Case No: HQ14D04882

Neutral Citation Number: [2017] EWHC 162 (QB)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/02/2017

Before :

MR JUSTICE WARBY

- -

Between :

(1) SIR KEVIN BARRON MP **(2) RT HON JOHN HEALEY MP** **(3) SARAH CHAMPION**	**Claimant**
- and -	
JANE COLLINS MEP	**Defendant**

- -
- -

Gavin Millar QC and Sara Mansoori (instructed by **Steel & Shamash**) for the **Claimants**
The defendant did not appear, but Mr Mick Burchill was permitted to make representations on her behalf.

Hearing date: 31st January 2017

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Judgment

Mr Justice Warby :

1. This has been a hearing to assess compensation pursuant to the Defamation Act 1996, following the claimants' acceptance of an offer of amends.

BACKGROUND

2. The three claimants, Sir Kevin Barron, Rt. Hon. John Healey, and Sarah Champion, are all Labour Party MPs for constituencies in and around Rotherham, Yorkshire. The defendant, Ms Collins, is the MEP for Yorkshire, a member of the UK Independence Party. The claim arises from a speech made by Ms Collins at the UKIP Party Conference on 26 September 2014. The speech was broadcast live on the BBC Parliament channel, and republished in whole or in part on the UKIP website, Twitter, and the Press Association Mediapoint wire service.

3. On 29 April 2015 I gave judgment after the trial of preliminary issues in the action: [2015] EWHC 1125 (QB). The full text of Ms Collins' speech is set out in paragraph [9] of that judgment, in which I held that it bore three defamatory meanings about each of the claimants:

   (1) That they knew many of the details of the scandalous child sexual exploitation that took place in Rotherham over a period of sixteen years, in the course of which an estimated 1,400 children were raped, beaten, plied with alcohol and drugs, and threatened with violence by men of Asian origin, yet deliberately chose not to intervene but to allow the abuse to continue.

   (2) That they acted in this way for motives of political correctness, political cowardice, or political selfishness.

   (3) That each was thereby guilty of misconduct so grave that it was or should be criminal, as it aided and abetted the perpetrators and made the Claimants just as culpable as the perpetrators.

4. I held that the first of these meanings was an allegation of fact, whilst the others were expressions of opinion. For reasons which will become clear, I shall call these imputations "the Collins Libels".

5. On 26 May 2015 Ms Collins' solicitors, RMPI, sent the claimants' solicitors a letter making an unqualified offer of amends on her behalf, pursuant to s 2(1) of the 1996 Act. Section 2(4) explains what an offer of amends amounts to:

   "An offer to make amends under this section is an offer—

   (a) to make a suitable correction of the statement complained of and a sufficient apology to the aggrieved party,

   (b) to publish the correction and apology in a manner that is reasonable and practicable in the circumstances, and

> (c) to pay to the aggrieved party such compensation (if any), and such costs, as may be agreed or determined to be payable.
> ..."

6. By s 4 of the Act, the fact that an offer of amends has been made is a (qualified) defence to defamation proceedings. On 27 May 2015 RMPI filed and served a Defence, settled by Counsel, which relied on the offer of amends as a defence. It further stated that "It is accepted that the claimants and each of them are entitled to compensation pursuant to the above offer of amends" and admitted "that the allegation was serious."

7. On 28 May 2015 the claimants' solicitors accepted the offer of amends on their behalf. Ms Collins, via RMPI, had also made a money offer in full and final settlement of the claimants' claims. This was done in a letter sent Without Prejudice Save as to Costs. (The amount is not known to me, as it has properly been redacted). The claimants rejected the WPSATC offer. On 28 May 2015, however, they asked for Ms Collins' proposals as to the steps to be taken to fulfil the offer. In response, Ms Collins' solicitors sent a draft joint statement to be read in court. In this draft, Ms Collins offered to accept that the allegations were "completely without foundation". That was on 12 June 2015.

8. Ms Collins did not, however, make or publish any correction or apology and, the parties having failed to agree on the steps to be taken to give effect to the offer, the claimants took advantage of the machinery for enforcing an offer which is provided for by s 3 of the 1996 Act. They issued an application ("the Assessment Application") for the court to assess the compensation due to them. That was on 9 September 2015.

9. The Assessment Application was originally listed for hearing on 18 December 2015. It has eventually been heard over a year later than that. There are three main reasons. The first is that on 9 December 2015 Ms Collins, who was by then a litigant in person, made an application to "vacate the offer of amends" ("the Application to Vacate"). The grounds of that application were, in summary, that she had not given informed consent to the making of the offer; that there had been no agreement between the parties; that she had a good defence on the merits, including defences of truth and/or public interest; and that she was in any event immune from suit in respect of the statements complained of by virtue of her role as an MEP. The second reason for the delay is that in conjunction with the Application to Vacate Ms Collins also sought an adjournment of the Assessment Application on grounds of ill-health – an approach she has taken on subsequent occasions. Those factors led to the December 2015 hearing date being lost.

10. The third reason for the delay is that on 4 May 2016, a few days before the long-adjourned hearing at which the court was to consider the Application to Vacate and, if that failed, the Assessment Application, Ms Collins applied for a stay of these proceedings. Her application was for a stay pending the issue of an opinion by the European Parliament ("EP") on whether this action infringed her immunities as an MEP. She had raised that issue with the EP just before making the stay application. Once the EP had confirmed to me its receipt of the application I granted the stay, as I was bound in law to do. That was on 16 May 2016.

11. On 26 October 2016 the EP issued its opinion on Ms Collins' request to defend her immunity as an MEP. This was that the statements complained of were not protected by parliamentary immunity. The stay was lifted. Thereafter, I dismissed the Application to Vacate, fixed the present date for the hearing of the Assessment Application, and dismissed applications by Ms Collins for (1) a further stay of proceedings and/or (2) a further adjournment of the Assessment Application. The stay was sought on the grounds that she was in the process of challenging the EP's decision by way of an application to the Court of Justice of the European Union ("CJEU") for a review of the legality of the Parliament's decision on her immunities, pursuant to Article 263 of the Treaty on the Functioning of the European Union. The adjournment application was made on the grounds of ill-health and/or lack of preparation time.

12. The history that I have just summarised and the reasons for the decisions to which I have referred are set out in detail in my judgments of 16 May 2016, [2016] EWHC 1166 (QB), 20 December 2016 (extempore, no neutral citation), 22 December 2016, [2016] EWHC 3350 (QB), and 27 January 2017 (written reasons attached to my Order of that date).

13. In the meantime, a related action has proceeded to judgment and an assessment of damages. In *Barron v Vines,* Claim No HQ15D00453, Sir Kevin Barron and Mr Healey sued Caven Vines, the leader of the UKIP group on Rotherham Metropolitan Borough Council ("RMBC"), for libellous statements he made in an interview broadcast on Sky News on 5 January 2015 ("the Vines Libels"). This was just over 3 months after the Collins Libels.

14. On 29 April 2015, on the claimants' application, I determined the meaning of the Vines Libels. These were similar to the Collins Libels. They were (1) that the claimants knew for years most of what was going on by way of large-scale sexual abuse of children in Rotherham, and let it go on despite such knowledge; (2) that they thereby let down the children; and (3) that they were still failing to ensure that the perpetrators were brought to justice. I held that there was no real prospect of a successful defence of the claims, and no compelling reason why they should be disposed of at a trial. I therefore entered summary judgment against Mr Vines for damages to be assessed: see my judgment, [2015] EWHC 1161 (QB). On 18 May 2016 I heard argument on the assessment of damages. On 2 June 2016 I awarded £40,000 to each of the claimants, for reasons set out in my judgment of that date, [2016] EWHC 1226 (QB) ("the Vines Damages Judgment").

THIS HEARING

15. The primary evidence for the claimants consists of three statements served in September 2015 – one each. Ms Collins' written evidence in response was filed in November 2015. It consisted of three witness statements, one in respect of each of the claimants, with exhibits. On 11 December 2015, the claimants filed reply evidence. This consisted of a second witness statement from each of the claimants and, on behalf of Ms Champion, statements from Vanessa Johns and Dawn Elliott. Ms Johns has been Ms Champion's PA and Office Manager since August 2013. Ms Elliott worked for Ms Champion between December 2013 and August 2015, as her Senior Parliamentary Assistant and Research Manager.

16. The claimants are represented by Leading and Junior Counsel. Ms Collins has not appeared, and is not legally represented. Mr Mick Burchill has attended on her behalf, seeking to represent her. Mr Burchill has no legal training, but is one of Ms Collins' assistants.

17. All three claimants have attended the hearing to give oral evidence. Each has confirmed on oath the contents of their witness statements. I asked some questions to explore aspects of the points made by way of mitigation in Ms Collins' defence, and other matters. But having regard to the Practice Guidance on McKenzie Friends, and having heard submissions from Mr Millar QC on behalf of the claimants, Mr Burchill decided not to seek to cross-examine any of the claimants. He acknowledged the force of Mr Millar's submission, that to allow this would be unfair to the claimants, given that Ms Collins is not here to be cross-examined.

18. He was right to do so. Mr Millar would seem to be correct in his submission that by failing to appear Ms Collins is in breach of the order for directions made by Master Leslie as long ago as 15 October 2015 that "all deponents are to attend the assessment of damages hearing … unless released …". She was not released. Mr Millar is also justified in his submission that Ms Collins' non-appearance today is not explained by any evidence at all, nor has any satisfactory explanation been advanced.

19. Mr Burchill has stated that Ms Collins is a cancer survivor who has been ill for some time. That is not disputed, and Ms Collins is deserving of sympathy on that account. But no medical evidence has been produced for this hearing, and it is not suggested that she is not fit to attend. The primary explanation offered by Mr Burchill is that Ms Collins is in Brussels, as she has an obligation to attend a Plenary Session of the EP. He told me that he did not know when Ms Collins had first become aware of that need. He himself was unaware of it, he said, until 16 January 2017 when "the diaries were distributed". No mention was made of any such problem in the letter written by Ms Collins on 25 January 2017, to justify a stay of proceedings or adjournment. Documents produced by Mr Millar suggest that the Plenary Session was not taking place on the day of this hearing, but on the day afterwards, at 3pm. Mr Millar also told me on instructions that notice of the session had been given in October 2016. In any event, as Mr Millar points out, nothing has been said to give reason to believe that Ms Collins would be penalised by the EP for attending court in compliance with an order to do so. Mr Burchill had a separate point: that Ms Collins has become a member of a Committee which calls for her attendance in Brussels. This however was not adequately explained.

20. In these circumstances that I have had to consider what if any account to take of Ms Collins' witness statements. Since she has not appeared at the trial, these statements have not been confirmed on oath, nor have they been tested by cross-examination. Mr Miller invites me to ignore the statements altogether. I regard that as an option open to me, given my conclusions as to the reasons given for her absence. But the process in which I am engaged is one that engages fundamental rights on both sides. In the end I have decided that I should have regard to those parts of the defendant's statements that are relevant, according them the status of hearsay evidence from a source whose absence is not properly explained. As such they have little weight. I do not take account of evidence which is irrelevant to the issues properly before the court. The only issues properly raised on the question of compensation are those pleaded in the Defence of 28 May 2016. I have regard to evidence relevant to those

issues, and to evidence that is responsive to points raised in support of the claimants' case since that date, but not other matters.

21. Despite all of the above, I allowed Mr Burchill to address me on behalf of Ms Collins, on matters relevant to the assessment of compensation. He had put in written submissions, which I received 3 minutes before the hearing began. Over two thirds of the document were devoted to revisiting the failed application to stay proceedings pending the CJEU proceedings. Ms Collins had no right to do that, having lost on the issue on 20 December 2016 and on 27 January 2017. But I read the rest of the document before preparing this judgment. I also take account of the brief submissions that Mr Burchill made orally.

LEGAL PRINCIPLES

22. The amount to be paid in compensation after the acceptance of an offer of amends is to be assessed "on the same principles as damages for libel": Defamation Act 1996, s 3(5). Ordinarily, the court will approach the assessment in two stages: (1) identification of the award that would be made without reference to the offer; (2) discounting the figure to take account of the offer of amends: *C v MGN* [2012] EWHC Civ 1382, [2013] 1 WLR 1051.

The first stage

23. As I noted in the Vines Damages Judgment at [20], the key principles guiding the assessment of damages for defamation are summarised in the judgment of Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586 at 607-608 in a passage to which I have added some numbering and lettering to aid clarity:

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

> when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men."

24. I examined the relevant principles at greater length and in rather more detail in the Vines Damages Judgment at [21-26]. The same principles are applicable in the present case, and I adopt what I said there, subject to the following.

25. Other publications to the same effect can have an impact on damages (a) if the claimants have sued over them in another defamation claim or (b) it is necessary to consider them in order to isolate the damage caused by the publication complained of: see the Vines Damages Judgment at [21(6)(b)] and [24-25], where I explained that reason (a) flows from s 12 of the Defamation Act 1952. In assessing damages for the Vines Libels of January 2015 I took care to avoid awarding damages for harm that resulted from the Collins Libels of September 2014. In the present case, Ms Collins has not relied on s 12 of the 1952 Act. But she is unrepresented, and in principle I must in any event avoid compensating Sir Kevin or Mr Healey for damage caused by the later Vines Libels. Ms Champion did not sue Mr Vines, so reason (a) could not apply in her case. But reason (b) remains, and I must ensure that she is compensated only for the consequences of the Collins Libels.

26. As to the measure of damages, there is a notional "ceiling" on libel awards. It is arrived at by reference to the top figure for pain, suffering and loss of amenity in personal injury claims. The figure is now about £300,000: *Raj v Bholowasia* [2015] EWHC 382 (QB) [179] (HHJ Parkes QC). Awards at that level are reserved for the gravest of allegations, such as imputations of terrorism or murder. One must seek to place an individual case in its proper position on the scale that leads up to this maximum. There is nowadays a more or less coherent framework of damages awards to guide a trial judge: see the discussion in the Vines Damages Judgment at [80]-[82].

27. At [86]-[87] of the Vines Damages Judgment I considered a submission of Mr Vines based on Article 10 of the Convention. I accepted a proposition which I propose to adopt in the present case. This is that:

> "special caution is required when it comes to deciding what is justified and proportionate by way of compensation for libels such as those in issue here, which are published by one politician about another on a topic of public interest. Politicians may in general have thicker skins than the average. Whether or not that is so in the individual case, they are expected to tolerate more than would be expected of others."

28. Cases of some relevance or arguable relevance to quantum are cited by way of example at [83]-[85] of that judgment. The majority of those cases have been referred to in Mr Burchill's written submissions for this hearing. He submits that the £60,000 in *Appleyard v Wilby* [2014] EWHC 2770 (QB) offers "a sensible approximate high watermark". Mr Burchill refers to the award in *Barron v Vines* itself as the most relevant, and as affording a basis for considering a starting point of £40,000. It is submitted, however, that there is a basis for reducing damages to zero, on the basis of

what is alleged to be misleading of the court by the claimants. Reference is made to the decision in *Joseph v Spiller* [2012] EWHC 2958 (QB).

The second stage

29. It is a general principle of the law of damages for defamation that the amount required to serve the functions identified in *John* will be reduced by an apology, retraction, or correction. This is because such steps will prevent or reduce any continuing harm to reputation, should assuage hurt feelings, and ought to achieve something by way of vindication.

30. An apology, retraction or correction may be, and often is, made or offered pursuant to the statutory scheme provided for by the 1996 Act. The court has considered the impact of such an offer. As I noted in the Vines Damages Judgment at [26]:

> "Since *John,* which was decided in December 1995, Parliament has laid down a statutory procedure for making an offer of amends: Defamation Act 1996 ss 2-4. Where a defendant uses this procedure, it will be considered a significant mitigating feature and attract a healthy discount to the damages awarded: *Nail v News Group Newspapers Ltd* [2004] EWCA Civ 1708 [2005] 1 All ER 1040 [41]. The usual discount for *a prompt and unqualified offer* of amends is between 35-50%: *C v MGN Ltd* [42] (Bean J). ..."

31. The emphasis is mine. Of course, the court's approach to the "discount" may be affected by delay or qualification upon it. It may also be affected by the way the defendant behaves after making the offer. This is partly a matter of statutory obligation pursuant to s 2(5) of the 1996 Act. This provides that in making its assessment:

> "The court shall take account of any steps taken in fulfilment of the offer and (so far as not agreed between the parties) of the suitability of the correction, the sufficiency of the apology and whether the manner of their publication was reasonable in the circumstances, and may reduce or increase the amount of compensation accordingly."

32. The authorities, helpfully analysed by Mr Millar QC and Ms Mansoori, indicate that the following factors bear on the level of the discount:

(1) Whether the offer is prompt or delayed. If the latter, the discount may be reduced: see *Angel v Stainton* [2006] EWHC 637 (QB) and *Undre v The London Borough of Harrow* [2016] EWHC 2761 (QB), where the offer took 3 months and the discount was reduced to 25%.

(2) Whether any correction or apology that is published is prompt and fulsome. An apology that is published late or is off-hand or only grudging is likely to lead to a reduced discount: *Campbell-James v Guardian Media Group* [2005] EWHC 893 (QB) [2005] EMLR 24, *Veliu v Mazrekaj* [2006] EWHC 1710 (QB) [2007] 1 WLR 495

(3) Whether the defendant has acted in a way inconsistent with the conciliatory stance which an offer represents. If the defendant has advanced an ill-founded defence in correspondence, or indicated that the claimant's character may be attacked, the mitigating effect of the offer may be reduced: see for instance, *Campbell-James.*

(4) Whether a Defendant's conduct has increased the overall hurt to the Claimant's feelings. For instance, correspondence may increase hurt to feelings by treating the Claimant dismissively, or by expressing a grudging attitude: *Angel v Stainton* [2006] EWHC 1710 (QB) [2017] 1 WLR 495 [31], [33], *Veliu* [32]. Such conduct may at least theoretically make it appropriate to allow no discount at all: *Turner v News Group Newspapers Ltd* [2006] EWHC 892 (QB) [46] (Eady J).

33. This case appears to be unique, inasmuch as the defendant has not made or published any correction or apology at all. It would seem however to be a logical extension of factor (2) that a complete failure to publish any correction or apology following an offer of amends would be likely to reduce the discount considerably. The offer of amends will have failed to achieve much of the purpose it is meant to fulfil. As to point (4), it is an open question on the authorities whether a defendant's aggravating conduct could in an appropriate case be found to have effects severe enough to go beyond eliminating the "right" to a discount. Could a defendant's behaviour increase damages beyond those that would have been awarded even if there had been no offer of amends? If so, how should the court reconcile this with the two-stage approach? These are points to which I shall return.

The effect of hurtful conduct

34. When considering the extent to which the behaviour of Ms Collins has increased the harm caused to the claimants, or reduced the mitigating effect of the offer of amends, I need to caution myself (a) that in this context I am concerned only with compensation for extra injury to feelings and not harm to reputation, and (b) that it is important not to over-compensate for hurt feelings.

What is relevant and admissible

35. I also need to bear in mind two further points. One is that the process in any offer of amends case starts with a form of agreement. For that reason it is important ensure that neither side advances new points on the quantum of compensation that could and should have been made at or before the time the offer of amends was accepted. The Court of Appeal addressed this point in its judgment on an appeal from the award of compensation by Eady J in *Nail v News Group Newspapers Ltd* [2004] EWCA Civ 1708, [2005] 1 All ER 1040 [15]:

> "Both parties prepared bodies of evidence seeking respectively to aggravate and to mitigate the compensation. Eady J either ignored or declined to admit most of this. He was right to do so. Speaking generally, there may of course be evidence from both sides relevant to the determination of compensation. But in principle it seems that a claimant should not normally be permitted to enlarge significantly pleaded allegations upon which the offer to make amends was made and accepted, for example by promoting a new case of malice. Nor should a

> defendant, who has made an unqualified offer which has been accepted, be permitted to water down significantly the pleaded allegations. Claimants should therefore plead the full substance for which they seek redress: defendants who wish to make amends for significantly less than that full substance should make appropriate qualifications to their offer."

The letter of claim and, where relevant, the Particulars of Claim will set the initial parameters for the assessment.

36. Secondly, relevant conduct and events which take place after acceptance of the offer may be relied on by either side, provided that an intention to rely on them has been adequately indicated by pleading or in evidence in good time before the assessment hearing.

MORE ABOUT THE FACTS

The parties

37. Sir Kevin Barron has been the Labour MP for Rother Valley since 1983. His constituency falls within the RMBC boundary. He was a member of the General Medical Council from 1999 to 2008 and has been Chair of the House of Commons Standards and Privileges Committee since 2010. He has held a number of shadow cabinet positions. He was knighted in the New Year's honours 2014.

38. Mr Healey has been the Labour MP for Wentworth and Deane since 1997. His constituency falls largely within the RMBC boundary. In the years 2001-2010 he held a number of ministerial positions both in the Treasury and in the Department of Communities and Local Government. He lives with his wife in Rotherham, where his son was brought up.

39. Ms Champion is the MP for the constituency of Rotherham, having won a by-election in November 2012, as successor to Dennis MacShane. Prior to standing for Parliament she worked within the community and on issues relating to children. Her last job was CEO of Bluebell Wood Children's Hospice. She led an inquiry by a group of Parliamentarians and Dr Barnado's into CSE and trafficking in 2013/2014. She works regularly with children's charities.

40. All three claimants were standing for election in the General Election in May 2015.

41. Ms Collins was the UKIP candidate for the Rotherham constituency at the by-election of 2012 and was its candidate for that constituency at the 2015 General Election. She was then and remains the MEP for Yorkshire.

The context

42. The sexual exploitation of children in the Rotherham area had become a national scandal at the time of Ms Collins' speech. Allegations of child sexual exploitation ("CSE") in Rotherham first emerged publicly in Andrew Norfolk's *Times* articles from September 2012, two months before the by-election at which Ms Champion was elected. On 26 August 2014 the Independent Report of Professor Alexis Jay OBE

into CSE in Rotherham was published. It reported that at least 1,400 children had been subjected to sexual exploitation in Rotherham between 1997 and 2013. The report, which had been commissioned by the RMBC, suggested that some members of the Labour group on the RMBC had been aware of child sexual exploitation and had failed to take action. It did not implicate any MP.

Publication and republication

43. Ms Collins' speech was made a month after the publication of the Jay Report. It was the opening speech at the conference, made during the morning session. I find that the immediate audience - that is to say, those in the conference hall - exceeded 2,000. Ms Collins admits there were 800. The claimants' evidence is that the capacity was 3,000. The claim for slander relates to publication to this audience. The audience will have consisted mainly of UKIP members and sympathisers but I am satisfied that there were also independent people, principally journalists, present.

44. More important is the claim for libel. The speech was broadcast live on the BBC Parliament channel to an audience that I find exceeded 13,000. The BARB figure is 12,500 and I accept the evidence of the claimants that this figure excludes those viewing via monitors in the Houses of Parliament, of which there are some 2,000 or more. The timing was significant, in terms of viewing and impact within the Palace of Westminster, as Parliament had been recalled during the recess for a special one-day debate on Iraq. There may have been additional viewers via repeats of the broadcast, as Ms Champion suggested in her evidence, but the evidence of this is too speculative to be reliable. The speech was also broadcast online via the UKIP website for about a month. The unchallenged evidence is that the recording was on Youtube and had 2,140 views by September 2015.

45. I accept the claimants' evidence that there was extensive written republication of the sting of what Ms Collins had said, for which she must take responsibility. A key passage from her speech, containing the gist of the libel, was published as part of a PA Mediapoint wire service report, which remained live for some 3 hours on the day, before it was edited out as a result of measures taken on the claimants' behalf. Something of this nature is likely to have had a significant impact before it was withdrawn. And I accept the evidence of Mr Healey that those who receive the Mediapoint service include not only journalists but also others involved in the public policy area. But it is right to note that there is no allegation or evidence that the report was taken up and repeated by any media subscriber to the Mediapoint wire service, or by any other subscriber.

46. The gist or sting of Ms Collins' libel of the claimants was repeated extensively on Twitter. There were tweets by Alex Wickham of Guido Fawkes, Matt Holehouse of the Daily Telegraph, and Paul Brand of ITV Calendar (the Yorkshire regional news service of ITV). The unchallenged evidence of the claimants is that the followers of these three numbered at the time, respectively, 11,600, 5,535 and 2,655. The total is therefore nearly 20,000.

47. The evidence satisfies me that the broadcast and Twitter repetitions probably led to a large number of onward republications, on social media and verbally. There certainly were many publications to the same or similar effect. It is difficult to pin down causation in respect of individual items, and I stand by the words of caution I have

expressed. But overall I accept the claimants' case, and their evidence, that although questions had been raised before the speech about who knew what when, there had been nothing like the allegations made by Ms Collins. I accept that the picture changed significantly after, and as a result of, what she said and its republication on the BBC, online, and on Twitter. The evidence contains some illustrations of what was plainly reaction to Ms Collins' speech. One of the most striking is a tweet sent on the day of the speech stating, "#RotherhamAbuse a brilliant speech from #UKIP Jane Collins, lets arrest 3 MPS". It contained what seems to be a link to Ms Collins' speech.

48. The Claimants heard about the allegations made against them the same day. They have described in their statements the responses they experienced from others, and the emotional impact on them. This is factual material that in my judgment falls within the spirit of the guidance given in *Nail.* Sir Kevin Barron said his colleagues had all heard about the allegations, "it was the 'talk of the tearoom'". Mr Healey said "There was chatter in the corridors from my colleagues about the speech …." Ms Champion said "There was immediate awareness at Westminster of the allegations against me which made me feel sick, embarrassed, self-conscious, and that I needed to justify that it was not true." Beyond this, Mr Healey's evidence is that the first person to tackle him about the allegations was his son, 19 at the time, who asked "Dad, did you know all about the abuse?" Ms Champion says that following the Defendant's speech, abusive tweets came through to her mobile so fast that she did not have time to block people. I am satisfied that all three claimants found the experience genuinely and significantly distressing. They felt that their careers were at stake, and that their integrity was under serious attack.

The claims and the response

49. The claimants sent a letter of claim on 2 October 2014. This was less than a week after the speech. The remedies sought were the removal of the allegations from the UKIP website, an undertaking not to repeat, an apology, damages, and costs. The claimants offered to settle their claim for £10,000 each. By letter from RMPI of 23 October 2014 Ms Collins declined to compromise on any such terms, and proposed that the parties should "join in the publication of a form of words in which (should they so wish) each of the parties clarifies its respective positions". Failing this, the letter indicated, defences of honest comment and publication on a matter of public interest would be advanced. The UKIP website posting was however removed at about this time.

50. Proceedings were issued on 26 November 2014. The Particulars of Claim relied in relation to the amount of damages on the gravity of the allegations, the "sensational and provocative manner" in which they were published, and an alleged intention to cause maximum damage and embarrassment. It was alleged that she knew the allegations were baseless. Reliance was placed on the failure to apologise and the way that Ms Collins had responded instead.

51. The claimants applied for the determination of meaning on which I gave judgment on 29 April 2015. That was just before the May 2015 General Election. The election then took place. The offer of amends was not made until after the election, on the day before the Defence was due. This was precisely 8 months after the speech itself. The Defence pleaded certain matters by way of mitigation. The principal issues raised

were the extent of publication and the number and identities of the publishees. It was also said that Ms Collins would rely in mitigation on

> "the fact that most of the publishees … were political opponents of the claimants, and, it is to be inferred, that the claimants' standing in the eyes of those publishees is of limited importance to the claimants and did limited damage to their reputations in the eyes of the public at large."

52. The course of events thereafter is outlined at [6]-[15] above.

ASSESSMENT

53. The usual approach to the first stage has been to identify an award that would have been made at the end of a hypothetical trial, assuming that nothing had been done by the defendant to aggravate the hurt to the claimant's feelings, such as by advancing an unfounded defence of truth, and nothing to mitigate: see Eady J in *Turner* at [45]. It is easy to see why that should be so. A defendant who makes an offer of amends and relies on it as a defence may not rely on any other defence. The offeror will be "putting up their hands", accepting a liability to correct and apologise, and to compensate. But Mr Millar submits that this is an exceptional case, in which the court should take the "seriously aggravating conduct" of Ms Collins into account when considering the starting figure. Otherwise, he submits, she will "unjustifiably benefit from the Offer of Amends process" and "the claimants will not receive compensation for the additional distress they have suffered as a result" of these factors. An alternative, suggests Mr Millar, would be to take aggravation into account at the end of stage two.

54. I see a good deal of force in these submissions. It would seem logical, however, to take any aggravation of harm into account at the step in the analysis to which it chronologically belongs. So, where the circumstances justify it, aggravation that has occurred prior to the offer of amends should be reflected in the stage one figure; later aggravation may lead to a reduction in the discount at stage two and could, in an extreme case, yield an increase in the stage one figure. In this case there is something, but relatively little by way of aggravation prior to the offer of amends. The thrust of the claimants' case on aggravation depends on Ms Collins' behaviour over the 20 months that have passed since she offered to correct and apologise.

The first stage

55. These were undoubtedly serious allegations. That much is admitted. The main sting lies in the first of the three imputations: the factual allegation. Such an allegation not only imputes serious wrongdoing, which any reasonable person would deplore; it attacks a core attribute of an MP, tending to undermine the trust and confidence that constituents would expect their representatives to deserve. The allegations were made prominently, with apparent conviction. They were made by a person with some authority, who would appear to most to be in a good position to assess the truth of the matters of which she spoke. They were made to a packed conference hall, and widely disseminated outside that hall. Those who heard them live were mainly UKIP party members and activists. A similar audience will have seen the speech on the UKIP website. But the allegations reached a wider audience outside the hall which was quite

substantial, and included people whose opinion mattered more to the claimants: their Parliamentary colleagues, and others with whom they had daily or close working relationships, as well as members of their families. The impact on each claimant's reputation was seriously harmful, and each suffered substantial distress as a result of the publication complained of, from the repetition of its gist or sting, and from the cascade of hostile social media response. I find that the claimants did perceive this to be a dishonest attack on them for political motives. I have made clear that it is not relevant for the court to determine whether they were right to do so. I do find that this was a reasonable response, that should be reflected in damages. The damage to reputation and feelings continued over many months before the defendant made her offer of amends, albeit not at the same pitch as it achieved initially. All of this falls for consideration at stage one. So also does the need to award a sum which can be pointed to as affording appropriate vindication. There is no reasoned judgment that can sensibly be viewed as a substitute for that function of an award of damages.

56. I reject the contention of Ms Collins that the claimants' reputations were not seriously harmed amongst UKIP members or supporters, and I reject her argument that the claimants' reputations amongst members of this group do not matter to them. I accept that the claimants' reputations among voters matter to them, including their reputations amongst those who identify with other parties. There is no sound basis for approaching this case on the footing that UKIP supporters hold Labour politicians in such low esteem that their reputations cannot be seriously harmed if they are accused of – to put it broadly - covering up sex crimes against children.

57. It is argued by Mr Burchill that the general election result shows that the claimants suffered no harm to reputation. The point could in principle have been pleaded but it was not. As far as I can tell it was first put forward in this case in the written argument that I saw 3 minutes before the start of the assessment hearing. That is far too late, in fairness. Moreover, Mr Vines made the same point, and I rejected it: see the Vines Damages Judgment at [69]-[70]. There is nothing new since then. If the point had been legitimately raised before me in this case, I would have dismissed it again, for the same reasons.

58. A point is made about a post-publication interview between Ms Collins and Paul Brand of ITV, which is said to have "greatly moderated the language and statements of the speech". Complaint is made that the claimants took action to prevent the broadcast of this interview, and thereby failed to mitigate their loss. This too is an entirely new point, never pleaded, and taken at the last minute. I cannot fairly take it into account. I add that it does not have any obvious merit, in any case.

59. I also reject Ms Collins' *Joseph v Spiller* point. This is not a point that could have been pleaded in the Defence. It is however essentially the same as a point made by Mr Vines at the assessment of damages in his case: see the Vines Damages Judgment at [69]. I rejected it on the evidence in that case: see paragraphs [71]-[73] of that judgment. It is repeated in this case, but no new material is relied on. It is sufficient to say that the point is, self-evidently, offensive and that I reject it as unfounded on the evidence in this case, for the same reasons as those given in the Vines Damages Judgment.

60. I do not consider that this case is closely comparable on its facts with *C v MGN Ltd*, as the claimants have submitted. The appropriate starting points fall considerably

lower on the scale, for several reasons. The claimant in *C v MGN* had been accused of having a conviction for the rape of a 14 year old girl. These claimants were not accused of participation in any such wrongdoing, but of passivity in the knowledge that others had acted wrongfully. The imputation of criminality against these claimants was of a very different order, and expressed by way of an opinion. The claimant in the *C* case was especially vulnerable. He was the father of Baby Peter, who had died as a consequence of violent abuse by three others. He was not a public figure for any other reason. Here, I am compensating politicians who have chosen the public limelight and are or ought to be more robust. But the stage one figures do need to be substantial if they are properly to reflect the factors I have mentioned in the previous paragraphs.

61. There are of course differences between the positions of the three claimants. On behalf of Ms Collins, Mr Burchill argues that I should distinguish between them in my assessment. I do not believe that I should. The argument for Ms Collins is based on the fact that the first two defendants have already received damages "relating to identical statements", and the third defendant has not. The argument is unsound, for reasons already explained: the damages awarded in the Vines case were for the Vines Libels and only those libels. The claimants sought and obtained damages for the additional harm he caused, above and beyond that caused by the Collins Libels.

62. The starting points suggested by Mr Burchill for the first allegation are £45,000 to Ms Champion and £20,000 to Mr Healey. The lower figure is explained by the argument I have just rejected. Mr Burchill's figures are for the slander and the libel, together, I have taken the slander and libel separately, as there should be separate awards for separate causes of action. My conclusion, bearing in mind all the factors I have identified above, is that the appropriate starting points to compensate each claimant for all the libels are (a) for slander, the sum of £10,000 and (b) for libel, the sum of £50,000. The larger figure for the libels reflects the obvious fact that these were more widespread and bound to have greater impact, due to the permanence of the form in which they were published, and the nature of the audiences to whom they were primarily directed. The figure for the slander reflects the relatively limited audience in the hall and the fact that most of these were political antagonists of these claimants.

The second stage

63. A prompt and unqualified offer of amends would have reduced the stage one figure, as it would have cut down the injury to feelings quite significantly, and ought to have reduced the continuing anxiety and uncertainty that any claimant will experience. If a prompt and unqualified offer had not only been made, but also followed up swiftly by the making and publication of a retraction and apology, a substantial discount would have been appropriate, at or toward the top of the scale. In the event, the offer was not made until 8 months after the event, and at the last possible moment. That would not have attracted anything close to the full 40%. I can see that a significant discount, perhaps as much as 20%, might have been appropriate even so, if the belated offer had been carried through. The scale of any discount on that footing would no doubt have depended on the fulsomeness of the retraction and apology.

64. It would be unreasonable and unfair to the claimants to discount compensation for injury to reputation on the basis of the offer of amends in this case. Nothing whatever has been done by the defendant to stem any continuing harm to reputation, or to

restore the damage done. She has offered, but has taken no step to afford them actual vindication. Apart from making the offer of amends, she has done nothing at all to make the claimants feel better about the matter. Since making that offer, she has done much that is likely in the ordinary course of things to undo the good that the offer was likely to do. Her attempt to set aside the offer of amends was made on the basis that she had good defences all along, including truth, and was a victim of negligence by her lawyers. That application lacked any substantial merit. It unreasonably delayed matters by many months. The same, in my judgment, is true of the application to stay proceedings pending the opinion of the EP. It is true, as Ms Collins submits, that the stay was required by law once she had sought the EP's opinion. But she was not bound to do that, and I have already expressed the view that the EP's opinion was clearly correct: see my judgment on the Application to Vacate, and the reasons I gave on 27 January 2017 for dismissing the further stay application.

65. The long delays in this case are understandably relied on as aggravating the harm. That is on the basis that the delays are due to deliberate evasion or at least unjustified foot-dragging by the defendant. I agree that the defendant has unreasonably caused considerable and unnecessary delay. Furthermore, at this final stage Ms Collins has, unreasonably, put forward offensive arguments that have been tried and failed before and which tend to increase the harm rather than reduce the appropriate compensation. Mr Millar is justified in calling Ms Collins' conduct "seriously aggravating". I have no doubt that it has been exasperating for the claimants. I have some sympathy with the argument that things have been made worse than they would have been if no offer of amends had been made. Even so, I do not consider that Ms Collins has managed wholly to erase all of the benefits that the claimants gained from the offer of amends. At that point, the issue of liability was settled. The claimants accept that they did not believe the Application to Vacate would succeed. Rightly so, as it proved. Ms Collins has not repeated the libels, other than in these proceedings. Some reduction remains appropriate. In my judgment, however, in all the circumstances only a residual discount is justified. To deduct 10% may tend towards being generous to Ms Collins. But this is not a scientific process. I reduce the award for slander by £1,000 and the libel award by £5,000.

Disposal

66. In the result the total award to each claimant is £54,000.