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Case No: HQ04X01682

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13 July 2006

Before:

THE HON. MR JUSTICE GRAY

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Between:

MICHAEL CHARMAN	**Claimant**
- and -	
(1) ORION PUBLISHING GROUP LIMITED	**Defendants**
(2) ORION BOOKS LIMITED	
(3) GRAEME McLAGAN	

- -
- -

HUGH TOMLINSON QC and LUCY MOORMAN
(instructed by **Simons Muirhead & Burton, Solicitors**) for the **Claimant**
ADRIENNE PAGE QC, MATTHEW NICKLIN and ADAM SPEKER
(instructed by **Wiggin LLP, Solicitors**) for the **Defendants**

Hearing dates: 19-23 & 30 June 2006

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Approved Judgment

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

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THE HON. MR JUSTICE GRAY

Mr Justice Gray:

The issue

1. This libel action is being tried in stages without a jury.

2. The first stage was to decide the issue what meaning the words complained of would have been understood to bear. That issue was resolved at an earlier hearing which took place in October 2005. My ruling can be found at [2005] EWHC 2187 (QB).

3. The issue which I now have to decide is whether the Defendants, who are respectively the publishers and author of a book entitled *Bent Coppers*, are correct in their contention that the publication of the passages from that book of which the Claimant makes complaint is protected by qualified privilege. The Defendants rely on an amalgam of various species of privilege: the privilege accorded to responsible journalism (the so-called *Reynolds* privilege); the statutory privilege which protects fair and accurate reports of parliamentary and judicial proceedings and the ancillary common law privilege which can attach to matters closely connected with reports of proceedings which enjoy statutory privilege. Unquestionably the most important of these various species of privilege for the purposes of the present case is that which is accorded to the products of responsible journalism.

4. This case is a good example of the advantages of trying the issue of privilege (and in particular the issue of responsible journalism) without a jury. Trial by judge alone dispenses with the sometimes problematic question of distinguishing between issues of law (which are for the judge to decide) and issues of fact (which would be a matter for the jury, if there were one). Another problem which arises in cases where responsible journalism is relied on by the defence is that there may in the particular circumstances of the case by very few contentious issues of fact for the jury to resolve and that such factual questions as do arise may appear to the jury to be trivial and unimportant. Eady J adverted to this problem in *Galloway v. Telegraph Group Limited* [2005] EMLR 7 at 19-20. Try as the judge may to explain to the jury why their role in the trial is so limited, it is entirely understandable if jurors are puzzled, if not affronted, at the role they have been called upon to play. One case in point is *Loutchansky v. Times Newspapers Limited* [2002] QB 321.

5. The Defendants in the present case also advance a defence of justification. If the claim to privilege fails, there will be a third stage when the issue of justification will be decided. Depending on the outcome of that third stage, there may have to be a further trial of the issue of the Claimant's entitlement to damages and other consequential relief.

The parties

6. The Claimant ("Charman"), is a former Detective Constable in the Metropolitan Police Force ("the Met"). He was a serving officer from 1971 until 6 May 2004. In June 1993 he was in the Flying Squad, based at Tower Bridge. He became the joint handler of an informant called Geoffrey Brennan ("Brennan"). Another officer in the Met was John Redgrave ("Redgrave") who attained the rank of Detective Inspector. Unlike Charman, Redgrave was a member of the South Eastern Regional Crime Squad ("SERCS") but he and Charman had worked together on the Brink's Mat

enquiry and investigation from about 1983. Later, however, they were on different teams.

7. Charman and Redgrave were required to resign from the Met on 6 May 2004, following the finding of an internal disciplinary panel that they had acted in a manner likely to bring discredit on the reputation of the force.

8. There are three Defendants. The first defendant, The Orion Publishing Group Limited, and the second defendant, Orion Books Limited, are respectively the publishers of the hardback and the paperback editions of *Bent Coppers*. The author of that book is the third defendant, Mr Graeme McLagan ("McLagan").

9. McLagan is a journalist of many years standing. After starting as a reporter on the *Newcastle Journal*, he moved to London and worked for the *Daily Mail* in the 1960s. In 1971 he joined BBC Radio News as a reporter, becoming Deputy Home Affairs correspondent a few years later and thereafter Home Affairs correspondent for both radio and television. Over the years he covered many major home affairs stories. In 1993 he was appointed head of a new investigations team which covered both television and radio news. He was heavily involved in reporting the Matrix Churchill trial and the subsequent Scott Inquiry.

10. From the late 1970s onwards McLagan took a special interest in the issue of police corruption. In the early 1980s he reported on the first major inquiry by an outside force into police corruption within the Metropolitan Police. He covered the progress of that inquiry and several trials which arose out of it. A particular problem within the Metropolitan Police at that time was the abuse of the system of informants. McLagan reported on this area of police corruption in a Panorama programme transmitted in 1982. He came to be recognised as the BBC's expert on police corruption. He reported on the criminal trials of several allegedly corrupt police officers. In January 1998 McLagan was the presenter for another Panorama programme about police corruption.

Publications sued on

11. The hardback version of *Bent Coppers* was published on 9 June 2003. It is sub-titled "The Inside Story of Scotland Yard's Battle Against Police Corruption". Also on the cover are words attributed to the then Metropolitan Police Commissioner, Sir John Stevens: "This is a story that deserves to be told – warts and all". The flyleaf within refers to the book as "the inside story of the 'Ghost Squad' and describes how it broke into the secret world of police corruption".

12. The book runs to 260 pages. It will give a flavour of the book's contents if I list the chapter headings:

> "1. Corruption through the years
>
> 2. Forming the Ghost Squad
>
> 3. Corruption in elite detective squads
>
> 4. The Great Flying Squad Robbery

5. Investigating the Flying Squad
6. Phase Two
7. The Cannabis Sting
8. Rolling Over
9. Finding Evidence
10. New Corruption Crackdown
11. Appeals
12. Problems and Difficulties
13. SERCS (South East Regional Crime Squad)
14. Murder and the Detective Agency
15. Loose Ends
16. The Continuing Struggle"

13. Charman has, as it is proper for him to do, selected for complaint a number of substantial passages from chapters 2, 3, 6, 12, 14, 15 and 16 of the hardback edition as well as the caption to one of the photographs included in this edition.

14. Those passages are too lengthy to be set out in full in this judgment. They consist for the most part in a detailed account of the dealings of Charman and Redgrave with Brennan. The book describes how, after he had been arrested on suspicion of stealing £400,000 from two Vietnamese American businessmen ("the Wangs"), Brennan approached Detective Chief Superintendent Gaspar ("Gaspar"). In the course of several interviews, which were tape-recorded, Brennan told Gaspar that he had made corrupt payments totalling £50,000 to Charman and Redgrave in return for their protection whilst engaged in the theft from the Wangs. The two officers are said strenuously to have denied Brennan's allegations. The inquiry which was mounted into them is described. There is a report of Brennan's trial. The media coverage accorded to the trial and to subsequent events is described. Readers are told of the disciplinary proceedings against Charman and Redgrave which led to their leaving the Met.

15. The words complained of can conveniently be divided into four main groups:

    i) a detailed account in chapter 3 of Brennan's statements to Gasper that he paid the Charman and Redgrave £50,000 to "cover" his theft of £400,000;

    ii) an account in chapter 12 of the withdrawal by Brennan of his allegations against Charman and Redgrave and the "sting" operation which was thereafter conducted against the two officers;

iii) a detailed account in chapter 15 of the criminal proceedings brought against Brennan for theft, including pre-trial proceedings in the absence of the jury and the trial itself; and

iv) a passage in chapter 16 which mentions the Brennan case as being one of a number of examples of abuse of the informant system said to be at the heart of the vast majority of corruption cases over the years.

16. At the earlier hearing in October 2005 I found that the passages in the hardback edition of which the Claimant complains bore the defamatory meaning that

> "there are cogent grounds to suspect that Mr Charman abused his position as a police officer by colluding with Brennan in the commission of substantial fraud by Geoffrey Brennan from whom he and Mr Redgrave received corrupt payments totalling £50,000".

17. The paperback version of *Bent Coppers* was published on 1 April 2004. It had the same sub-title as the hardback edition and on the back cover there were references to the book being a "disturbing inside story" which "only now can … be revealed".

18. A number of changes from the text of the hardback edition were made in the paperback edition: the material ones are identified at paragraphs 62 to 67 of my judgment on the issue of meaning. Notwithstanding those alterations, my finding was that the paperback version bore the same meaning as the hardback.

Observations as to evidence which may be called in support of a defence of privilege based on responsible journalism

19. Before I come to summarise the relevant background, it may be helpful if I make some general observations about the evidence which will generally be relevant and admissible where the defence of responsible journalism is relied on. The primary and often the only issue will be whether the author or journalist concerned has acted responsibly in gathering and selecting information for the intended publication and in presenting that information to readers (or viewers).

20. The corollary of that proposition is that the evidence which is relevant and admissible in connection with the issue of responsible journalism will in principle be confined to events which took place prior to publication and to information which was (or should have been) available to the author or journalist prior to publication.

21. This was made clear by Brooke LJ in *Loutchansky* (loc cit):

> "40. It appears to me that throughout the case law I have considered the judges are speaking with a single voice. The court has to consider all the circumstances surrounding a publication when it considers whether the publisher had a duty to publish the information in question on that particular occasion. I have shown how Lord Bingham CJ and Lord Nicholls in *Reynolds's* case [2001] 2 AC 127 set out to give guidance about the kind of matters a publisher should take into

> account when deciding whether or not to publish. Lord Nicholls would, I think, have been surprised if he had thought that a publisher could bolster his contention that he was under a duty to publish by going out afterwards in search of material which was not to hand when he took the decision to publish, and there is no sign of this possibility in his guidelines. Indeed, if that was the law, matters like 'the steps taken to verify the information', 'the urgency of the matter' and 'the circumstances of the publication, including the timing' would lose a lot of their potent effect if the law permitted a publisher to publish untrue defamatory matter without sufficient enquiry and then to justify that publication (in the sense of establishing a plea of qualified privilege) by being allowed to rely on after-acquired information".

22. It follows that, when it comes to the preparation of the witness statement of the author or journalist, the defendant's legal advisers should confine the statement to the circumstances antecedent to and surrounding publication and for the most part to exclude that which post-dates publication. Equally important, when it comes to disclosure of documents, the relevant documents will in the main be those which pre-date publication. It will be of great assistance, particularly in cases where juries are involved, if this important distinction is also borne in mind when trial bundles are being prepared.

The relevant background in summary

23. In addition to his role as a police informant since the early 1990s, Brennan was a small-time criminal. As I have said, his handlers included Charman. Another officer who handled Brennan was Detective Sergeant Chris Smith ("Smith"). Brennan ran a retail mobile phone business in Bexleyheath.

24. In or about June 2003 an operation called "Nightshade" was set up. Ostensibly it had three strands: (i) drug trafficking in Venezuela; (ii) production of amphetamines in Portugal and (iii) money-laundering and/or gun-running. Brennan provided information to the police in connection with Operation Nightshade. The Defendants' case, hotly contested by Charman, is that the third element of Operation Nightshade was a fabrication by Brennan, Charman and Redgrave devised in order to conceal their own involvement in criminal activity.

25. Brennan, together with a man known as "Tall Ted" Williams, became involved in a conspiracy to steal some £400,000 from the Wangs. The Defendants' case is that Charman and Redgrave were aware of the conspiracy and agreed to protect Brennan in return for his corrupt payment to them of substantial sums.

26. Brennan succeeded in dishonestly obtaining the £400,000 from the Wangs, who in October 1993 reported the theft to Kent Police. Shortly afterwards, in November 1993, Brennan was arrested and released on bail the following day. The case was transferred from Kent Police to SERCS. At that time Redgrave was a Detective Inspector with that squad.

27. Brennan claimed that everything he had done vis-à-vis the Wangs had been in the full knowledge of Charman and Redgrave. He said he had paid them a total of £50,000. Charman denies complicity in the conspiracy or knowledge of it and also denies that there is any truth in the allegation that he received a corrupt payment from Brennan.

28. On 14 June 1994 Brennan was introduced by Smith to Gaspar, who in his capacity as the head of CIB2, a division of the Criminal Investigation Squad, had set up the so-called 'Ghost Squad'. The previous day Brennan had made allegations to Smith of corruption on the part of Charman and Redgrave. Brennan told Gaspar that his position as an informant on Operation Nightshade had been compromised. He claimed that documents revealing him as an informant had got into the hands of Tall Ted Williams (his accomplice in the theft from the Wangs). Evidently accepting that Brennan was in real danger, Gaspar made immediate arrangements for Brennan and his family to be put on the police witness protection programme which involved their being given a new identity and being re-housed.

29. Brennan was interviewed a number of times by Gaspar. Brennan made it clear that he would not talk on the record and Gaspar decided not to caution him. The interviews were tape-recorded ("the Gaspar tapes").

30. Brennan admitted to Gaspar that between June and September 1993 he had defrauded the Wangs of about £400,000 by falsely pretending he was in a position to sell them a large number of mobile telephones, which the Wangs intended to re-sell in China. Brennan also told Gaspar that he had told Charman about the intended theft. Brennan alleged that Charman had agreed, in return for a cash payment, to protect him by pretending that Brennan was giving the police information about a money laundering operation being run from the US by the Wangs. Brennan told Gaspar that Charman had introduced him to Redgrave, who also agreed to pretend that Brennan was acting as a participating informant. Brennan claimed that he had paid £10,000 to each of Charman and Redgrave and that a further payment of £30,000 in cash was made to them shortly afterwards. Brennan told Gaspar that in return he expected help from Charman and Redgrave in the event that he should be questioned or arrested in connection with the theft from the Wangs.

31. Charman's case is that the story which Brennan told Gaspar was a tissue of lies intended to provide him with a defence to the charge of theft for which he had been arrested.

32. Brennan remained under police protection until November 1996, when he was arrested for a second time in connection with the theft from the Wangs. Brennan stated that he adopted as true what he had said when interviewed by Gaspar. He said that everything he had done had been with the knowledge of the police.

33. In January 1997, however, Brennan withdrew his allegations against Charman and Redgrave. Instead he accused Smith (who had also at one time been his handler but who had by this time left the Met) of having in effect put Brennan up to making the allegations of corruption on the part of Charman and Redgrave because of bad blood which existed between Smith and the Claimant. Brennan alleged that Smith had "moonlighted" for him whilst still a serving police officer.

34. Detective Superintendent John Coles ("Coles"), who had succeeded Gaspar as head of the Ghost Squad, was appointed to investigate Brennan's allegations about events from 1993 to 1996 in an operation which became known as Operation Cornwall. The criminal case against Brennan was put on hold pending the outcome of Operation Cornwall.

35. As part of Operation Cornwall search warrants were executed at the homes of Charman and Redgrave, who were both suspended from duty on 7 February 1997. They were never to return to duty. Their suspension received publicity in the national press.

36. Smith had retired from the police in September 1996. On 1 February 1998 an article appeared in *The Sunday Times* accusing him of having taken thousands of pounds in bribes from Brennan. Later that month Smith was due to give evidence for the prosecution in the case of a man named Phillips whose counsel was David Bate QC ("Bate"). Smith was cross-examined by Bate about his relationship with Brennan. Smith refused to answer Bate's questions on the basis that it might incriminate him if he told the truth. He also refused to answer questions about payments made to him by Brennan. As a result of that cross-examination an investigation of Smith was carried out by the CIB as part of Operation Cornwall.

37. At the direction of Coles covert surveillance was carried out at the home of a Crown Prosecution Service employee named Cahill, who was suspected of sharing with Charman and Redgrave confidential information about the ongoing investigation of Smith by CIB. This investigation was named Operation Ambleside. Following that surveillance Charman, Redgrave and Ms Cahill were arrested on 16 July 1998.

38. The three of them were charged with conspiracy to pervert the course of justice. However, the charges were summarily dismissed by a magistrate and an application to prefer a voluntary bill of indictment against them was dismissed. In due course the Charman and Redgrave were informed that there would be no criminal charges against them over the Brennan allegations.

39. From May 1999 onwards Charman and Redgrave made formal complaints against the Met and in particular against Coles about their arrest, detention and treatment. According to the defence case, it was at about this time that Charman and Redgrave met Michael Sean Gillard ("Gillard") and another journalist from *The Guardian.* Articles supportive of their position were published in the *Guardian* from March 2000 onwards.

40. At about the same time Charman's brother-in-law, George Millar ("Millar") enlisted the assistance of Redgrave's MP, Mr Andrew Mackinlay ("Mackinlay"). He tabled parliamentary questions and asked the then Home Secretary to set up an independent judicial inquiry. Mr Mackinlay spoke on an adjournment debate in the House of Commons about the alleged mistreatment of the Charman and Redgrave by the Met. Despite all this, on 8 September 2000 Charman and Redgrave were charged with the disciplinary offence of discreditable conduct.

The trial of Brennan

41. Brennan's criminal trial finally began at the Central Criminal Court on 29 January 2001 before His Honour Judge Barker QC. Richard Latham QC ("Latham") was leading counsel for the prosecution and Andrew Trollope QC ("Trollope") led the defence.

42. Before the jury were empanelled, Trollope submitted that the prosecution should be stayed as an abuse of process on the ground of delay and unfairness in that at the time of the alleged theft Brennan had been a participating police informant who had performed all acts relevant to the case at the direction of Charman and Redgrave. The principal witness called on behalf of the prosecution in relation to the abuse of process application was Gaspar. He gave a detailed account of the interviews he had conducted with Brennan whilst he was under police protection. Reference was made to possible irregularities in the financial affairs of the two officers: Redgrave was said to have received unexplained income and in the case of Charman an unusual spending pattern emerged at the time when Brennan had claimed to have paid over the £50,000 bribe. The Judge ruled that the trial should proceed.

43. There was also a pre-trial hearing as to the admissibility in Brennan's trial of the Gaspar Tapes. Trollope for Brennan contended that the tape recording should not be introduced in evidence because his client had not been cautioned and because at that time Brennan had been in such a state of fear that he would have been motivated to say anything in order to obtain protection for himself. The Judge ruled that the tapes should not be admitted in evidence but added that his ruling was subject to review in the course of the trial.

44. The trial itself commenced on 26 February 2001. At a later stage I will have to consider in some detail what were the issues which the jury had to decide; what was the prosecution case, in particular in relation to the alleged corrupt payments to Charman and Redgrave; and what evidence was put before the jury on that question. I shall therefore for the present confine myself to saying that on 3 April 2001 Brennan was convicted and sentenced to three-and-a-half years' imprisonment. Confiscation proceedings against him were adjourned (and were not in the event heard until August 2002).

45. McLagan reported the outcome of the Brennan trial for BBC Radio 4. *The Guardian* reported it the following day. Gillard had by this time left *The Guardian* but he contributed an article which was published in *The Big Issue* on 30 April 2001 which was highly critical of the role of CIB in relation to Brennan, Charman and Redgrave.

46. McLagan had for some time been planning to publish a book about police corruption. In October 2001 he signed a book deal with publishers named Piatkus.

47. In the early part of 2002 (at which time McLagan was preparing *Bent Coppers*) various exchanges took place over the telephone and in correspondence between McLagan and Charman's brother-in-law, Millar, and his wife (Charman's sister). Gillard and a colleague wrote on 29 August 2002 to Piatkus as did Redgrave and his then solicitors. Piatkus decided not to publish. McLagan approached Orion who agreed to take the book.

48. On 21 February 2003, a little over three months before *Bent Coppers* was to be published in its hardback edition by Orion, Charman issued civil proceedings against the Met for wrongful arrest, false imprisonment and malicious prosecution.

Statements of case: the Defence – common law privilege based on responsible journalism

49. I have already set out at paragraph 16 above what I have found to be the defamatory meaning of the passages complained of in both the hardback and paperback editions of *Bent Coppers* read in the context of the book as a whole. Nothing more needs to be said about the Particulars of Claim.

50. The substantive defences relied on are, as I have said, justification and qualified privilege. The claim to privilege based on responsible journalism is pleaded at paragraph 5 of the Defence. That paragraph consists of 100 sub-paragraphs and is supported by a Schedule, which is itself 39 pages long. The Schedule identifies the information in the book which "can" be sourced from the public domain.

51. This part of the Defence ranges far and wide. There are general sections describing the endemic corruption which at one time existed within the Met and the role of the Press in reporting that corruption. There is an account of the establishment of the so-called 'Ghost Squad' by Gaspar.

52. At sub-paragraphs 5.11-18 the Defendants plead the allegations made by Brennan to Gaspar (see paragraph 30 above) and the appointment of Coles to investigate them in the operation called Operation Cornwall (see paragraph 34 above). Sub-paragraphs 5.19-24 describe the press coverage accorded to the Brennan allegations, particularly in *The Sunday Times*.

53. At sub-paragraphs 5.25-31 the Particulars recite the arrests of Charman, Redgrave and Ms Cahill; the dismissal of the criminal proceedings against them and the accusations levelled against Coles by Charman and Redgrave afterwards.

54. In a section of the Defence entitled *'The public Campaigns of Gillard and Mackinlay',* which occupies eleven sub-paragraphs, the Defendants rely on articles in *The Guardian* (where Gillard was a journalist) and the activities of Mackinlay (Redgrave's MP) in Parliament. It is pleaded that effect of the newspaper reports and the statements of Mackinlay in the House of Commons was to publicise Charman's and Redgrave's version of events and to discredit the Brennan allegations: see paragraphs 39-40 and 45 above.

55. In an important section which runs from sub-paragraphs 5.43-52 the Defence deals with the criminal trial of Brennan including the pre-trial hearings and in particular the evidence of Gaspar. The Defence sets out events at the trial and the references made in the course of it to the corrupt payments alleged to have been made to Charman and Redgrave by Brennan. It is pleaded that the Crown's case, put to Brennan in cross-examination, "evinced the belief" of CIB and instructions to counsel for the Crown that Charman and Redgrave had in truth received corrupt payments. The particulars criticise the report of the Brennan trial written by Gillard and published in *The Big Issue*.

56. After referring to the disciplinary proceedings brought against Charman and Redgrave and to their civil actions against the police, the Particulars set out at sub-paragraphs 5.68-78 the reasons why the Defendants contend that the subject matter of the book was a matter of public interest. The Defendants assert that it was in the public interest that the facts of Charman's and Redgrave's cases, as well as the wider issue of how the Met should root out corruption in its ranks, should be subjected to public scrutiny. It is further asserted that it was in the public interest that McLagan, with his knowledge and experience of police corruption, should conduct a detailed examination of corruption in the Met. Such an examination had to include a narrative of events, namely the dispute waged in public between CIB on the one hand and Charman and Redgrave on the other.

57. The next section (sub-paragraphs 5.79-83) deals with the state of mind of McLagan. The opening words of paragraph 5.79 read:

> "In his narrative of events as they related specifically to [Charman] and Redgrave, [McLagan] deliberately confined himself to information from the opposing sides that was already in the public domain whether through proceedings in open court, proceedings in the House of Commons, press releases or newspaper article from which [Charman's] and Redgrave's side of events was put into the public domain. [McLagan's] narrative in the book was not intended to introduce into the public domain any new information (i.e. information not already in the public domain)".

It is averred that McLagan did not intend to convey any conclusion one way or the other as to the truth or falsity of the allegations of corruption against Charman and Redgrave; it was his aim to give a balanced account. His belief at the time of publication, if relevant, was that Charman and Redgrave probably had corruptly taken money from Brennan.

58. The particulars conclude by addressing the non-exhaustive tests propounded by Lord Nicholls in *Reynolds v. Times Newspapers* [2001] 2 AC 127 at 205. The Brennan allegations are described as "very serious". The information contained in the book is said to be a balanced narrative sourced from the public domain and self-evidently of public concern. In such circumstances it is contended that need for verification does not arise. It is said that the Brennan allegations had been investigated by anti-corruption police officers and found to be true. McLagan sought information as to Charman's side of the story but to no avail. The book contained the gist of Charman's and Redgrave's side of the story. It did not adopt as true the Brennan allegations.

The Defence – statutory privilege

59. As I have already recorded, the Defendants rely also on the statutory privilege accorded to fair and accurate reports of legal proceedings and parliamentary proceedings by section 14(1) and part 1(1) and (2) of Schedule 1 to the Defamation Act, 1996. The passages in the book to which the statutory privilege attaches are identified in the Defence.

60. The Defendants further contend that a number of other passages in the book are also protected by privilege because, although themselves not part of the legal proceedings, they were matters closely relating to the proceedings and the public were entitled to know them.

The Reply on privilege

61. In its original formulation the Reply contained passages which appeared positively to assert that Charman was innocent of the charge of corruption. Other passages asserted as a fact (to give but two examples) that CIB officers passed on information to McLagan because they wished to have it placed in the public domain by a journalist they regarded as sympathetic and that a number of CIB officers had their own axes to grind.

62. Miss Adrienne Page QC for the Defendants objected to these parts of the Reply. Her contention was that, where the issue is whether a journalist acted responsibly, what matters is his perception of the facts and not what the facts, objectively speaking, were. She argued that, if those and other similar passages in the Reply were allowed to stand, the Defendants would be entitled to call evidence in rebuttal from police officers, including Coles and Mr Roy Clark, head of CIB from 1996 and later Deputy Assistant Commissioner. Witness statements had been obtained from both these officers by the defence.

63. On behalf of Charman, Mr Hugh Tomlinson QC rejected the suggestion that it was part of his case on privilege that Charman was innocent of any corruption. He did not accept that he was disentitled from advancing a positive case as to the state of mind of CIB officers. He said that in places the Reply was "exuberant" and agreed that the principal (even if not the only) consideration in this context is how McLagan perceived the facts in the light of the knowledge which he possessed at the time when he was writing the book (or ought to have acquired at that time). In order to allay Miss Page's concern, Mr Tomlinson agreed to make the amendments which appear in the Amended Reply for which I gave leave. The amendments include the substitution of certain of the allegations against McLagan, including for example that he suppressed material favourable to Charman, by averments as to what McLagan as a responsible author knew or ought to have known about such matters as the CIB officers' conduct and motivation.

64. Notwithstanding the assertion in paragraph 3 of the Amended Reply that *Reynolds* has no direct application to the publication of defamatory allegations in a book, Mr Tomlinson accepts that with modifications the publisher of a book like *Bent Coppers* is entitled to rely on privilege based on responsible journalism. He submits that a higher degree of care is owed in the case of a book than in the case of a newspaper because books remain in publication for years afterwards.

65. Charman's case as pleaded in the Reply is that the words of and concerning him in *Bent Coppers* were published irresponsibly. There follow 27 pages of pleading in which the particulars relied on by the Defendants are individually addressed. Many of those matters are admitted.

66. As to the allegation that he and Redgrave orchestrated a campaign against CIB officers in the columns of *The Guardian* and later *The Big Issue*, Charman denies that he or Redgrave "went public" in articles written by Gillard.

67. It is pleaded at paragraph 12.1 of the Amended Reply that when, in the course of the Brennan trial, Latham for the prosecution put to Brennan that he had made corrupt payments to Charman and Redgrave, Trollope for Brennan objected. Following his objection, that line of cross-examination was not pursued. Charman's case is that McLagan knew or ought to have known that Latham was cross-examining as to credit only and that it was not the Crown's case that corrupt payments had been made. It is said that McLagan should have realised that Latham's reference to Charman and Redgrave as "criminals" was obviously inappropriate. Charman relies on the fact that Latham accepted that there was no "direct evidence" of payments by Brennan to Charman or Redgrave and that Trollope told the jury that there was not "a single scrap of evidence" in support of these very serious allegations. The Judge had directed the jury to ignore such matters. Charman further denies that it can be inferred from the guilty verdict that the jury accepted that Brennan had made corrupt payments to Charman and Redgrave.

68. In relation to the Defendants' claim that the subject matter of the book was a matter of public interest, the Reply asserts at paragraph 16.1(5) that Charman's case is that it was not in the public interest for McLagan to make defamatory allegations about him in relation to the issue of police corruption. Nor was it in the public interest for McLagan to write an account substantially based on material provided by Met sources which he had not subjected to critical analysis. McLagan knew or ought to have known that Brennan's allegations were made by a dishonest man who subsequently withdrew them.

69. As to the state of mind of McLagan, the particulars at paragraph 17 deny that he "deliberately confined himself" to information "from the opposing sides" which was already in the public domain. The information from CIB had been provided to McLagan by CIB officers of whose partiality McLagan knew or ought to have known. Charman denies that McLagan intended to give a "balanced account in chronological order of the publicly available information about a conflict between accusers and accused". That was not the stated aim of the book, as its title, sub-title, flyleaf and contents demonstrate.

70. Finally, in regard to Lord Nicholls' tests in *Reynolds*, the Amended Reply admits that the Brennan allegations were very serious. It asserts that they were adopted by McLagan, who knew or ought to have known that there had been no independent investigation of the truth of the allegations. He also knew or ought to have known that the CIB believed that there was insufficient evidence to charge Charman with corruption. It is asserted on behalf of Charman that McLagan was misinforming the public by repeating unverified defamatory allegations about him.

71. Paragraph 20 of the Amended Reply denies that the narrative in the book was balanced. A responsible author would not have omitted to mention matters favourable to Charman. McLagan knew or ought to have known that CIB officers had an obvious axe to grind. He should have sought to verify the Brennan allegations by interviewing the relevant witnesses.

72. In regard to the question whether comment was sought from Charman, the Amended Reply admits that McLagan approached Millar but asserts that, when asked by Millar for answers to a number of further detailed questions, he replied saying he could not answer them. Furthermore McLagan did not warn Charman that he was going to refer in detail to him in the book he intended writing about CIB.

73. It is denied that the book contains the gist of Charman's side of the story. His denials, as published in the book, have the appearance of unconvincing falsehoods. The book was not confined to raising queries or calling for an investigation; it adopted the Brennan allegations as true.

74. As regards statutory privilege, Charman's case is that the words were not a fair or accurate report of the Brennan trial. There were material omissions and the account of the trial gave the false and misleading impression that it was substantially concerned with allegations of corruption against Charman and Redgrave. As for the statutory privilege attaching to reports of parliamentary proceedings, Charman admits that two of the passages complained of were fair and accurate reports and so published on an occasion of qualified privilege. Charman withdraws his complaint in respect of them.

75. Finally, the Amended Reply denies that any of the words in the book were closely related to legal proceedings so as to be protected by qualified privilege at common law.

The evidence in the present case

76. Charman was not called to give evidence; nor was anyone else called to give evidence on his behalf. This was entirely appropriate. Where, as here, the issue is whether an author or journalist conducted himself responsibly in relation to the publication complained of, it will rarely be necessary for factual evidence to be called on behalf of the claimant. The gravity of a charge of corruption against a police officer speaks for itself. The truth or falsity of that charge is not at this stage directly in issue; nor is the presumption of falsity engaged: see *Jameel v. Wall Street Journal Europe* [2005] QB 904 at 61. It has, however, to be borne in mind that the defence will protect the publisher from liability for the publication of information which he is unable to prove to be true.

77. The focus of the defence case is and must be on the conduct of the publisher and more particularly of the author or journalist concerned. The issue of responsibility will turn on his or her knowledge and perception of the available facts and matters and the way they were deployed in the publication sued on. Sometimes evidence from others, including others involved in preparing for and composing the publication, will also be relevant and admissible.

78. In the present case Miss Page sought to rely on evidence from the Chief Executive and the Publishing Director of Orion Publishing Group, namely Mr Peter Roche and Mr Ian Drury, and from the Publishing Director of Orion Paperbacks, Ms Juliet Ewers. Since none of these three had any involvement in the compilation of the book, I expressed the view that their evidence does not carry the matter any further. In the result it was agreed that their witness statements could be put in evidence but Mr Tomlinson did not find it necessary to cross-examine on them.

79. McLagan was the only witness for the Defence. His witness statement, which deals only with the issue of privilege, is 76 pages long. It is obvious that a great deal of care went into its preparation. However, it appears to me in parts to be unduly prolix and sometimes includes argument when it should be confined to evidence. There are also references to post-publication events which, as I have said, have no bearing on the question whether McLagan acted responsibly.

80. Having dealt with his journalistic background and special interest in police corruption, McLagan turns in section D (paragraphs 45 to 97) to the emergence into the public domain of the story of Brennan, Redgrave and Charman. He refers to the stories which appeared in the press in early 1997 about Brennan's case and the suspension of two then unnamed detectives. Further publicity about Brennan and police corruption appeared in *The Sunday Times* in August 1997 and early in 1998, shortly before Smith was cross-examined in the Phillips trial about payments made to him by Brennan (see paragraph 36 above).

81. McLagan says that he attended the first court appearance of Charman and Redgrave at Bow Street Magistrates' Court on 8 February 1999, when the criminal charges against them were dismissed (see paragraph 38 above). He read the extensive coverage of the two officers' case in *The Guardian* on 4 and 11 March 2000. The articles contained a quotation from Redgrave and featured a photograph of him with Charman which appeared to McLagan to be posed. According to McLagan, the implication of the *Guardian* account was that Smith had procured Brennan to make false corruption allegations against Redgrave and Charman in revenge for Charman having reported him (Smith) for being in a corrupt relationship with Brennan in 1985. It seemed obvious to McLagan that the information for this article came from or had been confirmed by Redgrave and Charman.

82. In his statement McLagan quotes at length from the second *Guardian* article dated 11 March 2000, which identified the case of Charman and Redgrave as the principal reason why Mackinlay had publicly asked the Home Secretary to set up an independent judicial inquiry. McLagan records it as having been his impression at the time that the officers had authorised Gillard and Mackinlay to speak out publicly on their behalf.

83. McLagan says that he again attended court in May 2002 when Redgrave sought permission judicially to review the decision to charge him and Charman with disciplinary offences of discreditable conduct. The application failed. Shortly afterwards Mackinlay demanded a full judicial inquiry into Operation Nightshade.

84. Having explained in section E of his witness statement the genesis of *Bent Coppers* and the reason why he felt there was a very important story to be told about the Met's anti-corruption drive, McLagan states that, in order to obtain as much information as possible from all sides, he began in February 2001 a series of interviews with officers in the Met who had been involved at a senior level in devising and implementing the anti-corruption operations. This was his starting point. The information was given on a non-attributable basis and nothing was to appear in direct quotes.

85. The Brennan trial is dealt with in section F (paragraphs 106 to 126). McLagan attended some, but not all, of the pre-trial hearing. His notes have been disclosed. He received news agency reports for the days when he was not present in court. He was

also provided by Trollope with his skeleton argument. He had access to transcripts of the Gaspar Tapes and to a report which had been prepared on the private finances of Charman and Redgrave by Detective Constable Chaplin. McLagan was also provided with information about allegedly false entries said to have been made by Charman in Brennan's informant logs. McLagan does not say how he came by these documents and information.

86. At paragraphs 112 and 113 of his statement, McLagan gives a brief account of the two pre-trial hearings, namely the application to stay the prosecution as an abuse of process and the issue as to the admissibility of Brennan's admissions on tape to Gaspar that he had stolen the money.

87. McLagan was present for most of the trial itself. McLagan says the impression he formed of Brennan was that he was a big, excitable man given to lies, boast and bluster. McLagan says in paragraphs 117 and 118 that he understood the prosecution case to be limited to the question whether or not Brennan had stolen £400,000 from the Wangs for the sale of mobile phones which he had no intention of delivering. Brennan did not dispute that the money had passed through his account or that the phones never materialised. His defence was that he received the money from the Wangs in his capacity as informant working under the direction of honest police officers, Redgrave and Charman, in the course of a bona fide police operation to ensnare serious criminals.

88. McLagan points out that, unknown to the jury, Brennan had earlier alleged, when confessing to the theft, that Redgrave and Charman were corrupt officers who in return for payment agreed to pretend that the crime was part of a police operation. McLagan comments that, for Brennan to run this defence before the jury, when he had admitted stealing the money to Gaspar, seemed to him risky and brazen. McLagan suggests that this also meant that Latham for the Crown was able, on the basis of the Gaspar Tapes, to cross-examine Brennan to the effect that his relationship with Redgrave and Charman was a corrupt one. He was able to put to Brennan the two different versions of events: the one on the Gaspar Tapes where he said Redgrave and Charman took money from him and the one in court where he said that they were honest. According to McLagan, the names of Redgrave and Charman came up repeatedly during the proceedings. He says that officers to whom he spoke were waiting with interest to see whether Charman and Redgrave would be called by Brennan to support his account of an honest and legitimate relationship but neither went into the witness box.

89. McLagan describes how Latham put to Brennan in cross-examination that he had made corrupt payments totalling £50,000 to Charman and Redgrave. Brennan denied that he had done so and challenged Latham to bring Charman and Redgrave to court to ask them questions about whether they were paid money by Brennan. According to McLagan (whose evidence is borne out by the transcript), Latham replied that he was hardly going to bring "criminals" to court.

90. McLagan states that Trollope referred in the course of his plea in mitigation on behalf of Brennan to it being "unquestionably the case that [Redgrave] and [Charman] were in contact with [Brennan] throughout the relevant time and were cognisant of what was taking place". Trollope is quoted as having said that the officers bore a heavy responsibility for what took place.

91. In paragraph 126 of his witness statement (which contains 14 sub-paragraphs) McLagan addresses each of the criticisms advanced in the Reply for his alleged failure to give a fair or accurate report of the Brennan trial. I will return to those criticisms both when I express my conclusions on the issue of responsible journalism and when I come the issue of statutory privilege.

92. McLagan criticises the article written by Gillard about the Brennan trial which was published in *The Big Issue* on 30 April 2001. He says the article portrays Brennan as a dishonest villain who had falsely claimed that Charman and Redgrave were accomplices in the fraud. McLagan regards the article as being in no sense a balanced report of the evidence at Brennan's trial. According to his evidence, "the police side" received scant, if any, coverage by journalists such as Gillard favoured by Charman. In McLagan's opinion the only truly consistent theme of press coverage of the Brennan story was serious criticism of the police and championing the causes of Charman and Redgrave. He asserts that in writing the book he tried to narrate the principal evidence without taking sides.

93. Following the conclusion of the Brennan trial, McLagan says that he made several attempts to contact Charman and Redgrave to find out their side of the story and their responses to the serious allegations against them that had been ventilated at the Brennan trial. He says that both officers refused to speak to him. McLagan describes the further efforts he made to contact Charman and Redgrave in section J of his statement. He contacted Millar and answered some questions from him. Later Millar asked for more information which McLagan considered unreasonable and so declined to provide. Feeling he was getting nowhere with Millar, McLagan wrote to Charman care of his sister but he received no reply. Another letter from McLagan to both Charman and Redgrave, which referred to serious allegations against him at the Brennan trial, also went unanswered. McLagan also says that he approached Redgrave at the hearing of his judicial review application and tried to give him a copy of his earlier letter. Redgrave brushed it aside but his solicitor agreed to take the letter for him. The solicitor declined to say anything until the Flying Squad corruption trials were over. In March 2002, however, the BBC gave McLagan a copy of a letter written by solicitors acting for Redgrave complaining of his Radio 4 broadcast a year earlier. That letter set out much of Redgrave's side of the story and McLagan says he incorporated some of it in the book.

94. McLagan also made contact with Mackinlay, who passed on to him a dossier which included documents setting out the complaints and criticisms of Charman and Redgrave about the CIB investigation of them. It was his understanding that Mackinlay had been authorised by the two officers to let him have these documents. It was from these documents that McLagan learned that Charman's brother-in-law, Millar, was acting on behalf of both officers. Amongst the documents in the dossier was a witness statement made by Coles dated 26 July 2000 in civil proceedings brought by Charman against the Commissioner of the Met arising out of a shooting accident in 1995. In that statement Coles outlined the nature of Operation Cornwall.

95. In Section I of his witness statement McLagan gives evidence about his sources for the book. He says that he had conducted off the record interviews with a number of senior officers for background material. Amongst those sources were Gaspar, Coles, senior officers at CIB and many other officers. He also talked to lawyers from all sides and to suspected officers and their colleagues. McLagan identifies by name a

number of allegedly corrupt Met officers to whom he spoke. In addition to the information obtained from those interviews, McLagan states that a lot of information was obtained by him at court hearings and from searches of newspaper cuttings.

96. Towards the end of his statement in section L McLagan sets out his case as to the public interest in the subject matter of the book. He asserts, uncontroversially, that it is of paramount importance that the public has faith in the honesty of police officers and in the rigorous investigation of corruption within its own ranks. In section M of his statement McLagan expresses his view that the history of the Ghost Squad and CIB would have to include something of the Brennan, Charman and Redgrave affair. The investigation took up a great deal of time and it had many significant features, including the intelligence gathering role of the Ghost Squad; the manipulation of anti-corruption officers by an informant; serious criticisms of the investigating officers and use of the media, courts and parliament by the officers under investigation in support of their cause.

97. Confronted by what he describes as the difficulty that Charman and Redgrave had not been made the subject of criminal disciplinary charges arising out of the Brennan allegations, McLagan says in section N of his witness statement that he therefore adopted the approach of telling the story as it had already appeared in the public domain. Other source material included the dossier of documents given to him by Mackinlay. McLagan does, however, accept that there are a very small number of instances in the book where he refers to information given privately to him by Coles and other CIB officers.

98. McLagan rejects Charman's claim in the Reply at paragraph 17.1(1) that he (McLagan) did not confine himself to information in the public domain. McLagan believes that he gave the case of Charman and Redgrave very fair coverage based on the information he had gathered. McLagan states that he did not intend his book to be read as imputing that Charman was guilty of corruption or a "bent copper" or that he had taken money from Brennan. He did not intend to adopt either side's account of events and does not believe that he has done so.

99. Finally, at paragraphs 251 to 252 McLagan asserts, firstly, that it is completely unrealistic to suggest that he could ever have verified the truth of Brennan's allegations, even if (which he disputes) he had a duty to do so. Secondly, he says that he did take steps to confirm for himself whether there was a sufficient basis for the allegations to warrant their inclusion in the book.

Cross examination of McLagan

100. McLagan was cross-examined by Mr Tomlinson for the better part of three days. To be questioned for that period of time by a skilful cross-examiner is a daunting experience for anyone. It is, as it appears to me, an inevitable feature of cases where the defence relies on privilege based on responsible journalism that the author or journalist concerned will have to face a rigorous and often wide-ranging cross-examination. At one stage in his evidence McLagan expressed concern that he was not doing himself justice, mainly because he was being asked detailed questions about events which took place over six years ago at the time when he was writing the book. Miss Page in the Defendants' written Closing Submissions underlined the strain which the adversarial process places on a person in the position of McLagan. I have

well in mind the difficult position which confronted him and I make due allowance for it.

101. Mr Tomlinson did not question the honesty of McLagan, although he naturally challenged many of his answers. The thrust of the cross-examination was that he failed to achieve his self-imposed objective of steering a middle course. His case was that the parts of the book which relate to the Brennan allegations and in particular to Charman are unbalanced and partial. Mr Tomlinson also challenged McLagan's claim to have based everything (or almost everything) that he wrote on material in the public domain.

102. As is inevitable and necessary in a case of this kind, Mr Tomlinson not only put to McLagan many of the passages in the book to which his client takes objection but also asked him about source material which it was suggested he ought to have taken into account but did not do so. It was put to him that he ought to have invited Charman to comment on the allegations contained in the book before publication.

The interaction between common law and statutory privilege

103. As I have said, the Defendants rely not only on the qualified privilege accorded at common law to responsible journalism but also on statutory privilege. Obviously the latter protects only those passages in the book which report parliamentary or judicial proceedings, whereas on the Defendants' case the former protects the entirety of the passages complained of. The same position arose in *Henry v. BBC* (loc cit), in which case I said, echoing what Simon Brown LJ had said in *Al-Fagih* at [45]:

> "As already pointed out, the BBC relies on an amalgam of various species of qualified privilege. There is nothing objectionable about that: *Tsikata v. Newspaper Publishing plc* [1997] 1 All ER 655 is but one example of a case where the defendant relied on both statutory and common law privilege. Both were upheld in the Court of Appeal.
>
> Ultimately it will be necessary for me to stand back and consider the various species of privilege collectively."

104. Common law and statutory privilege have to be considered separately. The appropriate course is for me to decide, firstly, if the defence of responsible journalism is established and thereafter to consider the claim to statutory privilege (and any privilege ancillary thereto).

The law relating to privilege based on responsible journalism

105. I will start with the principles to be derived from the authorities as regards privilege based on responsible journalism. (Given that the publication in question here is a book, that is something of a misnomer but the term is used in the authorities so that it is convenient to adopt it here). I will deal separately and later in this judgment with statutory privilege.

106. Mr Tomlinson and Miss Page advanced interesting arguments and cited a number of authorities as to the approach which should be followed in deciding whether qualified privilege based on responsible journalism avails the Defendants in this case.

107. It is common ground that the matters set out by Lord Nicholls in *Reynolds* at 205 represent important criteria for deciding the availability of privilege. But, as Lord Nicholls made clear, they are non-exhaustive and so not of themselves necessarily determinative in every case. Moreover, as counsel agreed, those tests require modification in the present case because the publication sued on is a book rather than a newspaper containing the perishable commodity which is news. Also allowance needs to be made for the fact that the author of a book has more time for checking than a journalist who has to meet a deadline. Furthermore there have been a number of authorities since *Reynolds* which need to be taken into account.

108. I will attempt to summarise what seem to me to be the principles which can be derived from the cases which were cited in argument:

i) qualified privilege is designed to strike an appropriate balance between the ECHR Article 10 right to freedom of expression and the right of an individual to protect his reputation which is an aspect of private life which is protected by Artcle 8: *Bonnick v. Morris* [2003] 1 AC 300 per Lord Nicholls at [23] and *Compana and Mazare v Romania* [2005] 41 EHRR 200 at [91];

ii) neither of those rights is pre-eminent or has "presumptive priority": there is a clear public interest in the promotion of free and vigorous press to keep the public informed and journalists should be permitted a good deal of latitude in how they present the material; but reputation is an integral and important part of the dignity of the individual, the protection of which is conducive to the public good. In some cases the reputations of other individuals than the claimant may be engaged : *Reynolds* at 210, 230 and 238; *Loutchansky v. Times Newspapers (No's 2-5)* at [36]; *In re S (a child)* [2005] 1 AC 593 per Lord Steyn at [17]; *Bonnick v Morris* at [23]; *Galloway v. Telegraph Group* [2006] EWCA Civ 17 at [80, 83] and *Bladet Tromso and Stensaas v Norway* [1997] 23 EHRR CD40;

iii) in order to determine whether publication was in the public interest, it is first necessary carefully to analyse the information which has been provided to the public and to pose and answer the question whether the public had a right to know or a legitimate interest in knowing the facts alleged, even if they cannot be shown to be true: *Loutchansky v. Times Newspapers (No's 2-5)* at [39]; *Jameel v. Wall Street Journal* [2005] EMLR 377 at [86-7] and *Galloway v. Telegraph Group* at [37];

iv) the question identified at (iii) above should be answered by reference to the information which was known to the publisher at the time of publication: *Loutchansky v Times Newspapers (No's 2-5).*

v) the touchstone being that of the public interest *and* responsible journalism, it is then necessary to ask whether in the particular circumstances of the case the publisher has demonstrated that he was acting responsibly in communicating the information to the public. For that exercise the starting point is to consider

such of the factors set out by Lord Nicholls in *Reynolds* at [208] as are applicable: see also *Galloway v. Telegraph Group* at [37];

vi) the requirements of responsible journalism will vary according to the particular circumstances. Depending on the circumstances, factors other than those identified by Lord Nicholls may come into play. It is necessary to always to bear in mind that the publication is defamatory and cannot be shown to be true. The standard of conduct by which the responsibility of the journalism is judged must be applied in a practical, fact-sensitive and elastic manner: *Loutchansky v Times Newspapers (No's 2-5)* at [38]*; Jameel v. Wall Street Journal* at [87] and *Bonnick v Morris* at [24];

vii) one such circumstance is where the publication consists of what has been described as "reportage", that is, where the publisher has neutrally and disinterestedly reported in an even-handed way unattributed allegations which are of legitimate and topical interest to the readers of the publication but has not adopted those allegations as being true ore otherwise embellished them: *Al Fagih v. HH Saudi Research & Publishing* [2002] EMLR 215 at [6], [29]; *Galloway v. Telegraph Group* [2005] EMLR 7 at [130] and in the CA at [28] and *Roberts v. Gable* [2006] EWHC 1025 (QB); and

viii) in the case of reportage there may well be no duty on the publisher to verify the information, provided that the publication did not include background information which was defamatory of the claimant and provided further that any comment by the publisher about the information was confined to honest comment about the information made without malice: *Al-Fagih v HH Saudi Research and Marketing* at [50] and [39-43] and *Galloway v. Telegraph Group* at [50-51].

Common law privilege

109. Before I endeavour to apply the principles set out above to the facts of the present case, there are a number of general observations which need to be made. The first is that I readily accept that the problem of corruption within a police force is a matter of grave public concern. Particular case histories, of which Brennan is one, are equally of legitimate public interest. This was common ground between the parties.

110. Part of the underlying purpose of the House of Lords in *Reynolds* in effecting a change to the common law defence of qualified privilege was to reflect the concern felt in some quarters that a greater degree of freedom of publication was required in regard to the reporting of matters of public interest in circumstances where the defendant publisher was unable to prove the truth of what he intended to publish. The House of Lords adopted as a new criterion of privilege the test of responsible journalism. It is well known that hitherto the defence of privilege based on responsible journalism has failed more often than it has succeeded. I accept that the Court must be on its guard not to set an unrealistically high standard of journalism or authorship. I bear in mind what Lord Nicholls said in *Reynolds* at p202:

> "The common law does not seek to set a higher standard than that of responsible journalism, a standard the media themselves espouse".

111. An unusual feature of the present case is that McLagan laid great stress both in his witness statement and in his oral evidence upon the fact that *Bent Coppers* is, as he put it, a balanced and non-partisan account of the public dispute between CIB on the one hand and Charman and Redgrave on the other, based on material in the public domain. I will shortly have to decide if those claims are made out. It seems to me, however, that before I address those issues I should first consider whether, as McLagan claims, the passages of which Charman complains constitute "reportage" in the sense in which that term is used in *Al Fagih* and later cases. If those passages do constitute reportage, the requirements of responsible journalism are or may be significantly relaxed.

Reportage

112. In *Al Fagih* Simon Brown LJ described reportage as "a convenient word to describe the neutral reporting of attributed allegations rather than their adoption by the newspaper". The Court held that in such a situation the public was entitled to be informed of such a dispute without having to wait for the publisher, following an attempt at verification, to commit himself to one side or the other.

113. In *Galloway* the *Daily Telegraph* relied on privilege based on responsible journalism. The Court of Appeal agreed with the remarks of the trial judge in that case, drawing attention to the significant potential distinctions between standard journalistic responsibility cases one the one hand and reportage on the other. Eady J said in his judgment:

> "First, it is necessary for me to consider whether *The Daily Telegraph* did, or did not, adopt any defamatory imputation or imply that it was true. Secondly, this was not a case of politicians or other public figures making allegations and cross-allegations about one another, so as to give rise to a dispute which would itself be of inherent public interest. Thirdly, this is not a case where one or other, or both, of two persons could be shown to be disreputable by the very nature of the allegations being made (whether true or false). Fourthly, I shall need to consider whether *The Daily Telegraph* was "fully, fairly and disinterestedly" reporting the content of the Baghdad documents and Mr Galloway's response to those allegations. Fifthly, it would clearly be significant if they went beyond reporting them and made independent allegations or inferences."

114. I do not read that passage as suggesting that the five propositions referred to by the Judge are conditions precedent to a publication qualifying as reportage. They are, however, questions which arise when a decision has to be made whether the words sued on constitute reportage.

115. Miss Page argued that, because I have found that the passages complained of bore the meaning that there were cogent grounds to suspect Charman was guilty of corruption (as opposed to meaning that he *was guilty* of corruption), it must follow that McLagan had not adopted Brennan's allegations as being true. I cannot accept that argument. It seems to me that an imputation that there are cogent grounds to suspect a police

officer of corruption comes somewhere between a *Chase* level one and two meaning. Such an imputation may not amount to an unequivocal adoption of the charge of corruption but it does not to my mind constitute neutral reportage. It is partial adoption of a serious charge. This of itself appears to cast considerable doubt on the defence claim that the passages in the book constituted reportage.

116. The present case is far removed from one where politicians and other public figures are reported to have been making allegations and cross-allegations against one another in the course of an ongoing dispute which is of itself of inherent public interest. I nevertheless accept that extensive publicity had been given over the years to the controversial issue of corruption within the Met and attempts to rid the force of it. In a loose sense it may be said that there were two opposite sides to the debate, namely the investigators at CIB and the officers suspected of corruption, each of which was to an extent making the media a vehicle for its point of view. It does not appear to me, however, that either side could be shown to be disreputable by the very nature of the allegations being made. Indeed, it is not McLagan's case that what he wrote would have been read in this sense.

117. Another to my mind important consideration is whether *Bent Coppers* "fully, fairly and disinterestedly" reported the facts underlying the Brennan allegations and Charman's response to them. This raises the question whether, as McLagan claims, the passages of which Charman complains are, in their context, balanced. I shall have to return to that question when I come to consider whether McLagan's journalism achieved the requisite standard of responsibility. For the present I will confine myself to saying that, for reasons which I will explain later, I cannot accept that McLagan succeeded in reporting the facts fully, fairly and disinterestedly. I do not regard his account as being "neutral". I think that the reader would take away from the passages of the book which deal with the Brennan affair that it was more probable than not that Charman was guilty of corruption.

118. For these reasons I am unable to accept that these passages in the book constitute reportage in the sense in which that term has been defined in the authorities. I might add, for what it is worth, that the prospective reader is not led to believe that the account in *Bent Coppers* is going to be neutral reportage. In the sub-title and on the flyleaf of *Bent Coppers* the reader is told he is going to get "the inside story". The consequence which flows from this conclusion (and which may be important) is that McLagan is not excused from having to take such steps as might in all the circumstances be reasonable to verify the information intended to be published.

A balanced account of the public dispute between CIB and Charman/Redgrave based on information in the public domain?

119. I should say straight away that, even if I were to reject McLagan's claim that the material passages in *Bent Coppers* constitute a balanced account, it would by no means necessarily follow that his claim to privilege based on responsible journalism has to fail. A publication does not have to be balanced in order to qualify as responsible journalism. Nor obviously does it matter whether or not the information on which the publication was based was found or could be found in the public domain. In a sense McLagan created a difficulty for himself by the self-imposed straightjacket created by his claim to have written a balanced account. It created difficulties for him in answering certain questions in cross-examination.

120. I have accepted that there had been in a loose sense a public debate or dispute between CIB and Charman/Redgrave. I ask myself whether McLagan is right in saying that his account of it was balanced and whether, as he says he set out to do, he "steered a middle course". "Balanced" in this context must mean balanced in relation to Charman and the allegations levelled against him.

121. McLagan felt himself constrained by a dictum in *Jameel* at [27] to say in his witness statement that in his view the allegation of corruption against Charman was "probably true". My feeling is that this influenced, even if subliminally, the way in which McLagan presented his account to the reader. I note that his evidence was that much of the information gathered for the book came on a non-attributable basis from senior officers in the Met who had been involved in anti-corruption operations. He said that this had been his starting point (see paragraph 84 above). This being so, it seems to me to be inevitable that information passed on to McLagan by the officers would have represented the perspective of the police. In his evidence McLagan accepted that the officers were "opening their files" to him because they wanted the story told and wanted to have more transparency. Later McLagan said that he "generally believed these officers". McLagan conceded that there was no contemporary documentation dating back to the time when he was writing the book which indicated that he had intended to provide a balanced narrative. Indeed, he went so far in his evidence as to say of Charman and Redgrave that "it was what I believed to be a true inside story".

122. I am far from saying that the passages complained of are altogether unbalanced. Terse though both the references to Charman's and Redgrave's denials of wrong-doing and Brennan's withdrawal of his allegations against them at page 49 of the hardback undoubtedly are, Miss Page is right to draw attention to the lengthy section of what she describes as "antidote" which is to be found at pages 228 to 231 of the hardback. There are other passages exculpatory of Charman and Redgrave, including for example at pages 180 and 184. But in considering the question of balance, due account must be taken of the extent of the "bane" which is to be found in *Bent Coppers* and to which I will return.

123. In my view there was force in the submissions of Mr Tomlinson that one significant respect in which the passages in question are lacking in balance appears to have resulted from McLagan's apparent willingness to draw inferences adverse to Charman from material which, as he should have appreciated, was weak. Mr Tomlinson identified the following as examples:

i) in response to the point that the CPS and counsel had advised against prosecuting Charman and Redgrave for corruption, McLagan's response was to suggest that Latham may have had a different view. The somewhat slender basis for this was that, according to McLagan, Coles told him that Latham was unhappy with the decision not to prosecute.

ii) when the lack of evidence produced by the "covert surveillance" of Charman and Redgrave was put to him, McLagan suggested that Charman had possibly been tipped off or that the investigating officers had not managed to listen to all the tapes. These inferences appear somewhere speculative. McLagan also appeared to accept a suggestion made by Brennan that Redgrave had disclosed his informant logs to Tall Ted Williams as part of a plan by Redgrave to have Brennan killed by Williams.

iii) McLagan interpreted Latham's acceptance in closing that there was "no direct evidence" of corruption to mean that there was in fact indirect evidence relating to what he described as the "underlying prosecution case".

124. In addition it appears to me that a balanced approach required McLagan to mention certain noteworthy aspects of the Brennan story. Matters which he did not mention included:

i) McLagan does not refer in *Bent Coppers* to the very real reasons for doubting Brennan's credibility, namely the apparent lies which he told Gaspar during his interviews including such matters as the bona fides of Wang and the date when Redgrave became involved in Operation Nightshade and the absence of any credible explanation as to the source of the £30,000 which he claimed to have paid to Charman and Redgrave. He said he got the money by "phoning a couple of people".

ii) the fact that, according to what he said on the Gaspar Tapes, Brennan told Gaspar that the first person he turned to after his arrest was not Charman or Redgrave but was Smith, the very officer who he was later to claim had put him up to making claims of corruption against Charman and Redgrave.

iii) the fact that an officer whose honesty there is no reason to doubt, namely DS Maul, was appointed to investigate the allegations made by Wang against Brennan and did so conscientiously.

iv) the fact that covert operations which involved tapes running to many thousands of hours failed to produce any evidence of corruption on the part of Charman or Redgrave.

McLagan was aware of these matters but none of them is featured in the book.

125. Finally, in connection with the question of balance, I am bound to say that McLagan is in my view open to criticism for the manner in which he reported in *Bent Coppers* the pre-trial hearings in Brennan's criminal case and the trial which followed. I will elaborate on my conclusion later in this judgment. In the respects which I have set out above, it is my conclusion that McLagan did not achieve the balanced approach which he set himself.

126. The other goal which McLagan claimed to have set himself was to base *Bent Coppers* on information in the public domain. In some respects I found this to be a curious claim. In the first place, to base a publication on public domain material is not guarantee of balance or of fairness. Secondly, reliance on what is in the public domain often involves the retelling of information obtained from a search of press cuttings which may well be neither fair nor accurate.

127. Be that as it may, I accept that a considerable proportion of the material contained in the passages concerning Charman and Redgrave can be traced to the public domain. I put it that way because the title of the Schedule annexed to McLagan's witness statement was changed from "…information in the book [which] *was* sourced from the public domain" to "…information in the book [which] *can be* sourced from the public domain". It emerged in the course of McLagan's cross-examination that many

of the documents included in the Schedule did indeed exist at the time when McLagan wrote *Bent Coppers* but had not at that time been in his possession. Examples include witness statements made by Gaspar and dated 20 November 2000, 12 January 2001 and 30 November 2001; the witness statement of Roy Clark dated 17 June 1998 and Latham's Case Summary. McLagan frankly accepted in his witness statement that some of the information contained in the book was not in fact sourced from public records. Moreover, much of the information on which *Bent Coppers* is based cannot properly be described as having been in the public domain at all. A prime example are the transcripts of the Gaspar Tapes which, according to the evidence, were provided to McLagan by a confidential source and which he had opportunity to consider for a period or no more than two hours. The statement in the book that Gaspar believed Brennan's allegations was based on a chat which McLagan had with Gaspar. "Quite a bit" of information about Operation Ambleside was given to McLagan by Coles in a private conversation. The information that "CIB officers hoped that Redgrave and Charman would give evidence for Geoffrey Brennan" was also obtained by McLagan in private conversations.

128. If one takes *Bent Coppers* as a whole it is plain that a vast amount of information contained in it was indeed sourced from the public domain. I entirely accept that McLagan was diligent in researching public records. It is no criticism of McLagan to say that parts of *Bent Coppers* are based on private information and parts on information that was in the public domain but not in his possession. For what it is worth, however, my finding is that to the extent which I have indicated I am unable to accept McLagan's claim that he based everything in the book on public domain material. This conclusion does not of course invalidate McLagan's claim to have acted responsibly. To that question I now turn.

Responsible journalism

129. I accept Mr Tomlinson's contention that the question which I have to address is whether the Defendants acted responsibly in collating and presenting the information in the book which relates to Charman (and Redgrave) rather than the information in the book generally.

130. It seems to me that where, as I have found, the imputation conveyed to readers in relation to Charman was that cogent grounds exist for suspecting that in his capacity as a police officer he had been guilty of corruption, a responsible journalist should evaluate with some care the material on which that imputation is based. Such a journalist should in my view subject the material to a degree of critical analysis. This is particularly so in the case of a book where there is less urgency than in the case of a journalist who has to meet a deadline. It will be recalled that the tenth of the tests or factors set out by Lord Nicholls in *Reynolds* relates to the circumstances of the publication, including the timing.

131. The other nine non-exhaustive tests or factors fall to be considered in the light of the conclusions at which I have already arrived in this judgment in relation to McLagan's treatment of Brennan's allegations of corruption against Charman. Those conclusions are in summary these: the material passages do not constitute reportage, from which it follows that the steps taken to verify the published information are potentially relevant to the availability of the privilege. The reasons why I have rejected the suggestion that the passages in question were reportage are, firstly, that to an extent it appears to

me that McLagan adopted the allegation of corruption against Charman and, secondly, that the relevant facts are not presented in the full, fair and disinterested fashion which is required of reportage. Very similar reasons led me to reject McLagan's claim to have written a "balanced" account of the Brennan allegations directed at Charman and Redgrave.

132. It would be impractical for me in this judgment to undertake a line by line examination of the substantial passages complained of by Charman. I will therefore confine myself to those which seem to me to matter.

133. Chapter 3 is one of the more important chapters. It is entitled "Corruption in Elite Detective Squads", namely SERCS and the Flying Squad. It refers in its first paragraph to the officer Smith. Charman and Redgrave are mentioned by name on the next page. A detailed account is presented of the story which Brennan told Gaspar. Brennan is recorded by McLagan as having told Gaspar that he had told Charman at the time that he was going to "relieve" the Wangs of a lot of money. The narrative includes this sentence at the foot of page 44:

> "The police would pretend that Brennan was giving them information about a money-laundering operation being run from the US, and in return for the protection Brennan would pay over cash. Brennan alleged he gave a first payment of £10,000 to Charman, who told him he would introduce him to his old friend DI John Redgrave…"

Brennan is quoted at some length describing in graphic terms a meeting which took place between them. According to Brennan Redgrave asked at that meeting for £10,000 for himself. Brennan agreed to pay the pair a total of £50,000. The balance of £30,000 is said by Brennan to have been paid a few days later in south east London. The money was in a green Marks & Spencer bag. Brennan is reported to have claimed to Gaspar that he expected help from Charman and Redgrave if he was ever questioned or arrested over the theft of Wang's money. Gaspar is described as having "believed" what Brennan told him.

134. Following the passages which I have summarised and which occupy nine pages of the hardback, the reader is told at page 49 no more than this:

> "For their part, Redgrave and Charman strenuously denied all allegations of wrongdoing, and Brennan himself was to withdraw his claims against the two officers, as detailed in Chapters 12 and 15."

A similar denial is to be found at page 180:

> "From the outset the pair [Redgrave and Charman] have denied receiving money from Brennan, or indeed, any corruption at all. The two also denied involvement with newspapers at that time".

135. There is, however, no reference to be found in the book to the discrediting of the officer Smith. He had been described in Chapter 3 as "a reliable Flying Squad

officer". The reader of *Bent Coppers* is told that he had formerly acted as Brennan's handler and that it was he (Smith) who referred Brennan to Gaspar. At page 42 McLagan writes that Gaspar had no reason to disbelieve Brennan's story "especially as it was corroborated by DS Smith". At page 180 of the hardback edition the reader is told that when Brennan withdrew his allegations against Charman and Redgrave some two-and-a-half years after he was interviewed by Gaspar, he claimed to the Police Complaints Authority that Smith had put Brennan up to blackening the two officers because he had "had it in" for Charman and Redgrave since the 1980s. The reader is told that Smith strongly denied that claim. There follows a reference to Smith and other officers "moonlighting" for a private security company which Brennan was running. Smith is said to have received payments from Brennan for his help during a spying operation on a private house in the course of which police equipment was used. At page 182 Smith is recorded as having admitted working for Brennan whilst still employed by the Met.

136. What the reader is not told about Smith is that (as I have recorded at paragraph 36 above) he had been accused in the columns of *The Sunday Times* of having taken thousands of pounds in bribes from Brennan. Shortly afterwards Smith was cross-examined by counsel on behalf of the defendant Phillips about his relationship with Brennan. Smith repeatedly refused to answer these questions on the basis that it might incriminate him if he told the truth. He also refused to answer questions about payments made to him by Brennan. As a result Smith became the subject of an investigation by the CIB. McLagan was present in court during that cross-examination and had a transcript of it when he wrote the book. The flavour of the cross-examination can be gauged from the transcript of the present hearing at Day 2 pages 146-158. In his evidence McLagan accepted that it had been a mistake on his part to have written that Smith had admitted "moonlighting" in his evidence. In the witness box he denied having moonlighted but later he admitted having done so. McLagan did not mention this contradiction.

137. It seems to me that the role of Smith in relation to the Brennan allegations was important. He had been Brennan's handler. The claim was made by Brennan that it was Smith who put him up to making allegations of corruption against Charman and Redgrave. It was to Smith that Brennan turned when he decided to alleged corruption on the part of Charman and Redgrave. In my opinion McLagan is open to criticism for failing to inform his readers that, far from being "reliable", Smith was profoundly tainted by his answers during cross-examination in the Phillips trial.

The account of Brennan's trial

138. McLagan returns to the topic of the Brennan allegations against Charman and Redgrave in Chapter 15, entitled "Loose Ends", which is another significant chapter for the purposes of the present case. In that chapter McLagan describes what happened at the trials of two criminals who became informants, namely Michael Hart and Brennan. The trial of the latter is dealt with at pages 228 to 238. As I have said, the first four pages of this section describe in some detail the complaints made by Charman and Redgrave about their treatment at the hands of CIB officers and their call for a full, independent investigation. There follow two paragraphs at page 232 in the first of which the then Home Secretary is reported to have declared his support for the way the Met was dealing with corrupt officers. The second paragraph indicates that the Met always had robust answers to the criticisms but had difficulty in

responding publicly because of possible prejudice to forthcoming trials. In assessing the responsibility of McLagan's account of the trial in the following pages, I will of course bear in mind these four pages about which Charman can and does make no complaint.

139. McLagan turns at the foot of page 232 to the trial of Brennan. According to his evidence, McLagan was present for most of the pre-trial hearings which lasted from 22 January to 23 February 2001 and for most of the trial itself which started on 26 February and concluded with the jury's verdict on 3 April 2001. There are in the papers for this trial many transcripts but some are missing.

140. Brennan faced charges of stealing substantial sums from the Wangs. Before the trial itself commenced, the Judge heard the two applications which I have described in paragraphs 42 to 43 above. In relation to the abuse of process application, Gaspar was the principal prosecution witness but several other officers were also called. Their evidence was in effect directed at explaining why the delay had occurred in bringing Brennan to trial and to demonstrate that the delay was not culpable. There were in the course of the hearing some references to Charman and Redgrave and to Operation Nightshade, for example in the evidence of Clark and Coles. On 12 February 2002 the Common Serjeant ruled that the case against Brennan should proceed.

141. The Judge was then invited to rule whether the Gaspar Tapes should be admitted in evidence, notwithstanding the decision of Gaspar not to caution Brennan before interviewing him on 21 and 28 June 1994. This part of the hearing commenced on 21 February 2001 and finished two days later when the Judge ruled that the tapes were inadmissible because of a "wholesale breach of the rules" on the part of Gaspar. In this part of the hearing there were no more than occasional passing references to Charman and Redgrave.

142. How does McLagan portray this part of Brennan's trial for the readers of *Bent Coppers*? In answering this question, I bear in mind that, whilst he is a highly experienced journalist with considerable experience of court reporting, McLagan is not a lawyer and is therefore not to be taken to be familiar with the practices and procedures of criminal trials.

143. The relevant passages are at pages 233 to 234 of the hardback edition. They include the following paragraph:

> "At the pre-trial hearing, Gaspar made two new important disclosures of evidence coming from his investigation. He said he had learned that the separate inquiry into Wang's allegations of theft had been taken over by SERCS, which was an unusual move as that elite group of detectives was not normally involved in such investigations. Gaspar also revealed the results of a secret investigation he had ordered into possible irregularities in the two officers' financial affairs. He said this showed that Redgrave had received unexplained income, over and above his Met police salary. In Charman's case, an unusual spending pattern had started in October 1993,

> coinciding with the time Brennan had claimed to have paid over the £50,000 bribe".

144. That passage appears to me to be open to a number of criticisms. Whilst it is factually correct that the inquiry into Wang's allegations of theft had been taken over by SERCS, there was nothing unusual or sinister about it. DC Maul, the SERCS officer who conducted the inquiry, gave evidence at the pre-trial hearing about it. It was not suggested to him that it was in any way unusual for SERCS to have become involved. It is hard to understand why this aspect ranked as an "important new disclosure" by Gaspar.

145. The other "important new disclosure" identified by McLagan was the revealing by Gaspar of the results of a secret investigation he had ordered into possible irregularities in the two officers' financial affairs. Gaspar is reported to have said that this showed that Redgrave had received unexplained income, over and above his Met police salary, and that in Charman's case an unusual spending pattern had started in October 1993, coinciding with the time Brennan had claimed to have paid over the £50,000 bribe. In point of fact it was not Gaspar but Clark and Coles who had mentioned these matters in the course of their cross-examination. The criticism which I make of this passage is that it treats matters which McLagan ought to have realised were of marginal relevance and which he knew had taken up no more than a few minutes of court time as if they formed a major part of the hearing. The references to "unexplained income" and "an unusual spending pattern" are damning. No balancing reference is made to other evidence given at the pre-trial hearing which tended to exonerate Charman.

146. McLagan at the foot of page 232 writes that CIB officers hoped that Redgrave and Charman would give evidence for Brennan at his trial. It is said that the pair could have used the proceedings as an opportunity to set the record straight but that, if the pair had appeared in the witness box, they would have been open to cross-examination by the CIB prosecution team, determined to get at the truth of Brennan's allegations. The paragraph ends with these words:

> "Although Redgrave and Charman's names were continually mentioned throughout the trial, the two suspended officers did not appear at the Old Bailey".

147. As McLagan ought to have appreciated, there was in fact no possibility of Charman or Redgrave giving evidence at Brennan's trial. The issue for the jury was whether Brennan had stolen money from the Wangs. It was no part of the prosecution case to say that Brennan's allegations of corruption against Charman and Redgrave were true. Besides, those allegations had been withdrawn. I do not think it is accurate to say that the names of Redgrave and Charman were "continually mentioned throughout the trial". They were referred to on two days after the trial had been running (with interruptions) for a month.

148. At page 234 of the hardback edition McLagan refers to Latham's opening on behalf of the Crown. He is said to have "studiously avoided" any mention of corruption or the names of Redgrave and Charman. In the following paragraph he is described as "choosing his words carefully" when explaining that the delay in bringing the case to trial was because Brennan had made allegations against a number of police officers

which had to be investigated. The reader is then told, correctly, that it was Brennan who mentioned Charman and Redgrave as officers to whom he provided information. McLagan adds that the jury heard no mention of Brennan giving £50,000 to Redgrave and Charman (an allegation later withdrawn). It would have been apparent to McLagan that the reason for that was that, true or false, the giving of £50,000 to the two officers was irrelevant.

149. From the foot of page 235 McLagan gives an account of Brennan's cross-examination. It includes the following:

> "[Latham] was on top of every aspect of the case, having been prosecuting counsel in the CIB sting operation that had netted Redgrave and Charman. He knew how far he could go legally over the two detectives, and he knew how far he could go in goading Brennan.
>
> One exchange was particularly fascinating. It cam after Brennan had described giving information to Charman.
>
> 'That officer was going to come into you pay?' asked Latham.
>
> 'No, he was not,' replied Brennan, who then admitted that he had met Charman and Redgrave at South Mimms, the service station where, unknown to the jury, he had originally claimed to have paid money to the two detectives.
>
> 'They wanted money,' said Latham, 'and you gave them money'.
>
> Brennan denied the charge and threw the gauntlet back, demanding to know why the prosecution was not calling the pair to give evidence. In replying, Latham chose his words with care. They were damning:
>
> 'I am not going to bring in criminals to give evidence'
>
> Brennan retorted that they were honest officers who had been doing their job:
>
> 'Don't accuse people when they are not here to defend themselves. Why not charge them with corruption?'
>
> 'There are few people around when officers are involved in corruption', replied Latham, going on to warn Brennan: 'Be very careful what you say about these two officers'.
>
> In later exchanges Latham described the two as 'dishonest' and 'corrupt', claiming they wanted £50,000 from Brennan out of the £400,000 and in exchange they would 'mind his back' with a cover story about money laundering and arms dealing…

> Although Redgrave and Charman were not on trial, for much of the time it was as if they were in the dock with Brennan. In Latham's closing speech to the jury, much play was made of their alleged corruption. He repeated that the prosecution case was that a total of £50,000 had been paid to the two detectives to provide a smokescreen for the theft of Wang's money… For the defence, Andrew Trollope said that although the prosecution was calling Redgrave and Charman criminals, there was no evidence that they were paid a penny piece or were party to any plans to steal the money".

150. As the transcript demonstrates, McLagan's quotations are accurate. There nevertheless appears to me to be considerable force in the criticism made by Mr Tomlinson that McLagan should have made clear that the alleged criminality of Charman and Redgrave had no bearing on the issues which the jury had to decide. I accept that at the end of the passage which I have quoted McLagan informs readers that in his closing speech Trollope told the jury that there was no evidence the officers had been paid money. McLagan does not mention the fact that Latham accepted that there was no direct evidence that corrupt payments were made to the officers. A more serious omission is the failure to refer to the Judge's advice to the jury in his summing up to ignore suggestions made that any money was taken by Charman or Redgrave to assist Brennan. He told the jury that they ought to put that out of their minds. In the context of the trial as a whole it is difficult to understand how, as McLagan claims, for much of the time it was as if Charman and Redgrave were in the dock with Brennan.

151. I have taken some time with the account in *Bent Coppers* of the Brennan trial because it marks the culmination of McLagan's account of one of the major characters in the book. One of the questions which I have to decide is whether this is a fair account of what took place at Brennan's trial. For the reasons which I have given, I have concluded that it is not.

152. In concluding this part of the judgment, I return to the ten matters to be taken into account when deciding the issue of responsible journalism as identified by Lord Nicholls in *Reynolds*:

    i) *The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true*.

    As Miss Page accepts, the Brennan allegations of corruption against Charman were very serious. I do, however, bear in mind that I have determined the meaning of the passages complained of as cogent grounds for suspicion rather than guilt of corruption.

    ii) *The nature of the information, and the extent to which the subject matter is of public concern.*

    It is common ground that the information is of public concern. I do, however, bear in mind, as Miss Page asked me to do, that much of the information is in the public domain.

iii) *The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.*

Miss Page asserts that the narrative in the book was sourced from the public domain and from identifiable material set out in the Schedule and that it was a balanced narrative. I have dealt in some detail at paragraphs 119 to 128 above with the questions of balance and public domain. A significant amount of the information about Charman which is contained in the book was provided to McLagan by senior police officers.

iv) *The steps taken to verify the allegation.*

At paragraph 118 above I have rejected the Defendants' claim that the passages in the book which are the subject of Charman's complaint represent reportage. It follows from that that dispensation from the normal journalistic obligation to verify information is not available for McLagan. He does not claim to have verified the information about Charman and it is his case that there were in fact no means whereby he could have verified the truth or otherwise of the Brennan allegations. In my view McLagan ought to have carried out an evaluation and analysis of the material available to him.

v) *The status of the information. The allegation may have already been the subject of an investigation which commands respect.*

Whilst I do not accept that the truth or otherwise of the Brennan allegations were investigated at his criminal trial, nor in my opinion did the Crown's case at that trial evidence the truth of Brennan's allegations, I do accept that there had been an investigation by police officers under the leadership of Coles in the form of Operation Cornwall. However, that investigation concluded that there was insufficient evidence to charge Charman with any offence arising out of his dealings with Brennan. That being so, it seems to me to have been unwise on McLagan's part to have placed reliance on the opinions expressed privately to him by individual officers such as Coles.

vi) *The urgency of the matter. News is often a perishable commodity.*

Miss Page accepts that this is not a factor that arises so immediately in relation to a book. I agree that it is a factor which simply does not arise.

vii) *Whether comment was sought from the claimant. He may have information others do not possess or have not disclosed. An approach to the claimant will not always be necessary.*

I accept that at a relatively early stage when writing the hardback edition, McLagan contacted Millar in January 2002 in an endeavour to obtain Charman's side of the story. That approach was to no avail. A subsequent approach was also rebuffed. It is true that these approaches were made before the hardback had been written and before McLagan's conclusions in relation to Charman had crystallised. I think, however, that McLagan was entitled to assume that Charman would have remained

uncooperative if the allegations to be published in the book had been put directly to him.

viii) *Whether [the book] contained the gist of the claimant's side of the story.*

I accept that to an extent the book did contain Charman's and Redgrave's side of the story (see in particular pages 228 to 231 of the hardback edition). On the other hand, I have found the meaning to be that there are cogent grounds to suspect Charman of serious misconduct. No comment having been sought from Charman as to this positive case which was going to be made against him in the book, Charman did not have the opportunity to provide his side of the story.

ix) *The tone of the [book] and [author] can raise queries or call for an investigation. It need not adopt allegations as statement of fact.*

As I have found at paragraph 115 above, the book did partially adopt Brennan's allegations as true. It is also relevant in this context that the book describes itself as an "inside story".

x) *The circumstances of the publication, including its timing.*

This has no application to the present case.

Conclusion

153. I have throughout this section of the judgment referred to passages as they appear in the hardback edition of *Bent Coppers*. As I have explained at paragraph 18 above, changes were made for the paperback edition but I do not think that they are individually or collectively material for present purposes.

154. I have to decide whether, applying the principles which I have summarised at paragraph 108 above and taking due account of the matters to which Lord Nicholls referred in *Reynolds*, the Defendants in the person of McLagan have shown that they were acting responsibly in communicating the information contained in *Bent Coppers* about Charman to the public. For the reasons which I have given, my judgment is that they have not done so.

Statutory privilege

155. It is now conceded on behalf of Charman that the reporting of the adjournment debate in the House of Commons (hardback pages 231-2 and paperback at pages 372-3) is protected by statutory privilege, so it is unnecessary for me to say more on that topic.

156. Section 15 of the Defamation Act, 1996 provides:

> "**15 Reports, &c. Protected by qualified privilege.**
>
> (1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to have been made with malice, subject as follows…

> (3) This section does not apply to the publication to the public, or a section of the public, of a matter which is not of public concern and the publication of which is not for the public benefit.
>
> (4) Nothing in this section shall be construed—
>
> (a) as protecting the publication of matter the publication of which is prohibited by law or
>
> (b) as limiting or abridging any privilege subsisting apart from this section".

Part 1(2) of Schedule 1 to the Act includes "A fair and accurate report of proceedings in public before a court anywhere in the world".

157. The law as to the requirements of fairness and accuracy is accurately summarised at paragraph 15.4 of *Gatley*, 10th Edition at paragraph 15.4:

> "…The reports, copies and extracts referred to in Sch.1 must be 'fair and accurate' to gain the protection of privilege. However, although the report must be fair and accurate, it need not be verbatim; a fair, even if very brief, summary of the proceedings will be privileged. 'The theory is that the reporter represents the public—he is their eyes and ears and he has to do his best, using his professional skill to give them a fair and accurate picture'. Nor need the report be accurate in every detail. If the report been as a whole a substantially fair and accurate account of the proceedings, a few slight inaccuracies will not deprive it of protection, but where the inaccuracies are of a substantial kind, there is no immunity.
>
> …
>
> The onus of proving that the report is fair and accurate lies on the defendant, but it is sufficient if this clearly appears from the claimant's own evidence. If the defendant fails to prove that the report is fair and accurate, the claimant is entitled to succeed, however honestly it may have been published. Whether the report is a fair and accurate report is a question of fact for the jury, provided always there is some evidence of unfairness or inaccuracy to do to the jury. This is a question for the judge to determine".

158. The importance of the statutory defence of qualified privilege, albeit in the context of a case concerned with the report of a public meeting, was emphasised by Lord Bingham in *McCartan Turkington Breen v. Times Newspapers PLC* [2001] 2 AC 277 at 290:

> "In a modern, developed society it is only a small minority of citizens who can participate directly in the discussions and

> decisions which shape the public life of that society. The majority can participate only indirectly, by exercising their rights as citizens to vote, express their opinions, make representations to the authorities, form pressure groups and so on. But the majority cannot participate in the public life of their society in these ways if they are not alerted to and informed about matters which call or may call for consideration and action. It is very largely through the media, including of course the press, that they will be so alerted and informed. The proper functioning of a modern participatory democracy requires that the media be free, active, professional and inquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction".

It is common ground that the defence applies equally to books, as do Lord Bingham's remarks to a book of the type with which this action is concerned.

159. Assistance as to the standard of fairness and accuracy which is required can be derived from *Burnett & Hallamshire Fuel Ltd. v. Sheffield Telegraph & Star Ltd.* [1960] 1 WLR 502, 505. That is a report of the direction of Salmon J to the jury at the trial of the action:

> "But in considering whether a report is fair and accurate, you have got to use your common sense. You do not go through a report with a toothcomb and say: 'if I can find that little inaccuracy, that is the end of the defence'. Minor and irrelevant inaccuracies are of no consequence. This principle that you are free to report anything provided it is fair and accurate would not be worth much – human nature being what it is – if, through some slight, inconsequential slip, you were to be deprived of that defence; the law takes a broad and sensible view that a minor and immaterial inaccuracy is of no importance. If there is an omission or inaccuracy, it is for you the jury to consider whether it really is significant, and the only help I can give you is this: if you say to yourselves: 'it would not have mattered whether that was in or not', then it is of no consequence. But if you say 'this makes a real difference to what was being said about the plaintiff, and if this had not been added, anyone reading the newspaper would not have taken an adverse view, or such an adverse view of the plaintiffs as they would on the report as it is published', then the defence fails".

160. The only other authority to which I need refer is *Cook v. Alexander* [1974] QB 279. In that case Lord Denning MR said at 288F:

> "If the reporter is to give the public any impression at all of the proceedings, he must be allowed to be selective and to cover those matters only which appear to be of particular public

> interest. Even then, he need not report it verbatim word for word or letter by letter. It is sufficient if it is a fair presentation of what took place so as to convey to the reader the impression which the debate itself would have made on a hearer of it".

Buckley LJ made observations to similar effect at 290. At 291 Laughton LJ said:

> "Unfair must mean unbalanced… It is important to remember, however, that the balance must be in relation to the plaintiff's reputation".

161. It is not suggested that any statutory privilege which may attach to passages in the book is lost either on the footing that McLagan was malicious (see section 15(1)) or on the ground that the publication was not of public concern or not for the public benefit (see section 15(4)). The issue is one of fairness and accuracy.

Fairness and accuracy

162. My conclusion that common law privilege based on responsible journalism is not of course determinative of the question whether those parts of the book in which McLagan gives an account of the Brennan trial constitute fair and accurate reporting on his part. The availability of statutory privilege is a separate and free-standing question.

163. I have drawn attention at paragraph 145 above to one inaccuracy in McLagan's account of the Brennan trial but it is a minor one and can be ignored. The real question is whether the report is a fair one in the sense that it provides readers with a portrayal of what happened in court which is fair and balanced in relation to Charman's reputation.

164. As will be evident from what I have already said, McLagan in his report concentrated on the references which were made in the course of the trial to Brennan's allegations of corruption against Charman and Redgrave. He was entitled to be selective as to the aspects of the trial which he chose to report. Given that the book is all about corrupt police officers, it is unsurprising that McLagan's report of the trial should have focussed on the officers whom Brennan had accused of corruption. However, McLagan's entitlement to be selective does not detract from the requirement that the report be a fair one.

165. I am unable to accept that McLagan provided readers with a fair presentation of what took place at Brennan's trial. Having said that, I accept that there are passages in the report which are not only accurate but also fair in regard to Charman. For instance, at pages 233 to 234 McLagan gives and unobjectionable summary of the parties' respective arguments on the issue of the admissibility of the Gaspar Tapes. Also unobjectionable is the account at page 235 of Brennan's evidence in chief. However, the report as a whole is in my view skewed so as to give the readers the false and unfair impression that the issue of Charman's alleged corruption assumed a far greater importance that it in fact had at either the pre-trial hearings or at the trial itself. The comments which I have made at paragraphs 142 to 150 above in relation to common law privilege are equally apposite when it comes to statutory privilege. I will not repeat myself.

166. My conclusion is that the report of Brennan's trial in chapter 15 of the hardback edition of *Bent Coppers* is not a "fair" report in the sense in which that term has been explained in the authorities to which I have referred. As regards the paperback edition, it is true to say that material deletions were made to the report as published in the hardback edition and some equally material passages were added: see paragraph 65 of my judgment on the issue of meaning. I am, however, on balance of the opinion that those changes are not sufficient to bring the report of the Brennan trial as it appears in the paperback edition within the scope of statutory privilege.

167. Such being my conclusion on the question of statutory privilege, it is unnecessary for me to consider the ancillary privilege relied on by the Defendants.

Overall result

168. The overall result is that the defence of qualified privilege fails.