Neutral Citation Number: [2016] EWHC 3110 (QB)

Case No: HQ14D04351

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2 December 2016

Before :

SIR DAVID EADY
Sitting as a High Court Judge

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Between :

Mir Shakil-Ur-Rahman	**Claimant**
- and -	
(1) ARY Network Ltd **(2) Fayaz Ghafoor**	**Defendants**

- -
- -

Matthew Nicklin QC and **Richard Munden** (instructed by **Carter-Ruck**) for the **Claimant**
Desmond Browne QC and **Jonathan Barnes** (instructed by **Gresham Legal**) for the **Defendants**

Hearing dates: 1, 2, 3 and 7 November 2016

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Approved Judgment

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

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SIR DAVID EADY

Sir David Eady :

The parties

1. The Claimant is the Group Chief Executive and Editor in Chief of the Jang group of companies, which is the largest media group in Pakistan and which operates also in the United Kingdom through two UK companies Jang Publications Ltd and GEO TV Ltd (of which the Claimant is chairman). His family connection with this jurisdiction goes back to 1971, when his father Mir Khalil-ur-Rahman launched the first South Asian newspaper here, the *Daily Jang*, which remains the highest circulation Urdu newspaper in the UK today. Its website attracts some five million visitors each month from within the UK. He is determined to carry forward his father's legacy and is well known in Pakistan and among Urdu speakers here. Since about 2008, he and his family have been based in Dubai for security reasons, not least because of hostility towards him in certain quarters in Pakistan. Nonetheless, he told me in evidence that he is loyal to Pakistan which he regards as "the home of his heart".

2. The first Defendant is a UK company which also broadcasts in the Urdu language via three channels throughout the UK and is licensed by OFCOM. For the most part, it echoes the content from ARY channels originating in Pakistan, but is nonetheless responsible for what it broadcasts here. The second Defendant is the Chief Operating Officer: he oversees all operational aspects of the business in this jurisdiction and all employees report to him. It is fair to describe the ARY group generally as a commercial rival of the Jang and GEO group, including in relation to Urdu broadcasting in the United Kingdom.

3. One of the Defendants' channels is ARY News, which transmitted a current affairs programme between August 2012 and May 2015 called *Khara Sach*. It was broadcast three times a day from Monday to Thursday with audiences in the tens of thousands. The "anchor man" or main protagonist of those programmes was Mr Mubashar Luqman, who is not a party to these proceedings in England.

The nature of the claim

4. The complaint is that over a twelve month period from October 2013 the Defendants mounted a "campaign" of abuse and defamation against the Claimant. He therefore brings claims both in defamation (24 programmes) and harassment (more than 100 programmes). It is also said that the campaign has continued beyond that period and, by way of example, my attention was drawn to further allegations of treachery in *The Reporter* for 21 March 2016 and in two programmes broadcast on 16 August of this year. I am grateful to counsel for their industry and for their skill in handling and presenting this material for the purposes of the trial.

5. There is considerable overlap between the two causes of action, not least because each of the 24 programmes relied upon for the defamation claims is also prayed in aid as an instance of harassment. There is no doubt that the Claimant was singled out for persistent abuse and ridicule over a year long period. The programme was addressed to him personally. He was regularly taunted by the presence of an empty chair, the purpose of which was to suggest that he was afraid to come and defend himself against any of the allegations being made. (That is an accusation that could hardly be maintained any longer, since in these proceedings he afforded the Defendants every

opportunity to put their charges to him – in circumstances where he would be given a fair hearing and an opportunity to respond.) He was also patronised by the use of the title Baba Ji. This was explained by Mr Luqman during the programme of 16 December 2013. He said that he could not bring himself to use the name Rahman because of its sacred connotations. These are some of the facts which led his advisers to add the claim in harassment.

6. Mr Nicklin QC described him as being targeted by the programme makers, and by the Defendants who broadcast the content in England and Wales, and must have realised that it was calculated to incite hatred towards him. He characterised the treatment of his client as "nasty, deliberate, relentless and oppressive".

7. Mr Browne QC pointed out that these proceedings were launched on 23 October 2014, when nearly a year had elapsed from the first of the offending broadcasts, and the particulars of claim were not served until February 2015. There had been libel claims in Pakistan before that, however, on behalf of two Jang group companies in relation to publication both in Pakistan and internationally. Another libel claim was commenced in Pakistan on 8 March 2014 to which the Claimant himself was a party. There had also been complaints to OFCOM specifically about the broadcasts in the United Kingdom (including on behalf of this Claimant personally). The Claimant says in paragraph 16 of his witness statement that he became concerned about the allegations in England after his family and friends called him and informed him of the extent of the damage caused there. But that was in October 2013 and, although a letter of complaint was sent to these Defendants on 28 October which met with no response, there was clearly a long delay before proceedings here were actually begun. I am not sure what significance I am meant to attach to this, but I see no reason to draw the inference that he was unconcerned about the impact on his reputation in England. He plainly was.

Harm, damage and causation

8. In November 2015, Haddon-Cave J ruled in a detailed and lengthy judgment on the relevant "single meanings" attributable to each of the programmes, and also identified which words or passages could be characterised as comment and which as fact. That judgment has not been appealed. On 25 October this year, less than a week before the date set for trial, I struck out defences of justification/truth and also of fair comment/honest opinion. Some of the broadcasts took place before the Defamation Act 2013 came into effect on 1 January 2014, and some afterwards. I was then invited by Mr Nicklin, for the Claimant, to rule on the first day of the trial that those publications that took place after 1 January 2014 passed the threshold test set out in s.1 of the Act; that is to say, that the words complained of had caused or were likely to cause "serious harm" to his reputation. The burden of proof under the new provisions lies upon the Claimant. Mr Nicklin, although he also adduced evidence on the subject of harm once the trial began, asked me at the outset to draw an inference from the gravity of the allegations themselves, and from the scale of publication, to the effect that serious harm must indeed have been caused. I did so without difficulty.

9. Mr Browne, for the Defendants, was minded to submit that the claims in relation to those programmes broadcast before the critical date were liable to be struck out under the *Jameel* abuse doctrine: see *Jameel (Yousef) v Dow Jones Inc* [2005] QB 946. He wanted to argue that the publications could not have caused any significant harm to

the Claimant's reputation in the light of a number of factors which were much more likely to have done so and, correspondingly, that any distress and hurt feelings which he was seeking to attribute to the broadcasts could be accounted for in the same way. Hence, much of his cross-examination was directed to exploring other publications, in other parts of the world and particularly in Pakistan, which were supposed to have done the damage. The exercise was difficult to follow in some respects as Mr Browne sought to explain it purely in terms of "causation". He wanted the court to find that both injury to reputation and distress, if they occurred at all in this jurisdiction, were brought about by these extraneous factors rather than by the offending broadcasts.

10. It seemed to me at first, however, that the real objective was to establish that the Claimant's reputation, here and elsewhere, was so poor that any additional harm occasioned by the broadcasts could be discounted. Once it is acknowledged that a defendant is seeking to mitigate the effect of his own conduct by establishing a general bad reputation on the part of the claimant, or at least one that has been tarnished, then there are certain well established constraining principles that come into play.

11. It is not permitted, first of all, to introduce damaging publications by others: *Dingle v Associated Newspapers Ltd* [1964] AC 371. Secondly, a defendant cannot rely on individual acts, or instances of conduct, on the claimant's part by way of mitigating damage (as opposed to evidence of general bad reputation): *Scott v Sampson* (1881-82) LR QBD 491. (There was a recommendation in the report of the Neill Committee in July 1991 that this rule should be abolished, but it was decided in the legislature that the restriction should be retained, largely because it was feared that such a reform might introduce "a muckraker's charter".)

12. Thirdly, if a plea of truth/justification has been pursued at trial, albeit unsuccessfully, then because that evidence is legitimately before the court for that reason, it can be relied upon also in the context of evaluating the claimant's reputation when assessing compensation: *Pamplin v Express Newspapers* [1988] 1 WLR 116. So, for example, if any of the pleas of truth had been allowed to proceed in this case, evidence properly adduced for that purpose could have been taken into account also when addressing reputation. But that did not happen.

13. Mr Browne patiently re-affirmed, however, that he was indeed confining his submissions to causation and not seeking to embrace mitigation of damage. These are subtle distinctions, but nonetheless important for that. They are perhaps especially significant in the context of publications after the 2013 Act came into effect. There will no doubt be many skirmishes in the years to come as to whether a particular claimant can establish "serious harm" to his/her reputation. In that context, it *may* be appropriate for a proposed defendant to introduce evidence of other possible causes of any harm alleged in order to undermine that contention. This, it is to be hoped, will more often occur early on in the litigation, at what is truly the threshold stage, but it may be raised at any point. Whenever it occurs, however, it is an exercise in identifying whether the harm alleged can truly be attributed to the act(s) of the relevant defendant. It is not about mitigation of damage, although in some respects it resembles it very closely. Once that is recognised, it becomes apparent that the introduction of the evidence of (say) other defamatory publications, or of apparently discreditable conduct on the claimant's part, will not in itself offend the traditional rules about mitigation to which I have referred.

14. This emerges clearly, submits Mr Browne, when one focuses upon the words of Lord Denning in *Dingle v Associated Newspapers*, at 410:

> "Now comes the difficult point which I may state in this way. The *Daily Mail* are only responsible for the damage done to the plaintiff's reputation by the circulation of the libel in their own newspaper. They are not responsible for the damage done to the plaintiff's reputation by the report of the select committee or by the publication of extracts from it in other newspapers. If the judge *isolated* the damage for which the *Daily Mail* were responsible from the damage for which they were not responsible, he would have been quite right, see *Harrison v Pearce* (1858) 1 F&F 567. But it is said that he did not *isolate* the damage. He reduced the damages because the plaintiff's reputation had already been *tarnished* by reason of the publication of the report of the select committee and of the privileged extracts from it in the *Daily Mail* and other newspapers. I think he did do this and I think he was wrong in so doing."

I recognise that, so far as possible, I must try to isolate such damage as flowed from the relevant broadcasts in this jurisdiction and compensate the Claimant only in respect of those matters. I should not attribute to Mr Browne's clients any liability for distress or hurt feelings caused by others, in Pakistan or anywhere else, who may have libelled or abused him. The task may not always be easy, but in principle that is obviously correct. So too, however artificial the exercise may seem, I should also leave out of account any harm to his reputation for which their broadcasts are not responsible.

15. On the other hand, I need to bear in mind a further complicating factor; namely, that a television broadcast can have a "grapevine effect", such as was described by the Court of Appeal in *Cairns v Modi* [2013] 1 WLR 1015. The allegations made in those programmes can spread among the community, for example by word of mouth or by means of social media, and cause corresponding damage to the Claimant's reputation among those who hear about them. It is legitimate to take that into account when attributing responsibility to the Defendants.

16. The evidence of the Claimant's wives brought strikingly home how seriously he had been affected by the attacks on his character during the period in question. They did not, however, attempt to draw any distinction between the various causes that were operative at the time. One could hardly expect them to do so. They are not lawyers and would not in everyday life carry out such an analytical exercise when witnessing the impact of hostile coverage upon a close family member. There is, nevertheless, no doubt that other factors did come into play. Mr Browne placed particular emphasis upon two aspects of Jang and GEO coverage in April and May 2014, which seem greatly to have added to the scorn and vitriol poured in his direction. These need to be borne in mind when it comes to assessing compensation for the later broadcasts which were more or less contemporaneous with these incidents. (They cannot, of course, be relevant to assessing the damage caused during the early months of the Defendants' alleged campaign.)

17. First, there was the allegation published by GEO following an assassination attempt on Hamid Mir (a GEO journalist) on 19 April 2014. Understandably, this was the cause of anger and outrage within the organisation. Unfortunately, however, in the wake of the attack, GEO broadcast an accusation that Pakistani intelligence had been behind the shooting; what is more, that this had been carried out on the direction of a named individual (General Zahirul Islam). This caused great resentment and hostility among Pakistanis towards GEO and those identified with it (and very probably that includes Pakistanis within this jurisdiction). The Claimant agreed that "all hell broke loose". A full apology had to be published on 26 May and sanctions were imposed on GEO by the Pakistan Electronic Media Regulatory Authority ("PEMRA"). This was an uncomfortable time for the Claimant – not least because he had been personally consulted about the allegation against the General prior to the original broadcast.

18. Shortly afterwards, on 14 May 2014, there was another unfortunate broadcast by GEO. It was the *Utho Jago* programme in which a well-known wedding song was played along with a scene purporting to show the wedding of the Prophet's daughter. This again led to outrage among many Pakistanis (no doubt in England as well as in Pakistan). Moreover, there were further sanctions imposed on GEO. Although the Claimant, as it happens, was not on this occasion directly involved, some of the anger was vented in his direction. Mr Browne understandably, therefore, wishes it to be emphasised that abuse deriving from this incident cannot fairly be attributed to his clients. He again submits that the court must be very careful when trying to isolate the harm which *is* their responsibility at around that time (i.e. because it can legitimately be attributed to one or more of the ARY broadcasts in England and Wales). That is plainly right.

19. These two instances were important but merely illustrative. There are clearly significant differences of opinion in Pakistani communities and strong feelings widely expressed. It is not for this court to take sides in those disputes or to appear to be doing so. I have no doubt that the Claimant was attacked and reviled by many people here and elsewhere for things he had said or was believed, rightly or wrongly, to have said through Jang or GEO publications.

20. It is fair to say also that one of the topics which had attracted widespread disapproval in Pakistan, much earlier, was the publication of allegations to the effect that the sole surviving terrorist from the Mumbai atrocities of 2008 (one Ajmal Kasab) emanated from Pakistan. It was not suggested that Jang published anything untrue, but the coverage led nonetheless to anger and hostility.

21. In so far as there were *other* brickbats hurled in the Claimant's direction because of his views, or for example because of an editorial line taken in the *Daily Jang*, the court must not include the resulting damage and distress when assessing compensation in these proceedings in respect of the very specific allegations sued upon. There was evidence of hostile and threatening behaviour in this jurisdiction towards individuals associated with the Jang group, but it is not possible to pin the responsibility for that on the Defendants. The burden of proof cannot be discharged against the background I have described. It should also be emphasised that they are not liable for the acts of the Pakistan companies or for those of Mr Luqman. I am concerned only with what the Defendants broadcast in England and Wales.

The Claimant's objective in these proceedings

22. The publications complained of in the 24 broadcasts are very specific. They are quite distinctive and damaging to the Claimant's reputation separately from any harm done by (say) *Utho Jago* or by the accusations made against General Zahirul Islam. To that extent, they appear to be readily isolable. This litigation, and any vindication achieved by that means, is intended to address only those individual charges. They fall broadly into the following categories (although spelt out in more detail later): (i) treason or treachery towards Pakistan; (ii) covertly conspiring with foreign powers or agencies to damage the interests of Pakistan; (iii) doing so in return for payment; (iv) blasphemy; (v) destroying or attempting to destroy evidence at the crime scene of the attack on Hamid Mir; (vi) making threats to Muhammad Ali and authorising the publication of false allegations against him.

23. The Claimant was determined to clear his name *with regard to those allegations* and took every step he could to achieve that objective. It is in my view fanciful to suggest that he is making a fuss about nothing and that they can have done him no harm. It is difficult to understand why, if they were *not* to be taken as gravely serious, they would have been regurgitated so relentlessly for twelve months and more.

24. He does not want the exercise to be misrepresented as taking advantage of some technicality or quirk of English libel law. He was prepared to address any and all of these matters substantively. That is to say, he was prepared to meet any defence of justification/truth on its merits and to submit himself to cross-examination in open court. Although, as it turned out, no such defence could be properly pleaded, since there simply was no evidence to support it, he was determined nevertheless not to appear to succeed purely by reason of the presumption of falsity. He gave evidence in his witness statement dealing substantively with each of the charges made in the broadcasts complained of. He was ready to demonstrate if necessary that they were untrue. Since, however, there was no challenge to that evidence, and since it was no part of the Defendants' case during the trial to suggest that any of the allegations was true, there was nothing more he could do to establish his innocence.

25. I should mention that at one stage there was a plea of truth in relation to blasphemy, but this was based only upon a conviction *in absentia*. Once that was overturned, the Defendants (eventually) abandoned their attempt to prove the allegation to be true.

The limited nature of the Defendants' case

26. The Defendants' case was inevitably shifting as time went on in the light of various court rulings, and the final version of the defence was served just before the trial, following my order of 25 October. It then emerged that there was no pleaded defence at all in relation to six of the programmes broadcast in 2013: 25 October (para 9.1 of the particulars of claim), 28 October 2013 (para 9.3), 30 October (para 9.4), 26 November (para 9.7), 17 December (para 9.10), and 21 December (para 9.11). The Claimant would thus be entitled to judgment on these – subject only to their surviving the *Jameel* abuse test.

27. There were 11 programmes in respect of which the only point taken was that they failed the "serious harm" test under the Act, having been broadcast in 2014: 28 January (para 9.12), 24 March (para 9.13), 21 April (9.14), 22 April (para 9.15), 23

April (para 9.16), 5 May (para 9.17), 13 May (para 9.19), 14 May (para 9.20), 21 May (para 9.21), 12 June (para 9.22), and 8 October (para 9.23). Again, a right to judgment would arise consequent upon my ruling of 1 November.

28. There were raised substantive defences of qualified privilege in relation only to the remaining seven programmes: 28 October 2013 (para 9.2), 4 November 2013 (para 9.5), 12 November 2013 (para 11), 13 November 2013 (para 9.6), 3 December 2013 (para 9.8), 16 December 2013 (para 9.9), and 12 May 2014 (para 9.18).

29. Unusually, no evidence was adduced by either of the Defendants at trial.

30. Despite all this, there has been no withdrawal or apology in respect of any of the programmes at any point. It is quite obvious from the conduct of this litigation that the Defendants hold the Claimant in contempt. I was told that the second Defendant did not trouble to attend on any occasion throughout the trial. There is nothing the court can do about that – except to put on record the falsity of the serious allegations they were making, by the republication of those broadcasts, and to award damages for the purposes of compensation and vindication.

31. I shall now consider each of the programmes in the light of the meanings attributed by Haddon-Cave J.

25 October 2013 (para 9.1 of the particulars of claim)

32. The meaning is that the Claimant is guilty of the criminal offence of treason, having conspired with Indian intelligence agencies to force the publication of a newspaper story in the *Hindustan Times* which furthered the interests of India at the expense of Pakistan. No defence is pleaded.

33. The Claimant drew attention to the fact that this, the first programme opened with Mr Luqman reciting a verse of the Qu'ran referring to the religious duty of Jihad.

34. Treason is plainly a very serious allegation. It was, moreover, common ground that Pakistanis are particularly sensitive to any suggestion of foreign interference or influence in their affairs. The Claimant denies the charge in no uncertain terms and, as I have said, there was no challenge to his evidence. He regards himself as a patriot and he would not dream of collaborating with a foreign power against his country's interests. As I have already made clear, although he is entitled to the presumption of falsity, the Claimant did not wish it to be thought that he was succeeding only on the basis of some technicality, and he addressed the charge substantively. There was nothing more he could do to clear his name. The allegation is simply untrue. (This applies to a number of similar allegations in the later broadcasts, but I shall not repeat this point every time. Suffice to say, the Claimant addressed the substance of the charge in his evidence on each occasion. The Defendants called no evidence and did not challenge him. Mr Browne made it clear in his cross-examination that it was no part of his clients' case to suggest that any of the charges was true.)

26 October 2013 (para 9.2)

35. There are two meanings:

(1) The Claimant is a traitor and an enemy of Pakistan who works against Pakistan and who has very deep relations with Indian intelligence agencies working against Pakistan;

(2) Following threats by the Claimant to damage Muhammed Ali's reputation, Mr Ali became the subject of false media allegations made through the Claimant's broadcast and newspaper companies, GEO and Jang.

36. Mr Ali was formerly the Chairman of the Pakistan Securities and Exchange Commission ("the SECP"). On 9 May 2013, he had issued Suit No 607 of 2013 in the High Court of Sindh against the Jang and GEO group and the Claimant personally, claiming various remedies in respect of an article appearing in *The News International* dated 11 April 2013 under the heading "Regulator Himself Remains Unregulated", which was alleged to have defamed him. An order was made on 13 May 2013 in those proceedings restraining the Claimant and the companies from publishing any further defamatory allegations against Mr Ali.

37. Then, on 15 July of that year, Mr Ali wrote a letter to the Prime Minister seeking his intervention with regard to what was alleged to be conduct directed against himself, while he was at the SECP, by the Claimant and others.

38. It is said that the offending broadcast by these Defendants of 26 October was a fair and accurate report of Mr Ali's proceedings in the High Court of Sindh and/or of a government publication, and thus the subject of statutory privilege under s.15 and Sch 1, Part 1, para 2 to the Defamation Act 1996 and/or under para 7 (although these provisions are not expressly pleaded). Para 2 relates to a fair and accurate report of public court proceedings anywhere in the world. Para 7 protects a fair and accurate copy or extract from matter published by a government or legislature anywhere in the world.

39. There are, however, serious difficulties with such a plea. Whereas the charge contained in the Defendants' broadcast was that the Claimant had made threats to kill Mr Ali (and to have him dismissed), this allegation formed no part of the proceedings in question. In any event, the programme made no mention of the proceedings and, therefore, could not be regarded as a report for this purpose: see e.g. *Tsikata v Newspaper Publishing Plc* [1997] EMLR 117. The broadcast took the form of an interview with Mr Ali together with a closing comment from him. That material was quite independent and cannot be defended as though it were a report of the proceedings: see e.g. *Rogers v Nationwide News* [2003] HCA 52, at [18]. (Mr Nicklin also draws attention to the fact that the proceedings in Sindh appear now to have been dormant for three years or so.)

40. As for the "material published by a government", this is apparently a reference to the letter of 15 July 2013 addressed to the Prime Minister of Pakistan. Yet the programme did not purport to be publishing an extract from any such letter, but rather was publishing Mr Ali's account, as it were "from the horse's mouth". In any event, there is no evidence to suggest that the letter, or any part of it, was published on the authority of the government or the legislature. It is naturally for the Defendants to prove that.

41. Reliance is also placed on duty/interest privilege. But there cannot possibly have been any duty to publish this very serious allegation, which the Defendants do not suggest is true and which is expressly denied by the Claimant. Nor, it follows, could there be any corresponding interest to receive it on the part of the audiences in England and Wales.

42. The defence of privilege cannot succeed.

28 October 2013 (para 9.3)

43. The relevant meanings are that the Claimant, who is disloyal to his country:

(1) has strong links with Indian intelligence agencies;

(2) has spread pro-Indian propaganda and sought to promote India's image in Pakistan (even when India was shelling Pakistani land and killing Pakistani soldiers), and

(3) sought money from the American government in return for promoting the US within Pakistan and recognised that violence, political uncertainty, energy crises and unrest would continue in Pakistan.

44. In the course of the programme, a guest called Aqeel Dhedhi calls for Jihad against "the enemies of the country" (who the viewers would certainly understand to include the Claimant). Not unreasonably, he thought that this was likely to lead to attempts on his life.

45. There is no defence raised and the Claimant expressly denies the allegations.

30 October 2013 (para 9.4)

46. The meanings are that:

(1) the Claimant has disloyally taken money covertly from Indian intelligence agencies and other foreign agencies to broadcast pro-India propaganda, even whilst India was shelling and killing Pakistanis;

(2) the Claimant has hypocritically promoted the 'Aman Ki Asha' campaign as a genuine and independent peace campaign by media groups, when in fact it is funded and run by a company connected to the Indian government to serve Indian interests, and he has therefore lied to and betrayed the people of Pakistan.

47. Again, there is no defence and the Claimant has expressly denied these allegations.

4 November 2013 (para 9.5)

48. The meanings are very similar in their main thrust, namely that:

(1) the Claimant has traitorously taken money from foreign powers, including India's infamous RAW, the CIA and Britain, in order to broadcast programmes favourable to their interests;

(2) the Claimant has disingenuously promoted the 'Desire for Peace' campaign as a genuine and independent peace campaign by media groups, when in fact it is funded and run by a company connected to the Indian government to serve Indian interests, and he has therefore lied to and betrayed the people of Pakistan.

49. Viewers were encouraged to track the Claimant down and call for him to come on to the programme and answer questions.

50. There is another plea of qualified privilege pleaded here, based on "duty and interest" and "reply to attack". The background is that the Jang group had commenced court proceedings complaining of some of the false and defamatory allegations broadcast in Pakistan in the *Khara Sach* series. It is difficult to see how this gave rise to a *duty* to publish the allegations against this Claimant, or how there was an interest on the part the audiences in England and Wales to receive them. It is to be noted that a defence of duty and interest, in any case of publication to the general public, now seems rather outdated in the light of the developments in the law of privilege to be found in *Reynolds v Times Newspapers* [2001] 2 AC 127. That common law defence is reflected in s.4 of the 2013 Act. In either case, it is now necessary to address the criterion of "responsible journalism". Mr Nicklin suggests that this route has been avoided by the pleader for that very reason, since it is difficult to imagine how those behind this broadcast could pass that demanding test. Be that as it may, I cannot see any foundation for succeeding on the old "duty and interest" criteria (outlined e.g. in *Blackshaw v Lord* [1984] QB 1).

51. The alternative basis for the defence is that of "reply to an attack". When considering this category of privilege, it is important to remember the principle that such a statement should be in defence of the defendant's reputation and character. It should not go into irrelevant matters, or be published to a wider audience than is necessary for the purpose of reaching those to whom the original "attack" was made. In particular, if it is to be protected by qualified privilege, it should not cross over into an attack on the integrity of the claimant where it is not reasonably necessary to do so for the defendant to protect his own reputation: see e.g. *Hamilton v Clifford* [2004] EWHC 1542 (QB), at [65] and [79], and *Field v Local Sunday Newspapers* [2002] EWHC 336 (QB), at [79].

52. Yet remarks made during this broadcast about the Claimant (during an interview with Lord Nazir Ahmed conducted by the "anchor man" Mr Luqman) cannot possibly be interpreted as a reply to an attack. The supposed "attacks", as relied upon by these Defendants, are to be found in two sets of proceedings begun in Islamabad by two Jang companies (not by this Claimant) complaining of defamation; in an article contained in *The News* newspaper, shortly before the broadcast, on 1 November 2013 (referred to in the trial as "the Liars article"); and in proceedings brought in the High Court of Sindh by Mr Jahangir Siddiqui, again shortly before the offending broadcast. These Siddiqui proceedings had nothing to do with this Claimant: he was not a party or playing any part in their conduct. In any event, the way to defend oneself against court proceedings is by way of response or defence *in those proceedings*: see e.g. *Baldwin v Rusbridger* [2001] EMLR 47. They cannot provide an occasion of privilege by which to make an attack (even on the parties) to the world at large.

53. As to the "Liars" article in *The News*, this was itself a reply to attacks by Mr Luqman during the first four of the *Khara Sach* programmes sued upon in this libel action. It

challenged their accuracy (as does the Claimant here) and cannot justify the further publication of those original allegations (let alone their republication in England and Wales) – so as to give rise to a defence of qualified privilege. Mr Browne described the terms of the article as "extravagant" and characterised it as an "excessive outburst". His clients are entitled to such an opinion, but that is beside the point. In general terms, they are entitled to respond to an allegation of lying, but that does not warrant a defence of privilege when they choose to go further and make a false allegation that the Claimant has taken money from, and covertly conspired with, foreign powers.

54. For these reasons, the defence of privilege must fail.

12 November 2013 (para 11)

55. This time the complaint relates to a news item, which was not part of the series. The meaning is very specific, namely that the Claimant had threatened to kill Mubashar Luqman and his family. The defence pleaded at paragraph 68 of the RRAD is qualified privilege, based partly on the words being a fair and accurate report of a "written application", consisting of a letter written by Mr Luqman himself and addressed to the police station in Lahore, and partly on the duty/interest argument considered above. The letter would not attract statutory privilege, as it cannot be suggested that it formed part of any legal proceedings (and certainly none which had taken place in public and required to be widely reported). It seems to have been a complaint without substance, which was sent in response to a complaint made against him by some GEO TV employees. In other words, it was a "knee jerk" or "tit for tat" reaction on his part: in any event, it was dismissed as "baseless" by the police.

56. Mr Luqman did make a written application to the High Court in Lahore. How far these proceedings went is unclear, but there had been no hearing in open court such as could be the subject of any report. Nor had any application document been referred to in open court. In these circumstances, it is hard to understand how the allegations contained within it could be the subject of privilege: see *Gatley on Libel & Slander* (12th edn), at 13.48. The allegations by Mr Luqman were presented to the viewers as true: that reflects the finding by Haddon-Cave J. They would thus need to be defended, not as a report of anything, but by way of justification.

57. There is no basis on which it could be said that there was a duty to publish this very serious allegation. It is denied by the Claimant and the Defendants do not allege that it was true. Why, therefore, should a duty have arisen to make it to the tens of thousands of viewers in this jurisdiction? It was contemplated by Stephenson LJ in *Blackshaw* that there could be circumstances in which there was an urgent need to alert the public to an imminent risk from (say) a terrorist or violent criminal, which might give rise to a duty to make a serious allegation without having had the opportunity to check or verify it: nothing of that sort arises here. Again, there is simply no viable defence.

13 November 2013 (para 9.6)

58. It was alleged in this broadcast that the Claimant had disloyally taken money covertly from the United States to broadcast TV programmes which are critical of Pakistan. Yet again, the pleader relies on "duty/interest" privilege. The Claimant has said that

there is no truth in the suggestion and the Defendants do not challenge him or seek to assert the contrary. I can thus see no basis for a duty to publish the allegation. There is also an attempt to identify the words broadcast as a "reply to an attack" contained in the "Liars" article of 1 November. Yet the words complained of have no connection with that article (which was a Jang group response to allegations made by Mr Luqman). They are in no sense a reply or response to anything contained in that article.

26 November 2013 (para 9.7)

59. On this occasion, the meaning found by Haddon-Cave J was quite simply that the Claimant was a traitor to Pakistan (as a matter of fact rather than opinion or comment). No substantive defence is raised and it can hardly be said that this allegation is so trivial that "the game is not worth the candle".

3 December 2013 (para 9.8)

60. Once again, the natural and ordinary meaning is that the Claimant has traitorously accepted funding from anti-Pakistan foreign movements covertly to plant programmes for their benefit, and has made a proposal to the United States offering to act in a similar manner for their benefit, and had broadcast 400% Indian content, all in breach of his licence to broadcast which should be cancelled. An innuendo meaning was also upheld to the effect that the Claimant was guilty of high treason. All this was found by Haddon-Cave J to be factual in nature rather than comment.

61. The defence is qualified privilege, the bases for which appear to be "reply to attack" and "duty/interest". The "attacks" relied upon for this purpose are those alleged to be found in the two Jang group proceedings in Islamabad (as described above); the Siddiqui proceedings in Sindh (see above); the article published in *The News* on 1 November 2013 (see above); and an article on 2 December 2013 in the same newspaper headed "Arrest warrant again issued for unbridled outlaw anchor". This latter article was a report of proceedings in Karachi in which an arrest warrant had indeed been issued in respect of Mr Luqman. That could hardly be said to be an "attack" by its authors – still less one that justified the mounting of a new attack upon this Claimant in the terms of the meaning found by Haddon-Cave J. If it was a response at all, it could not be characterised as relevant or proportionate. In truth, however, the allegations made by the Defendants have nothing whatever to do with the content of the court report. That is equally true of the other article and of the court proceedings relied upon.

62. There was plainly no duty to attack the Claimant for covert funding and collaboration with foreign governments. He has denied it expressly and there is no evidence to support it.

16 December 2013 (para 9.9)

63. The meaning was found to be that the Claimant had covertly and disloyally worked with RAW, the notorious Indian intelligence agency, and India, and either or both of the CIA (the US foreign intelligence agency) and Mossad (the Israeli foreign intelligence agency) in order to promote their agenda, and has disgraced and

humiliated the Pakistan army and dishonoured the security departments of Pakistan. (The only word characterised by the learned Judge as comment was "disloyally".)

64. The defence raised is qualified privilege. The suggestion is that these words were a reply to an attack. Again, the supposed "attack" is to be found in the various legal claims made in Islamabad and Sindh and in the article contained in *The News* of 1 November 2013 ("The Liars"). Additional reliance is placed in this instance on the article of 2 December concerning the arrest warrant. These have been described above. There was no reference by Mr Luqman in this broadcast to any of the proceedings or articles relied upon as constituting the "attack". It is thus hard to see how it could be classified as a genuine "response" to any of them.

65. The alternative argument is that of duty/interest.

66. By a parity of reasoning, these arguments must be rejected as they were in relation to the 3 December programme. I should again emphasise that the Claimant takes these allegations very seriously and his denials in evidence were not challenged. He has done everything he could to demonstrate the falsity of these claims of covert collaboration with foreign powers.

17 December 2013 (para 9.10)

67. This programme was found to carry the meaning that the Claimant, in return for money from CIA and Indian interests, had published a story from Indian newspapers which was critical of the Pakistani army and the Pakistan security services and had thereby been disloyal to Pakistan and undermined Pakistan. (Again, the element of "disloyalty" was characterised as comment.)

68. No substantive defence is put forward, and the allegations clearly cannot be dismissed as so trivial as to render the claim an abuse of process.

21 December 2013 (para 9.11)

69. The meanings found by Haddon-Cave J were that the Claimant is an enemy of Pakistan, who had:

(1) traitorously accepted money from Indian intelligence agencies and other foreign countries to change his editorial content to favour their interests and benefit the enemies of Pakistan, and to act against the integrity and ideology of Pakistan; and

(2) had engaged in a campaign to discredit everyone who had come on the *Khara Such* programme to expose his disgusting plans (i.e. (1) above). (The words "enemy of Pakistan", "traitorously" and "disgusting" were identified as comment and the remainder as fact.)

70. During the programme, Mr Luqman warned that "two types of people cannot survive in Pakistan". He identified those who are blasphemous of the Prophet and those who reek of ties to the Indian intelligence agencies and RAW. That is clearly threatening.

71. No substantive defence is advanced in respect of these seriously defamatory allegations which the Claimant denied in his evidence. It is plainly untenable to suggest that they are so trivial that the complaint amounts to *Jameel* abuse.

28 January 2014 (para 9.12)

72. It will be noted that the remainder of the programmes complained of were broadcast after the 2013 Act came into effect. I was thus obliged to consider in each case whether the Claimant could prove that the relevant words could pass the threshold test as to "serious harm". As I have already explained, I ruled on 1 November that this was one of those cases in which the court was able to draw an inference to that effect from their inherent gravity and from the scale of their publication.

73. It was found that the words complained of in the programme of 28 January bore the factual meaning that the Claimant was a traitor to Pakistan. That would have to be proved as a matter of fact. He squarely denied it and was not challenged. Yet again, therefore, he has done everything he could to demonstrate the falsity of the charge. No substantive defence was raised.

74. Aqeel Dhedhi made a return visit as a guest on the programme and referred to "Baba Ji" as one of the traitors whose days would be numbered. The implication is that they deserve to be physically attacked.

24 March 2014 (para 9.13)

75. The meanings found were that the Claimant disloyally:

(1) published fabricated stories to malign Pakistan's institutions, armed forces, and intelligence agencies;

(2) offered to broadcast the American intelligence agency's choice of television programmes as if they were a public service campaign, in return for payment, thereby deceiving the Pakistani people; and

(3) went to great efforts publicly to link notorious terrorist Ajmal Kasab to Pakistan and its security services, thereby damaging Pakistan, in order to promote Indian interests.

76. There is no substantive defence and nothing to support the allegations. Indeed, Mr Browne made clear, when cross-examining the Claimant, that the Defendants were not even suggesting that the published claims about Ajmal Kasab's involvement in the Mumbai terrorist outrage were untrue.

21 April 2014 (para 9.14)

77. The meaning found was that the Claimant was reasonably to be suspected of having committed treason several times contrary to the constitution of Pakistan. This was a factual allegation and one that corresponded to what is often called *Chase* level 2: *Chase v News Group Newspapers* [2003] EMLR 11. In order to establish a defence of substantial truth, therefore, it would only require a defendant to prove that there were reasonable grounds to suspect the claimant of the relevant act or conduct. Yet, once again, there is no substantive defence.

22 April 2014 (para 9.15)

78. The meanings were found that the Claimant was:

(1) a traitor, an enemy of Pakistan, someone who had violated the constitution and the country and its institutions and, as a result, he should have no right to live in the country and his company should be stripped of its broadcasting licence;

(2) reasonably to be suspected of involvement in the attack on Hamid Mir [a Jang journalist], and was guilty of obstructing and/or impeding the police investigation into the attack.

79. Haddon-Cave J characterised part of the first meaning as comment, namely the words "… as a result, he should have no right to live in the country and his company should be stripped of its broadcasting licence". Serious though they undoubtedly are, there is no substantive defence pleaded.

23 April 2014 (para 9.16)

80. The three meanings found were to the effect that the Claimant:

(1) was guilty of destroying or attempting to destroy evidence at the crime scene of the attack on Hamid Mir and obstructing the police investigation into the attack;

(2) was guilty of blasphemy;

(3) had money from abroad and had not declared it.

81. The third meaning is not complained of in the proceedings. As to the others, there is no substantive defence pleaded. On this occasion, a religious scholar called Mufti Abdul Qavi is consulted about the appropriate punishment for certain types of misconduct, including the misattribution of statements in the hadith to the Qu'ran. He then says that such a statement had appeared in the *Jang* in April 2009, which he had asked to be corrected, but to no avail. The Claimant is then addressed directly and warned, "You have heard the fatwa of the religious scholars as to what the Qu'ran says about you".

5 May 2014 (para 9.17)

82. This programme bore the meaning that the Claimant was paid to promote the Indian and American agenda in Pakistan, and has put Pakistani culture, history and religious values in jeopardy, and deceived the Pakistani people. (The "putting in jeopardy" was found to be comment.)

83. No substantive defence is pleaded. The allegation falls away, of course, unless it can be shown that the Claimant had indeed been paid to promote those foreign agendas. That was denied and nothing put forward to sustain it.

12 May 2014 (para 9.18)

84. Haddon-Cave J found four meanings conveyed by this programme, namely that the Claimant was a traitor who should be prosecuted for treason and not allowed to rest in peace because he:

(1) was complicit with and had taken money from RAW, the notorious Indian intelligence agency and their intelligence bureau IB, to publish false propaganda damaging to Pakistan's national integrity and solidarity;

(2) had sworn to belittle Pakistan;

(3) broadcast foreign governments' advertisements as editorial on GEO's 'Zara Sochiye' ('Just Think') programme and was therefore a criminal and his company's television licence should be revoked; and

(4) was willing to accept money to promote any agenda no matter the harm it caused to his native Pakistan.

85. A guest on the programme sees the empty chair with a photograph of the Claimant attached and demands that it be taken away because the photograph exudes "the stench of a traitor". Mr Luqman had opened by telling the Claimant twice, rather chillingly, that he should "continue to be frightened".

86. Here, the defence of qualified privilege is raised on the basis of both reply to attack and duty/interest. I have already referred to the court proceedings and to *The News* articles of 1 November and 2 December 2013, which are said to contain the relevant "attacks" giving rise to a right of reply under the cloak of privilege. In relation to this article of 12 May, there are two other matters relied upon in addition. First, the Defendants point to the libel proceedings brought by the Claimant in Pakistan on 8 March 2014 against the company broadcasting *Khara Sach* in that jurisdiction (Civil Suit No 11) and also against certain individuals. Secondly, there was an article in *The News* on 28 March 2014 under the heading "IHC issues contempt notices to TV channel CEO, anchor, four directors."

87. As to the libel proceedings, they cannot be said to constitute an "attack" for this purpose. They simply seek redress for alleged wrongdoing and the route by which to answer those claims would be in the proceedings themselves.

88. The 28 March article was a report of a hearing in the High Court in Islamabad during which the contempt notices were issued regarding alleged breaches of an injunction. It is also to be noted that the article in question did not deal with any of the allegations made against the Claimant in the 12 May programme. It is difficult to see how they could possibly be seen as relevant to any response the Defendants (or for that matter the Defendants in the Pakistani proceedings) might wish to make.

89. Nor can it be said that there was a duty on the Defendants' part to broadcast the offending words including within this jurisdiction. For these reasons, the defence fails.

13 May 2014 (para 9.19)

90. The meanings found were that the Claimant was a greedy traitor who, in return for money from various countries, was prepared to advance Indian interests by treacherously and deceitfully:

    (1) running media campaigns, which dishonoured the Pakistani army and security institutions of Pakistan;

    (2) putting in jeopardy the culture, economy, people, businesses, politicians and everything that matters in Pakistan; and

    (3) casting Pakistan into disrepute notwithstanding the atrocities committed by the Indian forces against Pakistan.

91. There is no substantive defence pleaded.

14 May 2014 (para 9.20)

92. The meanings found were that the Claimant:

    (1) was fanning sectarianism and putting Pakistan at risk in order to earn money; and

    (2) had through his media empire ridiculed Islamic teachings, but thinks he is above the law.

93. The last words ("thinks he is above the law") were deemed to be comment. Again, there is no substantive defence pleaded.

94. There appeared on the programme two scholars called Abbas Kumaili and Hamid Raza Khan. It is suggested that the Claimant should be prosecuted for blasphemy (the penalty being death) and Khan warns that they will fulfil their religious and Pakistani duty and the obligation of faith (i.e. presumably that of avenging insults to the Prophet).

21 May 2014 (para 9.21)

95. The relevant meanings are that the Claimant;

    (1) has accepted money from abroad to promote foreign agendas to create unrest in Pakistan;

    (2) had tried to ridicule the teachings of Islam; and

    (3) had challenged the solidarity of Pakistan, its ideology and its institutions; and

    consequently deserved to be punished for the hurt and offence that he had caused to many Muslims. (These concluding words were characterised as comment.)

96. No substantive defence has been pleaded

12 June 2014 (para 9.22)

97. The now familiar meanings are that the Claimant was a traitor and enemy of the state who had betrayed his country by plotting with other countries to further their agendas against Pakistan, by maligning the armed forces of Pakistan, by putting the interests of Pakistan at stake.

98. No substantive defence has been pleaded.

8 October 2014 (para 9.23)

99. The meanings are that the Claimant:

(1) was guilty of blasphemy and desecration of the Qu'ran; and

(2) should come and explain whether he has received funds from international agencies to work against Pakistan.

100. (The second meaning was classified as comment, and is not complained of in the particulars of claim.) No substantive defence is pleaded. Mr Luqman warns that there should be no room in the new Pakistan for its enemies, whichever profession they may be associated with, even if they are journalists, or for the ancestors of journalists (no doubt a reference to the Claimant's father).

Conclusions on liability

101. None of these allegations can be successfully defended and they are in my view clearly defamatory. That is to say, in relation to those broadcast before 1 January 2014, they were such as to make right thinking (i.e. reasonable and fair minded) viewers of the Defendants' programmes within England and Wales think the worse of the Claimant. As to those after the material date, I held on 1 November that they would have caused or were likely to cause serious harm to his reputation.

Libel damages

102. Where there are multiple libels, as here, it is difficult sometimes for the court to find the right balance between fair compensation and proportionality. It is a matter for the judge's discretion whether to make a single award or fix upon separate sums for each of the publications complained of: see e.g. *Hayward v Thompson* [1982] QB 47. Mr Nicklin suggested that it might be appropriate here to divide the offending broadcasts into groups depending on the allegations made (e.g. "treachery", "blasphemy", etc.). There might be cases where that would be a convenient method to adopt, but here it seems to me that there is too much overlap between the programmes. I think it would be better to find a single figure to cover the 24 programmes. It would be idle to pretend that the exercise is capable of more precise breakdown.

103. I emphasise that I have very much in mind Mr Browne's submissions about causation. I must focus upon injury to the Claimant's reputation in this jurisdiction and only that attributable to these broadcasts. I must put to one side, in so far as it is possible to do so, any damage caused to the esteem in which he was held elsewhere, and also any elements of distress brought about by other allegations or publications for which these Defendants are not responsible. The principle is clear. It is a matter of judgment and

common sense, however, how it is put into effect, since obviously no precise calculation is possible.

104. As the helpful judgment of Haddon-Cave J makes clear, the allegations complained of in these proceedings are quite distinctive and very serious. They go to "the core attributes" of the Claimant's personality: *John v MGN Ltd* [1997] QB 586, at 607. They were published to tens of thousands of people within this jurisdiction. Despite the fact that in most cases no substantive defence has been put forward, there has been no withdrawal or apology. Mr Browne had a delicate path to tread in his conduct of the trial because, though he was entitled to ensure that his clients were not blamed for *all* the distress or *all* the damage to the Claimant's reputation at the material times, he made it clear that he was not suggesting that that any of these allegations was true. Certainly, there was nothing in his conduct of the trial which in itself aggravated the harm done. On the other hand, there were defences of truth/justification on the record until they were struck out on 25 October. That was an aggravating element. There were also the many other broadcasts, relied upon to support the harassment claim, which clearly made things worse. There is on the other hand little, if anything, available to the Defendants by way of mitigation.

105. I was referred to a number of well known cases in the context of quantum, but the more one tries to analyse these and make a comparison, the more it becomes apparent that to a large extent each case turns on its own facts

106. I believe the right approach is to go towards the top of the bracket for general compensatory damages, while making only one award rather than attempting to calculate two dozen separate figures. I pay what I hope is due regard to the gravity and scale of these publications, and also to the persistence with which they were advanced and to the aggravating factors. Bearing in mind all that Mr Browne has said on the subject of causation, I consider that the appropriate award is £185,000. As was observed in *Cairns v Modi* [2013] 1 WLR 1015, most onlookers who are interested in the outcome of a libel action are only concerned to know the answer to the question "How much did he get?" The sum I am awarding should be enough to convince any fair-minded observer of the baselessness of these serious charges and to afford some measure of solatium in respect of the hurt and distress undoubtedly caused.

107. There are, I accept, a significant number of people whose attitude to the Claimant will be unaffected by the outcome of English libel proceedings. In particular, it is obvious that the Defendants, while having recognised the weakness of their position, will never withdraw the defamatory allegations, even though they know there is no evidence to support them. But to make an even higher award would make no difference. The court has to be concerned only with fair-minded (hypothetical) onlookers: they cannot but recognise that these seriously defamatory allegations simply had no foundation. The objective of vindicating the Claimant's reputation has thus been achieved. The compensation for injury to reputation and for distress may seem high to some people, and inadequate to others, but that is inevitable when courts are given the task of expressing non-monetary damage in monetary terms. All one can do is to work within the conventional tariffs.

108. I would add finally on the subject of damages that it is important to avoid double recovery. I have mentioned that there are pending proceedings in Islamabad (Civil Suit No 11 of 2014) to which this Claimant is a party and in which there is a claim in

respect of his international reputation. Obviously, any damages recovered in these proceedings, regarding his reputation within this jurisdiction, would have to be drawn to the attention of that court as and when those issues come to be resolved.

Harassment

109. I was puzzled from the outset as to what the plea of harassment really added to the Claimant's case. There was undoubtedly in my view a campaign against this Claimant and thus also a "course of conduct" as contemplated by the Prevention of Harassment Act 1997. Yet all of that conduct, in so far as it can genuinely be attributed to these Defendants, could be taken into account by way of aggravation when compensating for the libels.

110. It is provided by s.1 of the Act that a cause of action may arise where the course of conduct amounts to harassment of another person *and* the proposed defendant knows, or ought to know, that this conduct amounts to harassment. Has the Claimant shown here that the Defendants knew or ought to have known that *their* conduct, in broadcasting the ARY programmes in England and Wales, amounted to harassment of this Claimant? Was it objectively judged "oppressive and unreasonable"? I can see the force of Mr Nicklin's argument that the publications were unrelenting and calculated to arouse hatred towards him (and indeed quite possibly violence) among members of the Pakistani community in this jurisdiction.

111. Reference was made to the fact that the statute can give rise both to civil liability and, in appropriate circumstances, also to criminal liability. There was some difference between counsel as to the significance to be attached to the words of Lord Nicholls in *Majrowski v Guy's and St Thomas's NHS Trust* [2007] 1 AC 224, at [30], where he stated that to cross the boundary, from the regrettable to the unacceptable, the gravity of the misconduct must be of an order which would sustain criminal liability. My attention was drawn in this context to the remarks of Tugendhat J in *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB), at [63], who observed that the question for him to decide was not whether the CPS would or should prosecute (a question which would normally involve weighing the public interest), but whether the claimant had proved her claim (obviously to the civil standard) that the defendant had committed the statutory tort created by the 1997 Act.

112. Also, in *Jones v DPP* [2011] 1 WLR 833, at [27], Ouseley J considered the passage in Lord Nicholls' speech and concluded that he had not been suggesting that each individual act constituting the relevant course of conduct must itself be of sufficient gravity to be a crime in itself. Such an interpretation, he thought, would seriously undermine the purpose and effectiveness of the Act. Jacob LJ in *Ferguson v British Gas* [2010] 1 WLR 785 addressed the relationship between the criminal and civil wrongs and noted, at [18], that it had never been suggested generally that "the scope of a civil wrong is restricted because it is also a crime".

113. As it happens, I do not need to analyse these dicta more closely, but I suspect that there is little difference between them. What matters is that there has to be a minimum threshold of seriousness before the statutory tort can be established. Moreover, it is not simply a question of having to prove what would otherwise be a crime – but only to the civil standard. The question will be whether the course of conduct goes beyond the sort of annoyance and irritation that one has to tolerate, as

part of living alongside other people in a modern society, and has become "oppressive and unacceptable" (in Lord Nicholls' words) or "fairly severe" (in those of Jacob LJ), so that the law should intervene.

114. I do not believe it can be seriously suggested where a persistent and unrelenting broadcasting campaign includes, in some of its programmes, references to a fatwa and to Jihad in relation to a particular individual, who is said to be deserving of punishment, that the boundary of seriousness has not been crossed. Such conduct is in my view plainly oppressive, unreasonable and unacceptable. It would, at least by the standards of this jurisdiction, pass the strict test put forward by Tugendhat J in *Trimingham*, at [53]; namely, as being so unreasonable that it is necessary and proportionate to prohibit or sanction the speech in pursuit of one of the aims listed in Art 10(2) of the ECHR, including the protection of the rights of others under Art 8.

115. An important point, however, is that the Claimant was mostly in Dubai when the broadcasts took place – or at any rate not within this jurisdiction. That is a factor which is relevant both to the question I have already posed (i.e. as to what the Defendants knew or ought to have known) and to the issue of whether a tort was committed within this jurisdiction.

116. Mr Browne submits that it is not possible to harass someone who is outside the jurisdiction for the simple reason that, if indeed he is conscious of the harassment at all, its impact upon him (i.e. an essential element of the harassment) takes place elsewhere. Suppose, for example, this Claimant in Dubai watched recordings of the broadcasts which took place in England, or watched the programmes as broadcast in Dubai (for which these Defendants were not responsible), in neither case would such distress or other impact upon him have taken place within this court's jurisdiction.

117. The position is not comparable to that in libel. If defamatory words are published here, then the tort is complete wherever the particular claimant happens to be (subject to s.1 of the 2013 Act). Where harassment is alleged, on the other hand, the tort is not complete unless and until it impacts upon the person concerned. One can be libelled without knowing about it at the time, but not so with harassment. It makes no sense to say that a person was harassed but knew nothing about it. (It is true that a complainant may be unaware of some of the acts which constitute the "course of conduct" at the time they occurred: see *Howlett v Holding* [2006] EWHC 3758 (QB), at [22]. But that is another matter.)

118. There appears to be no English authority directly in point – at least so far. But Mr Browne cited the case of *Galloway v Frazer* [2016] NIQB 7, at [86]-[89], where Horner J seemed to take the same view. It was held that there was a good arguable case of harassment in Northern Ireland not only because of an act within that jurisdiction but because of damage being sustained there. I apprehend that the Judge would not have been prepared to grant leave to serve out of Northern Ireland if the evidence had yielded only a viewing of the offending speech in London or damage only occurring in England.

119. Mr Nicklin's response was put in these terms: "The Act is clearly premised on and directed at acts committed within the jurisdiction of the Court. The suggestion that the victim has to be present in the jurisdiction in order to be harassed is novel and takes a rather out-dated view of the myriad ways in which a *victim* can be subjected to

harassment". Clearly modern technology and instantaneous communication have made it easier to reach such "victims" wherever they may be, but that does not mean that jurisdictional reach has been correspondingly extended. It seems to me that Mr Nicklin is right in the first of those two sentences: it is indeed necessary to demonstrate acts committed within the jurisdiction, but he makes insufficient allowance for the nature of this particular wrong. It is an essential element of it that the person concerned should *be harassed*. It will not suffice for the defendant to complete his act or acts within the jurisdiction unless there is also an impact there upon the "victim". It is not unlike the situation addressed by the Court of Appeal in *R v ZN* [2013] 1 WLR 3900, where it was held that an act of intimidation does not amount to an offence under s.51 of the Criminal Justice and Public Order Act 1994 unless the "victim" has actually been intimidated: otherwise the act is no more than an attempt.

120. In these circumstances, I must dismiss the harassment claim. It would have added very little in any event and, as it happens, took up very little time at the trial. Moreover, the evidence of those attacks on the Claimant has been taken into account in the context of aggravation of damages for libel. The Defendants were undoubtedly holding him up to abuse and ridicule in those broadcasts. In this instance, the material torts (defamation) had occurred within the jurisdiction (whether before or after 1 January 2014) and it makes no difference that the Claimant was elsewhere for much of the time. The Defendants would surely have been able to pray in aid a withdrawal or apology by way of mitigating damage, despite his absence, and I see no reason in principle why he should not be able also to rely on their hostile activities by way of aggravation.

Outcome

121. There will be judgment for the Claimant on the libel claims in the sum of £185,000 and the harassment claim will be dismissed.

122. I will hear counsel as to consequential matters, including as to whether it is appropriate to grant other remedies such as an injunction and/or an order that the Defendants publish a summary of the judgment.