Neutral Citation Number: [2015] EWCA Civ 171

Case No: A2/2013/2695

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MR JUSTICE TUGENDHAT
HQ12D03024

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17/03/2015

Before:

LORD JUSTICE JACKSON
LORD JUSTICE RYDER
and
LORD JUSTICE CHRISTOPHER CLARKE

- -

Between :

PETER CRUDDAS	**Claimant/ Respondent**
- and -	
(1) JONATHAN CALVERT **(2) HEIDI BLAKE** **(3) TIMES NEWSPAPERS LTD**	**Defendants/ Appellants**

- -
- -

Mr Desmond Browne QC, **Mr Matthew Nicklin QC** and **Ms Victoria Jolliffe** (instructed by **Slater and Gordon**) for the **Claimant/Respondent**
Mr Richard Rampton QC, **Ms Heather Rogers QC** and **Mr Aidan Eardley** (instructed by **Bates Wells & Braithwaite LLP**) for the **Defendants/Appellants**

Hearing dates: 9th, 10th and 11th December 2014

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Approved Judgment

Lord Justice Jackson :

1. This judgment is in ten parts, namely:

Part 1. Introduction

2. In this appeal two journalists and the publishers of The Sunday Times seek to overturn a judgment holding them liable for libel and malicious falsehood to the former Treasurer of the Conservative Party. The proceedings concern three articles in The Sunday Times, which recounted what (allegedly) the claimant had said to two persons masquerading as potential donors to the Conservative Party. The first issue in relation to libel is whether the articles gave a true account of what the claimant had said in relation to the benefits available to generous donors and whether what the claimant had said was "inappropriate, unacceptable and wrong". The trial judge held that the articles did not give a true account and that what the claimant had actually said was not "inappropriate, unacceptable and wrong". The second issue in relation to

libel is whether the articles gave a true account of what the claimant had said in relation to foreign donations. The principal issue in relation to malicious falsehood is whether the journalists were acting maliciously in relation to any falsehoods which they published. The judge held that they were. This gives rise to the question of law as to what state of mind constitutes "malice", when the dominant meaning of the words published is true, but an alternative incorrect meaning which (foreseeably) some cynical readers might place upon the words is not true.

3. The claimant, Peter Cruddas, was Treasurer of the Conservative Party between May 2011 and 24th March 2012. The first defendant, Jonathan Calvert, is editor of the The Sunday Times Insight Team. The second defendant, Ms Heidi Blake, is deputy editor of The Sunday Times Insight Team. I shall refer to the first and second defendants as "the two journalists" or "the journalists". The third defendant, Times Newspapers Ltd, is the publisher of The Sunday Times. It is the employer of the first and second defendants.

4. Ms Sarah Southern formerly worked for the Conservative Party. In 2011 and 2012 she was working as an independent lobbyist.

5. In this judgment "ECHR" means the European Convention on Human Rights. I shall refer to the Conservative Campaign Headquarters as "CCHQ". I shall refer to the Committee on Standards in Public Life as "CSPL". The CSPL is an advisory non-departmental public body. It advises the Prime Minister on ethical standards across the whole of public life in the UK.

6. This litigation concerns an undercover operation during which the two journalists approached the claimant, pretending to be international financiers. They discussed the possibility of making large donations to the Conservative Party and what benefits they could get in return. Following the meeting the journalists wrote the articles which form the subject matter of this litigation.

7. One of the issues which we are being asked to decide is what type of relationship between a political party and its individual donors is acceptable and what type of relationship is "inappropriate, unacceptable and wrong". The judge decided this question partly by reference to recent policy statements which Conservative politicians had made. The appellants contend, but the respondent denies, that the judge applied the wrong standard. The defendants' counsel argues that we should ignore the Conservative 'party line' and consider what was "morally unacceptable – wrong – conduct" (skeleton argument paragraph 29). More than once during argument I expressed concern that we were being given limited material on which to decide a question of wide import. For example, we have been told almost nothing about the funding and activities of the Labour Party beyond that which is general knowledge.

8. After the end of the hearing I came across *The Funding of Political Parties* by Professor Keith Ewing and others (Routledge 2012), reviewed at [2014] Cambridge Law Journal 635-8. The book seems to be relevant for two reasons. First, it contains helpful background material, which puts the documents relied upon by the parties into their proper historical context. Secondly, it demonstrates that different considerations apply to (a) individual donations to political parties and (b) institutional funding of political parties. Counsel were given an opportunity to make any submissions which

they wished concerning Ewing's book. The book does not alter the views which I had provisionally formed before reading it.

9. After these introductory remarks, I must now deal with an important matter which forms the background to this case, namely the law and practice governing donations to political parties.

Part 2. The law and practice governing donations to political parties

10. During the early 1960s approximately four million people belonged to political parties. The subscriptions which they paid provided much needed finance for the parties to which they belonged. Since then membership of the three main political parties has progressively dropped. By 2010 the combined membership of the Conservative, Labour and Liberal Democrat parties stood at about 420,000.

11. As a result of the drop in membership, all three parties have increasingly come to depend upon donations from wealthy supporters. In the case of the Labour Party a significant proportion of donations comes from trade unions. In the case of the Conservative Party a significant proportion of donations comes from the business community.

12. For many years there has been concern that large donors to political parties may gain undue influence and other unfair advantages by reason of their donations. On the other hand political parties play a vital part in the modern democratic process. In order to fulfil that role they need substantial funding. The state provides no funding apart from modest sums to assist opposition parties with their administrative costs. As a consequence the system of political donations upon which all the main parties rely is an essential feature of our representative democracy. The real questions are how those donations should be regulated and what reciprocal benefits political parties can properly give to their benefactors.

13. The CSPL first addressed this issue in the 1990s. In 1998 it produced a report which formed the basis of legislation two years later, namely the Political Parties, Elections and Referendums Act 2000 ("PPERA"). This was the first major piece of legislation concerning political funding for over a century. The PPERA established the Electoral Commission and required all political parties to register with it. The Act set down accounting requirements for political parties. Part IV of the Act imposed a number of restrictions upon political donations.

14. Part IV of PPERA (as amended) includes the following provisions:

> "**54. Permissible donors**
>
> (1) A donation received by a registered party must not be accepted by the party if —
>
> (a) the person by whom the donation would be made is not, at the time of its receipt by the party, a permissible donor; or
>
> (b) the party is (whether because the donation is given anonymously or by reason of any deception or concealment

> or otherwise) unable to ascertain the identity of the person offering the donation.
>
> (2) For the purposes of this Part the following are permissible donors —
>
> (a) an individual who is registered in an electoral register;
>
> (b) a company —
>
> (i) registered under the Companies Act 2006, and
>
> (ii) incorporated within the United Kingdom or another member State,
>
> which carries on business in the United Kingdom.
>
> ….
>
> **61. Offences concerned with evasion of restrictions on donations**
>
> (1) A person commits an offence if he —
>
> (a) knowingly enters into, or
>
> (b) knowingly does any act in furtherance of,
>
> any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of donations to a registered party by any person or body other than a permissible donor."

15. Despite that legislation, there remained a widespread concern that those who funded political parties might be exerting undue influence. On 8th February 2010 Mr David Cameron MP, then the Leader of the Opposition, delivered a speech entitled "Rebuilding trust in politics". In the course of that speech he said:

> "Now we all know that expenses has dominated politics for the last year. But if anyone thinks that cleaning up politics means dealing with this alone and then forgetting about it, they are wrong. Because there is another big issue that we can no longer ignore.
>
> It is the next big scandal waiting to happen. It's an issue that crosses party lines and has tainted our politics for too long, an issue that exposes the far-too-cosy relationship between politics, government, business and money.

> I'm talking about lobbying – and we all know how it works. The lunches, the hospitality, the quiet word in your ear, the ex-ministers and ex-advisors for hire, helping big business find the right way to get its way. In this party, we believe in competition, not cronyism. We believe in market economics, not crony capitalism. So we must be the party that sorts all this out.
>
> Now, I want to be clear: it's not just big business that gets involved in lobbying. Charities and other organisations, including trade unions, do it too. What's more, when it's open and transparent, when people know who is meeting who, for what reason and with what outcome, lobbying is perfectly reasonable.
>
> It's important that businesses, charities and other organisations feel they can make sure their voice is heard. And indeed, lobbying often makes for better, more workable, legislation. But I believe that it is increasingly clear that lobbying in this country is getting out of control.
>
> Today it is a £2 billion industry that has a huge presence in Parliament. The Hansard Society has estimated that some MPs are approached over one hundred times a week by lobbyists. Much of the time this happens covertly.
>
> We don't know who is meeting whom. We don't know whether any favours are being exchanged. We don't know which outside interests are wielding unhealthy influence. This isn't a minor issue with minor consequences. Commercial interests - not to mention government contracts - worth hundreds of billions of pounds are potentially at stake.
>
> I believe that secret corporate lobbying, like the expenses scandal, goes to the heart of why people are so fed up with politics. It arouses people's worst fears and suspicions about how our political system works, with money buying power, power fishing for money and a cosy club at the top making decisions in their own interest.
>
> We can't go on like this. I believe it's time we shone the light of transparency on lobbying in our country and forced our politics to come clean about who is buying power and influence."

16. Following the May 2010 General Election the Conservative and Liberal Democrat parties drew up two documents setting out the basis on which they would govern for the following five years, namely the Coalition Agreement and the Coalition

Programme for Government. Section 16 of the latter document was entitled "Government Transparency" and included the following two statements of intent:

> "• We will regulate lobbying through introducing
>
> a statutory register of lobbyists and ensuring
>
> greater transparency.
>
> • We will also pursue a detailed agreement on
>
> limiting donations and reforming party funding
>
> in order to remove big money from politics."

I shall refer to these as "the lobbying proposal" and "the donations proposal".

17. The lobbying proposal has now been implemented by the enactment of the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014. That Act is coming into force progressively.

18. Implementing the donations proposal was bound to be a more difficult exercise. That is because party politics is the lifeblood of representative democracy and political parties have got to get their funding from somewhere. As a first step towards implementation, in May 2010 the Coalition Government asked the CSPL to look again at the issues surrounding the funding of political parties and to prepare a further report. The CSPL duly embarked upon that inquiry.

19. On 15th February 2011 Lord Feldman, the Chairman of the Conservative Party, gave evidence to that inquiry. In the course of his opening statement Lord Feldman said this:

> "2. We need to be clear about the current state of party funding. Under David Cameron's leadership, the Conservative Party has undertaken a comprehensive programme to deal with its financial situation after the 2005 General Election, and to ensure that income generated from fundraising would cover its campaigning expenditure and at the same time enable it to pay down the majority of its historic debts. The Party centrally has not taken on a single loan from a donor since David Cameron became leader.
>
> 3. This has been achieved through the hard work of the voluntary Party Treasurers working in conjunction with a revamped professional team. The model has been based on the more successful charities and voluntary organisations operating in the UK today. There has been a multi-layered approach to fundraising including expanding donor clubs at all levels; a larger number of ticketed events; the development of a weekly

> lottery draw; far more sophisticated and targeted use of direct mail appeals and the emergence of on-line activity.
>
> 4. Contrary to the impression given by some sections of the media, in my experience there is no question of individuals either influencing policy or gaining an unfair advantage by virtue of their financial contributions to the Party. On the contrary, I have found donors to be motivated by a genuine desire to support the Conservative party and help it to win elections. They listen carefully to the arguments put forward by Conservative politicians, read the manifestos and other policy documents and then decide whether or not to support the Party.
>
> 5. However, we recognise that public perception is important, which is why we believe there is a case for a comprehensive cap on donations that applies equally to individuals, companies and trade unions...."

Lord Feldman then went on to discuss the position of the Labour Party, noting that over 80% of its donations came from trade unions.

20. In November 2011 the CSPL published its Thirteenth Report, entitled "Political Party Finance: Ending the big donor culture". The Committee noted that there was much public scepticism about the motivation of donors to political parties. In discussing whether that scepticism was justified the Committee said this:

> "1.19 On the one hand:
>
> • Significant donors do have preferential access to political decision-makers. All three main parties run leader's clubs of one form or another that explicitly provide access as an incentive to donors.
>
> • Significant donors have on occasion been appointed to the House of Lords. Of the 212 party political peers appointed since 2004, 48 were donors, either before or after appointment, fewer than some might have supposed. Of these, 20 gave £50,000 or more. 8 appointees held roles in trade unions that gave money to the Labour Party. 35 were associated in some way with companies, unincorporated associations or limited liability partnerships that made donations, although in some cases the connections were tenuous. In others it was with an organisation that made donations to all three main parties. 130 of the political peers appointed in the period had no discernible connection with any donations.
>
> • Party leaders are under much pressure to obtain funds for campaigning in competitive elections – and therefore to push what is permissible within the rules to the limit. The parties do not always resist the temptation. In 2005, for example, it became apparent that all three main parties had obtained significant loans.
>
> ….

> • The way influence is exerted does not have to be very direct.
>
> ….
>
> • Even if there is no direct connection between individual donors and specific decisions, there could be a bias created by large donations encouraging policies which benefit a particular type of donor.
>
> 1.20. On the other hand:
>
> • None of our witnesses gave us concrete evidence of a connection between donations and influence or position.
>
> • Access does not automatically bring direct influence on particular decisions – though it may have more subtle effects.
>
> • Many significant donors are successful people in their own spheres and might be expected to have access to ministers, or to receive peerages or other honours, irrespective of any money given to a party
>
> • Senior officials of affiliated trade unions would similarly be expected to have influence on Labour Party policy, and on occasion to be appointed to the House of Lords, even in the absence of large financial transfers from their union's political funds
>
> ….
>
> • There are provisions in the Ministerial Code and other safeguards intended to prevent improper influence on policymaking."

21. The CSPL concluded that the public scepticism was justified. It stated that even if there was no actual corruption in the present arrangements, they were potentially corruptible and therefore not deserving of trust. The Committee added:

> "The enormous competitive pressure on party leaders and treasurers to raise the funds thought necessary to fight elections creates considerable incentives to find ways of avoiding the rules."

22. The CSPL went on to recommend that there should be a limit of £10,000 per year placed on donations from any individual or organisation (including trade unions) to any political party. In order to make up the shortfall the Committee recommended that there should be public funding of each political party based on the number of votes that it had secured in the previous election. The Committee estimated that this would cost the taxpayer about £23 million per year.

23. The CSPL was also concerned about the possibility of foreign donations being channelled through UK companies. It therefore recommended that in order to be a permissible donor a company should be able to demonstrate that it was trading in the UK and earning sufficient income to fund its donations.

24. There is much obvious good sense in the CSPL's recommendations. On the other hand a proposal that the public purse should pay £23 million to political parties to fund their campaigning and other activities is not likely to be attractive to the electorate. Without public funding of that order it is not feasible to limit donations to £10,000 per year. The practical consequence is that the CSPL's main recommendations have not been implemented.

25. All the main political parties have continued to rely heavily upon large donations from wealthy organisations and individuals. The Conservative Party published the arrangements made for its donors in a brochure entitled "Play a key role in the future of the party". I shall refer to this as "the Donors Brochure" or "the Brochure". The Brochure describes seven different "groups" or "clubs" to which donors could belong. These were:

> 1. Team 2 Thousand: members of this team pay £2,000 per year.
>
> 2. City & Entrepreneurs Forum: members of this group pay £2,000 per year.
>
> 3. The Property Forum: members of this group pay £2,500 per year.
>
> 4. The Front Bench Club: members of this group pay £5,000 per year.
>
> 5. The Renaissance Forum: members of this group pay £15,000 per year.
>
> 6. Treasurers' Group: members of this group pay £25,000 per year.
>
> 7. The Leader's Group: members of this group pay £50,000 per year.

26. The Brochure sets out what events the members of each group will be invited to attend. The Brochure also sets out the degree of contact which members of each group can expect to have with Conservative politicians. In the case of the Leader's Group the accompanying text reads:

> "The Leader's Group is the premier supporter Group of the Conservative Party. Members are invited to join David Cameron and other senior figures from the Conservative Party at dinners, lunches, drinks receptions, election result events and important campaign launches."

27. It appears from the CSPL report that all the major political parties have arrangements for their individual donors which are broadly comparable to the arrangements set out in the Conservative Party's Donors Brochure. If political parties did not have such arrangements, they would have difficulty in raising the full amount of the funding that they need. The Labour Party, which gains most of its financial support from trade unions, also receives donations from wealthy individuals who support that party's ideals.

28. The conclusion which I draw from all the material before the court is that as a matter of *realpolitik* it is acceptable, indeed inevitable, that donors will have access on social occasions to senior members of the party which they support. In the case of large scale donors those social occasions may include intimate events, such as small dinner parties. It is both inevitable and acceptable that on such occasions conversation will range over political issues (in addition no doubt to more general matters such as sport or the arts). What is not acceptable on such occasions is that (a) the politicians should reveal confidential information; (b) the views expressed by donors on policy issues should carry greater weight with politicians merely because the proponents are donors; (c) politicians should give any form of unfair commercial advantage or preference to donors during or after those social occasions.

29. I have for some time been worried as to whether, in stating that general principle, I am trespassing on territory which has not been explored during the appeal, namely the relationship between political parties and institutional funders such as trade unions. I conclude, however, that those fears are misplaced. As Jacob Rowbottom demonstrates in chapter 2 of *The Funding of Political Parties*, different considerations come into play when one is dealing with donations or funding which institutions provide to political parties. Rowbottom argues that "a donation from a political organisation to which members subscribe may be seen as part of a democratic effort of a group of citizens to collectively influence politics" (page 16). I make no comment about that proposition or about how institutions should interact with the political parties which they support. That is not an issue in this case and we have heard no argument about it. The observations in this judgment about what is "inappropriate, unacceptable and wrong" are applicable only to individual donors.

30. Having dealt with those important matters by way of background, I must now return to the present case and begin by setting out the facts.

Part 3. The facts

31. In late 2011 Mr Calvert and Ms Blake had reason to believe that Ms Southern might be willing to effect introductions to senior Conservative politicians in return for payment. In order to test this hypothesis they decided to create a fictitious company based in Liechtenstein, "Global Zenith", which reputedly managed large funds for foreign investors. I shall refer to it as "GZ". They established a website for GZ showing that it managed two separate funds totalling £4.11 billion. Mr Calvert and Ms Blake assumed the identities of "John Brewster", the Chief Executive, and "Hayley Harris", the Director of Public Strategy.

32. Armed with these fictions the two journalists made contact with Ms Southern and in due course had a meeting with her. At that meeting the question of making large donations to the Conservative Party was discussed. At the journalists' request Ms Southern arranged for them to meet with Mr Cruddas, so that they could pursue this aspect further.

33. The meeting with Mr Cruddas took place on Thursday 15th March 2012 at Mr Cruddas' office in Houndsditch, London EC3. The two journalists attended, accompanied by Ms Southern. The journalists were both carrying video cameras and digital recorders. As a result a complete transcript of what was said at the meeting is now before the court.

34. After initial pleasantries and small talk, the meeting took the following course. The journalists explained briefly what GZ was and that it managed two funds from its base in Liechtenstein. They liked to operate under the radar. Mr Calvert said that they were about to embark upon a new UK investment strategy, buying Government assets, and they wanted to have high level contacts within the Conservative Government. He said that Ms Southern had come up with some brilliant ideas. One was making a donation, so as to get themselves noticed.

35. Mr Cruddas welcomed the proposal that the two journalists (whom he believed to be international financiers) should make donations to the Conservative Party. He produced a copy of the Brochure and explained that there were different categories of donors. On a number of occasions he stated that you cannot buy access to the Prime Minister and that donations do not entitle you to influence Government policy. Nevertheless Mr Cruddas went on to describe the benefits flowing to donors in the Leader's Group in terms which tended to contradict those general statements. I would summarise what Mr Cruddas said as follows:

    i) The donors in the Leader's Group will be invited to join the Prime Minister and senior ministers both at large public events and also at smaller private dinner parties.

    ii) At the private dinner parties the donors can ask the Prime Minister about anything and they will pick up much useful information.

    iii) If donors are unhappy about something, the Government will listen and will feed their concerns into the "Policy Committee" at 10 Downing Street. But the donors cannot change policy. Their views may be and sometimes are rejected.

    iv) At the larger events the donors and their guests may, if they pay enough, be on the same table as the Prime Minister or a senior minister. Even if they are on other tables, the Prime Minister or a senior minister may well come over to greet them and engage in brief chat.

    v) There will be opportunities for the donors and their guests to be photographed next to the Prime Minister and other senior ministers.

vi) At both the larger events and the intimate dinner parties donors will meet captains of industry and other prominent persons. Therefore there will be valuable opportunities for networking.

36. There was also some discussion about the means of making donations, bearing in mind the restrictions imposed by PPERA and the fact that GZ was a foreign corporation. Two possibilities were discussed. The first was that an English subsidiary company could make the donations. The second possibility was that the journalists personally could make the donations. Mr Cruddas made it clear, however, that the journalists would have to discuss all this with Mike Chattey, the head of fundraising at CCHQ. Mr Chattey and his staff dealt with compliance.

37. The meeting lasted about two hours. The parties separated on amiable terms. The two journalists then headed back to their office to write up the story.

38. On 25th March 2012 The Sunday Times published four articles. On pages 1 and 2 there was an article headed "Tory Treasurer charges £250,000 to meet PM". A photograph of Mr Cruddas taken during the 15th March meeting accompanied that article. On pages 8 and 9 there was an article entitled "Cash for Cameron: cosy club buys the PM's ear". At the bottom of page 9 there was a shorter article entitled "Pay the money this way and the party won't pry". Also on page 9 was an article entitled "Rotten to the Core". Those four articles also appeared on The Sunday Times' website. The newspaper also carried an editorial entitled "Sack the Treasurer and clean up lobbying".

39. Mr Calvert and Ms Blake were the authors of the first, second and third articles. In those articles they gave an account of what had happened at the meeting, with numerous quotations from Mr Cruddas. Whether that was a fair and accurate account is a question to which I shall return in Parts 6 to 8 below. Mr Mark Adams, a lobbyist, was the author of the fourth article. Mr Adams was commenting on the issues rather than recounting what people had said at the meeting.

40. Mr Cruddas became aware of the content of the four articles on the evening of Saturday 24th March. After conferring with colleagues in the Conservative Party he submitted a letter of resignation in terms which they had drafted. An extract from that letter appeared in later editions of The Sunday Times of 25th March, alongside the first article.

41. On Monday 26th March Mr Cameron made a speech about the incident. By then he had read the articles in The Sunday Times of 25th March, but not the transcript of the meeting on 15th March. He stated that what Mr Cruddas had said was wrong; that the party only accepted donations after carrying out very thorough compliance procedures; and that there was no question of donors exerting undue influence on policy. Mr Cameron added that in future the Conservative Party would publish a register of all donors who attended dinners with the Prime Minister and other senior ministers.

42. Mr Cruddas was understandably distressed by the course of events. He also considered that the articles in The Sunday Times were inaccurate and defamatory. Accordingly he commenced the present proceedings.

Part 4. The present proceedings

43. By a claim form issued in the Queen's Bench Division of the High Court on 24th July 2012 Mr Cruddas claimed damages for libel and malicious falsehood in respect of the first, second and third articles ("the three articles" or "the articles"). He named Mr Calvert as first defendant, Ms Blake as second defendant and Times Newspapers Ltd as third defendant. Mr Cruddas also claimed an injunction to restrain repetition.

44. In paragraph 6 of his particulars of claim Mr Cruddas alleged that the articles meant:

> "(1) in return for cash donations to the Conservative Party, the Claimant corruptly offered for sale the opportunity to influence government policy and gain unfair advantage through secret meetings with the Prime Minister and other senior ministers;
>
> (2) the Claimant made the offer, even though he knew that the money offered for such secret meetings was to come, in breach of the ban under UK electoral law, from Middle Eastern Investors in a Liechtenstein fund; and
>
> (3) further, in order to circumvent and thereby evade the law, the Claimant was happy that the foreign donors should use deceptive devices, such as creating an artificial UK company to donate the money or using UK employees as conduits, so that the true source of the donation would be concealed."

45. I shall refer to those three sub-paragraphs as "meaning 1", "meaning 2" and "meaning 3". Although the claimant later amended his particulars of claim, paragraph 6 remained unaltered. In the course of the litigation meaning 1 has sometimes been referred to as "cash for access"; meanings 2 and 3 have sometimes been referred to as "the foreign donations allegations".

46. All three defendants denied liability. They also denied that the articles bore the meanings alleged in paragraph 6 of the particulars of claim. In paragraphs 7 and 8 of their defence they put forward alternative meanings of the articles. The principal difference between the parties concerning meaning was this. The defendants asserted that, properly understood, the articles were not alleging criminality on the part of the claimant. In relation to meaning 1 (cash for access), the defendants asserted that the claimant's conduct was inappropriate, unacceptable and wrong and gave rise to an impression of impropriety. In relation to meanings 2 and 3 (foreign donations), the defendants asserted that the claimant countenanced conduct which was contrary to the spirit of the law.

47. In paragraphs 7 and 8 of their defence the defendants further alleged that the less serious meanings for which they contended were true. The defendants also denied the allegations of malice and malicious falsehood.

48. The action was assigned to Mr Justice Tugendhat ("the judge"). In May 2013 there was a preliminary issue trial to determine the meanings of the three articles. On 5th June 2013 the judge gave judgment. He held:

    i) In libel the single meaning rule applied. The articles bore the three meanings set out in paragraph 6 of the particulars of claim. The first of those meanings connoted conduct that amounted to a criminal offence of corruption.

    ii) In malicious falsehood the court must look at any other meanings which reasonable readers might place on the articles.

49. The defendants appealed against the judgment on meaning. The appeal was expedited because the start date for the main trial was imminent. Lord Justice Longmore, Lady Justice Rafferty and Sir Stephen Sedley heard the appeal on 14th June 2013 and handed down their judgment on 21st June 2013. Longmore LJ gave the leading judgment, with which the other members of the court agreed. He held:

    i) For the purposes of libel, meaning 1 was as pleaded in paragraph 6 of the particulars of claim, subject to one qualification. The word "corruptly" should be interpreted not as connoting a criminal offence, but as meaning "inappropriate, unacceptable and wrong": see [16].

    ii) For the purposes of libel, meanings 2 and 3 were as pleaded in paragraph 6 of the particulars of claim. It should be understood, however, that countenancing a loophole in electoral law would not involve criminality, but the allegation of countenancing the funnelling of money through a third party was an imputation of countenancing a criminal offence contrary to section 61 of PPERA: see [23].

    iii) The defendants should be permitted to amend their defence to justify the correct meanings of the articles, as identified by the Court of Appeal: see [29] and paragraph 6 of the Court of Appeal's order.

    iv) For the purposes of malicious falsehood, meaning 1 can be read in more than one way. A number of reasonable people might have read the articles as imputing criminal corruption, even though that reading was wrong: see [31] to [32].

50. Following the judgment of the Court of Appeal the defendants amended their defence, so as to allege that the three meanings of the articles, as found by the Court of Appeal, were true. The action then proceeded to trial.

51. The trial took place before Mr Justice Tugendhat during the first two weeks of July 2013. Mr Cruddas gave evidence in support of his claim. Mr Calvert, Ms Blake and Mr John Witherow (who had been editor of The Sunday Times during 2012) gave evidence on behalf of the defence.

52. On 31st July 2013 the judge handed down his reserved judgment. He found in favour of the claimant and awarded damages of £180,000. I would summarise the judge's findings and conclusions as follows:

i) What Mr Cruddas said during the meeting on 15th March 2012 was substantially in line with the Donors Brochure as well as the publicly stated positions of David Cameron and Lord Feldman. The defendants had failed to justify meaning 1. In that respect the articles were untrue. Since truth was the only pleaded defence to the claimant's libel claim, the claimants succeeded in respect of meaning 1.

ii) As to meanings 2 and 3, Mr Cruddas did no more than discuss lawful means of making the proposed donations. He made it clear that it was for Mr Chattey and the staff at CCHQ to ensure that all donations complied with PPERA. The defendants had failed to justify meanings 2 and 3. In those respect the articles were untrue. Therefore the claimant's libel claim succeeded in respect of meanings 2 and 3.

iii) The two journalists knew that Mr Cruddas had not suggested any criminal conduct in relation to meaning 1. They understood that some cynical readers would understand meaning 1 in the sense of connoting criminality. Therefore they were liable for malicious falsehood in respect of meaning 1.

iv) In respect of meanings 2 and 3, the journalists knew that Mr Cruddas had not countenanced the commission of an offence contrary to section 61 of PPERA. They knew that this was what the articles alleged. Therefore they were liable for malicious falsehood in respect of meanings 2 and 3.

v) Other evidence established that the two journalists had the dominant intention to injure Mr Cruddas. They were malicious in relation to all three meanings of the articles.

vi) The third defendant, Times Newspapers Ltd, was directly liable to the claimant in respect of the libels and vicariously liable in respect of the malicious falsehoods.

vii) The proper measure of damages for libel in respect of meanings 1, 2 and 3 was £180,000. That included £15,000 aggravated damages. No additional award of damages was required in respect of malicious falsehood.

viii) An injunction should be granted restraining the defendants from repeating the libels.

53. The defendants were aggrieved by the judge's decision. Accordingly they appealed to the Court of Appeal.

Part 5. The appeal to the Court of Appeal

54. By an appellant's notice filed on 18th September 2013 the defendants appealed against the judgment of Mr Justice Tugendhat on no less than sixteen grounds. Without any disrespect to that fulsome pleading, I would summarise the defendants' essential argument as follows:

i) For the purposes of libel, meaning 1 was true. This is apparent from the transcript of the meeting on 15th March 2012.

ii) The defendants are not liable for malicious falsehood in respect of meaning 1, because they did not intend readers to place the alternative (incorrect) interpretation on the articles which has been identified by the Court of Appeal.

iii) Meanings 2 and 3 are true. Therefore the defendants are not liable for either libel or malicious falsehood in respect of those meanings.

iv) In any event, the defendants were not malicious in respect of meanings 2 and 3.

55. We heard this appeal over the three day period 9th to 11th December 2014. Mr Richard Rampton QC, leading Ms Heather Rogers QC and Mr Aidan Eardley, appeared for the appellant defendants. Mr Desmond Browne QC, leading Mr Matthew Nicklin QC and Ms Victoria Jolliffe, appeared for the respondent claimant. On 21st January 2015 the court, having formed its view on liability, invited both parties to send in their written submissions on damages on the basis that the appellants succeeded in relation to meaning 1, but failed in relation to meanings 2 and 3. The parties provided those written submissions during February 2015. We are grateful to counsel for the excellence of their oral and written arguments.

56. During the course of the hearing almost no reference was made to the articles published in The Sunday Times. This was because the Court of Appeal had previously established the three meanings of the articles. Most of the debate in the hearing before us centred upon (a) the transcript of the meeting on 15th March 2012 ("the transcript"), and (b) comparison of the transcript with meanings 1, 2 and 3.

57. I must now address the first issue which is whether, for the purposes of libel, meaning 1 was true.

Part 6. For the purposes of libel, was meaning 1 true?

58. The judge assessed the claimant's conduct by reference to the Donors Brochure and the public statements of Mr Cameron, as leader of the Conservative Party. I should therefore begin by reviewing what benefits were, as a matter of public record, available to those who made large donations.

59. According to page 2 of the Donors Brochure, anyone who joins a donor club can "get closer to the heart of the party" and attend "political discussions … with MPs and senior Conservative politicians". Page 3 states "Join a donor club and get involved in the heart of the party. Meet the key party figures and supporters … Challenge us with your ideas". Page 4 describes the Leader's Group in terms which I have set out in Part 2 above.

60. It is an inescapable fact of political life that those who make large donations to one of the main parties will have periodic opportunities to mingle with senior members of their chosen party, both when that party is in opposition and when it is in Government. That does not mean, however, that large scale donors will gain access to confidential Government information or that their views will carry greater weight with ministers than the views of other special interest groups on that account. There is no reason why a donor should not have a civilised conversation with a senior Government minister over dinner which does not cross any of those lines. The

minister can limit what he or she says to the plentiful information which is in the public domain. The minister can listen courteously to any views expressed by the donor in the same way that he or she listens to all the views which citizens or organisations put forward. The one undeniable advantage which donors in the Leader's Group have is that they can express their views directly to the Prime Minister or to other senior ministers. They do not have to rely upon civil servants or intermediaries to pass on their views.

61. Although large scale donors have direct access to senior ministers on social occasions, it is inappropriate, unacceptable and wrong for the donors to use that access to gain (a) confidential information, (b) enhanced influence over policy-making or (c) unfair commercial advantage. It is also inappropriate, unacceptable and wrong for senior ministers to allow that to happen. By "enhanced influence" I mean greater influence than any non-donor would have when making representations to the Government.

62. The above propositions are self-evidently correct. They are supported by David Cameron's speech of 8th February 2010 and Lord Feldman's opening statement in evidence to the CSPL, both of which I have quoted in Part 2 above. Those propositions are also consistent with the CSPL's Thirteenth Report.

63. Neither politicians nor any other decision makers in public office can cut themselves off from society in general or, more specifically, from those social groups who are affected by their decisions. There is therefore a duty on all concerned to ensure that encounters on informal or private occasions are not abused. By way of partial analogy, I would refer to the position of judges. They frequently mingle with solicitors and barristers at professional or other events. On such occasions no-one would dream of suggesting to a judge how he or she should decide forthcoming cases. This analogy cannot be pressed too far. Judges decide cases by reference to the evidence adduced in court. Government ministers make decisions on a broader basis. They consider the views of all interest groups. Those views are expressed both orally and in writing on a variety of occasions. As Mr Cameron correctly stated in his speech of 8th February 2010, lobbying by special interest groups is beneficial and contributes to good governance, provided that it is open and transparent. I would add that it is an important element of democratic government that the voices of all who are affected by particular policies or who have relevant specialist knowledge should be heard. It is the duty of both Government and the legislature to consider, as best they can, all the conflicting arguments and relevant facts put before them. What is unacceptable, however, is for those who pay large sums to political parties thereby to gain enhanced influence over the decision making process or access to confidential information or specific benefits for their own businesses.

64. I turn now to what transpired at the meeting on 15th March 2012. Like the trial judge, I have read the transcript and watched the DVD of that meeting many times. It is important to read each section of the transcript in the context of the whole and also to have regard to the body language. I have done so.

65. At an early stage of the meeting the two journalists (identified in the transcript as "D1" and "D2") tell Mr Cruddas (identified as "C") what they want and why they are considering making a donation. They describe GZ and explain that they run two funds. The conversation then continues as follows:

"D1: Because, especially because, we're, at the moment we're, we're just, we're pursuing this UK investment strategy, which is a brand new strategy to us. And, erm, this strategy, er, is basically looking at opportunities to invest in government assets. Erm, and our problem at the moment is that, erm, we've been out of the UK for ten years, we've been in mainland Europe for ten years and we just don't have any connections, erm and that how it's …

C: Yeah

D2: And well that's why, that's why we've brought Sarah on board, erm because obviously we're aware that she's worked with the Conservative party closely for a number of years …

C: Believe me she's well connected, it's a good recruit for you.

SS: (Laughs)

D2: Excellent. Well we feel that, and especially having worked so closely with David Cameron. It's just a fantastic asset.

C: She, um, pinged me an e-mail, 'Peter I need to see you', 'No problem Sarah, in you come, any time'. So she, I can confirm she has got the contacts.

D2: Fantastic.

C: And her contacts will improve over time, 'cause she knows a lot of rising stars that are destined for important positions. And we met them primarily through No to AV and obviously what you were doing beforehand.

D1: Yeah

D2: Brilliant, well …

C: She's a good recruit for you, I promise you.

D2 Well we're thrilled with the work she's done so far, its been absolutely brilliant, and, er, and we really need those connections in the UK, as John's explained, and to an extent we need them more now than ever because we have, in recent years taken on a sort of growing number of clients from sort of parts of the world, especially the Middle East, where these people are just used to being able to sort of go to the top and do business.

C: Deal with people, yeah.

D2: At the top. And obviously we understand it works slightly differently in the UK than it does in Qatar but, erm.

(Laughter)

C: Slightly

D2: Slightly differently.

C: Well they've got money, we haven't.

(Laughter)

D2: Yeah.

C: That's the major difference.

D2: That's one difference, yeah, but, but I mean our clients do expect us to have connections at the top and we need to be able to look them in the eye and say, we've spoken to Mr Cameron, we've represented your concerns, or you know we've seen him, he's aware of, er, of our company, he knows what we're trying to do, erm, and so in order to achieve that I think we need to have some contact with people er at the top of the party, and obviously Sarah's explained to us that you don't get a sit down meeting for an hour with David Cameron but there are ways of, of meeting him and becoming sort of a player, erm, in the UK. And so we'd like to have some of that contact, we'd like to have an opportunity to some extent to have our say in policy areas which we feel affect our business, er, in the UK and our investment strategy, and er we'd sort of like to be moving in the kinds of circles where you, you sort of know what's going on and you pick up the kind of intelligence…

C: Yeah (nodding)

D2: … that we need to …

C: Yeah

D2: … progress our, our business strategy here. Erm, and so we've talked to Sarah about that, that's …

SS: Yes

D2: … what we've put to you and Sarah's come up with a load of brilliant ideas, about ways we can do that. One of them was that we could think about making a donation erm and that that would be a good way of getting ourselves noticed, erm.

SS: Because, especially with all of the different donor groups ..."

66. There is then a discussion about the different donor groups and Mr Cruddas produces a copy of the Donors Brochure. Two key facts emerge from the passage quoted above. First, the journalists are not proposing to support the Conservative Party out of ideological or political commitment. Making a donation to the Conservative Party (which is currently in power) is simply a means to an end. Secondly, the journalists are seeking access to the Prime Minister and an opportunity to influence Government policy in areas which affect their business.

67. What the journalists were seeking went significantly beyond the perquisites of belonging to any donor group. Mr Cruddas ought to have made that plain immediately. He did not do so.

68. Instead Mr Cruddas gave a lengthy explanation of the Conservative Party and the benefits of joining a donor group. It is true that he began by saying "when you give to the Conservative Party it doesn't buy you access to anybody". His subsequent exposition contradicted that initial statement. It is a feature of this transcript that Mr Cruddas frequently makes entirely proper statements and then contradicts them by what follows. Mr Browne submits that the court should look at both the exculpatory statements and the inculpatory statements; the exculpatory statements prevail. Mr Rampton ripostes that the inculpatory statements should not be there at all. I agree with Mr Rampton.

69. Mr Browne makes the separate point that some of the journalists' questions sought to lure Mr Cruddas into making inculpatory statements. That is true in some instances. On the other hand there was not the slightest reason for Mr Cruddas to fall into the trap. He should have said something like "that cannot possibly happen". It is not unheard of for temptation to be placed in the path of those who hold responsible professional or public positions. It is the duty of such persons to reject the temptation. They hold responsible positions because they are trusted to do so.

70. At the end of Mr Cruddas' explanation about the donor groups there is the following passage:

> "C: We have to be careful. You cannot buy access to the Prime Minister, full stop. If you donate you will be invited to events where the Prime Minister is there, and frequently, if you get into the right club, and I can advise you, you could well be at a private house, having a private dinner, with the Chancellor, William Hague, David Cameron, Michael Gove, all the top ministers…
>
> D1: Mm-hmm
>
> C:…the Chairman of the party, where around that table there will be very distinguished business people. For example there's a big commodities erm merger going on at the moment that you may or may not know of, but one of the people involved with that was sitting at the table.
>
> D1: Right

C: I was at the table, big hedge fund guys, ex bankers, current bankers…

D1: Mm-hmm

C:… the Prime Minister, they're at the table and we get a chance to ask the Prime Minister questions…

D1: Mm-hmm

C:… and we can say well what do you think about trade between blah, blah, blah. What do you think we're going to do about the top rate of tax?

D1: Yeah

C: And I tell you something, for me, you meet a lot of interesting people,…

D1: Yeah

C:…a lot of interesting people, and you do get to hear a lot of things.

D2: Mm-hmm

C: A lot of things that are kind of semi-public.

D1: Right

C: Erm and you know at the last dinner I went to about a month ago and I've got one coming up in a couple of weeks, erm, we were talking about Scotland and what effect that, they would have and the Prime Minister said oh well I'm meeting…I said to him, 'When are you meeting the mad Scotsman?

(Laughter)

C: He said 'I'm meeting the mad Scotsman, er, in about a month's time', and I said when, and he said well not…don't fix the date yet, but February. Lo and behold, at the beginning of February, he met Alex Salmond, I think it was the 10th.

D1: Yeah

C: (Clears throat) But a couple of days later I went up to a luncheon for the party…

D1: Mm-hmm

C:… and I was at the luncheon, I said 'Oh yeah, the Prime Minister told me he's meeting Alex Salmond in February, so it's key bits of information that you can use, you know …

D2: Mmm

C:… when you, you know frequently I say well I was with the Prime Minister last week and he told me this.

D2: Mmm

D1: Yeah, yeah

C: You know and they said, well does he want to pull out of Scotland, I say, well actually, he told me that he wants to fight to keep the Union and then they said well is that the official line or his true feelings? And I said he told me that was, those were his true feelings, however, even if they're not, we as a party have to be seen to be fighting to keep the Union together. Even if we don't agree with it, because at the end of it all, if the Scots say we're out of here and they want to go independent, we can turn around and say it's not what we wanted, it's not what we campaigned for,…

D1: Mm-hmm

C:… you can't have this, you can't have that, and you can get on with it

D1: Yeah, Of course, year.

D2: Mmm

C: So you do really pick up a lot of information…

D1: Yeah

C:…, and when you see the Prime Minister, you're seeing David Cameron, you're not seeing the Prime Minister, you're seeing David Cameron.

D1: Yeah.

C: But, within that room everything's confidential…

D2: Mm-hmm

C:… and you will be able to ask him practically any question that you want.

D1: Well that's quite handy.

> D2: Okay
>
> C: Well you know, what would, what would be the type of thing you would want to ask him for example?
>
> D2: Well, we're, for example we're interested in, at the moment our investment strategy in the UK is in its very early stages and we're just sort of kicking around ideas, but one thing is that we might, say we want, we wanted to take an interest in an asset like the Royal Mail, we'd, we'd like to ask him 'How do you feel…'
>
> C: Spot on. Spot on.
>
> D1: What the strategy would be..
>
> C: You could ask him about that.
>
> D2: Right
>
> C: You could ask him about that, that would be a very good thing."

71. The clear message which Mr Cruddas conveys in that passage is that donors in the Leader's Group are in a privileged position. They not only have the ear of the Prime Minister and senior ministers, they also pick up useful information not available to the general public at meetings where everything is in confidence.

72. If that were actually to happen, it would be an abuse of the donor system. Wealthy donors should not be able to tap into confidential Government information or Government thinking. Nor should they be given an opportunity to discuss with the Prime Minister (even in general terms) the appropriate strategy for them to pursue in purchasing Government assets.

73. At page 27 of the transcript the journalists say that they have ring fenced 1.8 million euros (approximately £1.5 million) for the purpose of setting up in the UK. The money which they "donate or invest in the party" will come from that. The use of the word "invest" (repeated several times) indicates that the journalists are expecting to get a proper return for the sums which they pay to the party. This passage also indicates that they expect to pay substantially more than the normal subscription to the Leader's Group.

74. At pages 32 to 33 of the transcript there is a specific discussion about influencing policy. The passage begins with an entirely proper disclaimer by Mr Cruddas, but then the tenor changes:

> "C: … Unfortunately donating to a party is not the most effective way to get your voice heard …
>
> D1: Mmm

> C: … if you're – if you're unhappy about something you can g-, we can-, we-, we'll listen to you and we'll put it into the Policy Committee at Number 10. We feed all feedback into the Policy Committee.
>
> D1: Right.
>
> C: But just because you donate money doesn't give you a voice at the top table to change policy, that doesn't happen. And primarily-,
>
> D1: But at least it gets into the policy committee at Number 10.
>
> C: Oh it goes-, yeah, yeah, yeah."

75. Mr Cruddas then gives an example of an issue where the Conservative Government has gone against the views of donors. That was in legalising gay marriage. Mr Cruddas summed the point up in this way:

> "C: And some of our donors are saying, 'But we don't agree with er gays getting married in a church' and we're saying, 'No, look I'm sorry, we're not actually agreeing with that, we're not even talking about that, we're just saying that marriage is a legally-binding contract and if gay people want to get married then-, and suffer the same laws as heterosexual people, then that should be allowed."

76. The effect of this passage, when read as a whole and in context, is that the Conservative Government will always give particular attention to the views of donors, even if in the end it rejects those views.

77. At pages 39 to 41 there is discussion about the benefits of making especially large donations. The discussion begins like this:

> "D2: And what do you think I mean if, say, we were to make a commitment er now the- or in a couple of weeks' time to donate over, say, two years, what do you think, if we really want to get-, get ourselves noticed and get ourselves invited to the very top level so that we would be taken seriously when we meet Mr Cameron at Downton Abbey for example, what do you think is a suitable amount for us to give to-,
>
> C: Minimum of a hundred grand a year, minimum
>
> D1: Right.
>
> C: Minimum.

> D2: Hundred grand a year. What do you think, I mean, what's a kind of-, what-, what would you say was a suitable amount if a hundred grand is a minimum?
>
> C: Hundred grand probably isn't enough if you really want to be taken seriously. You've got to be compliant.
>
> D2: Course."

78. On page 40 Mr Cruddas says that £100,000 is nice, but it is not premier league. He cites examples of donors who have given substantially more than that. The discussion then continues:

> "C: Yeah. People tend to up um during the election year, election year 2015, actually, my advice to you is people tend to say, 'Right, well I'll give this now and then in the election year-, 'this guy has offered one million pounds at the election year. But you know what? We get a lot of money in the election year. You kind of do get noticed but you'll get outbid in the election year,
>
> D1: Yeah
>
> C:.. you'll get outbid. So the impact n-, is probably now, we're mid-term and its harder to get money now, mid-term, so from an impact point of view I think you need to come above the radar now and not necessarily pledge a big pledge for the election year.
>
> D1: Yeah
>
> D2: Okay.
>
> C: And a hundred grand is not premier league, it's not bad, it's- probably bottom on the premier league. 200 grand, 250 is premier league.
>
> D1: Right
>
> C: But anything between a hundred and two fifty. And what I would suggest is that-, to leave something back for the- the party conference so-
>
> D1: Yeah
>
> D2: Of course, and things like that.
>
> D1: Well, we have that within our budget, um-
>
> D2: Yeah.

> D1: It's a question of-, I mean, and the question for us really I suppose is we pay-, if we do become premier league what-, what would we get in addition?
>
> C: Well what you would get is um the first thing that you-, when we talk about your donations the first thing we wanna do is get you at the Cameron and Osborne dinners."

79. Mr Cruddas' repeated reference to being "outbid" is significant. So also is his reference to "impact" in circumstances where what he was being asked was what Global Zenith had to do in order to "get ourselves noticed" and "invited to the very top level so that we would be taken seriously". Mr Cruddas' description of the "premier league" is something that does not feature in the Brochure. The clear message is that these large scale donors enjoy greater access to top ministers and exert greater influence on policy making than regular members of the Leader's Group.

80. In the course of the meeting Mr Cruddas describes an array of benefits which donors will enjoy. These range from large events in grand locations to more intimate dinner parties with the Prime Minister and a few other guests, as described on pages 44 to 45 of the transcript.

81. On page 52 of the transcript the journalists ask if they should also donate to the Liberal Democrats. Mr Cruddas advises against that. He says that Easyjet donate to all three main parties. As a result they are not taken seriously. Here again the discussion is all about how the journalists can derive the greatest benefit from their proposed donations.

82. Towards the end of the meeting Mr Cruddas returns to the useful information which donors can glean. At page 81 the transcript reads:

> "C: Well you know, you have to know a little bit about what's going on because, you know, people ask you, donors ask you and you have to, you have-, but also you pick up so much, when you go to some of these events, you will hear stuff that, I mean I heard something about the budget yesterday that I can't, I won't say …"

83. I readily accept that many pages of the transcript relate to entirely innocuous matters. Mr Cruddas describes how donors and their guests can attend large functions where senior ministers may briefly greet them. He describes opportunities to be photographed with the Prime Minister and an occasion when someone was given a 70th birthday card. He also describes the splendid opportunities for networking with the captains of industry and other prominent persons who are invited to such events. All of that is a perfectly reasonable way for the Conservative Party to express gratitude to its benefactors.

84. Unfortunately the journalists made clear that they wanted more than networking opportunities, baubles and social occasions. They wanted to talk business and politics with senior ministers. They wanted to be taken seriously and to have their say in policy areas affecting their business. Mr Cruddas indicated that they could have an impact if they paid enough money and staged their payments wisely.

85. Let me now draw the threads together. Mr Cruddas was effectively saying to the journalists that if they donated large sums to the Conservative Party, they would have an opportunity to influence Government policy and to gain unfair commercial advantage through confidential meetings with the Prime Minister and other senior ministers. Mr Cruddas was not suggesting any form of criminal offence under the Bribery Act 2010. Nevertheless, what he proposed was unacceptable, inappropriate and wrong. Therefore meaning 1 was substantially true.

86. For completeness I should add that Mr Cruddas was offering more than he could deliver. It is clear from the Prime Minister's speech on 26th March 2012 that the Conservative Party would not in fact accord to donors the benefits which Mr Cruddas described. That, however, does not undermine the defendants' defence of justification in relation to their report of what Mr Cruddas said.

87. Mr Browne makes the point that Mr Justice Tugendhat is a very experienced judge with considerable expertise in the field of defamation. The Court of Appeal should be slow indeed to differ from the judge in his findings of fact. I accept that.

88. Unfortunately the judge's summary of what Mr Cruddas said in paragraph 80 of the judgment is not entirely accurate. As to paragraph 81, Mr Cruddas not only described the benefits of belonging to the Leader's Group (as set out in the Brochure) but also the greater access and "impact" which premier league donors would enjoy. That went well beyond what the Brochure described.

89. Paragraph 85 of the judgment contains a most surprising mistake. That paragraph reads as follows:

> "Mr Cruddas was also explaining both the kind of access that was being offered, and the kind that was not being offered. Mr Cruddas made clear what was not permitted at the private occasions on which donors met ministers. He said that it was not permitted for them to attempt to obtain commercial benefits specific to their particular businesses. He said (in a passage from the Transcript omitted from the Articles):
>
> "if you've got someone who's got a big government contract coming up and they want to talk to the Prime Minister about the contract terms that ain't gonna happen… I said to you that there's no cash for access, there's no cash for honours the Party is really clean"."

90. The first part of the quotation in paragraph 85 of the judgment comes from page 69 of the transcript of the meeting. The judge omits the following words in that passage which read as follows:

> "D1: Mmm
>
> C:… But if they wanna ask general questions, and they can ask specific questions about the Post Office and stuff like that.
>
> D1: Yeah
>
> C:… He'll come back to you, you know,
>
> D1: Yeah
>
> C:… you can ask him. You can ask him difficult questions.
>
> SS: He likes a difficult question.
>
> C: He likes it, yeah."

91. The second part of the quotation in paragraph 85 of the judgment does not follow the first part at all. It comes from page 24 of the transcript. That is another exculpatory statement, which is followed by an explanation of how cash does buy access.

92. It is not clear to me how the judge came to create paragraph 85 of the judgment. Possibly it originated through word processing errors. The overall effect, however, is to mislead the reader and possibly the author as well. The two exculpatory passages which are consolidated in reverse order in that paragraph (the second passage having been spoken 61 minutes before the first passage) do not form part of a continuous narrative. Nor does that consolidated passage represent the message which Mr Cruddas was conveying.

93. There are many shortcomings in The Sunday Times articles, as the judge observed. Also the articles are in some respects unfair to Mr Cruddas. In particular, the quotation "awesome for your business" is removed from its proper context and misused. That, however, is a separate matter. The issue before the judge and now before this court is whether the defendants have justified the first meaning, as formulated by the Court of Appeal in its judgment dated 21st June 2013. In my view they have justified it. My answer to the question posed in this part of the judgment is yes.

94. Therefore the appellants succeed on the first issue. I must now turn to the claim for malicious falsehood in relation to meaning 1.

Part 7. Are the defendants liable for malicious falsehood in respect of meaning 1?

95. In relation to the tort of malicious falsehood, the single meaning rule does not apply: see *Ajinomoto Sweeteners Europe SAS v Asda Stores Ltd* [2010] EWCA Civ 609; [2011] QB 497. In that case Ajinomoto made a claim for malicious falsehood, in

respect of words used on packaging. There was no separate claim for libel. The trial judge held that the words on the packaging had two reasonably possible meanings, of which one was true and the other was false (see 499 D-E). The judge held that the single meaning rule applied and adopted the meaning which was true. The Court of Appeal, reversing the judge, held that the single meaning rule did not apply to claims for malicious falsehood and that both the possible meanings of the words on the packaging should be considered.

96. Mr Browne for Mr Cruddas places heavy reliance upon *Ajinomoto*. He submits that for the purpose of malicious falsehood there are two separate versions of meaning 1 to consider. The first version is the meaning for the purpose of libel. The second version of meaning 1 is the same as the first version except that "corruptly" connotes a criminal offence.

97. The criminal statute which is of most obvious relevance is the Bribery Act 2010. The second version of meaning 1, which must be considered for the purposes of the malicious falsehood claim, may be formulated as follows:

> "In return for cash donations to the Conservative party, Mr Cruddas corruptly offered for sale the opportunity to influence Government policy and gain unfair advantage through secret meetings with the Prime Minister and other senior ministers. "Corruptly" here means acting in such a way as to commit a criminal offence under the Bribery Act 2010."

98. It is common ground that the second version of meaning 1 is not true. During the meeting Mr Cruddas did not countenance or suggest any criminal offence involving corruption.

99. Mr Browne contends that the two journalists maliciously wrote the articles knowing that they bore both versions of meaning 1 and knowing that the second version of meaning 1 was false. Therefore they are liable for malicious falsehood, even if they are not liable for libel.

100. In addressing this issue I must first isolate the relevant facts which have been established. The Court of Appeal stated at paragraphs 31 to 32 of its judgment on meaning:

> "31. The first question therefore is whether the imputation of criminal corruption is a meaning which reasonable persons could read into the articles. Although I feel certain that the single meaning required by the law of libel does not carry that imputation, I cannot feel certain that a number of reasonable people would not have understood the articles as making an imputation of criminal corruption. I would therefore reject Mr Rampton's invitation that we should declare that, for the purpose of the malicious falsehood claim, the imputation of criminal corruption is a meaning which is not available for the purposes of malicious falsehood.

> 32. It might appear that there is a tension, even an incompatibility, between the proposition that a particular meaning is plainly wrong and the proposition that it is nevertheless a possible meaning. The reason why it is not necessarily so lies in the difference between libel and malicious falsehood. In malicious falsehood every reasonably available meaning, damaging or not, has to be considered. In libel, the artifice of a putative single meaning requires the court to find an approximate centre-point in the range of possible meanings."

101. I gather from this passage that version two of meaning 1 is "plainly wrong", but nevertheless it is an interpretation which "a number of reasonable people" might have placed on the articles. I say "might have placed" rather than "would have placed" because of Lord Justice Longmore's cautious language and his use of the double negative twice. I also note that at the end of paragraph 32 Lord Justice Longmore characterises version one of meaning 1 as "the (or a) dominant" meaning.

102. Drawing the threads together, I conclude as follows:

i) Version one of meaning 1 is what the articles actually mean.

ii) Version two of meaning 1 is an incorrect statement of what the articles mean.

iii) Nevertheless a number of reasonable readers might wrongly interpret the articles as bearing version two of meaning 1.

103. Against that background, were the journalists malicious in respect of version two of meaning 1? The test to be applied here is subjective. The court must focus on the defendant's state of mind.

104. Having heard the two journalists give evidence at trial the judge held at paragraph 218:

> "I think it more than probable that the Journalists understood that cynics would understand that the Articles meant that Mr Cruddas had been seeking to induce the international financiers to make very large donations to the Party by representing to them that these donations would be bribes that would enable them "to influence policy or gain unfair advantage in return for cash", in particular by learning from the Prime Minister "insider information" which would be of commercial advantage to their business."

105. In other words the journalists realised that some cynical readers would understand the articles to mean that Mr Cruddas was proposing criminal bribes, even though the articles did not mean that and the journalists knew the articles did not mean that.

106. Mr Browne submits that this provides a proper factual basis to impose legal liability for malicious falsehood. Mr Rampton submits that it does not.

107. The only authorities which counsel have cited on this issue are *Horrocks v Lowe* [1975] AC 135, *Loveless v Earl* [1999] E.M.L.R 530 and *Ajinomoto Sweeteners Europe SAS v Asda Stores Ltd* [2010] EWCA Civ 609; [2011] QB 497 . Mr Browne also draws particular attention to the judgment of Rimer LJ in *Ajinomoto* and the rights of journalists under ECHR article 10.

108. In *Horrocks* the defendant to a claim for slander pleaded that he had made fair comment on a privileged occasion. The plaintiff sought to defeat that defence by alleging express malice. The plaintiff succeeded at trial, but the defendant prevailed in the Court of Appeal and the House of Lords. Lord Diplock (with whom Lords Wilberforce, Hodson and Kilbrandon agreed) stated the relevant principle at 150H:

> "Judges and juries should, however, be very slow to draw the inference that a defendant was so far actuated by improper motives as to deprive him of the protection of the privilege unless they are satisfied that he did not believe that what he said or wrote was true or that he was indifferent to its truth or falsity."

109. In *Loveless* the plaintiff sued his former employers for providing a reference to prospective employers, which implied that he had committed a criminal offence. The defendants pleaded qualified privilege. The plaintiff sought to defeat that defence by proving malice. The plaintiff won at first instance, but lost in the Court of Appeal. Hirst LJ (with whom May LJ and Sir Christopher Slade agreed) dealt with the issue of malice at 538 to 539. He noted that the test for malice was subjective, being entirely dependent on the defendant's state of mind and intention. He observed:

> "Thus, in a case where words are ultimately held objectively to bear meaning A, if the defendant subjectively intended not meaning A but meaning B, and honestly believed meaning B to be true, then the plaintiff's case on malice would be likely to fail."

110. Hirst LJ set out the passage from Lord Diplock's speech in *Horrocks*, to which I have already referred. He then quoted with approval the following passage from the judgment of Lord Donaldson MR in the unreported case *Heath v Humphreys* (21st May 1990):

> "I think that this passage requires some qualification by the addition of a further exceptional case. Since, as Lord Diplock emphasised, the public interest essentially requires protection for freedom of communication honestly exercised, what matters is that the publisher shall believe in the truth of what he intends to say. If, from his viewpoint, his remarks are misconstrued, he

> would be likely to be the first to say "I never believed in the truth of that" or "I never considered whether or not that was true". If such an answer would take him outside the protection of qualified privilege, its purpose would on occasion be wholly undermined. Putting it in another way, in such circumstances the defamer cannot be said to be "telling deliberate and injurious falsehoods". At worst, he is only doing so unintentionally."

The latter part of that passage appears to be applicable both to qualified privilege defences in defamation and to claims for malicious falsehood.

111. Since the test for malice is subjective, knowledge of falsity must be assessed by reference to the meaning which the defendant intends to convey. In my view, if (a) an article has one correct meaning which is true but is susceptible to a second incorrect interpretation by some cynical readers which is untrue, (b) the author intends the article to convey its correct meaning but foresees that some cynical readers will place upon it the incorrect interpretation, then that does not constitute malice for the purpose of malicious falsehood.

112. Mr Rampton submitted that it would be absurd if a journalist had to expressly disavow every foreseeable but incorrect interpretation of what he or she wrote. I agree. If the journalist had to do that, it would have a chilling effect on free speech and may make newspaper articles tortuous to read. The proposition which I have set out in paragraph 111 represents a proper balance between the journalist's rights under ECHR article 10 and the private rights of the individual under ECHR article 8.

113. As Mr Browne points out, the judge has found that the defendants had a dominant intention to injure the claimant. That finding stands in relation to meanings 2 and 3 for reasons to be discussed below. In relation to meaning 1, however, that finding falls away. The defendants could not have had a dominant intention to injure the claimant in respect of meaning 1, if to the knowledge of the defendants the correct meaning of the words which they used was true.

114. If the claimant succeeds on his claim for malicious falsehood, it would greatly expand the ambit of that tort. A defendant should only be liable for malicious falsehood if the falsehood represents one of the possible correct meanings of the defendant's words and the defendant intended to convey that falsehood. The Court of Appeal's decision in *Ajinomoto* does not expand the tort of malicious falsehood any wider than that.

115. Finally it would be a bizarre outcome in the particular circumstances of this case if Mr Cruddas' claim for libel in respect of the "cash for access" issue failed because the defendants had justified the articles, but his claim for malicious falsehood in respect of the "cash for access" issue succeeded. In the result my answer to the question posed in this part of the judgment is no.

116. The appellants therefore succeed on this issue. I must now turn to meanings 2 and 3, which concern the proposed use of money from abroad to fund donations.

Part 8. Are the defendants liable for libel and malicious falsehood in respect of meanings 2 and 3?

117. I can deal with these issues quite shortly, because the judge's decision was plainly correct. The defendants have failed by a wide margin to justify either meaning 2 or meaning 3.

118. The journalists made it clear at the meeting that they were proposing to set up a company to carry on business in the UK. Mr Cruddas advised that they had "got to develop an office here and stuff like that" (transcript page 39). On a number of occasions Mr Cruddas said that their UK company must be a real operating company not a shell company. Most importantly, Mr Cruddas advised that the journalists would have to talk to Mike Chattey and his staff at CCHQ in order to ensure compliance with the electoral law.

119. There was brief discussion of the possibility of the two journalists personally making the donations. But once again Mr Cruddas said that this had to be discussed with the compliance people at CCHQ. Mr Cruddas added: "but we can't sail close to the wind, because anything bad, it's not worth the issues." (Transcript page 57).

120. Mr Rampton submits that, even if he fails to justify meanings 2 and 3, the claimant's libel claim should still fail. In support of that submission he relies on section 5 of the Defamation Act 1952, which was in force at the material time, although subsequently repealed by the Defamation Act 2013. Section 5 of the Defamation Act 1952 provides:

> "**Justification**
>
> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges."

121. In my view section 5 cannot avail the defendants. Meanings 2 and 3 allege that Mr Cruddas was countenancing a specific criminal offence, namely breach of PPERA section 61, which carries imprisonment as the penalty. Meanings 2 and 3 also allege that Mr Cruddas was proposing the use of a loophole to evade the criminal law. Meaning 1 by contrast (at least when properly understood) contains no allegation of criminality. In my view meanings 2 and 3 do materially injure the claimant's reputation, despite the fact that meaning 1 is true.

122. The judge found that the two journalists knew that the articles bore meanings 2 and 3 as formulated by the Court of Appeal. He also found that the journalists knew those meanings to be untrue. In particular, they knew that Mr Cruddas had not suggested any breach of the criminal law or shown himself willing to commit an offence. See paragraphs 214 and 215 of the judgment.

123. At paragraphs 220 to 276 of his judgment the judge found a number of other matters proved, which indicated malice on the part of the journalists. These findings all supported the judge's conclusion that the journalists were malicious in relation to meanings 2 and 3.

124. There is no basis for overturning the judge's decision in relation to malice. Those findings were based upon the oral evidence which he heard and his assessment of the witnesses.

125. In the result, therefore, I would uphold the judge's decisions in relation to meanings 2 and 3. My answer to the question posed in this part of the judgment is yes.

Part 9. The measure of damages and the injunction

126. As previously noted, the judge awarded general damages of £165,000 and aggravated damages of £15,000. The next issue to address is how much of those damages the claimant should retain, having lost on meaning 1 but succeeded on meanings 2 and 3.

127. Neither party challenges the level of damages which the judge awarded on the basis of full liability. Nor does the claimant suggest that the judge should have awarded, or that this court should now award, any separate damages for malicious falsehood. Therefore my task is to analyse the judge's award of damages and to recalculate the amount due, adopting the same approach as the judge but making adjustments for the new decision on liability.

128. How then should the judge's award of £165,000 general damages be apportioned as between meaning 1 and meanings 2/3? The claimant contends that £25,000 should be attributed to meaning 1 and £140,000 to meanings 2/3. The defendants contend that £120,000 should be attributed to meaning 1 and £45,000 to meanings 2/3.

129. The purpose of an award of general damages for libel is compensatory. Sir Thomas Bingham MR stated in *John v MGN Ltd* [1997] QB 586 at 607:

> "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must compensate him for the damage to his reputation; vindicate his good name; and take account of the distress, hurt and humiliation which the defamatory publication has caused."

130. In *Cairns v Modi* [2012] EWCA Civ 1382; [2013] 1 WLR 1015 Lord Judge CJ, delivering the judgment of the court, explained that the three distinct features identified by Sir Thomas Bingham MR applied in every case. But the emphasis to be placed upon each would depend upon the circumstances.

131. Mr Browne has drawn the court's attention to the awards of damages made in the following five cases, which he submits are comparable:

    i) *Ghannouchi v Al Arabiya* 8th November 2007 (reported only at paragraph A3.33 of appendix 3 in Gatley on Libel and Slander, 12th edition, 2013): A Tunisian exile recovered damages of £165,000 against a Dubai-based

television broadcaster for alleging that he was an extremist with links to Al Qaeda.

ii) *Veliu v Mazrekaj* [2006] EWHC 1710 (QB); [2007] 1 WLR 495: A Kosovan newspaper sold in the UK alleged that the claimant had been implicated in the July 2005 London bombings. Eady J held that the starting point for a damages award under the 'offer of amends' procedure was £180,000.

iii) *Berezovsky v The Russian Television and Radio Broadcasting Company* [2010] EWHC 476 (QB): A satellite television programme alleged that the claimant was party to a criminal conspiracy to avoid extradition and obtain asylum by procuring a false confession; the false confession was to be obtained by means of drugs and bribes. Eady J awarded £150,000 and the Court of Appeal did not disturb that award.

iv) *Al-Almoudi v Kifle* [2011] EWHC 2037 (QB): The defendant's website with a readership of several thousand asserted that there were reasonable grounds to suspect that the claimant (a) knowingly financed terrorism and (b) was responsible for the murder of his daughter's lover. HHJ Parkes QC awarded £175,000 damages.

v) *Bento v The Chief Constable of Bedfordshire Police* [2012] EWHC 1525 (QB): A press release included the allegation that evidence obtained by the police showed that the claimant (against whom charges had been dropped) had probably murdered his girlfriend. Bean J awarded damages of £125,000.

132. I accept that in each of those cases the court was awarding damages for an unjustifiable allegation of criminal conduct. Nevertheless the criminal conduct in issue was very much more serious than the criminal conduct identified in meanings 2/3 in the present case. Furthermore in each of those previous decisions the claimant was accused of actually committing the crime, rather than (as here) countenancing that someone else should commit the crime. Nevertheless I take those cases into account as helpful guidance concerning the appropriate level of damages on their own facts. It is also relevant that on 1st April 2013 (which was after the date of each of those cases but before the judge gave judgment in the present case) the level of general damages for defamation was increased by 10%: see *Simmons v Castle* [2012] EWCA Civ 1039 and 1288; [2013] 1 WLR 1239.

133. I turn now to the judge's discussion of damages at paragraphs 279 to 305 of his judgment. He began by referring to the general statements of principle in *John v MGN Ltd* and *Cairns v Modi*. He then referred to the devastating effect which the libels had had on the claimant's reputation, his self-esteem and his family. It is clear that on the judge's analysis the most damaging allegation was that comprised in meaning 1, cash for access. That aspect received the greatest prominence in the articles and in subsequent re-publications. On the other hand meanings 2 and 3 (the foreign donations allegations) also made a material contribution to the damage and the humiliation which the claimant suffered. The judge noted at [290] that on 26th March 2012 the Leader of the Opposition raised the matter in Parliament. Mr Miliband referred to the allegation that the claimant was proposing that foreign donations should be made by illegal means.

134. Having reviewed the relevant authorities, the judge's findings of fact and his analysis of the damage suffered, I conclude that the judge's award of general damages should be treated as comprising £100,000 in respect of meaning 1 and £65,000 in respect of meanings 2 and 3.

135. The next question to consider is what reduction should be made to the award of £65,000 in respect of meanings 2 and 3, in order to reflect the fact that the defendants have justified meaning 1. In relation to this question, *Pamplin v Express Newspapers Ltd* [1988] 1 WLR 116 is the governing authority.

136. *Pamplin* was a case in which some of the criticisms of the plaintiff published in The Sunday Express were justified, but others were not. The jury held the defendant liable for libel in respect of part of the article, but only awarded damages of half a penny. The Court of Appeal dismissed the plaintiff's appeal. It held that the defendant was entitled to rely in mitigation of damages upon evidence properly before the court justifying other parts of the article.

137. In the present case the defendants can rely upon the evidence which has enabled them to justify meaning 1. The claimant is therefore to be treated as a man who has not conducted himself properly when talking to potential donors about the rewards available in return for political donations. That circumstance diminishes the damage which he has suffered by reason of the two proven libels.

138. The defendants contend that there should be a two thirds reduction in general damages on the basis of *Pamplin*. The claimant submits that the reduction should only be one third. On this issue I prefer the submissions of Mr Browne. The allegation that the claimant was countenancing criminal conduct is a serious matter and of a different character to the 'cash for access' allegation. The damage in respect of meanings 2 and 3 should be reduced by £22,000 in order to reflect the fact that the defendants have justified meaning 1. I therefore assess general damages for libel in the sum of £43,000.

139. I turn now to aggravated damages. The judge awarded £15,000 under this head, in order to reflect the defendant's offensive conduct in contesting the claimant's claims both before and during the trial. In the present circumstances it is obviously necessary to reduce that award. The defendant contends for a two thirds reduction. The claimant proposes a one third reduction. On this issue I come to a point roughly midway between the parties' contentions.

140. The defendants' conduct in contesting the claimant's claims in respect of meanings 2 and 3 was offensive. But no complaint can be made of the manner in which the defendants have justified meaning 1. Adopting the same approach as the judge, but making an appropriate discount in respect of meaning 1, I would reduce the aggravated damages to £7,000.

141. In the result, therefore the claimant is entitled to recover damages of £50,000. That comprises general damages of £43,000 and aggravated damages of £7,000.

142. I turn finally to the injunction. The first part of the injunction granted by the judge, which restrains the defendants from repeating meaning 1, should be discharged. The remainder of the injunction, which relates to meanings 2 and 3, will remain in place.

Part 10. Executive summary and conclusion

143. Mr Cruddas claimed damages and an injunction in respect of three articles published in The Sunday Times on 25th March 2012. The Court of Appeal has previously determined the meanings of the articles. The principal issue for the judge at trial was whether those meanings were true. He held that they were not. Accordingly the journalists who wrote the articles and the newspaper which published them were held liable for libel. They were also held liable for malicious falsehood. The judge assessed damages at £180,000 and granted an injunction to restrain re-publication of the libels.

144. On the defendants' appeal, I conclude that the judge erred in respect of the first of the meanings previously identified by the Court of Appeal. On a proper reading of the transcript of a meeting on 15th March 2012, the following is clear. Mr Cruddas was effectively saying to the journalists that if they donated large sums to the Conservative Party, they would have an opportunity to influence Government policy and to gain unfair commercial advantage through confidential meetings with the Prime Minister and other senior ministers. That was unacceptable, inappropriate and wrong. Therefore meaning 1 was substantially true. The defendants are not liable for libel or malicious falsehood in respect of meaning 1. I should add that what Mr Cruddas said at the meeting does not represent the true position of the Conservative Party. The Prime Minister has dissociated himself and the party from what Mr Cruddas said.

145. I agree with the judge that the defendants have failed to justify the second and third meanings previously identified by the Court of Appeal. The defendants are liable for libel and malicious falsehood in respect of those matters. The defendants cannot rely on section 5 of the Defamation Act 1952 in order to escape liability.

146. In those circumstances I would reduce the damages awarded to £50,000 and modify the injunction granted by the judge, so that it is limited to the second and third meanings.

147. If my Lords agree, the defendants' appeal will be allowed in respect of meaning 1, but dismissed in respect of meanings 2 and 3. The consequences will be as set out in the preceding paragraph.

Lord Justice Ryder:

148. I agree.

Lord Justice Christopher Clarke:

149. I also agree.