* was telling him or her about Mr Yeo. To exonerate Mr Yeo of having broken any law does not alter or mitigate the impact of the defamatory suggestions otherwise present, which do not involve any imputation that a law has been broken, or even a suggestion of actual breach of a code of conduct. The ordinary reader would understand the difference between laws and codes of conduct as well as the distinction between acting and offering to act in breach.

127. As to Mr Yeo's statement, it is significant for the purposes of assessing meaning that this was simply added on to the end of the online article. It is significant also that it is described as being "in response to the allegations in the *Sunday Times*" and that apart from the two changes just discussed no modification was made to the articles as originally presented. The effect was, therefore, that the online versions of the articles presented two conflicting accounts: first, the "allegations" of the *Sunday Times*, by which Mr Yeo was presented as having told Mr Smith what to say to the committee, boasted about it, and offered to act in breach of Parliamentary rules; secondly, that of Mr Yeo, who denied having done those things. The reader would take the *Sunday Times* as having not changed its original position. The two positions would appear irreconcilable to the reader. The *Sunday Times'* position was supported, on the face of it, by express quotations from a recorded conversation. The impression gained by the reader would be that the allegations and comments in the article were unaffected by Mr Yeo's rebuttal, which was untrue.

The 23 June Article

128. The words complained of from the 23 June Article are as follows:-

> **"Lobbyist 'wrote peer's speech'**
>
> [1] A LOBBYIST has been caught on film boasting that he masterminded a House of Lords debate to push a paying client's agenda and fed the opening speech to a peer who read it out almost "verbatim".
>
> [2] Undercover reporters investigating lobbyists selling influence in Westminster were told how debates, speeches, and questions could be arranged in both houses of parliament.
>
> [3] John Stevenson, of Freshwater Public Affairs, said he had engineered a whole Lords debate in April on behalf of a client paying him to lobby against
>
> £25bn plans for a tidal barrage in the Severn estuary.
>
> [4] He claimed to have persuaded a former Tory minister to table the debate and read out a 10-minute speech he said he had written calling for the plans to be "strangled".
>
> [5] The lobbyist also said that he could write parliamentary questions, motions and amendments that would be put down by politicians who were convinced by his case.
>
> [6] Stevenson and lobbyists from two other firms — Keene Communications and Hulf McRae — also agreed to set up and run an all-party parliamentary group (APPG) of MPs and peers to push private business.
>
> [7] Their methods are revealed as part of this newspaper's "Westminster for sale" investigation, which has exposed how businesses can buy influence in parliament.

> [8] Three lords and a select committee chairman are being investigated by the parliamentary authorities after The Sunday Times revealed that they were selling themselves as parliamentary advocates for paying clients..."

129. These are only the first 8 paragraphs of an article which is 26 paragraphs long. TNL relies on the whole article and again I have regard to the entire article in reaching my conclusions. It is not necessary to set it out.

130. The article did not name Mr Yeo but his case is that he was identified as the "select committee chairman" referred to in paragraph [8]. In support of that contention Mr Yeo says that there were readers of this article, he says a "large but unquantifiable number", who had already seen the articles of a fortnight earlier and who would therefore know that it was he who was being referred to. That is not admitted by TNL and is a matter that would require proof at a trial. I am however invited to assume for present purposes that this is so. TNL do not quarrel with that approach.

131. The issues as to meaning concern only what this class of reader would understand the 23 June Article to mean. There is no issue as to fact or comment.

132. The meaning which Mr Yeo says that the 23 June Article would convey to this class of reader is that "in breach of the rules of the House of Commons [Mr Yeo] was selling himself as a Parliamentary advocate for paying clients." That is pleaded by Mr Yeo first of all as a natural and ordinary meaning. Mr Nicklin QC explained in his Skeleton Argument that Mr Yeo's primary case is that it is a matter of general knowledge that selling oneself as a Parliamentary advocate for paying clients is in breach of House of Commons rules. In the alternative Mr Yeo pleads that this is a meaning that arises by way of context or true innuendo. In support of this alternative approach Mr Yeo pleads that "a substantial number" of those who read the 23 June Article would have read the 9 June articles and that the meaning conveyed to them by the later article would be affected by what the earlier articles had said about the Parliamentary rules. By those means, he alleges, the readers who read both articles would have known "that an MP offering to act as a paid Parliamentary advocate was a breach of the rules of the House of Commons."

133. TNL dispute all of this. The meaning which TNL seeks to justify is that "there were reasonable grounds to suspect (alternatively to investigate) whether [Mr Yeo] had offered to act as a Parliamentary advocate for a paying client in a way that breached Parliamentary standards." TNL do not specify whether this is presented as a natural and ordinary meaning or a true innuendo or a contextual meaning.

134. There are some difficulties lurking here. If I am to make the assumption that some readers understood the 23 June article to refer to Mr Yeo because they had read the 9 June articles then, as I have noted, it is only those readers who are relevant for the purposes of determining meaning. Whether it is right to plead the earlier articles as innuendo facts is debatable. Ordinarily a pleading of a true innuendo involves the pleading of an extrinsic fact coupled with an averment that the extrinsic fact became known by some specified means to some or all of the readers of the words complained of. An earlier article in the same newspaper would not ordinarily be regarded as an extrinsic fact, though it might be relied on as a means by which such a fact became known to readers. Normally, where an earlier article is relied on as relevant to meaning, it will be pleaded by way of context; in effect, as part of the publication complained of. This will be legitimate where the articles are in the same issue or part of a series of connected articles. It may not always be legitimate. If an article is properly relied on as context then again, conventionally, the court will have regard to the whole of it. The ordinary reasonable reader is treated as reading the whole of the publication which is alleged to give rise to a defamatory meaning, including all contextual material: see *Charleston*, above. This is regarded as part of the process of ascertaining the natural and ordinary meaning of the publication as opposed to its true innuendo meaning.

135. Here, the previous publications are pleaded in the alternative as either innuendo or context. I have not come across any case in which the court has admitted a previous publication by the same defendant as context, or for that matter as true innuendo material, on the basis that some readers of the words complained of will have read some but not all of the previous article or publication. The conventional view would seem to be that the court should treat any reader who identified Mr Yeo as the select committee chairman referred to by the 23 June Article because that reader had previously read the 9 June articles as a person who had read the whole of those earlier articles, and that the meaning of the 23 June Article should be approached on that basis. It may be that this is what is meant by Mr Yeo's pleading, but it may not, and this view may be wrong. Since this issue was not explored at the hearing I have concluded that it is one that I should leave open for further argument. It may be legitimate to envisage a reader who identified Mr Yeo by reading the 9 June articles but did not read the whole of those articles. If so, then it might be said by TNL that to such a reader the 23 June Article bore a meaning significantly different from and less serious than the meaning of the earlier articles.

136. What I can decide without trespassing on the debatable territory I have identified is what meaning would be conveyed to the hypothetical reader who read the articles of 9 June, identified Mr Yeo as the select committee chairman referred to, and read the whole of the rest of the earlier articles.

137. I do not accept that Mr Yeo's pleaded meaning is one that would be taken from the 23 June Article by such a reader. I agree that the 23 June Article meant that Mr Yeo had in fact been "selling himself" or offering to act as a paid Parliamentary advocate rather than, as TNL's pleaded meaning suggests, that he was reasonably suspected of having done so or that there were reasonable grounds to investigate whether he had done so. That is so whether or not one has regard to the earlier articles. For the reasons explained above when dealing with the Front Page and Inside Articles, however, the reader would not understand it to be a breach of the rules to make an offer of paid Parliamentary advocacy as opposed to undertaking such advocacy. TNL's account of the content of the rules was spelled out quite clearly in the 9 June articles. I do not know whether as a matter of fact the Parliamentary rules prohibit an offer of paid Parliamentary advocacy and since this is not a matter for evidence I reject the suggestion that it is a matter of general knowledge that they do. The ordinary reader would take their understanding of the rules from the 9 June articles.

138. The reference in the 23 June Article to an investigation would not affect the meaning drawn from that article by the reader who had read and recalled the articles of 9 June. The newspaper's account of what Mr Yeo had done was sufficiently clear to such a reader. So was the suggestion providing the paid Parliamentary advocacy which he had offered to provide would involve a breach of the rules. In my judgment therefore, to such readers of the 23 June Article as had read and remembered the 9 June articles, the 23 June Article would convey a defamatory factual meaning similar to that of the 9 June articles, namely that:-

> Mr Yeo had been selling himself as a Parliamentary advocate for paying clients and had thereby offered to act in a way that was in breach of the rules of the House of Commons.

139. The online version of the 23 June Article, like the online versions of the articles of 9 June, has a head note stating "This article is the subject of a complaint from Tim Yeo." There are no other differences suggested. This small difference does not in my opinion affect the conclusion above.

Relief from sanctions

140. This application is designed to ensure that Mr Yeo is able, if successful, to recover sums over and above his reasonable legal costs. His pursuit of this action is subject to a "funding arrangement" within the meaning of CPR 43.2(1)(k). This comprises a conditional fee agreement (CFA) entered into with his solicitors on 9 December 2013 which provides for a success fee, and an after-the-event (ATE) insurance policy of the same date. The ATE policy provides cover in respect of Mr Yeo's potential costs liability up to £100,000 with staged premiums. The success fee and the insurance premiums are "additional liabilities" within the meaning of CPR 43.2(1)(o). These are in principle recoverable from TNL if the claim succeeds, subject to compliance with prescribed conditions.

141. By CPR 44.15(1) and paragraph 19 of the Costs Practice Direction (CPR 44) any party who wishes to claim an additional liability is required to provide specified information to the court and other parties about the funding arrangement by a prescribed method and at a prescribed time. The information which must be provided is specified in paragraph 19.4 of the Costs Practice Direction. The prescribed method of giving notice is by filing and serving a Notice of Funding in Form N251. The prescribed time for service, if the claimant is serving the claim form himself, is at the time the claim form is served. The consequences of failing to comply with these provisions are set out in CPR 44.3B(1):-

> "Unless the court orders otherwise, a party may not recover as an additional liability – ...
>
> > (c) any additional liability for any period during which that party failed to provide information about a funding arrangement in accordance with a rule, practice direction or court order;"

142. The steps to take in a case to which rule 44.3B(1)(c) applies are set out in paragraph 10.1 of the Costs Practice Direction (CPR 44):

> "… the party in default may apply for relief from sanction. He should do so as quickly as possible after he becomes aware of the default. An application, supported by evidence, should be made under Part 23 …."

143. That is the nature of the application made to me. It is supported by a witness statement of Mr Stephenson, a Consultant to Carter-Ruck, Mr Yeo's solicitors. He explains that TNL was notified of the funding position and the insurance policy by letter dated 13 December 2013 and that the letter, which he exhibits, contained all the information set out in Form N251. However, form N251 was not filed or served when the claim form was issued. This was an oversight by an Assistant Solicitor whom Mr Stephenson had asked to file and serve the claim form and "to ensure that whatever needed to be done by way of notification of the CFA had been done". The Assistant Solicitor misread the CPR and mistakenly thought that the December 2013 letter represented compliance. On Friday 11 July 2014 the omission was brought to Mr Stephenson's attention by his Assistant Solicitor and on his instructions she filed and served form N251 on Monday 14 July 2014.

144. The application is not opposed by TNL, subject to payment of its costs incurred, which Mr Yeo has agreed to. However, Mr Yeo rightly accepts that it is still necessary to demonstrate that this is an appropriate case for the grant of relief. The approach to be taken by the Court on an application for relief from sanctions has been recently clarified by the Court of Appeal in *Denton v TH White Ltd* [2014] EWCA Civ 906. The approach is summarised in paragraph [24] of the joint judgment of Lord Dyson MR and Vos LJ:

> "The first stage is to identify and assess the seriousness and significance of the "failure to comply with any rule, practice direction or court order" which engages rule 3.9(1). If the breach is neither serious nor significant, the court is unlikely to need to spend much time on the second and third stages. The second stage is to consider why the default occurred. The third stage is to evaluate "all the circumstances of the case, so as to enable [the court] to deal justly with the application including [the need (a) for litigation to be conducted efficiently and at proportionate cost; and (b) to enforce compliance with rules, practice directions and orders.]"

145. Relief from sanctions should not be granted lightly. The requirement to serve notice of funding is an important one. No defendant should be exposed to the risk of an additional liability of which they have no, or no adequate notice. There is a purpose to the requirement of the rules that notice should be given in a particular form to specified persons at a particular stage in the action. It helps to ensure that all the right information is provided in advance to other parties against whom a claim might be made, or who have a legitimate interest in knowing the potential costs involved in the litigation. It also helps the court to manage the case. However, I accept the submission of Mr Nicklin QC that in this instance the breach is not a serious or practically significant one.

146. Mr Stephenson is correct to say that the letter of 13 December 2013 contained all the information required by the rules. The information required was therefore provided to TNL some 3 months earlier than the CPR required it to be provided. The form in which it was provided was sufficiently clear. The letter consisted solely of information relating to the funding arrangement. It attached a copy of the insurance policy (with the premiums redacted). The information was not provided again at the time the claim was issued but there is no evidence of any prejudice resulting from that. Nor was it provided to the court, as it should have been, but that has had no consequences. I can deal shortly with stages two and three of the *Denton* approach. The reason the breach occurred was an error by the Assistant Solicitor and not a deliberate decision. The error was promptly rectified once noticed. The impact of the oversight on the efficient and proportionate conduct of litigation was negligible, consisting principally of the need to make this application which was made promptly, and the additional costs incurred for which Mr Yeo has undertaken to compensate TNL.

147. I am fortified in my conclusion that relief from sanctions should be granted by the decision of Norris J to grant relief in *Forstater v Python (Monty) Pictures Ltd* [2013] EWHC 3759 (Ch), [2014] 1 Costs L R 36. In that case a corporate claimant was joined to the action and an existing CFA with the individual claimant was varied on 24 May 2012 so as to make the company a party to it, but there was a failure to serve notice of funding in respect of the company. The evidence was that the defendant had "wondered" but had not known what the position was. Informal notice was given later by means of a "without prejudice save as to costs" letter on 19 July 2012 which contained the necessary information. The defendant did not suggest that it would have acted any differently if the same information had been provided by way of Form N251.

148. Norris J noted that the true beneficiaries of the application for relief, if granted, might well be the claimant's company's solicitors. Their client would have contractual liabilities to them but also a potential claim in negligence against them for their failure to serve and file Form N251 to enable recovery of the amount of those liabilities from the defendant. On the other hand, as Norris J observed, the consequence of withholding relief would be a windfall to the defendant. He granted relief to the extent of permitting the company to recover "such additional liability as would have been recoverable if Form 251 had been served on 19 July 2012". Such an order left open all the issues ordinarily capable of being raised in respect of a CFA, including the appropriate level for the success fee. Here, the order sought is that "Form N251 be treated as filed and served on 19 March 2014", the day the claim form was issued and this appears an appropriate form of order.