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Case No: HQ14D01146

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2015

Before :

MR JUSTICE WARBY

- -

Between :

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

- -
- -

Desmond Browne QC and Victoria Jolliffe (instructed by **Carter-Ruck Solicitors**) for the **Claimant**
Gavin Millar QC and Ben Silverstone (instructed by **Reynolds Porter Chamberlain**) for the **Defendant**

Hearing dates: 12-16, 19-20 October 2015

- -

Approved Judgment

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

.....

MR JUSTICE WARBY

Mr Justice Warby:

Introduction

1. Tim Yeo was first elected as the MP for South Suffolk in 1983. He remained the MP for that constituency until Parliament was dissolved in 2015 in readiness for the general election, at which he did not stand. For the last five of those 32 years he was Chairman of the House of Commons Energy and Climate Change Select Committee (ECCSC). In this action Mr Yeo claims that in June 2013, at a time when he held both those offices, he was libelled by the defendant Times Newspapers Ltd (TNL), the publisher of *The Sunday Times*, in articles prepared by its Insight team and published in hard copy and online.

2. The articles contained defamatory allegations of fact, to the effect that Mr Yeo was prepared and had offered to act in breach of the MPs' Code of Conduct by acting as a paid Parliamentary advocate for a foreign energy company. The articles also contained defamatory expressions of opinion, to the effect that Mr Yeo had acted scandalously and shown willing to abuse his position as an MP. TNL's defence is that its factual allegations were substantially true, and that the opinions expressed were honest comment; and, or in any case, that what it published was responsible journalism in the public interest. The main issue in this trial is whether any of those defences are made out.

An outline

3. The articles complained of were written by Jonathan Calvert, *The Sunday Times* Insight Editor, and his then deputy, Heidi Blake. They resulted from an undercover investigation proposed and undertaken by those two journalists with the approval of the Managing Editor, Charles Hymas, and the Editor, Martin Ivens.

4. By means of an email of 13 May 2013 (the Set Up Email), and a phone conversation on 14 May 2013 Ms Blake, posing as "Robyn Fox" of a fictitious consultancy firm named "Coulton & Goldie Global" ("CGG"), arranged a lunch meeting with Mr Yeo. The ostensible purpose was to discuss an opportunity for Mr Yeo to provide consultancy for a day or two per month with "an extremely generous remuneration package". The work was to relate to a European launch strategy for a leading edge solar technology developer in the Far East.

5. The lunch meeting ("the Meeting") took place at Nobu restaurant on 21 May 2013. It was attended by Mr Yeo, "Robyn Fox", and Mr Calvert, posing as "James Lloyd" of CGG. The journalists secretly filmed the Meeting, which lasted about 1 hr 20 mins.

6. The following morning "Robyn Fox" emailed Mr Yeo to say that his services were not required ("the Stand Down Email"). In the afternoon he replied, expressing relief, saying it had become "increasingly apparent" during the Meeting that what was wanted from him was lobbying.

7. On the evening of Friday 7 June 2013 Ms Blake and Mr Calvert sent Mr Yeo a letter ("the Front Up Letter"), putting him on notice of an article intended for

publication on Sunday 9 June. The letter summarised what was said to be the thrust of the intended article. It was made clear that the article was to be based on what had been said at the Meeting on 21 May, aspects of which were summarised. The letter posed four questions and asked for comment by 4pm on Saturday 8 June.

8. Mr Yeo instructed solicitors, Carter-Ruck. Just after 4pm on 8 June they sent TNL a letter ("the Pre-Publication Letter"), rebutting what had been said about the facts in the Front Up Letter. Carter-Ruck's letter said that Mr Yeo would take whatever action was necessary to defend his reputation, including legal action, if *The Sunday Times* published an allegation to the effect that he had "offered or was willing to act in breach of the MPs' Code of Conduct".

9. Publication went ahead in *The Sunday Times* on 9 June 2013. The story was the front page lead, running over to page 2 ("the Front Page Article"). This article was headed "Top Tory in new Lobbygate row", and carried the sub-headline: "MP coached client before committee grilling." There was a separate article over two inside pages ("the Inside Article") under the headline "'I told him in advance what to say. Ha-ha'". The articles were largely but not exclusively based on what had passed between the journalists and Mr Yeo, and in particular on what Mr Yeo had said, at the Meeting.

10. Shortly after the publication of the 9 June articles Mr Yeo referred himself to the Parliamentary Commissioner for Standards. The Commissioner undertook an investigation and reported to the House of Commons Committee on Standards ("the Standards Committee") by way of a Memorandum dated 14 November 2013.

11. In the meantime, on 23 June 2013 TNL published the second article complained of ("the 23 June Article"), on the front page and page 2 of the paper was headed "Lobbyist 'wrote peer's speech'". The 23 June Article did not name Mr Yeo, but his case is that a reference in its eighth paragraph it to a Select Committee Chairman who was being investigated by the Parliamentary authorities will have been understood as a reference to him.

12. On 19 November 2013 the Standards Committee published a report concerning the allegations about Mr Yeo ("the Standards Report"). On 13 December 2013 Mr Yeo's solicitors wrote a letter of claim to the defendant. Following a negative response on 31 January 2014, this action was started by a claim form issued on 19 March 2014. In its Defence TNL disputed Mr Yeo's case about the meaning of the articles complained of, and pleaded the three defences to which I have referred above.

13. On 20 August 2014 I determined as preliminary issues in the action what defamatory meanings, or imputations, were conveyed by the articles complained of, and whether these were imputations of fact, or comment. I held that the 9 June articles contained a defamatory factual imputation and a defamatory comment, and I found a defamatory factual imputation in the 23 June Article: see [2014] EWHC 2853 (QB) [121]-[122], [136] and [138] I held that the online versions of the articles, though they differed in some respects, bore the same meanings as the print versions: [126], [139]. Mr Yeo then amended his claim to complain of the

meanings I had identified, and TNL amended its Defence to plead justification, honest comment and *Reynolds* privilege in respect of those meanings.

14. Given that their meanings have been determined, it is not necessary to set out the full text of the articles complained of in this judgment, though I shall refer to some passages. The full text of the Front Page and Inside Articles can be found at paragraphs [99]-[101] of my August 2014 judgment. The eight paragraphs of the 23 June Article of which Mr Yeo complains are set out in paragraph [128] of that judgment.

The issues on liability

15. The claim in respect of the articles of 9 June 2013 gives rise to three issues:-

(1) Whether the defamatory factual imputation that I identified in my August 2014 judgment is justified, that is to say, true.

(2) Whether the defamatory comment I identified in that judgment is honest comment.

(3) Whether the defamatory information complained of is protected by *Reynolds* privilege.

16. The defamatory factual imputation I found was conveyed by these articles is that:

> Mr Yeo was prepared to act, and had offered himself as willing to act in a way that was in breach of the Code of Conduct of the House of Commons (the Code) by acting as a paid Parliamentary advocate who would:
>
> a) push for new laws to benefit the business of a client for a fee of £7,000 a day; and
>
> b) approach Ministers, civil servants and other MPs to promote a client's private agenda in return for cash.

17. The burden of proving justification lies on TNL. The defence requires proof that the defamatory sting of the imputation is substantially true. Whether that is so in this case turns principally on three matters: the relevant requirements of the Code of Conduct, the court's assessment of Mr Yeo's words and actions at the Meeting, and its assessment of his state of mind at the time.

18. The defamatory comment or opinion that I found was conveyed by the 9 June articles is that:

> by behaving in the manner referred to in the articles Mr Yeo had acted scandalously, and shown willing to abuse his position in Parliament to further his own financial and business interests in preference to the public interest.

19. The defence of honest comment has five requirements: the statement must (1) be on a matter of public interest; (2) be recognisable as comment, as distinct from an

imputation of fact; (3) be based on facts which are true or protected by privilege; (4) explicitly or implicitly indicate those facts, at least in general terms; (5) be a comment which could have been made by an honest person: *Tse Wai Chun v Cheng* [2001] EMLR 777 [16]-[21] (Lord Nicholls) as endorsed with one modification in *Joseph v Spiller* [2010] UKSC 53, [2011] 1 AC 852 [105] (Lord Phillips).

20. It is conceded that the first of the five requirements is met, as the articles concerned the behaviour of Mr Yeo in his capacity as an MP and Select Committee Chair. My decision on meaning is a finding that requirement (2) is satisfied. As the comment I have found is in terms a comment about the behaviour referred to in the articles there can be no issue over requirement (4). The contest relates to requirements (3) and (5).

21. Requirement (5) is known as "the objective test" of honest comment. It is generous. It protects any comment which could have been made honestly, even if only by a person who is prejudiced, or holds exaggerated or obstinate views: see *Turner v Metro-Goldwyn-Mayer Pictures Ltd* [1950] 1 All ER 449, 461 (Lord Porter), commenting on an observation in *Merivale v Carson* (1888) 20 QBD 275, 281 (Lord Esher). Requirement (3) does not demand proof that all the facts indicated as the basis for the comment are true. The Defamation Act 1952, s 6 provides, so far as material, that: "… a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is [honest] comment having regard to such of the facts alleged or referred to in the words complained of as are proved." In addition, though this is not part of TNL's pleaded defence in this case, a comment may legitimately be based wholly or partly on a factual statement which is not proved true, but is protected by privilege.

22. A defence of honest comment will fail even though the objective test is satisfied, if the Claimant establishes that in fact the Defendant was malicious - that is, did not believe the comment. But that does not arise in this case. Malice was pleaded in Mr Yeo's Reply, but the allegation was struck out by me as inadequately pleaded ([2015] EWHC 209 (QB)), and there has been no attempt to re-plead it.

23. The issue arising from the honest comment defence can therefore be encapsulated in this way: has TNL established that enough of the facts indicated in the Front Page and Inside Articles are true to allow an honest person, however prejudiced or obstinate, to make the defamatory comment?

24. The facts relied on by TNL in support of the fair comment defence are not the same as those relied on in support of the justification defence. They extend, for example, to facts about Mr Yeo's financial interests in companies involved in green energy. They include basic facts about what was said at the Meeting, falling short of the defamatory factual imputation above. Many of these facts are admitted. Mr Yeo's case is however that there are no true facts sufficient to support the comment, and that it fails the objective test.

25. *Reynolds* privilege is the defence which, in summary, "… protects publication of defamatory matter to the world at large where (i) it was in the public interest that the information should be published and (ii) the publisher has acted responsibly in

publishing the information, a test usually referred to as 'responsible journalism' …": *Flood v Times Newspapers Ltd* [2012] UKSC 11, [2012] 2 AC 273 [2] (Lord Phillips.) The defence can protect defamatory factual statements which are not or cannot be proved to be true. Whether it can protect comment is a moot point to which I shall return.

26. The question of whether publication was in the public interest requires a two-stage approach, as Lord Hoffmann explained in *Jameel (Mohammed) v Wall Street Journal Europe Sprl* [2006] UKHL 44, [2007] 1 AC 359:

> "48. The first question is whether the subject matter of the Articles [as a whole] was a matter of public interest. In answering that question … one should consider the article as a whole and not isolate the defamatory statement.
>
> …
>
> 51. If the article as a whole concerned a matter of public interest, the next question is whether the inclusion of the defamatory statement was justifiable. The … allegations … must be part of the story. And … make a real contribution to the public interest element in the article."

27. TNL maintains that both these questions should be answered yes, and that its journalism was responsible. Mr Yeo denies that the publication was justifiable in the public interest. He does not accept that either of the two public interest questions identified by Lord Hoffmann should be answered in the affirmative. His case is, further, that TNL was duty-bound to give a fair and accurate account of the totality of the evidence and that it failed; the article gave an unfair and inaccurate account of his behaviour, produced by irresponsible journalism.

28. The claim in respect of the 23 June Article also gives rise to three issues. The first is whether the article was understood by readers to refer to Mr Yeo. If not, the claim must fail. If the article was understood to refer to Mr Yeo, the questions arise of whether it was substantially true, or protected by *Reynolds* privilege. To establish justification TNL must prove the substantial truth of the defamatory factual meaning that I found this article would convey to a reader who did identify Mr Yeo as the "Select Committee Chairman" referred to:

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

The *Reynolds* defence must be assessed by reference to that defamatory imputation. The issues in relation to justification and *Reynolds* in this regard are similar to those that arise in respect of the articles of 9 June 2013.

29. I have described the issues, and I shall resolve them, by reference to the common law. The three defences I have referred to are those applicable at the time of the initial print publications ("fair" comment having been re-named "honest"

comment following *Spiller* [117]). Online publication continued after 1 January 2014, when these common law defences were abolished and replaced by statutory defences under ss 2 to 4 of the Defamation Act 2013. Those defences are accordingly pleaded but, although I shall refer to some aspects of the new defences, this will not be determinative. Neither side suggests, and I do not consider, that the 2013 Act altered the relevant law in any way that is material to the outcome of this case.

The evidence

30. I have been shown, and have considered, the Code and related materials. I have seen and heard both the two audio-visual recordings of the Meeting, and examined in great detail an agreed transcript of what was said. The other exchanges between the journalists and Mr Yeo, both before and after the Meeting were in evidence, in the form of emails, a recording and transcript of the one telephone conversation between Ms Blake and Mr Yeo, and pre-publication correspondence. There is documentary evidence illustrating the processes by which the articles came to be published. I heard oral evidence from Mr Yeo and, for the defendants, from Mr Calvert, Ms Blake, Mr Hymas, and Mr Ivens. Each witness was cross-examined. It is on this evidence, and other documents to which I shall refer below, that I base my conclusions on the issues.

31. I have not had regard to the Commissioner's Memorandum, or to the Standards Report. In his letter of claim, in his original statements of case, and in the initial version of his witness statement Mr Yeo made reference to these materials, and sought to place reliance on them. TNL responded. That gave rise to a dispute as to relevance, and to consideration of whether aspects of the parties' statements of case and witness statements might infringe the doctrine of Parliamentary Privilege: see my judgment of 22 July 2015, [2015] EWHC 2132 (QB) at [7]-[29]. However, both sides' statements of case have since been amended, as have their witness statements. In the end I have not been asked to examine or consider any of the Parliamentary proceedings relating to the publication of these articles, or to take such proceedings into account in any way.

32. I am sure that this is right. As a rule a court will not rely, in reaching conclusions on disputed issues of fact, on findings made in other proceedings involving different parties. Such findings are not conclusive and, generally, they are not even admissible: see my July 2015 judgment at [41]. Where the findings are made by a Parliamentary official or body, it is all the more undesirable for the court to examine them. None of the relevant proceedings are in evidence. I have not read them. Nothing I say here should be taken as in any way passing judgment on any such Parliamentary proceedings.

33. During the trial I have kept under review the question of whether in any other respect the proceedings ran a risk of infringing Parliamentary Privilege. Counsel to the Speaker of the House of Commons has been provided with relevant information and has written to the parties. I have also had an exchange of correspondence with Counsel to the Speaker. It has not been suggested that the trial, or my judgment, is likely to infringe Privilege in any other way, or to impinge on areas of which Parliament has exclusive cognisance. I have nonetheless considered the matter, and reached the clear conclusion that this is not

the case. Although I have had to examine the Code and related materials, to which I shall come shortly, this is for the purpose of identifying the relevant framework of rules, and recording matters of history, and not by way of any form of critique. I do not need to resolve any contested issue of interpretation. Such an activity does not of itself trespass on any exclusive area of competence reserved to Parliament.

The Code

34. I start with this, as all the issues in this case require an understanding of some key points about what was and was not permissible for MPs under the Code as it stood at the relevant time, and some understanding of its background and context.

The Nolan Report

35. On 25 October 1994 the Prime Minister, John Major, announced the setting up of the Committee on Standards in Public Life, chaired by Lord Nolan ("the Nolan Committee"). Its remit was "to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities, and make recommendations to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life." The announcement made clear that for these purposes "public life should include Ministers, civil servants and advisers, Members of Parliament …" As is common knowledge, the establishment of the Nolan Committee followed the "cash for questions" scandal, in which certain MPs were accused of accepting bribes in exchange for asking Parliamentary questions and undertaking other tasks on behalf of Mohamed Al-Fayed.

36. The Nolan Committee published its First Report in May 1995. Its General Recommendations included a re-statement of the seven principles which underpin public life, which have since become known as "the Nolan principles": selflessness, integrity, objectivity, accountability, openness, honesty and leadership. With regard to Members of Parliament the Committee concluded that "The House of Commons would be less effective if all MPs were full-time professional politicians, and MPs should not be prevented from having outside employment" (p4 para 10). Expanding on this point, the Committee said that "… we also consider it desirable for the House of Commons to contain Members with a wide variety of continuing outside interests" (p23 para 19). Recommendations were made for improvements in the registration of outside interests but, as these passages make clear, it was considered not only legitimate but also beneficial for the House to contain members with such interests.

37. At pp24ff the Committee considered in detail the topic of "Parliamentary Consultancies", and a Resolution of 1947 prohibiting an agreement controlling or limiting a Member's independence and freedom of action in Parliament (I shall come later to the full terms of that Resolution). In para 31 the Committee noted that the position under the 1947 Resolution was that

> "The Member remains free to enter an agreement to act as an adviser or Consultant about Parliamentary matters. On the face of it therefore, this resolution might appear to draw

> the clear line between paid advice and paid advocacy which very many people, in Parliament and outside, have told us would be appropriate."

Having said this, the Committee observed at para 49 that "Nevertheless, the impression can easily be gained, however unfair this may be in individual cases, that not only advice but also advocacy have been bought by the client."

38. The Committee considered but did not recommend a ban on the acceptance of any money for services rendered in their capacities as Members; it concluded that the information required to make a sound cost-benefit analysis was lacking: see paras 51-53. Noting a "fall in public confidence in the financial probity of MPs", however, the Committee left the issues to Parliament with recommendations that there should be a ban on "MPs selling their services to firms engaged in lobbying on behalf of clients" and that Parliament should "review the merits of allowing MPs to hold consultancies… " (p4 paras 9, 11-14). It was recommended that a Code of Conduct for MPs should be drawn up (p4 para 15.)

The Code

39. The Code was prepared pursuant to a Resolution of the House of 19 July 1995. The relevant edition is the one approved by the House on 12 March 2012 and published on 16 April 2012, HC 1885. It falls into six sections. Sections I and II make clear the purpose and scope of the Code.

> "**I. Purpose of the Code**"
>
> 1. The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents by
>
> (a) establishing the standards and principles of conduct expected of all Members in undertaking their duties;
>
> (b) setting the rules of conduct which underpin these standards and principles and to which all Members must adhere …
>
> **II. Scope of the Code**
>
> 2. The Code applies to a Member's conduct which relates in any way to their membership of the House."

40. Relevant duties, principles, and rules of conduct are then set out as follows:

> **"III. Duties of Members**
>
> …

7. Members should act on all occasions in accordance with the public trust placed in them. They should always behave with probity and integrity …

IV. General Principles of Conduct

8. In carrying out their Parliamentary and public duties, Members will be expected to observe the following general principles of conduct identified by the Committee on Standards in Public Life in its First Report as applying to holders of public office. These principles will be taken into account when considering the investigation and determination of any allegations of breaches of the rules of conduct in Part V of the Code.

"Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
…

Leadership

Holders of public office should promote and support these principles by leadership and example."

V. Rules of Conduct

9. Members are expected to observe the following rules and associated Resolutions of the House.

10. Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

11. No member shall act as a paid advocate in any proceedings of the House.[2]

12. The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter

> submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.
>
> …
>
> 16. Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its members generally."

[2] Resolutions of 6th November 1995 and 15 July 1947 as amended on 6th November 1995 and 14th May 2002."

41. As will be clear from my description of the issues it is Rule 11, the prohibition on paid advocacy, that lies at the heart of this case. As footnote 2 indicates, there were Resolutions of the House associated with this Rule, which members were required by Rule 9 to observe. The position was explained as follows in the *Guide to the Rules relating to the Conduct of Members* (the *Guide*), as approved by the House on 9 February 2009, updated in May 2010, and published on 16 April 2012 together with the 2012 version of the Code.

> "3. **Lobbying for Reward or Consideration**
>
> **The 1947, 1995 and 2002 Resolutions**
>
> 89. On 6th November 1995[25] the House agreed to the following Resolution relating to lobbying for reward or consideration:
>
> "It is inconsistent with the dignity of the House, with the duty of a Member to his constituents, and with the maintenance of the privilege of freedom of speech, for any Member of this House to enter into any contractual agreement with an outside body, controlling or limiting the Member's complete independence and freedom of action in Parliament or stipulating that he shall act in any way as the representative of such outside body in regard to any matters to be transacted in Parliament; the duty of a Member being to his constituents and to the country as a whole, rather than to any particular section thereof: and that in particular no Members of the House shall, in consideration of any remuneration, fee, payment, or reward or benefit in kind, direct or indirect, which the Member or any member of his or her family has received is receiving or expects to receive-
>
> (i) Advocate or initiate any cause or matter on behalf of any outside body or individual, or
>
> (ii) Urge any other Member of either House of Parliament, including Ministers, to do so,
>
> by means of any speech, Question, Motion, introduction of a Bill or

> table or any approach whether oral or in writing, to Ministers or servants of the crown"
> *(Resolution of the House of 25th July 1947, amended on 6th November 1995 and on 14th May 2002*)

90. This Resolution prohibits paid advocacy. It is wholly incompatible with the rule that any Member should take payment for speaking in the House. Nor may a Member, for payment, vote, ask a Parliamentary Question, table a Motion, introduce a Bill or table or move an Amendment to a Motion or Bill or urge colleagues or Ministers to do so.

91. The Resolution does not prevent a Member from holding a remunerated outside interest as a director, consultant, or adviser, or in any other capacity, whether or not such interests are related to Membership of the House.
…

Guidelines on the application of the ban on lobbying for reward or consideration

96. The Committee on Standards and Privileges has provided the following Guidelines to assist Members in applying the rule:

i. **Parliamentary proceedings**: When a Member is taking part in any Parliamentary proceeding or making any approach to a Minister or servant of the Crown, advocacy is prohibited which seeks to confer benefit exclusively upon a body (or individual) outside Parliament, from which a Member has received, is receiving, or expects to receive a financial benefit, or upon any registrable client of such a body (or individual). Otherwise, a Member may speak freely on matters which relate to the affairs and interests of a body (or individual) from which he or she receives a financial benefit, provided the benefit is properly registered and declared.

[25] The Resolution was subsequently amended on 14th May 2002"

42. The headings to this section of the *Guide* and the Guidelines both refer to "lobbying for reward." Para 90 refers to "paid advocacy". It is agreed that the two terms are for present purposes synonymous. So, for convenience, this resolution as amended has been referred to at this trial as "The Lobbying Resolution".

43. The key aspect of the Lobbying Resolution for the purposes of this case is the prohibition described in paragraph 96(i) of the Guide: a ban on advocacy, in the course of an approach to a Minister or civil servant, which seeks to confer a

benefit exclusively on a body from which the Member receives a financial benefit. But the prohibition goes a little wider than that, as explained in the Standards Committee's Third Report of Session 2012-2013, at Section 2 paragraph 16: "The current rules prohibit paid advocacy, that is the promotion of a particular matter for a fee or reward. The prohibition does not simply apply to formal Parliamentary proceedings, but also covers approaches to Members [and], public officials …"

The facts

Mr Yeo

44. Before entering Parliament in 1983 Mr Yeo worked in the City of London for 13 years, and as CEO of the charity Scope for 3 years. He took successive pay cuts as he moved from one of these roles to the next. Over the 32 years that followed his first election victory in 1983, he held posts in the Thatcher and Major governments at the Home Office, Foreign Office, Department of Health, and Department of the Environment. He had two spells as a minister in the Department of Health in the early 1990s. From 1998 to 2005 he was a member of the Shadow Cabinet, holding a variety of portfolios, including Shadow Secretary of State for the Environment and Transport.

45. After the 2005 General Election Mr Yeo stood down from the Shadow Cabinet and became a backbencher. Later, in December 2005, he was appointed Chair of the cross-party Environmental Audit Committee. In 2010 direct elections by MPs for Select Committee Chair were introduced. In June 2010 Mr Yeo was elected Chair of the ECCSC, a position he continued to hold at the time of the Meeting in May 2013. The ECCSC oversees the work of the Department of Energy and Climate Change.

46. An MP who is Chair of a Select Committee receives additional remuneration on that account. In June 2013, Mr Yeo was receiving £14,700 a year for this role, in addition to his basic MP's salary of some £66,000. Mr Yeo also had outside interests. He told me that he had never regarded the job of an MP as a full-time job. His witness statement explains that after leaving the Shadow Cabinet in 2005 he "began to explore opportunities for work outside Parliament". These efforts bore fruit in several ways, so that by the time of the Meeting he had secured three company Chairmanships, one non-executive directorship, and a consultancy position. He obtained valuable benefits from these positions.

    (1) AFC Energy plc is an AIM-listed company developing a hydrogen fuel cell for standard applications. Mr Yeo was appointed non-executive chairman in 2007 and remained in post at the relevant times. The information he placed on the register of interests shows that between May 2012 and June 2013 his remuneration in this capacity was approximately £42,000 for 200 hours' work. He had also been granted 2.5 million share options when he became Chair. He explained that this was to compensate for the relatively low level of his initial remuneration. By the time of the Meeting the company had a market capitalisation of some £65 million.

    (2) Groupe Eurotunnel SA is a Paris-listed company, which runs the Channel Tunnel. Mr Yeo was appointed a non-executive director in 2007 and remained

in post at the relevant times. The register of interests shows remuneration of some £41,000 for 61 hours' work between May 2012 and May 2013, and a shareholding in the company.

(3) Eco City Vehicles plc is a distributor of London taxis including the Mercedes Vito. Mr Yeo was appointed Chairman in October 2007. Mr Yeo resigned this post in September 2012. The register of interests shows £40,000 received for some 91 hours' work in the preceding 12 months. The register also shows a shareholding.

(4) TMO Renewables Limited was a company that was developing and supplying technology for second generation biofuels. Mr Yeo was appointed Chairman in December 2010. This was after his election as Chair of the ECCSC. He remained in post at the relevant times, and until January 2014, although the company went into administration in December 2013. The register of interests shows earnings of some £45,000 for 152 hours' work between May 2012 and May 2013.

(5) Edulink Consultants is a Dubai organisation which runs private universities internationally. Mr Yeo was a consultant to the company, earning over £30,000 in 2012-2013 for 58 hours' work. It is unconnected with either the energy industry or green technology.

47. These external interests had therefore at the relevant times been yielding a total income of just under £200,000 a year, for some 560 hours' work. By the time of the Meeting on 21 May 2013 the Chairmanship of Eco City had come to an end, reducing the annual time commitment, and the annual earnings. However, Mr Yeo had just obtained a further company Chairmanship. Albion Ventures Limited is a venture capital company. In May 2013 Mr Yeo had been offered and had accepted the position as Chair of a new investment fund established and run by Albion Ventures, called Albion Community Power. Albion Community Power was established for the purpose of investing in renewable energy. The publication of the articles of 9 June 2013 led Patrick Reeve, Chairman of Albion Ventures, to ask Mr Yeo to stand down, which he agreed to do.

48. Despite some initial reluctance to do so, Mr Yeo eventually accepted in cross-examination that at least some of his outside work was well paid, or very well paid, by the standards of ordinary people. Clearly, it was. There was no suggestion, however, that Mr Yeo's conduct in respect of these outside interests was otherwise than compliant with the rules. All such interests were duly registered. Indeed, the details given above are drawn from the information which Mr Yeo registered, which is agreed to be accurate. None of these roles involved a Parliamentary consultancy. That would have required separate registration. No such registration took place, and it was not suggested that it should have.

49. Nor did the Parliamentary rules prescribe any limits on the amount of time an MP could devote to outside activities, or the amount of money that they could earn from doing so. Indeed, as Mr Yeo and Mr Browne both emphasised, the Nolan Committee saw positive benefits to the public in MPs having outside interests. Mr Yeo strongly endorsed the view expressed in paragraph 10 of the Nolan Report, that a move towards full-time professional MPs would harm the public interest.

Both emphasised, also, that Mr Yeo undertook unremunerated work outside Parliament. This included making speeches, and giving advice to a number of companies involved in work connected to climate change. One such company was Rock Fuel Innovation Ltd, a carbon neutral petrol company based in Ipswich, just outside Mr Yeo's constituency. It was not disputed, and I accept, that Mr Yeo took an active interest in the company, inviting its management to Westminster to discover more, and provided help without any hint that he was seeking financial gain.

Media coverage of Parliamentary conduct

50. All this said, it cannot be - and is not - disputed that there have since at least the establishment of the Nolan Committee in 1994 been legitimate concerns about the standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities. Such concerns have been fuelled from time to time by reports of how Parliamentarians have behaved when approached by outsiders with offers of payment.

51. Over the years preceding the publication of the articles complained of there had been several media reports resulting from undercover media investigations, raising serious concerns about the conduct of Parliamentarians. These included the following:

(1) On 25 January 2009 *The Sunday Times* published an article by Mr Calvert resulting from an investigation in which he posed as a PR consultant wanting legislation amended. The article headed "Revealed: Labour laws change laws for cash" led to the suspension of two peers, and changes to the Code of Conduct for members of the House of Lords. The changes prohibited not only paid advocacy, but also the giving of any Parliamentary advice.

(2) In March 2010 Insight and Channel Four's Dispatches programme carried out another undercover investigation, also involving Mr Calvert. The result was a suggestion that three former ministers were willing to exploit their contacts and influence within government for reward. The three MPs were suspended from Parliament following an investigation by the Standards Committee.

52. One strand in the concerns that had been publicly expressed was whether Parliamentarians' performance of their public duties might be influenced by their private outside interests. Mr Yeo's name featured in some publications on this topic.

(1) On 10 and 11 December 2012 the political blog "Guido Fawkes" carried items headed "Yeo's Lump for Dump" and "Why is Tim Yeo Backing Fracking?", suggesting that Mr Yeo had conflicts between his private business interests and his role as ECCSC Chair.

(2) 23 December 2012 an article by Christopher Booker in the *Sunday Telegraph* questioned whether it was right for Mr Yeo to chair both the ECCSC and TMO. Mr Booker implied a conflict of interest, given that the ECCSC saw one of its chief roles as encouraging spending on renewables, and Mr Yeo had

"financial interests in several firms that might be among the beneficiaries of such spending".

(3) On 30 December 2013 Guido Fawkes carried an item headed "Review of 2012: Taxi for Tim Yeo", identifying him as "a serious contender for villain of the year". The item suggested conflicts between his Committee chairmanship and his role with Eco City Vehicles, and that he had actively lobbied for policies favourable to TMO.

(4) On 13 January 2013 the *Mail on Sunday* ran a report alleging that "A former Cabinet Minister [Lord Deben] who plays a key role in deciding the future size of energy bills is chairman of a company that stands to benefit directly from his Government work". The article attributed to Graham Stringer MP the observation that "the whole field of energy and environmental policy seemed to be dominated by individuals who had commercial interests – for example, Tim Yeo, the Select Committee Chairman, is a director of several renewable energy firms". Declaring interests was not enough, suggested Mr Stringer.

The origins of the articles

53. On 10 February 2013 Jonathan Leake of *The Sunday Times* sent Mr Calvert and Ms Blake an email headed "Tim Yeo is looking quite villainous" incorporating "cuttings" of the Guido Fawkes reports, and other online media reports relating to Mr Yeo, including the *Sunday Telegraph* and *Mail On Sunday* articles, that I have quoted above. Mr Leake was passing this information on to the Insight team by way of a suggestion for a possible investigation.

54. Mr Calvert has been an investigative journalist on national newspapers since 1993, when he first joined the Insight team at the *Sunday Times*. He worked there for two years, and then moved to the *Observer* as Investigations Editor. After four years in that role he moved to the *Express* for 18 months, before returning to the *Sunday Times* in 2001. He took up his present position as Insight Editor in 2005. From about 2008 the Insight team has mainly consisted of Mr Calvert and a deputy. Heidi Blake became that deputy in November 2011. She had started her career with the Telegraph Media Group as a graduate trainee in 2008, and spent time as a staff news reporter on the *Daily Telegraph* before joining that paper's investigative unit in December 2010. The Insight team reported to the Managing Editor (News), Charles Hymas. Stories would also be discussed with Stephen Bevan, the News Editor. Ultimate oversight and direction came from the editor, Martin Ivens.

55. When Mr Leake's email came in Mr Calvert and Ms Blake were engaged on other matters, but in early March 2013 they spoke to four confidential sources who told them of their concerns about the "corrosive" influence of money on politics. The sources are described by Mr Calvert as "a member of the Bow Group, the founder of an influential Tory think-thank, a senior figure within the Conservative party, and a member of the House of Lords Privileges and Conduct Committee". These sources told the journalists that both Houses had serious problems with lobbyists hiring members to do the bidding of their clients. They said that lobbyists were using new methods, such as abusing the All-Party Parliamentary Group ("APPG") system.

56. Having revisited the press "cuttings" sent by Mr Leake, the journalists examined Hansard and the register of members' interests as at March 2013. This is the source from which the information about Mr Yeo that I have given above is drawn. They noted that Mr Yeo was making significant amounts of money from work for private companies operating in the sector governed by the ECCSC. The journalists looked at other select committee chairmen, but none had interests directly relating to their Parliamentary work as Mr Yeo did. They decided to seek the necessary editorial approval for an undercover investigation. Approval was given.

57. At one stage of this case it was suggested by Mr Yeo that editorial approval should not have been given. The Editors' Code of Practice of the Press Complaints Commission, which was the applicable Code at the relevant time, required a public interest justification for the use of misrepresentation, subterfuge, or hidden cameras to obtain information. (Its successor, the Editors' Code of the Independent Press Standards Organisation, contains the same requirement.) Mr Yeo initially claimed there was no such justification in this case. That is no longer in dispute. But Mr Yeo is critical of the process by which the information, obtained in this way, was used in the creation and publication of the articles complained of. Among his criticisms are allegations that editorial staff were misled, and carried out inadequate oversight. It is for these reasons that it is necessary to set out the investigative process from its inception through to publication.

The undercover investigation

58. Between 22 and 24 April 2013 Ms Blake and Mr Calvert put together a five page document entitled "Proposal for an undercover investigation into the secret routes used by lobbyists to buy political access and influence the Houses of Parliament" (the Proposal). The Proposal was in eight parts. The first was "Background":

> "Private companies and lobbyists are buying access and influence in the Houses of Parliament by exploiting democratic mechanisms such as all-party groups, select committees and partisan think tanks, according to well-placed sources. ….
>
> We now propose to mount an undercover investigation to expose the full panorama of secret corporate lobbying taking place around the Houses of Parliament. …"

59. The Proposal then went on to identify five areas of concern: "APPGs", "think tanks", "Lords consultancies", "Select Committees", and "Parliamentary Questions." Mr Yeo's name featured in the section on Select Committees, which said: "Concerns have also been expressed about members of Parliament using their roles on select committees to work on behalf of businesses. Blatant examples of conflict of interest are: Tim Yeo who chairs the [ECCSC] and has lobbied government for greater subsidies for renewable energy companies – yet he is earning £200,000 a year on top of his Parliamentary salary from companies directly involved in renewable energy …." Mention was made in this section of two other Select Committee Chairmen. The final two sections of the Proposal set

out the public interest "Justification" for an undercover investigation ("… to expose the multitude of ways in which secret, corporate lobbying in and around the Houses of Parliament is perverting democracy…"), and an account of the "Proposed subterfuge".

60. The journalists took their Proposal to an editorial meeting on 24 April 2013 attended by Mr Ivens, Mr Hymas, Bob Tyer and Pia Sarma, Editorial Legal Director. The purpose was for the Editor, with his advisors, to interrogate the proposal and satisfy himself that it was justified. The meeting took about 45 minutes, according to Mr Calvert's recollection. The committee and the Editor were satisfied that there was a strong public interest justification, but required certain parts of the Proposal to be fleshed out. Ms Blake made notes on her copy of the Proposal of what had been decided in relation to the Select Committee/Tim Yeo section: "Pull Yeo out – flesh out more detail - Set out specific approach".

61. A revised version of the Proposal was prepared (the Revised Proposal). This was a considerably longer document, running to seven pages. It was in six sections: an introduction and five topic sections. Each topic section had been expanded in length, and was broken down into four sub-sections: Allegation, Evidence, Proposed undercover operation, and Justification for undercover operation. Thus each section of the document contained a stand-alone proposal with its own bespoke undercover operation, and a tailor-made justification for what was proposed. The relevant parts were these:

> "**Select Committees**
>
> **Allegation:** Key figures on Parliamentary select committees are being hired by businesses with a strong commercial interest in the work of the committee.
>
> **Evidence:** An examination of the register of MPs' interests has identified some disturbing conflicts of interest among MPs serving on select committees. The most blatant example is Tim Yeo, who chairs the Energy and Climate Change committee and has lobbied government for greater subsidies for renewable energy companies while earning £200,000 a year on top of his Parliamentary salary…
>
> **Proposed Undercover Operation**: Posing as representatives of our Chinese technology firm … we would approach MPs on select committees who are identified as having clear existing conflicts of interest by a thorough examination of the register of interests. We would offer to employ them and ask how they might use their position on the committee to benefit us. We would then pursue any leads which emerge from the meetings with the MPs where there is a strong public interest in further investigation …
>
> **Justification for an undercover operation:** It is of grave public concern that MPs sitting on select committees –

> which pay a vital role in democracy – may be compromised by conflicts of interest. It is therefore, we believe, clearly in the public interest to investigate whether they are exploiting their privileged positions on the committees to push the commercial agendas of the interested companied which employ them. An undercover operation is the only way to find out specifically what they are prepared to offer in private conversations with potential new employers."

62. The Revised Proposal went to the Editor for approval, and was approved, on 25 April 2013. The journalists then embarked on the creation of their "back story". A single cover story was used for all the various strands of the investigations that followed. One cover story would enable the team to investigate "how all the different ways in which private influence appeared to be working its way into Parliament were interconnected." Mr Calvert explains that another factor was that it is time-consuming to establish a cover and "it would have been inconsistent and probably confusing if we had used several different stories at the same time." Given Mr Yeo's roles in green energy it was decided that the "client" had to be in the green energy sector. Mr Leake, the *Sunday Times* Environment Editor, came up with a believable product in the form of a pioneering solar glass that could be used in windows. A corporate identity, a website, and stationery were created.

The approach to Mr Yeo

63. On 13 May at 16:23, out of the blue, Ms Blake emailed Mr Yeo as follows:-

> "Dear Mr Yeo,
>
> I hope this finds you well. I'm getting in touch because my company, Coulton & Goldie Global, a Zurich-based strategic consultancy, is establishing a new office in the UK and we are recruiting a select group of expert consultants to support our work. One of our most exciting new projects involves building a European launch strategy for a leading-edge solar technology developer in the Far East, and we feel that your personal business and political acumen could be a great asset to us in bringing this venture to fruition. The client is developing a range of solar PV nano-cell technologies which represent a bold leap forward and we believe could be a crucial breakthrough in the British government's progress towards meeting its renewable energy and zero carbon homes targets. The consultancy work would take up around a day or possibly two each month with an extremely generous remuneration package including a quarterly bonus. If this is an opportunity which may interest you, my colleague James Lloyd and I would welcome the chance to tell you more about it in person, and would be happy to talk it over on the phone in the first instance if you prefer. Do take a look at our company fact-sheet (attached) and our website (link below) if you'd like to know a little more about us.

Yours with best wishes

Robyn Fox

Senior Analyst

Coulton & Goldie Global"

64. The company fact-sheet was a one-page document giving a general description of CGG and its activities. It was described as a "Young, dynamic strategic consultancy established in Zurich in 2012 by Jennifer Coulton and Michael Gouldie to help you make, implement and communicate better, bolder business decisions." Under the heading "Our Sectors" was a list of six, headed by "Green Energy". The website told the reader little more of substance.

The 14 May Call

65. Mr Yeo replied by email on 14 May at 18:38: "Dear Robyn, Thank you for your email of 13 May. I would be happy to have a chat… Yours, Tim." He provided his office and mobile telephone numbers. Ms Blake replied by email at 19:20, asking if he was free for a quick chat now. Shortly afterwards, she called Mr Yeo's mobile phone and, at some point between 19:20 and 19:44, this conversation took place:

HB	Hi there….. Robyn Fox here calling from Coulton and Goldie. Erm just picked up your email [TY: Oh yes.], I wondered do you have five minutes to chat now, or er is it better to speak tomorrow?
TY	It might be better. I am walking down Piccadilly in the rain at the moment. Not ideal [laughs]
HB	No well, that's no fun at all. Oh dear.
TY	Yes tomorrow. I'm going to be in [inaudible] tomorrow but I will have some time free. What time would suit you?
HB	I could probably give you a ring tomorrow morning…or, I mean, alternatively if you are around for lunch say on Thursday or Friday we could have a chat face to face and we could fill you in then. We would be delighted to take you out.
TY	I'm up at Drax Power Station on Thursday and in my constituency on Friday unfortunately so I can't manage either of those. I'm usually [inaudible] Erm so I will be around next week if you're going to be in London.
HB	Yeah I will be in London next week. I mean we could erm…we could do sort of, I don't know, Tuesday lunchtime…does that work for you?
TY	Let me have a look [inaudible] I just put the phone down for a sec while I look In my diary. One sec, hang on.
HB	Okay, of course lovely
TY	Yes I can do Tuesday lunchtime, yes
HB	Oh fantastic… okay well look I'll tell you what that would be better and we can have a chat face to face and we can give you all the details then. What sort of time works best for you?
TY	I should think about 12:45
HB	12:45… fantastic. Alright well let me have a look at booking

> something and I will drop you a line and just confirm if that's alright. [TY: Okay.] It will be me and my colleague James Lloyd who's working with me on this. And you will be happy to sign an NDA if we bring one along so we can tell you about the project.
> TY Yeah sure
> HB Fantastic, that's wonderful… I tell you what…What I'll do is erm I'll bring a briefing for you on the clients' product which you can take away with you so you can have a think about it and erm [TY: Alright.]. Yeah we'll have a proper chat then. That will be wonderful
> TY Great… good. Look forward to seeing you.
> HB Look forward to speaking then. Okay bye
> TY Yup. Okay. Bye.

66. About 20 minutes after this, at 19:44, Ms Blake emailed confirmation that she had booked lunch at Nobu at 12:45 on 21 May. On 15 May the appointment was brought forward to 12.30 at Mr Yeo's request, because he had to be back in the House at 2pm. There were no further communications before the Meeting.

The Meeting

67. One of the less illuminating aspects of the evidence and argument in this case has been a dispute about whether *The Sunday Times* ought to have published the whole transcript of the Meeting. Mr Browne highlighted the evidence of Ms Blake and Mr Calvert that they were in favour of publishing the transcript alongside the articles. He contrasted this with the decision of Mr Ivens not to do so. He put it to Mr Ivens that he could not defend that decision if, as he said, he was committed to transparency. Mr Ivens denied that he had been "afraid" to publish, or had acted "arrogantly" in not allowing readers to see whether Mr Yeo had been fairly quoted. He said:

> "I have read the transcript. It's -- you know, it's about 30-40 pages long. As I said, you know, we don't -- we're not the Encyclopaedia Britannica, we're not the Oxford English Dictionary. Our job is not to keep on pouring out material. That's just not the job of journalism. Our job is to précis. Our job is to distil."

68. That, in my opinion, is plainly a legitimate position. The views of Ms Blake and Mr Calvert were not based on any acknowledgement that they had a duty of fairness to Mr Yeo requiring publication of the whole transcript. On the contrary, they were concerned that not publishing it might make it easier for Mr Yeo to put out a distorted but plausible account. Mr Browne submits that TNL had a duty to publish a fair and accurate account of the totality of the relevant evidence - an issue to which I shall return. But it could not be said that such a duty carries with it an obligation to put before *Sunday Times* readers all 28 single spaced pages and 16,000 words of this transcript. A duty to report fairly and accurately could obviously be performed by means of a summary as is the case, for instance, with reports of Parliamentary and legal proceedings.

69. It is not my task to include the whole transcript in this judgment, either. But since the fairness and accuracy of the published account of the Meeting is in issue, I shall need to set out quite substantial parts. In doing so I am using the agreed transcript. I shall, for ease of reference, add in the agreed timings (taken from the start of the recording). I shall leave out some unimportant interventions or interjections from one or other participant that appear in the transcript but merely break up the flow for the reader.

70. The significant aspects of the meeting can be divided up into 15 sequential phases or sections.

71. **(1) Greetings.** When the journalists arrived Mr Yeo was waiting for them, engaged on a phone call [11:11 – 11:58]. When he came off the phone, Ms Blake asked if it was a busy day for him. He replied that it was, explaining that the ECCSC had met that morning and had another meeting in the afternoon, seeing the Secretary of State and Minister of State. He went on:

> TY: And quite by chance, coincidentally the Department of Energy has a new permanent Secretary, Stephen Lovegrove, who replaced the lady who retired before Christmas. And he is coming in to see me later on for a private meeting as well. So I've got quite a heavy sort [Female Reporter: Oh dear.] of Parliamentary day today. So it's quite nice to have a break really.
> HB: Gosh. But great to be talking to all those people.

72. **(2) Orders.** Following some general discussion on current affairs [13:02 – 17:44] each of the party placed an order for soft drinks and, at the reporters' instigation, chose the "deluxe" Bento box [c 19:50 – 20:11].

73. **(3) NDA** [20:11 – 22:04]. Mr Yeo was asked to and did sign a Non-Disclosure Agreement by which he undertook to keep confidential any information disclosed to him that was marked, or should reasonably have been understood to be confidential "and specifically all information disclosed … relating to Haemosu Nano and its solar PV nanotechnology."

74. **(4) The Presentation.** [22:04 - 31:05] The journalists, principally Ms Blake, then spent some eight minutes presenting CGG, its client, and the product, to Mr Yeo. A small amount of documentation was handed over, including a one-page briefing note for reading "If you want to have a read on the tube home or whatever." The bulk of the presentation was by word of mouth. The agency was described by Ms Blake as **"**quite a young strategic consultancy and we're based over in Zurich". She explained that they had just been taken on by a client in South Korea called Yang Jungbock, the "lead investor in a consortium of sort of venture capitalists who are investing in technologies coming out of a research cluster in South Korea called Daedeok Innopolis". The "pet project" of the consortium was said to be a company called Haemosu Nano, doing "really leading edge work" on solar cells, developing "what is effectively a solar panel but, but in the form of a window or a pane of glass", made of organic polymers.

75. Ms Blake made clear that the product was well ahead of its closest competitors:

> … And so they're up to 75 per cent transparency and they're a much, much higher level of efficiency than any other solar glass that we… that is under

> development, as far as we can establish. [TY: Right]
>
> So for example, the closest competitor is – um there's a research team at University of California who's developing something quite similar. But they are at 60 per cent transparency so they're behind us there and they're only on four per cent efficiency [TY: Right] … um and that's because normally there's a trade-off, um if you want transparency, you lose efficiency. We're at 15 per cent which is about the sort of market standard for a solar PV installation. I mean 20 per cent is the best you'll ever get. [TY: Yeah]
> …

76. There was discussion about government subsidy in the course of which Mr Yeo, who made few interventions in this part of the Meeting, explained the Treasury's view that subsidies for low carbon energy were costly to consumers, and referred to the reduction in subsidy for solar PV. Ms Blake went on to say that the Haemosu solar windows were "far, far easier and cheaper to manufacture than the alternatives". In a new build, she suggested, the use of solar glass would only add about 20 per cent to the costs of window installation. She addressed what had been said about subsidy:

> So we think that in terms of the concerns about cost to the consumer, and also about subsidy – I mean I think we're hoping that this technology could sort of stand on its own two feet in a way which [TY: Yes, yeah] rivals in the solar PV market don't.

77. **(5) Discussing the Client Objectives.** [31:05 – 38:14] In this seven minute section of the Meeting the journalists identified some specific objectives which they had in mind, with which they needed help. The first was "talking to government about adapting the Building Regulations" in such a way as to make Haemosu Nano the "market leader".

> HB: But the things that we're quite interested in trying to achieve are things like, say, rather than going to subsidy, say talking to government about, for example, adapting the Building Regulations so that there might be a requirement that by a particular date all new buildings have to use solar glass, um which we think would be – you know - a really great way [Yeo: Yeah, yeah] of trying to hit zero carbon homes target for example. But also it would be great for us [Yeo: Yeah] because we'd be the market leader. [Yeah, yeah].
>
> So those are the sorts of things we're interested in [Yeo: Yeah] and we kind of wanted to have a grass roots strategy of engaging …
> JC: Yeah, the point is… we're quite new to solar and we're sort of putting our heads across the policy environment.
> HB: And it's complex isn't it? I mean there's so much going on.
> JC: And I suppose that's why we're talking to you, we need somebody who might be able to help us – advise us through all that.

78. Mr Yeo's response was positive:

> TY: Yeah. Sure. Yeah. It is complex but it's – um I mean what you'd be aiming to do is – working with the sort of grain [inaudible] I mean it's not like trying to do – get acceptance for something which is clearly going to have

> all sorts of resistance; it shouldn't have much resistance. I mean, building regulations certainly is one area which could be very helpful and there is a commitment to having a move towards zero carbon homes, and buildings generally. And the technology actually, is available to do it now if they wanted, but there's a slight cost factor. And the building regulations, they tend to change quite slowly, and they're also very badly enforced as well.
> HB: Are they? Oh that's interesting.
> TY: Yeah. So this will be one of the easy areas. …

79. Mr Yeo continued by suggesting that "the built environment offers an enormous potential for carbon savings and for greater energy efficiency" so that a product at an economically viable price would have "a huge market", and "a lot of support". He suggested "not just business, but NGOs and so on would be arguing for it." Ms Blake responded that CGG had thought about trying to engage with NGOs, environmental groups and others.

> HB: … Because then to an extent when we're trying to talk to government or decision-makers if it's just us selling our windows [Yeo: Yeah] then they might just think well you would say that because you want to sell your solar windows, whereas you know [Yeo: Yeah, sure].

80. Engaging with NGOs, suggested Ms Blake, would be "more our job". She went on to talk about a "campaign" involving talking to Parliamentarians and trying to create a "climate of opinion", with which they would want Mr Yeo's help for maybe one or two days a month. The idea of establishing an APPG on solar energy was floated:

> HB: Yeah, so what we kind of thought about doing was just trying to – and it would be really useful to be guided by you about it, we're looking for a campaign whereby we would be, in the first instance, just sort of talking to – … – talking to Parliamentarians and just trying to create a climate of opinion [Yeo: Yup] around, solar glass [Yeo: Yup, yup] and around the importance of micro-generation [Yeo: Yup] in terms of reducing our dependency on offshore energy resources [Yeo: Yeah] and that sort of thing.
>
> And um so, we'd love to have your advice on that. [Yeo: Yeah] We think the work, if you're interested in it, would take kind of maybe one or two days a month or something like that [Yeo: Yup. Yeah. Yup] um and we just sort of want – I don't know – we just sort of, and some help maybe engaging with other… other MPs, maybe? [Yeo: Yeah, sure] One thing we thought about actually doing, which we've spoken to a public affairs agency who might be going to help us with it, is establishing a-,
> JC: Yes, doing the secretariat and things. Yeah.
> HB: Yeah, is establishing an all-party group on solar energy, [Yeo: Yeah, yeah] because there isn't one [Yeo: yeah] at the moment. So, I don't know what your thoughts would be about sort of thing but.

81. Mr Yeo responded by saying that all this was "attainable", and identifying various "sections of audience" that the client would need to address.

> TY: Well, I mean, all that is attainable, I think that the – I mean I think there are probably three or four groups of, sort of, sections of audience. One clearly is MPs, another is what one might call other policy-makers who would include ministers and civil servants. Some of the think-tanks would take an

> interest in this area. Then you've got – I think the NGOs are worth talking to [HB: Yeah] because they will do a lot of selling. Once you've got them persuaded it's a good thing they will do a lot of promotion and they're not coming from a commercial angle, so they have some credibility with some people.

82. Mr Yeo continued, identifying a further section of audience: professional groups. He raised the prospect that planners might be persuaded to adopt a policy of looking favourably on applications specifying the Haemosu product, and pointed out that this could apply to commercial as well as residential development.

> TY: Then there are some professional groups as well. You've mentioned surveyors, architects, planners particularly – local authority planners [JC: of course] who will – you could get them to say we will look favourably on planning applications where this is part of the spec and so on.
> HB: Yeah, if we have a presumption in favour, that would be brilliant.
> JC: That would be brilliant. Now there are also some issues like certain planning departments don't like to have lots of glass on upstairs windows because of overlooking, and those sort of things [TY: Yeah, yeah.]… so the presumption would be great.
> TY: This would apply, of course, very well in the commercial property as well as it would in residential. I mean…

83. **(6) The Feed In Tariff Discussion.** [37:25 – 40:58] Ms Blake told Mr Yeo that they did not expect to be selling the product before the end of the year, but envisaged a press launch in six weeks' time. She said "we'd love at that point to have um our advisors in place, so that we can then begin at that point, having conversations and sort of setting the groundwork." Looking further into the future, she said they would think about manufacturing in this country and that "slightly further down the line" they would need to

> HB: …. establish a UK subsidiary for Haemosu, with a UK Chairman, and with that sort of, so we had a public face of Haemosu here, and those are all the things, so we're kind of building that broader strategy, but in the first instance, we kind of would just love to have someone like yourself kind of on board, just helping us think about how we build an engagement strategy [Yeo: Yes. Sure. Sure] and who we should be talking to.

84. Mr Yeo's response was to raise the topic of feed in tariffs (FITs), and to identify one "absolutely critical" aim for the client: "… to make sure that these windows qualify for the same feed-in tariffs that… that will apply to panels." He explained that the Government was "just changing the basis on which those sort of support payments are made", in the Energy Bill which was "going through the House at the moment."

> TY: … They're switching over to a system of contracts for difference with a feed-in-tariff level, which gives the companies a guaranteed payment basically and the crucial thing – which shouldn't [inaudible] about this - would be to make sure that these windows qualified on the same basis as panels do.
>
> The Government will be publishing a consultation they say later in the summer - that usually probably means in the autumn, on the level of those

payments which – that is quite a key element in the sort of finances of any product of this kind. But I think that given that solar is probably cheaper than – well, certainly cheaper than offshore wind, it should be quite well placed from that point of view as well. But, that's certainly something that should be managed through as well.

85. The conversation then turned to the public affairs agency that CGG had been talking to, and what the agency was expected to do.

TY: You say you're talking to a public affairs agency as well?
HB: Yes.
TY: Which one is it?
HB: It's Keene Communications.
TY: Which one?
HB: Keene Communications. They're sort of PR and public affairs. We've been talking to their public affairs team about – and they think they would – I mean we haven't quite signed off on the deal yet, but hopefully if we were to – then what they might do is basically help us set up an all-party group.
TY: Yeah, well that's a good thing to do.
HB: Is that a good way of sort of – we kind of feel it's quite a good way of getting lots of MPs on board and …
TY: It is. The other – it's certainly worth doing. The other things that are worth doing, is looking at some of the other existing groups in Parliament. There's a Sustainable Energy Group, which is quite active, quite well-financed, who have regular meetings, and it's worth trying to get in and make a presentation with them. There's an All-Party Climate Change Group, also quite well-financed. Doesn't get quite so many MPs attending. Gets quite a lot of other interesting people. There are probably four or five groups of that sort that it's worth targeting as well.
HB Oh ok

86. Mr Calvert came back to the topic of the consultation on FITs:

JC: With the consultation for the feed-in tariffs, is it worth us engaging at this stage?
TY: Yes it is. Well look, I wouldn't…
JC: Because if it's in the process at the moment-
TY: Yes, I think the time – the best time to engage is when the government publishes its initial proposal, I think that you can try and engage but if you haven't got a product you can actually point to yet, I think you wouldn't get a lot of time and attention from the department. [HB: right, right] But as soon as they publish their figures, I mean we don't know exactly when it will be – I suspect the timetable will slip because there are loads and loads of things they're supposed to be doing. That's the time to respond and say why you think yours: a) should be eligible; b) maybe the price should be extended or whatever. A lot will depend I dare say on, I mean this clearly depends on the scale at which you roll this out, on how the cost comparisons compare with other forms of solar technology.

87. **(7) Mr Yeo Explains his position** [c 42:33 – 46:12] After discussion of the aesthetic merits and price advantages of the product, Ms Blake asked directly whether Mr Yeo would be interested in principle in the "project". He confirmed he would. He went on to explain his Parliamentary and business activities since leaving the front bench in 2005.

> HB: …obviously they're not in mass production yet, so it's quite hard to put a, to pin a price on it, but I think it's looking like it's going to be very much cheaper. So I think – we think it's really exciting [Yeo – Yes. Absolutely.] and we're really, really pleased to be involved in it, but I mean, if it… is it a sort of project that would interest you in principle, do you think?
>
> TY: Yes it is. I mean, I er… just to explain really. I er, I gave up being in the front bench in 2005. I mean, I was in the government and the shadow cabinet for a long time and I decided consciously that I would go to a job in Parliament which allowed me to do some business things as well. So, I took on the chairmanship of a different committee in the last Parliament, which was called the Environmental Audit Committee. Still involved in a lot of sustainable issues, but in this Parliament, I couldn't go on doing that because that job has to go to someone who's in the opposition party.
>
> So, when we won the election, I couldn't go on. So I was elected – we now elect the Select Committee Chairs – I was elected as the Chairman of the Energy and Climate Change Committee in 2010, so that's my main Parliamentary focus. I have a variety of business activities …

88. Mr Yeo identified "very briefly, and in summary" those activities. In the process he addressed and dismissed the prospect that the role under discussion – which he described as "promoting another solar technology" - might involve conflicts with those commitments.

> … I chair a company called AFC Energy, AIM-listed, pre-revenue company developing a hydrogen fuel cell for standard applications. It's been quoted for about six years, market cap's about £65 million at the moment. Um, it's quite well funded. We expect to be able to commercialise in about two years' time. So I'm quite optimistic about that. That's one thing. I also chair another pre-revenue company, it's not listed, in the biofuels industry, so no overlap with what you're doing. I'm on the board of Eurotunnel which is a Paris-listed company, market cap of about 3 billion Euros, I've been on the board there for six years, and that runs the Channel Tunnel basically, so again, no overlap, although we have put up a couple wind turbines in Calais but [inaudible] your solar, and I consult for a Dubai company which runs private universities internationally, not very time consuming but moderately lucrative, and I'm just about to become chair of a… it's really a sort of fund, although it's going to be a company, er, run by a small but well-established fund-manager in the City, which is going to invest in four renewable energy technologies, small-scale – one is onshore wind, probably one or two turbines in brownfield sites like on industrial estates; hydro, small-scale hydro, where there's this interesting technology about Archimedes turbines which you can put into the river without interfering with the fish; it will do some anaerobic digestion; and it will do some small-scale solar as well but I don't see that as a conflict and I can talk to them about that [HB: no, I hope not], that's all disclosed anyway so… but I don't think they would have any objection to my being involved with promoting another solar technology, because they're not producing solar panels, they're just using solar panels. They might even become a customer of yours.

89. **(8) Time and Money.** [c 46:30 – 48:00] Mr Calvert raised the question of whether the amount of work CGG would be looking for from Mr Yeo would be

compatible with his other commitments. Mr Yeo assured the journalists he could "commit to" at least one day a month.

> JC: And I suppose one of our thoughts would be, we're, we're thinking about two days a week, two days a month.
> TY: Not two days a week?
> JC: No no no.
> HB: Well, sort of between one and two?
> JC: But I was wondering how does that fit with the rest of your commitments?
> TY: Well, I've got to make a judgment about how to spend my time. I'm not overstretched at the moment. I could certainly do one day a month, I could definitely to one day a month. And if another job I'm talking to people about does not materialise – and that's at a very early stage, then I could do two days a month. But at the moment, I'd want to keep one… but that's just a straightforward non-executive board job with another company, but it's interesting to me. By an extraordinary coincidence it's a company with a very strong Korean connection. It doesn't do much business in Korea, it's a well-established business. But… um, so I'd need to make a – I'll know that within the next couple of months. So if you were saying to me, "What's your time like?", I could commit to doing one day a month, no problem.

90. Next Ms Blake raised the topic of money.

> HB: Okay. Cool, I mean what we've been thinking was, for sort of one to two days a month, we've been thinking about a monthly retainer of about £10,000. Does that sound in the right sort of ballpark? [Yeo: Yeah, yup, yup,] So I mean if you wanted to say it was just one day, we could say – I don't know – go down to sort of £7,000, something like that? [Yeo: Yes. Yes] And then obviously we could, we could go up again [Yeo: Yeah] depending. And if you were to do any, any extra work, you could always bill us separately for that.
> TY: Well, it depends whether you're getting value. If you're getting value and I know you're getting value then we'll negotiate.
> HB: Exactly, yeah. There'd also be – we've also got – one of the ways that Michael, our founder, likes to work is he likes to kind of um use bonuses and incentives and things. So we'd – there'd be a quarterly bonus as well if we've kind of had some agreed targets that we were working towards. Um, but um, but I think it's quite an exciting project actually [Yeo: Yeah. Yeah] and there – it's just fabulous stuff.

91. Ms Blake said that Yang Jungbock, the main investor, was coming over in June "so if you're interested in the project then it'd be great for you to meet him". Mr Yeo said he would like to do so, and there was discussion about a possible future visit by him to South Korea, to see the product for himself.

92. **(9) The Advocacy Discussion**: [49:17] – [56:00]. At this point Mr Calvert introduced the term "advocate" for the first time. The noun, or the verb to advocate was used four times over the next five minutes of the discussion, which are plainly of considerable importance. The first mention of advocacy came in this exchange between 49:17 and 49:30.

> JC I think if you're going to be sort of an advocate for the product, then it's worth knowing the intimate technical detail.
> TY Yes. Of course it is.

JC We're not that great on it as yet ourselves.
TY You can help much more easily if you really understand what it is.
HB Absolutely.
TY: I'm actually going to South Korea but it's a very, very brief visit. In about three weeks' time – …

93. A brief discussion followed in which Mr Yeo spoke highly of South Korea, and the reporters agreed, encouraging Mr Yeo to visit Daedeok. Ms Blake brought the discussion back to what Mr Yeo could do for CGG and its client, making use for the second time of the word "advocate". Mr Yeo answered her question at length, making reference to his close relationships with key players in the UK in government and "the department". In the course of his answer Mr Yeo himself used the term "public advocate". The exchange between about 51:50 and 53:30 went as follows:

HB: … So once we've um, once we've kind of worked out what our objectives are in terms of some clear policy goals which we need to kind of nail down a bit more clearly. What are the sort of various things that you'd be able to do for us if you were working for us as kind of our advocate and our advisor in Parliament?
TY: Um. I think I could… I could help define how to influence the policy process here, at national level, on a local level. Er… maybe contribute to the sort of way in which you might get a campaign going behind this and so on. I know the energy industry in this country intimately, in the EU reasonably well, and internationally quite well.
[52:20] I've got a very close relationship with really all the key players in the UK in government and in the department, the professions, amongst a lot of the businesses, with the NGOs. So I can help you sort of work out, really, how you're going to roll this out here [inaudible]… I can certainly provide introductions. The one restraint I should make clear at the start – the one restraint because of my position as chair of the committee, is I can't act as a public advocate for you, I can't get up and make a speech for you and say 'This is the right technology, and that's the wrong technology'. But actually, on the whole, if I'm a consultant that has to be disclosed anyway, so people… everyone would be like… they'd say he's saying this because of his commercial interest … but what I can do is provide all sorts of leads, so you know if you want to meet the right people I can facilitate all those introductions, and I can use the knowledge I get from what is quite an active network of, um quite an active network of connections. So I think really almost anyone you, you know, you needed to get hold of in this country, I should be able to help you do that.

(I have included all of Mr Yeo's words, omitting only some interjections by Ms Blake – 'Fantastic', and the like).

94. At 53:32 Ms Blake sought and obtained clarification:

HB: Really? Does that—I mean does that extend to… to people in government as well?
TY: [Nods] Yeah.
HB: That would be great because I mean the business connections you have are superb and really, really useful. But I suppose where we really feel we need help is with the political connections which is what we lack completely, basically.

TY: Yes, of course. Yeah.

95. At this point the conversation was interrupted by the arrival of food. At around 54:11 Mr Calvert picked up on the "one restraint" that Mr Yeo had mentioned, asking him if he could "advocate behind the scenes".

JC: So but you wouldn't be able to publicly advocate—would you be able to advocate behind the scenes?
TY: Oh, of course but what I say to people in private is another matter altogether. All I'm saying is that I can't…

I shall have to return to the significance of the response "Oh, of course but … ". Interrupting himself at this point, Mr Yeo told a story about that morning's session of the ECCSC, seemingly to illustrate what he had just said:

> … I mean, this morning we had a case, in front of the committee, we had a company called Great Britain Rail Freight, who have got big contracts for moving coal and biomass around the country and we had a one-off hearing this morning about bioenergy. And I said, because GB Rail Freight is a subsidiary of Eurotunnel, I couldn't ask this guy any questions in public because it would look as though I might be biased about that. But what I do for them in private is another matter altogether, obviously. And I, and we-,

96. Ms Blake interrupted, seeking clarification, and the conversation continued, at 54:51, in this way:

HB: So were you able to ask him questions sort of afterwards or?
TY: I was able to tell him… I was able to tell him in advance what he should say.[laughs]
HB: Oh really? [Laughs] Brilliant.
TY: But, er, I mean we can explore that point in more detail.
…
I mean if you want to define, you know, fairly precisely what you would expect me to be able to do, I can tell you whether I can do it or not so…
HB: Yeah, okay. …

97. There was an interruption as more food arrived, after which Ms Blake continued [55:43]:

HB: So, um, I mean that sort of thing, because I mean actually, I agree in a sense, it doesn't really—um, making speeches about things in public is not necessarily actually what gets people's attention I would have thought. It's probably more about who you can talk to, sort of in your own network.
TY: Well, I certainly think you ought to be able to create a situation where there are enough other people doing that, making speeches in public about, you know… if you… if you've got an all-party group going, and you've got some of these other existing groups interested, and some of the think tanks are quite- I mean, Policy Exchange, was one of the more recently – it was founded about 8 or 10 years ago – have done quite a lot on the energy field, their energy girl writes quite sensible stuff, [Female Reporter: oh ok] and she gets a reasonable amount of coverage and is read by quite a few MPs, so there are people like that who, you know- you could…
JC: We were wondering actually whether we could sponsor some work by someone like Policy Exchange, … [inaudible] … if that would help?

TY: I think they'd be quite a good person to do it with, certainly. Yeah.

98. **(10) The ECCSC.** Ms Blake then steered the conversation on to how the ECCSC might be used to promote the product. Between 56:53 and 1:00:09 there were exchanges on "having a special day" on solar, "steering the agenda" of the Committee, "pitching" written evidence, and help with or guidance from Mr Yeo on the writing of such evidence. This part of the Meeting began in this way:

HB: Okay. So things like—because we did wonder about—obviously your committee is very influential and I imagine, you know, you'd need to be a little bit careful about… about the dual role [Yeo: Yeah], but I won… it would be really interesting to hear more about ways that you might be able to kind of—I mean, if for example we were to, um, have identified a particular objective, is it the sort of thing where there'd be a way of, I don't know, having that sort of—having like you say, you have a special day on biomass today, or like you have a sort of a particular hearing on it, or there's a way of getting attention?

TY: The agenda of the committee is set by the committee as a whole. We… we've got quite a lot of pressure on our time because there's a lot of issues going on at the moment. We did—we haven't had in the three years I've chaired it, any session devoted exclusively to solar. We've had a number of sessions devoted to renewable energy in general, and that's a more likely way in, because to devote a whole meeting to a single technology, we've obviously done it, we've done it with nuclear, but I think that's in a slightly different category. I mean, we've certainly… we're looking very carefully at the strike prices for the contracts for difference when they're published, and I should think it's very likely we'll have a session on those, and then again we'll probably look at wind, and we'll look at solar, we look at various marine-based technologies. All part of one thing. When we do that, the opportunity initially is to sort of pitch written evidence - to send in a memorandum saying 'We are producing this sort of stuff, this is why it's good, it's costing this much you know, it's visually more attractive, you know, so that's quite a good way of getting your stuff on the map.

JC: So would you be able to guide us through that process?

TY: Mm [nods]

99. Mr Yeo accepted in cross-examination that by that answer he was agreeing that he could guide CGG through that process. (His evidence, to which I shall return, was that he would "do the same for anyone who came to ask for my advice about appearing before my Committee or trying to ….''). The conversation continued:

HB: So is it sort of possible that you might um have, I don't know, a session on renewable energy say, so that you'd be able to kind of steer the agenda a bit so we could get… so we could get some stuff about solar glass in there.

TY: Well, I think any session on renewables is bound to look at solar. And the… the way the agenda develops and evolves is usually partly driven by the members, it's also partly driven by the quality of the evidence. So if people are sending us some really interesting written submissions, we tend to follow up on those.

HB: Would you be able to help us write the submission or to guide us on what to write?

TY: I mean, I can show you the ones that have been influential in the past, certainly. [HB: Right] It's also partly about getting to know the staff and so on, so you know good relationships with people. We've got a… the

> Committee has a staff of seven who are quite expert, and so it's sensible for outside people to try and plug in and have relationships with them. [HB: OK]
>
> JC: I mean is that something we should get our public affairs people to do, or is that something we should do through you?
>
> TY: It's quite sensible to use the public affairs people to do it. They should be quite practised at doing it. [HB: Ok] And with all these things, it's partly about building up relationships, you know, if you knock on the door, the sort of first response may be cautious. But as you get to know people a bit better they'll pay more attention, particularly if they think that what you're saying is actually, has some general application.
>
> HB: Yeah, well that's… and that's the brilliant advantage for us of having, potentially having your help would be that obviously you're very, very well respected in this field, and so people know your name and know who you are and would trust you, and obviously you'd have to – we'd have to make sure that you- we were really convinced by the technology as well, but it would just be a great way for us of, sort of, opening doors.

100. **(11) "Ministers".** A short while after these exchanges, at about 1:02, Mr Calvert asked a question about ministers. The agreed transcript has this:

> JC: Equally… I'm presuming [inaudible] ministers... or [About five seconds inaudible]
>
> TY: Well, ministers again will make judgements on the basis of the merits of the product, you know, and we have a system which is—the integrity of the system here is pretty high. The ministers will only I think act on something if they think it's genuinely right, I don't think they'd be susceptible to, er- someone, er [smiles]…
>
> JC: No presumably [inaudible]

The interpretation to be put on Mr Yeo's audible reply rather depends on the nature of the inaudible question put to him. Each side seeks to support its case by filling in the missing parts of that question, relying on circumstantial evidence, as I shall explain later.

101. **(12) Engagement and Payment**. Discussion followed of the merits of the product, opportunities for promoting it, and government policies such as the Green Deal. Ms Blake then asked, at about 1:09, whether, if a UK subsidiary was set up and the position of Chairman was open "is that the sort of thing that we could talk to you about down the line?". Mr Yeo replied

> Yeah, well I mean, if the product is right and the people involved are the people that I would be comfortable with then yes of course, but obviously [inaudible] the responsibilities as a director are substantially greater than those as a consultant. So you know, I would need to be confident that, you know, that the business met all the Government standards and the other people involved are... et cetera et cetera et cetera.

102. Ms Blake moved on to raise the issue of how the consultant role would work. She suggested that "probably though, the consultant role would be that you would be employed by [CGG] as a consultant rather than directly by Haemosu". Asked how it worked, "you have to declare a certain amount, don't' you?", Mr Yeo responded

that "any income I earn from outside has to be disclosed on a monthly basis". He explained that consultancy work he did "I mostly do through a service company" so that the contract "would provide for payments to go to this service company which my wife and I own." All this would be declared, it was simply "slightly more efficient from a tax point of view."

103. **(13) Help on the Political Side?** At about 01:13 Ms Blake raised again the question of what Mr Yeo could do to help "on the political side".

HB: .. So, what are the other things that you think that we ought to be doing, or that you might be able to help us with on the sort of political side? I mean the introductions would be great and especially if you've, you know, if you're able to sort of help us with people that it would be very hard for us to reach otherwise, because I think that's… that's what we - that's where we need help, but are there other things that we should be-

TY: Well, I think it's about having a sort of plan to make sure that this product fits in with various aspects of Government policy that you are alert to those, that you can maximise the benefits, that you can get the best possible perception for the product and what its advantages are, both environmentally and in terms of cost, and relate that to, you know, what the Government has been doing really.

HB: That would be great. And how would you, sort of, um—are there particular things that we ought to be doing with you or through you in order to do that? Just - the reason I ask for sort of specifics is because we've got to go back to um, Jennifer and Michael, our two founders next Thursday, I think it is, and sort of explain what the different people we've spoken to feel we should be doing and what they can offer.

TY: Well I think that the first step would be to sit down and sort of brainstorm to hammer out an overall plan, you know, what to do in the first six months, who to be in touch with, who to try and meet, what the desired outcome of those discussions would be and, as I say, I think you've got several different audiences. You should be able to put down a coherent sort of framework of things that would, you know, shape… shape the background to your product's launch in this country.

HB: Okay. And do you think… Are there sort of particular people that we should be talking to do you think, that are kind of immediately obvious to you? People in, I don't know, other… other MPs or particular groups or…?

TY: The MPs who have got an interest in this area are fairly easily identified, which committees they're on, which groups they belong to, what they've said in the past, so it's a fairly straightforward process to identify perhaps, you know, the 30 MPs who are most likely to be interested in this. And that can be done very easily. Actually, frankly, you scarcely need me to do that, you can do that from publicly-available sources really. It's a matter of records, who takes an interest in what.

JC: You presumably will know quite a few of them I would have

thought?
TY: Yes, of course.
HB: So we'll sort of identify them and then— I mean that will be quite useful because we'd want to know the right people to approach to be part of any kind of All-Party group that we set up. But I think, actually, Keene have sort of said that they can produce a list of MPs who I think would fall into that.

104. A short while later Mr Yeo suggested that if Keene were to be engaged "then it makes sense for me to talk to them as well". Ms Blake replied "Yeah. No we will definitely – um, if you're interested in principle we'll tell them that and I'm sure they'd love to have a chat."

105. **(14) APPGs**. At about 01:25 Mr Calvert brought up the subject of APPGs again, exploring whether one could be set up and what role Mr Yeo might play.

JC: Is there a Korean all-party group?
TY: There must be, yeah. I'm not a member but there must be.
HB: Okay. Would—If we were to have a group—I mean for example would you be interested in being part of the group or chairing it—would you think that would be-?
TY: I could certainly be a member of it. I'm not looking for any more chairmanships of all-party groups myself, but to get an all-party group going on any subject, you have to have identified people from all the main parties as sort of subscribers as it were. So that's easy to do. But ideally, you know, you have co-chairs—one from the government side, one from the opposition side, who are people who are willing to give a certain amount of time. That's what you need to identify.
HB: Okay. I mean if that work were to sort of form part of your work for us is that something that you might—I don't know it depends—I don't know whether...
TY: I'm sure I can help identify some people, yeah.
HB: Okay that would be great because yeah I just think that's quite an interesting way of...
TY: Yes. It's worth checking what – who- I mean, there probably is an all-party Korea group, so see who the members are. It would be worth looking at. [JC: inaudible] Yes, it's a good starting point, yeah.
HB: Right, yeah we might be able to poach some of their members. Yeah. I'm pretty sure there is one actually. It seems to me—I was having a look at the list and it seems to me there's one for most of the countries. I don't think there's a North Korean group, and you wouldn't necessarily expect that [laughs], but I think most of the other countries are represented.
JC: Are you involved in other all-party groups?
TY: Only one. It's called the all-party housing and planning group. [HB: Ah, right] Most of the town planners are in there.
HB: I'm done personally yeah.
TY: Yes - lovely, very good.
HB: Thank you. Yes please do it was great. Oh that, so that could be potentially…. If we were interested in, sort of, planning regulations or

building regulations I wonder whether we could, I don't know, host a joint event or something like that with that sort of group.

TY: Yes the secretariat for that group is provided by the Council for the Protection of Rural England, [HB: oh interesting…] which is a quite well-financed NGO.

HB: Actually we've been thinking about talking to them because of the concerns about – thank you –use of solar panelling on homes in conservation areas.

TY: I think it's probably worth giving them a call, um because it –, you know, certainly in rural areas – there can sometimes be resistance to ugly solar panels.

106. **(15) Parting words.** The Meeting ended when it was time for dessert, but Mr Yeo realised he had to get back to the House. Between about 01:31 and 01:32 the following exchanges took place:

HB: How are you doing for time?

TY: No. I must go. Gosh its already nearly 2 o'clock. I will scoot off. Sorry to dash.

HB: No, not at all.

JC: [Unclear].

TY: Yes and you.

HB: Let me give you my card. … So what should we do? Should we follow up with you sort of a bit later and…

TY: Yeah, whenever. Yes well I will… I'll think about what you've said and clarify my ideas about how I might be able to help.

HB: Brilliant.

TY: And if you think about – You will obviously want to think about how it works from your point of view. And we can either have a conference call or [inaudible] we can have another chat or exchange an email or whatever, whatever you think really.

HB: Okay brilliant.

JC: We would be very keen to engage you.

TY: Okay terrific. Good. Great. Alright.

HB: Great okay well we'll be in touch soon. Thank you so much.

The Stand Down Email and Mr Yeo's response

107. The journalists decided to inform Mr Yeo that his services were not required. On 22 May 2013 at 09:43 Ms Blake sent him an email (the Stand Down Email) in the following terms:

> "Thank you for your time yesterday. James and I really enjoyed meeting you and hearing more about your work. We both felt really enthused by what you had to offer, but I'm really sorry to say that we've since fed back on our meeting to Jennifer and Mike and we weren't able to persuade them that your services were quite what was required on this project. It was a close call and they were certainly intrigued but I think the world of select committees is a bit of a mystery to them! Perhaps it was our fault for failing to explain their value clearly enough, being

> novices in that area ourselves. Another factor was that they were a bit concerned that you might not have enough time to devote to the project. Do let us know if you have any further thoughts you think we ought to feed in (you have my cell) but otherwise I hope we can keep in touch anyway and wish you all the very best.
>
> Sorry this didn't work out – it was a real pleasure to meet you.
>
> Yours with warm wishes,
>
> Robyn Fox"

108. That afternoon at 16:11 Mr Yeo replied from his iPad:

> "Dear Robyn
>
> Thank you for your email. I was very relieved to get it because it spares me some embarrassment.
>
> It was increasingly apparent to me during our talk that what you were seeking was someone to advance your interests by lobbying. This is a function which is not compatible with my position as an MP and Chair of a Select Committee. I was going to email you later today to explain this but your email has removed the need for me to do so. I am sure that you will find a public affairs company which can perform this role for you and I wish you and your colleagues every success in promoting the technology you described. Thank you for an excellent lunch.
>
> Yours
>
> Tim"

This was the last communication between Mr Yeo and "Coulton & Goldie Global".

Preparing the Articles

109. TNL commissioned a commercial transcription service to prepare transcripts of the journalists' meetings. In the early hours of Saturday 25 May 2013, at 01:23, Ms Blake emailed to Mr Calvert a transcript of the recordings made at the Meeting with Mr Yeo, together with two other transcripts, relating to meetings with members of the House of Lords. At 13:50 that day, Ms Blake emailed to Charles Hymas and Bob Tyrer what she described as "the promised memo on the House of Lords instalment of our Westminster for Sale investigation, which is ready to go for next week" (the 25 May Memorandum). Ms Blake wrote: "It is a working memo to give you a flavour of our evidence, rather than draft copy, and contains an outline of two other instalments we propose." She explained that she

and Mr Calvert would be working through the weekend outside the office analysing the tapes.

110. The 25 May Memorandum ran to 4 ½ pages of 1.5 spaced text. Of these, 3 ½ pages were devoted to the Week 1 instalment, about the House of Lords. The other two proposed instalments were given half a page each. One of these was about APPGs, a topic eventually covered in the 23 June edition. The other was about Mr Yeo. It was described as follows at the end of the Memorandum.

> **"Tim Yeo - rent a select committee chairman**
>
> Tim Yeo, the chairman of the Energy and Climate Change select committee, has been secretly filmed offering to help a private client prepare submissions to his own committee in exchange for cash. Yeo told undercover reporters that he would advise their fake South Korean client on how to promote their own technology at future committee sessions on solar energy and gave details of how he had told a business associate of another client 'exactly what to say' before a recent appearance. He also said he use [sic] his position to influence carbon reduction policy by lobbying ministers and civil servants 'behind the scenes' in exchange for cash. He said he could not publicly be seen to advocate for the South Korean solar energy technology but would be able to push the product privately in the corridors of Parliament. 'I think I could influence the policy process here at a national level…I've got a very close relationship with really all the key players in government and departments, he said. Yeo explained that he had stepped down from the front bench in 2005 in order to take on a job which would allow him to pursue private business interests- first as chairman of the Environmental Audit committee and then in his present role. He acknowledged that all his private interests centred on green energy- squarely in the territory of his select committee."

111. At the end of the Memorandum there was a note, which I am satisfied related to the whole document and not just this concluding section about Mr Yeo. It read "*(N.B: This memo is based on an initial appraisal of rough transcripts and more detailed scrutiny of the evidence and relevant rules.)*"

112. On Sunday 2 June 2013 the *Sunday Times* published the first article in the Westminster for Sale series. "Cash for Access: Lords exposed", written by Mr Calvert and Ms Blake, identified three named peers as having been "caught offering to ask Parliamentary questions, lobby ministers, and host events on the House of Lords terrace for cash by the Sunday Times". The three were said to have "offered to become paid advocates for a firm pushing for new laws to benefit its business". The reporters had been "posing as representatives of a South Korean solar energy company." Following publication, two of the three peers were suspended and one resigned the whip.

113. At some stage before publication of the articles of 9 June Ms Blake and Mr Calvert highlighted what they considered to be relevant passages of a copy of the Code and the Guide which they held as a working document. It matters not when this took place. Ms Blake also highlighted in yellow certain passages in her copy of the Meeting transcript. I find that this highlighting was done after the 25 May Memorandum, and most probably on Sunday 2 or Monday 3 June 2013. When the 25 May Memorandum was sent the journalists had only had the Meeting transcript for just over 12 hours. They had clearly been focusing on the House of Lords story. They must have continued to do so until at least Saturday 1 June. It was not until the evening of Monday 3 June that Ms Blake emailed herself a highlighted copy of the Meeting transcript (the Highlighted Transcript).

114. A draft of the main news story that became the Front Page Article was in existence by 13:35 on Wednesday 5 June, when Ms Blake emailed that draft to Mr Hymas "with transcript attached (key passages in yellow)". This was the Highlighted Transcript. This was earlier than would be normal, and gave editors extra time to review the detail of the story. By the early hours of Friday 7 June both Ms Blake and Mr Calvert had produced more polished draft copy, as can be seen from emails each sent to herself/himself at 00:17 that day. Mr Calvert had prepared a draft of the Front Page Article, and Ms Blake a draft of the Inside Article. A version of the Front Page Article was sent by Mr Calvert to the Managing Editor, Mr Hymas, just before 6pm that Friday. Mr Hymas sent it to the editor, Mr Ivens, in a form which had "been through the lawyers", at 20:42.

The Front Up Letter

115. This was sent by hand to Mr Yeo's constituency and London addresses, and to two email addresses. The emails were sent at 21:12, about half an hour after Mr Calvert's "legalled" copy had gone to the Editor. A first, partial, draft of this letter, consisting of four paragraphs, had been prepared by Mr Calvert in the early hours and emailed to himself at 00:17, the same time as he sent himself the first draft of the Front Page Article. Evidently, this draft letter was developed over the course of the day, in parallel with work on the articles. The final version of the letter was considerably longer. The significant parts for present purposes were these:

> "Dear Mr Yeo,
>
> The Sunday Times is preparing an article for publication this weekend which will contain details of your meeting with representatives of a company called Coulton and Goldie over lunch on May 21 2013. The company was offering to hire you to provide Parliamentary services for a solar energy client pushing for new laws to benefit its business, and to act as a paid advocate for that client both in Parliament and in your dealings with the government. These services would be a breach of the MPs' code of conduct. But you said you were interested in taking on the role and said you could commit at least one day a month – for which you were offered a consultancy fee of £7,000. You agreed that was in the right ball-park, but that you may

wish to negotiate further if you felt you were offering good value.

… The representatives explained that they were interested in hiring you because they wished to create a favourable policy environment for the launch of their renewable energy product in the UK and you are the chairman of the key select committee for the renewables sector. You explained that you could not be seen to advocate for the company publicly because your position on the select committee would give rise to accusations of a conflict of interest. But you explained that you would be able to advocate for them privately. You told them that you could help them influence policy and provide them with introductions to government ministers and civil servants. You could also use intelligence gathered from your network of contacts in politics and government. As you know, the code of conduct forbids MPs from paid advocacy, or using confidential information acquired from their role in Parliament for commercial gain. Approaching ministers with a view to conferring exclusive benefit upon a client, or private business interest, is banned. Why did you agree to offer these services when they are banned under the rules?

As an example of how you could privately help Coulton & Goldie's client, you explained that you had privately tutored John Smith, the chief executive of Great British Rail Freight, on what he should say when giving evidence to your committee o the morning of May 21. As you explained GB Rail Freight is a wholly-owned subsidiary of Eurotunnel, of which you are a paid director and shareholder.

… Why did you help Mr Smith promote his company's agenda – namely its objection to new levies on freight trains – to promote your own committee when you are a paid director of his parent company?

… The Sunday Times will be reporting the above details as matters of significant public interest and concern. Please respond by email to the questions set out I this letter, and any other point you wish to make on the information herein, at the latest by 4pm on Saturday so that we can reflect your reply in our article.

Yours sincerely,

Heidi Blake and Jonathan Calvert

Sunday Times Insight Team"

116. Mr Yeo was alerted to the *Sunday Times* email shortly after it was sent, as a text was sent to him at 21:14, asking him to confirm receipt. He was driving home at the time, but was unsettled by the text, forgot to fill up with petrol and ran out. He was rescued by his wife, who brought a petrol can. He read the email when he got home, at about 11:30. He was horrified. He started to draft an email and spent some time doing so, but decided it was appropriate to get legal advice. He phoned Mr Stephenson of Carter-Ruck, who was available on the Saturday morning. He emailed Mr Stephenson a copy of the *Sunday Times* letter, and between about 9am and 4pm on the Saturday he gave instructions over the phone.

The Pre-Publication Letter

117. It is not necessary to set out the whole of Carter-Ruck's lengthy letter, sent at 16:02 on 8 June, but as it set out a case which is in large part the same as the one that Mr Yeo has advanced at this trial it is convenient to quote a good deal of it. The letter began by complaining that insufficient notice had been given:

> "Your letter relates to a meeting which took place between our client and two undercover journalists posing as representatives of a fictitious public relations company, 'Coulton and Goldie Global', on 21st May 2013, that is 18 days ago. Yet your lengthy letter to our client was only received by him by email from Heidi Blake timed at 21.12 hrs yesterday, Friday night, and calls for a response from him by 16.00 hrs today, Saturday afternoon. This is a totally unreasonable and unacceptable deadline to expect a full and considered response …"

118. Carter-Ruck did however go on to provide this response to the substance of the allegations outlined in the Front Up Letter:

> "Our client denies absolutely that he has acted in breach of the MPs' Code of Conduct and does not accept, despite the attempts in your letter to suggest otherwise, that there is any evidence from his meeting with the undercover journalists that he was prepared to do so, still less that he either offered or agreed to do so. We are instructed that your letter, which we note includes no direct quotes from our client at all, selects and distorts from their proper context matters discussed at the meeting.
>
> There was nothing whatsoever in the email which our client received on 13 May, ostensibly from 'Coulton and Goldie Global' to indicate that the approach to him would involve anything improper on his part with regard to his responsibilities as an MP. …
>
> Accordingly, our client, for his part in good faith, agreed to meet with the undercover journalists over lunch on 21 May. As far as he was concerned, the meeting was for the purpose of no more than a preliminary discussion for him to

find out more about what appeared to be a worthy cause and the extent, if any, to which he might assist. We are instructed that at no point was it put to him that the company was (as you assert in your letter) '*offering to hire*' him '*to provide Parliamentary services for a solar energy client pushing for new laws to benefit its business, and to act as a paid advocate for that client both in Parliament and in* [our client's] *dealings with government*' Had any such matters been raised with him, each of which would amount to a breach of the MPs' Code of Conduct, he would have made it clear that he was neither able nor willing to assist, as we are instructed he did (although your letter omits any reference to this) when the possibility of setting up a new APPG, and the recruitment of members for such a Group, was raised with him.

Our client is confident that the full, unedited recording of his interview with the journalists – a copy of which we invite you to produce to us – will confirm that he neither offered nor expressed any willingness to act in any way contrary to the MPs' Code of Conduct. Following the meeting with the undercover journalists, however, he concluded that what had been suggested to him, albeit obliquely, would amount in his view to an impermissible 'lobbying' role. For this reason, before on 22 May he received the email from 'Coulton and Goldie Global' informing him that his 'services' would not be required by their client and before he had any suspicion that the representatives of 'Coulton and Goldie Global' were not who they claimed to be, our client had decided to withdraw from further discussion and by email the same day suggested that they might look instead for a public affairs company to assist them ...

It appears from your letter that the Sunday Times seeks, by referring selectively to matters discussed at the meeting with the undercover journalists, shorn of the context in which the conversation took place, to convey the wholly misleading impression that our client was willing, for payment, to flout the rules of Parliament. Our client firmly denies that there is any justification for the publication of any suggestion to this effect.

Your letter raises a couple of further specific issues, which in view of the limited time you have chosen to allow our client with the unreasonable deadline you have imposed for his response, we will address only briefly.

1. Our client denies that he has ever or would ever act as an

> advocate in Parliament for any company or organisation with which he is associated, whether for payment or otherwise.
> 2. Our client denies that he ever 'tutored' ('privately' or otherwise) John Smith, the chief executive of GB Rail Freight (or anyone else) on what he should say when giving evidence to any select committee …
> …
>
> 5. Our client denies that he ever offered to commit one day a month to helping 'Coulton and Goldie Global'.
> 6. Our client does not accept your claim that a preliminary exploratory and inconclusive conversation over lunch constitutes an agreement or an offer of services …
>
> Should the Sunday Times publish any allegation to the effect that our client offered or was willing to act in breach of the MPs' Code of Conduct, we are instructed that he will take whatever steps he considers appropriate, including legal action if necessary, to defend his reputation."

119. Over the 40 minutes following receipt of the Pre-Publication letter TNL created a 150-word summary of Mr Yeo's position as set out in that letter ("the Yeo Rebuttal Summary"). Ms Blake sent that summary to Mr Calvert by email at 16:44.

The Articles of 9 June 2013

120. It is convenient to set out here the key parts of the articles as published: those that I identified in my August 2014 judgment as the principal sources of the defamatory meanings that I found. I found (at [111] [114]) that the defamatory factual sting derived mainly from the following:

(1) In the Front Page Article (which was 27 paragraphs long in total):

> "[10] The reporters approached Yeo posing as representatives of a solar energy company offering to hire him as a paid advocate to push for new laws to boost its business for a fee of £7,000 a day.
>
> [11] He told them he could commit to at least one day a month, despite the fact that he already held four private jobs and was in negotiations to take a further two. Setting out what he could offer, the MP said: "If you want to meet the right people, I can facilitate all those introductions and I can use the knowledge I get from what is quite an active network of connections."
>
> [12] Asked if that extended to government figures, Yeo replied: "Yes."

> [13] The House of Commons code of conduct forbids members from acting as paid advocates, including by lobbying ministers.
>
> …
>
> [15] Yeo is the latest politician to be implicated in the "Westminster for sale" scandal that has engulfed Parliament after The Sunday Times revealed last week that three peers had agreed to ask Parliamentary questions, lobby ministers and arrange events in the Lords for paying clients.
> …
> [24] The MP denied offering to provide Parliamentary advice or advocacy, which he said were roles he had never performed for any company, because he said that would be a breach of the code."

(2) The Inside Article (57 paragraphs long in all):-

> "[8] Unfortunately for Yeo, the two strangers he chose to let in on his secret were undercover reporters from The Sunday Times who were filming him on hidden cameras as he explained how he could secretly help push private business in Parliament for cash.
> …
> [10] House of Commons rules ban MPs from accepting "any fee, compensation or reward" in connection with the promotion of any matter "submitted, or intended to be submitted . . . to any committee of the house".
> …
>
> [16] They had contacted him out of the blue to ask if he would meet them to discuss becoming their point man in the Commons, paid to use his position to push for new laws to benefit their business.
>
> [17] MPs are forbidden to act as paid advocates in Parliament, which includes making any approaches to ministers, civil servants or other MPs to promote a private agenda for cash.
>
> …
>
> [20] Sipping on a cranberry and apple smoothie and tucking into a deluxe bento box, Yeo began his sales pitch. He told the reporters he could advocate for their company behind the scenes, introduce them to ministers and guide them on submitting evidence to his own committee."

121. The main features of the 9 June articles that conveyed the defamatory comment were identified at [107]-[108] of my August 2014 judgment. Chief among them were the explicit comment in paragraph [15] of the Front Page Article, above, that Mr Yeo was "implicated" in a "Westminster for Sale scandal", and the word "Lobbygate" in the Front Page headline ("Top Tory in new Lobbygate row").

122. Other parts of the articles that contributed to the defamatory comment depicted Mr Yeo as "boasting" of having coached a witness to the ECCSC; set out his financial interests (these, detailed above, were explained graphically across the Inside pages); and cast doubt on his claims that his views as an MP had been uninfluenced by those interests:

(1) The Front Page Article:-

> "[1] THE Tory MP in charge of scrutinising new energy laws has been caught boasting about how he can use his leadership of a powerful Commons committee to push his private business interests.
>
> …
>
> [8] Yeo has earned about £530,000 from private firms since taking over the committee in 2010, and has shares and options worth about £585,000 in low-carbon companies that have employed him.
>
> [9] He has always insisted that his views as an MP have "never been influenced at any time or in any way by my financial interests".
>
> …
>
> [18] Yeo was waiting for the reporters in Mayfair's exclusive Nobu restaurant when they arrived for the hastily arranged meeting last month. It was a busy day in Parliament for the MP, who was still wrapping up a hands-free phone call as the group shook hands."

(2) The Inside Article:

> "[1] Tim Yeo watched silently as the sharp-suited freight executive testified to his powerful committee of MPs in the House of Commons.
>
> …
>
> [6] At a lunch immediately after the hearing with two strangers offering him a new job as their Parliamentary advocate and adviser, Yeo could not resist boasting about what he had done. As he explained what he was willing to do for them behind the scenes, he confided: "This morning I had a case, in front of the committee we had a company

> called Great British Railfreight who have big contracts for moving coal and biomass around the country. And I said, because GB Railfreight is a subsidiary of Eurotunnel, I could not ask this guy any questions in public because it would look as though I might be biased about that. But what I do for him in private is another matter altogether, obviously."
>
> …
>
> [11] … the reporters …
>
> [12] … had spoken to a number of companies and peers about how to buy their way into the heart of Parliament. When they inquired about who they should be speaking to on the subject of green energy, Yeo's name kept coming up.
>
> ...
>
> [14] … the 68-year-old MP has been dogged by repeated allegations that he is compromised by his array of green business roles, which have proved lucrative. …
>
> [15] Yeo has always strenuously denied that his extensive business interests affect his conduct in Parliament in any way. But his remarks to the reporters during a 90-minute lunch meeting suggested otherwise.
>
> …
>
> [19] The morning's committee hearing would be followed by meetings with the energy and climate change secretary, his junior minister and the department's permanent secretary that afternoon. But that did not stop him finding time to squeeze in lunch with some potential new business clients."

123. Paragraph [24] of the Front Page Article (see [120(a)] above) was part of the Yeo Rebuttal Summary. The whole of that Summary was included in the Front Page Article. In full, it read as follows:

> "[22] Yeo last night denied "absolutely" that he had breached the MPs' code of conduct, or offered to do so in the meeting with the undercover reporters.
>
> [23] He said the meeting had only been a "preliminary discussion" about what appeared to be a worthy cause, and denied having committed to working for the reporters' fake company for one day a month.

> [24] The MP denied offering to provide Parliamentary advice or advocacy, which he said were roles he had never performed for any company, because he said that would be a breach of the code.
>
> [25] He said that he had not tutored Smith on what he should say to his select committee.
>
> [26] Yeo said he had decided to withdraw from any further discussions with the reporters before receiving their email on the morning of May 22 because he had concluded that what they were suggesting he do for their company amounted to "an impermissible lobbying role"."

124. The online text of the 9 June articles was in substantially the same terms as the printed version, except in two respects. Once Mr Yeo had issued a post-publication statement denying the allegations in the articles, text was inserted in the online versions. This recorded that the article was the subject of a complaint by Mr Yeo, and that there was no suggestion that Mr Yeo had broken any law. In addition, Mr Yeo's ten paragraph statement was reported word-for-word online: see [123] of my August 2014 judgment. The online versions of the articles also included a video clip showing extracts of the audio-visual recording of the Meeting, to which some reference has been made at the trial. I note however that it was not relied on at the meaning trial: see my judgment on meaning at [124]. As already mentioned, I did not consider that the online material bore any different meaning from the print copy.

Defences: the 9 June Articles

125. In opening, Mr Browne submitted that each of the three defences relied on raises at its core the same factual issue: can it be deduced from what Mr Yeo said at the Meeting that he was "prepared to act and had offered himself as willing to act in breach of the Commons Code of Conduct as a paid Parliamentary advocate"? The wording in quotation marks comes, of course, from the defamatory factual meaning I have found. I am not at all sure, however, that this is a correct or helpful analysis. I agree that if the answer to Mr Browne's question was "no", *Reynolds* and justification would inevitably fail. The same is not true, I think, of the honest comment defence. Be that as it may, the actual issues for the purpose of justification and *Reynolds* are different from the one identified in Mr Browne's question.

126. The issue raised by the plea of justification is not whether the truth of the imputation *can* be deduced from what Mr Yeo said but whether the court *should* conclude that the imputation *is substantially true*. And, as Mr Browne points out in another part of his argument, for this purpose the court will consider not only what was said, and how it appeared, but also Mr Yeo's evidence about his state of mind. What the journalists thought is immaterial here.

127. Mr Browne's question comes closer to identifying a factual issue raised by the *Reynolds* plea, but not close enough, in my view. By the end of the trial it had been accepted that the journalists and editors did believe that it was in the public interest to publish the relevant material. The journalists' honesty has not been in

issue, and their unchallenged evidence is that they believed in the truth of meanings not far from the ones I have found (I refer to paragraphs 94 of Mr Calvert's statement and 88 of Ms Blake's). So the relevant question is better expressed in the way Mr Browne put it in his written closing: was the journalists' belief a *reasonable* one, based on a *reasonable* investigation? Mr Yeo's actual state of mind is immaterial here. I explore this issue further in the next section of this judgment, as it seems to me convenient to take the question of *Reynolds* privilege first.

Reynolds privilege

128. This defence sets a lower threshold than justification. It should be less challenging to establish that the articles represented responsible journalism on a matter of public interest than to prove their substantial truth. If I uphold this defence TNL will succeed on the defamatory factual imputation whether or not I find justification established. Conversely, on the facts of this case, if *Reynolds* fails it is hard to see how justification could succeed. (That did happen in *Grobbelaar v News Group Newspapers Ltd* [2002] UKHL 40, [2002] 1 WLR 3024, but journalism which is irresponsible yet manages to convey information which is substantially true must in the nature of things be rare.) Further, I need to consider whether as TNL contend *Reynolds* affords a defence for the defamatory comment.

The public interest

129. I have no hesitation in concluding that these articles satisfy the first stage of the public interest test: the articles as a whole concerned a matter of public interest. The subject-matter can be variously described, and Mr Browne has aimed some well-targeted blows at some of the descriptions relied on by TNL. However, at the general level the subject-matter of the articles can be described as whether current, and admittedly legitimate, concerns about the standards of behaviour of Parliamentarians in relation to lobbying by commercial organisations were justified. It is to my mind beyond argument that this was a topic of real and abiding public interest at the time of publication. In addition to the third party media reports identified above, and the *Sunday Times'* own report of 2 June 2013, it is of relevance to note that in January 2013 the Nolan Committee had warned in its Fourteenth Report that lobbying remained a significant and continuing risk to ethical standards and on Friday 7 June 2013 it had issued a call for evidence on *Transparency in Lobbying*. It referred to amplified concerns about the issue following "a number of political scandals linked to lobbying over the last five years."

130. Mr Browne draws attention to the warning of Eady J in *McKeith v News Group Newspapers Ltd* [2005] EWHC 1152 (QB), [2005] EMLR 32 [55], that one needs to focus the question about public interest, and not approach the issue on the basis that "one may publish anything under the cloak of privilege provided only that … the subject-matter is of interest to the public in general terms." I do not find this a helpful citation in the present context. The decision is one that pre-dates both *Jameel* and *Flood*. The point made by Eady J is plainly correct, but the answer to it is that, as Lord Hoffmann explained in *Jameel*, one needs to examine not only the public interest in the general subject-matter of the article but also the public

interest in the publication of the specific information complained of. Eady J himself acknowledged this in the same passage, and at [56].

131. When considering, at this second stage of the public interest test, whether the defamatory material should have been included in the article "allowance must be made for editorial judgment" and the fact that reasonable minds may differ on such a question: *Jameel* [51] (Lord Hoffmann). This is not merely a question of making allowance for editorial choices as to how material should be presented. It is well-established that Claimants and the court must tolerate a degree of exaggeration or even provocation in the way the press expresses itself. But allowance also has to be made for editorial choices about content, as Lord Mance made clear in *Flood* at [137]:

> "The courts therefore give weight to the judgment of journalists and editors not merely as to the nature and degree of the steps to be taken before publishing material, but also as to the content of the material to be published in the public interest. The courts must have the last word in setting the boundaries of what can properly be regarded as acceptable journalism, but within those boundaries the judgment of responsible journalists and editors merits respect. This is, in my view, of importance in the present case."

132. Again, it seems to me that the answer to the question of whether it was in the public interest to include the particular information at issue here is obvious. Information to the effect that Mr Yeo had offered and was willing to act as a paid Parliamentary advocate was, if well-founded, plainly pertinent to the general subject-matter of the article. The decision to include it was plainly a legitimate exercise of editorial discretion, provided the conclusion that the information was accurate was one that had been properly and reasonably arrived at. The real issue on this *Reynolds* defence is in my judgment whether TNL survives the third stage of enquiry identified by Lord Hoffmann in *Jameel* at [53]: the responsible journalism test.

Responsible journalism

133. Some important general principles relating to this third stage are clear, and not in dispute:

(1) "The question in each case is whether the Defendant behaved fairly and responsibly in gathering and publishing the information": *Jameel* [54] (Lord Hoffmann).

(2) For this purpose "the information" is the particular defamatory information which is the subject of the claim. As Mr Browne puts it, referring to *Pinard-Byrne v Lennox Linton* [2015] UKPC 41 [31], "the focus of the responsible journalism element of the defence is the defamatory allegation".

(3) Some latitude must be allowed for reasonable differences of view on precisely what the allegation is: see *Bonnick v Morris* [2003] 1 AC 300. More generally, "the existence or otherwise of *Reynolds* privilege must be judged on the facts as they reasonably appeared to the journalist at the time." *Flood* [177] (Lord Mance).

(4) Lord Nicholls' well-known non-exhaustive ten point list in *Reynolds* is an important guide but not a set of "tests which the publication has to pass"; the standard of conduct must be applied in a "practical and flexible manner": *Jameel* [56] (Lord Hoffmann, approving observations of Lord Nicholls in *Bonnick* at [24]).

(5) Thus, the nature and extent to which verification is required is a fact-sensitive issue. The publisher must have taken the care that a responsible publisher would take to verify the information, but this depends on the nature and source of that information: *Jameel* [149] (Baroness Hale).

(6) Further, a publication may be held protected by *Reynolds* privilege even if the journalistic exercise has in some respect fallen short of the standards to be expected of a responsible journalist. This is what happened in *Bonnick*, as pointed out by Lord Mance in *Flood* [130]. As Lord Mance pointed out at [131], the position must be looked at in the round; it may not be appropriate to focus too closely on particular ingredients which have or have not been included in a composite story. Lord Mance cited Lord Bingham's words in *Jameel* [34]:

> "This may, in some instances, be a valid point. But consideration should be given to the thrust of the article which the publisher has published. If the thrust of the article is true, and the public interest condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue."

(7) The reference here to the thrust of the article being "true" may not be quite apposite in this context. But where the defamatory allegation is that the Claimant is guilty of some misconduct, and the public interest lies in the fact that this is or may be true, a *Reynolds* defence is unlikely to "get off the ground" unless the journalist "honestly *and reasonably* believed" that the statement was true: *Flood* [78]-[79] (Lord Phillips) (emphasis added). Lord Mance put it this way in *Flood at* [177]: "any journalist who publishes allegations must consider carefully the public interest in doing so and the terms in which he does so, at a time when the allegations have not been investigated or their accuracy determined, and weigh these against the risk of unjustified damage to the reputations of those affected". The privilege "is not available where there is some indication that the professional judgment of the editor or journalist was made in a 'casual, cavalier, slipshod or careless manner' " per Lord Bingham in *Jameel's* case": *Flood* [196] (Lord Dyson).

134. Mr Millar submits that *Reynolds* is not about the journalistic process but about the substance of what was published. I do not think that can be right. It follows from principle (1) above that I must examine the process by which the defamatory factual imputation came to be published. I accept however that what needs examination is the *relevant parts* of the process. It is not necessary to ask whether every aspect of the process was carried out to perfection. I must concentrate on the imputation and the parts of the articles that give rise to it, as identified above. These are a relatively small part of the articles as a whole. These contained 84 paragraphs in all, ranging over a number of separate and distinct facets of Mr Yeo's conduct. One such facet, for example, is what has been called "the coaching allegation": the suggestion that Mr Yeo had coached a witness on how to present his evidence to the ECCSC, when the witness was a director of a subsidiary of Eurostar, and Mr Yeo a paid director of the parent company. This suggestion features in the Front Page Article sub-headline or "standfirst", and in its first paragraph. It provides the headline of the Inside Article, and occupies the first ten paragraphs. But it is separate and distinct from the imputation of paid Parliamentary advocacy: see [2014] EWHC (QB) [118]-[119]. So I need not look at those aspects of the articles.

135. The need to examine the journalistic process does not require examination, either, of the authorisation for the undercover operation, the legitimacy of which is no longer in issue. It does include consideration of what the journalists knew and believed about Mr Yeo's conduct, and whether it was reasonable and responsible for them (a) to hold the beliefs they did about the facts, and (b) to publish what they did. Subject to the key issue of relevance, I accept Mr Browne's submission that the steps taken in the course of the investigation and in the preparation and publication of the Articles are all relevant. That includes the process of editorial oversight.

136. There are some further general points to be made about my approach to these questions:

(1) This is not a case where there is any issue of source verification. The central issue concerns the interpretation and treatment of material which is of itself of unquestioned veracity: the recordings and transcripts of the Meeting, and the exchanges between the journalists and Mr Yeo which led up to and followed the Meeting.

(2) I bear in mind the need for caution when interpreting conduct that responds to the actions of an *agent provocateur*. This is a factor of which a responsible journalist should be aware.

(3) I also accept Mr Millar's submission that I should make some allowance for the fact that the journalists were at the lunch, observing Mr Yeo "live", and with a better view than the recordings provide.

(4) Any assessment of what is reasonable and responsible must take account of the potential harm to Mr Yeo's reputation, of which the journalists must have been well aware. It must take account also of the political nature of the information.

(5) The court is required to interpret and apply the *Reynolds* defence in a way that is compatible with the Convention and, in doing so, to have regard to relevant Convention jurisprudence. The defence was developed just before the requirement to act compatibly with the Convention became part of English domestic law, pursuant to the Human Rights Act, but under the influence of the Convention. The "public interest" and "responsible journalism" requirements of *Reynolds* flow from the principles established in Strasbourg.

(6) So I must take account of the Strasbourg Article 10 jurisprudence on the importance of political speech, and I should address the questions, hotly debated between Counsel, of whether Article 8 is engaged in this case, and whether or not it matters to the outcome if it is.

137. As is well known, the Strasbourg Article 10 case-law exhibits a hierarchy of types of speech, with the highest value attributed to speech on political matters. Interference with speech of this kind requires clear and cogent justification. The Convention jurisprudence on this point goes back to the well-known case of *Lingens v Austria* (1986) 8 EHRR 407 where the Court emphasised at [42] that:

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

138. Lord Dyson echoed this approach in *Flood* when he said at [195]:

> "In my view, it is necessary to distinguish between allegations made against ordinary individuals and allegations made against persons who perform public functions (especially where they are about the alleged performance of those functions). I would accept that the danger of trial by press without proper safeguards will often weigh heavily against the publication of the details of an accusation against an ordinary individual. But where the

> accusation is of crime or professional misconduct by a person in his performance of a public function, I do not think that the danger of trial by press without proper safeguards weighs heavily, still less conclusively, against publication."

139. A convenient summary of well-established principles may be found in *Hrico v Slovakia* (2005) 41 EHRR 18, where the Court held that the award of damages for defamation to a Slovakian judge involved a violation of Article 10. At [40] the Court reiterated:

> "… the following fundamental principles in this area:
>
> …
>
> (e) The press plays an essential role in a democratic society. Although it must not overstep certain bounds, regarding in particular protection of the reputation and rights of others… its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest… Not only does it have the task of imparting such information and ideas, the public also has a right to receive them…
>
> …
>
> (g) There is little scope under Art.10(2) of the Convention for restrictions on political speech or on debate on questions of public interest…"

The *Reynolds* requirements of public interest and responsible journalism reflect principle (e).

140. I turn to whether Article 8 of the Convention is engaged in this case, and whether it matters if it is or not. It is clear in my judgment that the answer does make a difference in principle to the approach that should be taken. If Articles 8 and 10 are both engaged, they must be treated as inherently equal in value. The decision-making process involves the well-known parallel analysis or "ultimate balancing test" identified in *Re S (A Child)* [2004] UKHL 47, [2005] 1 AC 593 [17] (Lord Steyn). If only Article 10 is engaged, the approach is the one identified by the European Court in *The Sunday Times v United Kingdom* [1992] 14 EHRR 229 [50(a)]: "Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established." On this approach, the following words of Lord Nicholls in *Reynolds* at 205 are applicable:

> "Above all, the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a bloodhound as well as a watchdog. The

> court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know, especially when the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication."

141. It is clear from the Strasbourg and domestic jurisprudence that a defamatory publication can engage the right protected by Article 8(1) to respect for private life. It is also tolerably clear that not all defamatory publications will do so. I do not consider that the cases justify Mr Browne's submission that "Article 8 is engaged in the present case because the seriously defamatory attack on the Claimant's political conduct suggests a fundamental lack of personal integrity (in the sense the word is used in common English parlance.)

142. The case on which Mr Browne principally relies, *Pfeifer v Austria* (2009) 48 EHRR 8, contained no detailed discussion of the issue, which was not in dispute between the parties: see [35]. The decision in *Pfeifer* is probably correct, given the nature of the defamatory attack in that case (an allegation that the applicant had so grossly hounded an academic as to drive him to suicide) and the later jurisprudence, cited below. The same may be true of *Petrina v Romania* App No. 78060/01, 14 October 2008, to which Mr Browne also refers. In the light of the later jurisprudence, however, the reasoning in these two cases should in my view be regarded as unorthodox.

143. Three relevant criteria emerge from the cases. One is whether the activity about which information is disclosed (or to be disclosed) is of such a nature as to fall within the scope of "private life", so that Article 8 is "engaged". There is a zone of interaction with others in public places which falls within that scope but some public activities, such as rioting do not: *Re an application by JR38 for Judicial Review* [2015] UKSC 42, [2015] 3 WLR 155 (a case about privacy rather than defamation, but nonetheless important in this context). A second criterion is the status of the individual concerned. Article 8 affords politicians carrying out their public or official functions limited protection against media coverage: see *Krone Verlag GmbH & Co KG v Austria (No 2)* (App no 34315/96), judgment of 26 February 2002 [37].

144. The third criterion is whether the publication undermines "personal integrity" as distinct from merely harming reputation. The distinction was addressed in *Karakó v Hungary* (App no 39311/05), judgment of 28 April 2009:

> "22. Concerning the question whether or not the notion of "private life" should be extended to include reputation as well, the Court notes that the references to personal integrity in the *VonHannover* judgment reflect a clear distinction, ubiquitous in the private and constitutional law of several Member States, between personal integrity and reputation, the two being protected in different legal ways. In the legislation of several Member States, reputation has traditionally been protected by the law of defamation as a matter related primarily to financial interests or social status.

> 23. For the Court, personal integrity rights falling within the ambit of art 8 are unrelated to the external evaluation of the individual, whereas in matters of reputation, that evaluation is decisive: one may lose the esteem of society—perhaps rightly so—but not one's integrity, which remains inalienable. In the Court's case law, reputation has only been deemed to be an independent right sporadically (see *Petrina v Romania* [2008] ECHR 78060/01, 14 October 2008, and *Armoniene v Lithuania* [2008] ECHR 36919/02, 25 November 2008) and mostly when the factual allegations were of such a seriously offensive nature that their publication had an inevitable direct effect on the applicant's private life. However, in the instant case, the applicant has not shown that the publication in question, allegedly affecting his reputation, constituted such a serious interference with his private life as to undermine his personal integrity. The Court therefore concludes that it was the applicant's reputation alone which was at stake in the context of an expression made to his alleged detriment."

145. The distinction is slightly elusive from the perspective of a common lawyer, but it does seem clear that a defamatory attack would not be considered as "undermining personal integrity" in the sense that phrase is used in this context merely because it was a substantial assault on a person's honesty. The word "personal integrity" in this context appears to have connotations of "wholeness". A defamatory attack can, it appears, undermine personal integrity if it has "an inevitable direct effect" on private life which is quite severe, such as ostracisation from a section of society. In *Re Guardian News and Media* [2010] UKSC 1, [2010] 2 AC 697 *Karakó* was considered by the Supreme Court. Lord Rodger summarised the European court's approach at [42]:

> "… the European court was concerned with the application of arts 8 and 10 in a situation where, in the court's view, the applicant had not shown that the attack on his reputation had so seriously interfered with his private life as to undermine his personal integrity. In fact, the court does not mention any specific effects on the applicant's private life."

146. The position of applicant "M" in the case before the Supreme Court was distinguished on the basis of evidence about the effect on his relationship with other members of his community if it became known that he had been designated as a suspected terrorist. It was said in particular that this "may lead to a loss of contact, for himself and his children, with the local Muslim community who may fear to be associated with him": see [21], [42]. In *Axel Springer v Germany* (2012) 55 EHRR 6 [83] the Strasbourg court revisited the issue saying this:

> "In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life."

147. Applying these principles to the evidence in the present case the key factors to my mind are these. The claimant was a serving MP, and a Committee chair. The articles related wholly and exclusively to his conduct in those public roles, and not in any way to his private or personal life. I do not consider that the nature of the information is such as to engage Article 8. Further, Mr Yeo is unsurprisingly a robust individual and, although I have no doubt he has suffered considerable stress and anxiety as a result of publication there was, on the evidence, no interference of any seriousness with his family or home life, or with his relationships within his community. In summary, this was a disclosure that related to his public roles, not his private life. The consequences for him of the attack on reputation that was involved were not of a nature or gravity such as to engage Article 8; his "personal integrity" was not undermined. It follows that in my judgment the right approach in principle is the one indicated by the European Court in the *Sunday Times* case and by Lord Nicholls in *Reynolds* itself.

148. Approaching, in the light of these conclusions, the question of whether TNL's conduct in gathering and publishing the defamatory information was responsible, I find that the requirement of responsible journalism is comfortably met. I would have reached the same conclusion even if I had taken the view that Article 8 was engaged, as I agree with Mr Millar that on that footing the Article 8 right concerned could not be given any great weight.

149. I explain the detail underlying these conclusions in the paragraphs that follow. In broad summary, however, my findings are these.

(1) This was a reasonable journalistic investigation on a topic of considerable public interest, which was undertaken in good faith, and in accordance with the ethics of journalism. The journalists believed what they said; their belief was based on a reasonable and responsible investigation; and it was a reasonable belief to hold.

(2) For the most part, the criticisms advanced by and on behalf of Mr Yeo were not made out. I regard as unwarranted on the evidence the overall case for Mr Yeo, that "at every stage the journalists were blinkered by prejudice"; that "almost everything that pointed away from [Mr Yeo's] guilt was ignored, dismissed as irrelevant or, worse, dismissed as disingenuous." Mr Browne's careful cross-examination and minute critique of the process has certainly shown that the journalistic exercise could have been done differently; but that is not the issue. To the extent that valid criticisms have been made, these have fallen well short of undermining the overall case in favour of protecting this exercise in political speech. Taken in the round the defence must be upheld.

150. It is convenient to start by identifying aspects of TNL's conduct that are not the subject of criticism. The decision to investigate Mr Yeo is not challenged, nor is the decision to use subterfuge for the purpose. The journalists' honesty has not been impugned. It is accepted that they intended to make clear to Mr Yeo at the Meeting what it was that they wanted him to do for CGG. It is accepted that they believed their story to be in the public interest. Their evidence of what they believed to be the factual position has not been challenged. Nor has their evidence of what they intended their articles to mean.

151. The essence of that evidence is, in the case of Ms Blake, that "The core of the articles was that we were telling the reader that, in return for a fee of £7,000 per day, Mr Yeo had offered to act as a Parliamentary advocate for a private client which had a clear conflict of interest with his public role as chairman of the ECCC. … We also sought to explain to the reader that what he had offered to do would have been a breach of the MPs Code if he had followed through…" Mr Calvert considered the thrust of the articles to be: "that Mr Yeo had sold himself to us as someone who was willing to help push the business interests of our fictional company within government in return for a sizeable fee; and that if he had gone on to do what he offered at our meeting he would have broken the MPs' Code…" These are not the same as one another, nor are they the same as the meaning that I have found the words to bear, but they are similar, and well within the bounds of reasonableness as described in *Bonnick.*

152. The question for consideration when examining each stage of the journalistic process is therefore whether the admittedly honest beliefs and other relevant conduct of the journalists and TNL staff concerned were or were not reasonable and responsible. It is convenient to consider each stage in turn.

153. **The investigation.** Whilst disavowing any criticism of the decision to investigate, or to use subterfuge for that purpose, Mr Browne criticises what he says was a failure to focus on the Code or the Nolan principles. The Proposal contained no analysis of the Code, or the principles, nor anything about the distinction in the rules between advice and advocacy; there was therefore a failure properly to address the issue of what public interest there was. Further, the Revised Proposal failed to flesh out the detail as had been requested. This second submission is ill-founded. The Revised Proposal did "flesh out" the section on Mr Yeo. As pointed out at [60]-[61] above, the document changed substantially between the versions and, in particular, gave more detail of the approach to be adopted and the public interest justification.

154. In my view Mr Browne's first submission comes perilously close to criticism of the decisions which Mr Browne says he is not attacking. In any event the arguments are overdone, and altogether too fine-grained. It is true that the Proposal did not give chapter and verse of the particular aspects of the Code that would be violated by the behaviour that was to be investigated. But that behaviour was not the giving of Parliamentary "advice" in any shape or form. The focus was on "lobbyists buying access and influence" in secret. It is not suggested that this is a description of activity that would comply with the Code.

155. In any event, Mr Browne's arguments represent in substance a misconceived attempt to test the Proposal against what emerged in the Articles. The Articles did address which rules would have been broken by the conduct in which Mr Yeo had shown willing to engage. It does not follow that those issues needed detailed consideration at the Proposal stage. At that point it was reasonable and responsible to consider that the public interest justified an investigation into what was taking place, after which it would be possible to address the extent to which this complied with the rules. As shown by *Lait v Evening Standard Ltd* [2011] EWCA Civ 859, 1 WLR 2973 and other cases concerned with the expenses scandal, it is a misconception to think that MPs cannot be legitimately criticised for conduct which falls within the rules.

156. Three main criticisms are made of the journalists' conduct in the lead-up to the Meeting. First, it is pointed out that the introductory email was vague, and certainly did not spell out that CGG were looking for lobbying services. This is not a valid criticism of the email. As Mr Calvert pointed out, it would have been absurd to spell out a request for lobbying in such a document. No real consultancy would do so, and the investigation would inevitably fail if such a clumsy approach was taken. However, Mr Browne's main point is that the journalists failed to appreciate one consequence of the form of approach they chose: that Mr Yeo's reason for accepting the lunch invitation might have been (as he has said it was) a genuine interest in the potential "breakthrough" described in the email, rather than the prospect of a generously paid consultancy. I accept that this did not in fact occur to the journalists, but I cannot agree that this was irresponsible or unreasonable. Nothing that Mr Yeo said in response to the introductory email or at the Meeting suggested that his interest lay solely or even mainly in the environmental benefits of the product. The Presentation at the Meeting lacked technical detail, but Mr Yeo asked no questions about the product.

157. Next, the journalists are criticised for showing eagerness to fix a lunch, whilst failing to appreciate the exculpatory significance of Mr Yeo's readiness to defer it, and to prioritise his pre-arranged visit to Drax power station: [65] above. This is criticism of a minor kind, which could not conceivably undermine a public interest privilege that would otherwise exist. But in any event I do not agree that it was Ms Blake who showed all the enthusiasm. It was Mr Yeo who, when phoned at an inconvenient time as he walked down Piccadilly in the rain, proposed a meeting "next week" and was willing to search his diary to find a suitable date. The behaviour of the journalists does not come close to being unreasonable or irresponsible. Nor does it support the general allegation of Mr Browne that they were approaching their task with a closed mind.

158. The third criticism of this phase of the process illustrates how microscopic an approach Mr Browne invites the court to take. He refers to Ms Blake's statement to Mr Yeo during the phone call of 14 May, that she would bring a briefing to the Meeting, which he could "take away so that [he] could have a think about it." He then points to evidence given by Mr Calvert in cross-examination, which described this as Ms Blake "filling in a little bit of extra detail ... by saying she will bring along this document which will tell him about the product *which he would be promoting in Parliament.*" The emphasis is Mr Browne's and highlights words that are criticised as "typically unfair."

159. I doubt that criticisms at this level of detail and subtlety have a proper place in a *Reynolds* trial. To my mind they could only do so if there was such an accumulation of reasonable points of this kind that they could be said, in the mass, to support an allegation of systematic bias or unfairness. There is no such accumulation in this case. This criticism is not even sound in itself in my judgment. From the journalists' perspective, the product was one that Mr Yeo was to be "promoting in Parliament". That is what they were seeking from him. It was certainly reasonable for them to conclude from what Mr Yeo said at the Meeting that he understood the intended role to be "promoting" a solar technology (see the concluding words in the passage at [88] above) and doing so in Parliament (see [93] above). If the criticism is that Mr Calvert's evidence implied

that Ms Blake had made it known to Mr Yeo as early as the phone conversation of 14 May 2013 that he "would be promoting [the product] in Parliament" it seems to me to over-interpret the evidence.

160. **The Meeting.** Each of the journalists gave a detailed account of how they had interpreted and understood what Mr Yeo said and did during the Meeting. The reasonableness of those interpretations was challenged in detail by Mr Browne, the main thrust of whose case can be fairly summarised in these ten points:

(1) The journalists failed to make clear to Mr Yeo what it was that they wanted him to do. Their "shopping list" was confusing, and they failed to stop to consider this.

(2) They placed far too much weight on the discussion about the Building Regulations, which was the only basis for the allegation that Mr Yeo was willing to "push for new laws". They failed to appreciate that Mr Yeo might have interpreted their own statements as relating to the European launch strategy, or that he might have thought it would be CGG rather than him who would be doing the persuading on this front.

(3) The journalists failed to consider, when the discussion turned to the APPG and groups of audience, that Mr Yeo might merely be offering his thoughts about a European launch strategy rather than offering help with Parliamentary lobbying activities.

(4) Mr Calvert adopted an unreasonable interpretation of what Mr Yeo said about FITs. He took Mr Yeo to be explaining why it would be useful to have someone such as himself, who could talk to government. There is nothing to justify that interpretation.

(5) Reliance on what Mr Yeo had said about "getting them" to look favourably on planning applications specifying the new windows showed a "willingness to pounce on anything that put Mr Yeo in a hostile light".

(6) Ms Blake unreasonably interpreted Mr Yeo's words "it depends whether you are getting value" as an indication that he would want to negotiate the £7,000 a day fee upwards, and "gave no consideration to" a possible alternative interpretation.

(7) There was confusion in the description of what was wanted from Mr Yeo, and in particular a failure in the first question at [93] above to draw a clear distinction between advice and advocacy.

(8) The journalists' approach to the use of the term "advocate" was generally unclear and unreasonable. It is not responsible to "drop the word 'advocate' into conversation without making it crystal clear what they wanted Mr Yeo to do." The conclusions drawn by the journalists from what Mr Yeo said in response to questions about "advice and advocacy" were unreasonable.

(9) It was unreasonable and irresponsible to interpret what Mr Yeo said as including an offer to introduce CGG to Ministers. In fact, as the journalists themselves appreciated at the time, he had declined the suggestion that he might do that, and suggested that such an approach would be pointless.

(10) Ms Blake's interpretations of what Mr Yeo said in answer to her questioning about help he could give as Chair of the ECCSC ([98]-[99] above) are a clear indication of her "inability to view anything [Mr Yeo] said as pointing away from his impropriety."

161. I found the journalists responded to these criticisms in a way that was, in general, convincing both in its manner and in its content. Mr Calvert and Ms Blake both gave answers that responded directly to the questions posed. Subjected to what was, objectively speaking, severe criticism they conducted themselves courteously and fairly. The substance of their answers was clear and cogent. The cross-examination failed to elicit any support for the claimant's case theory that these were two one-eyed journalists intent on a story that denounced Mr Yeo, and blind to exculpatory material.

162. In my judgment the interpretations the journalists gave to what Mr Yeo said during this meeting were reasonable ones, reasonably arrived at. I agree that the explanation the journalists gave Mr Yeo of what was wanted from him could have been a little clearer than it was. It would have been better if advice and advocacy had been addressed separately. But Ms Blake responded reasonably, in my view, when she answered this criticism: "I think the two things have been clearly delineated rather than conflated…". The journalists were entitled to interpret the answer that was prompted by this question as showing that Mr Yeo had understood that he was being asked about advocacy. More generally, I do not accept that it was unreasonable of the journalists to draw the conclusions they did, about what Mr Yeo was willing to do, or the conclusion that this would have infringed the Code.

163. Of course, responsible journalists must take a fair-minded attitude and approach to the interpretation of what is said at such a meeting. But I do not accept that they are duty-bound to search out alternative interpretations, if these are far-fetched, speculative, or improbable. Improbable is the word I would use to describe the alternative interpretation of the state of mind in which Mr Yeo approached the Meeting that Mr Browne submits should have been addressed by the journalists: interested in the prospects of a technical breakthrough but not thinking at all of a job or the "generous remuneration" described in the introductory email.

164. I should deal specifically with two issues: the "new laws" point 160 (2) above) and the "Ministers" point 160 (9) above). Mr Yeo's case on the first is in my judgment a weak one. It cannot be argued with any force that it was unreasonable for the journalists to take the view that Mr Yeo was at the Meeting to discuss a well-paid consultancy job. By the time the building regulations were raised, it had been made clear via the Presentation that Haemosu solar glass was a market leader, with no real competition: see [75] and [76]. Changing the building regulations was identified during the discussion of Client Objectives as the first of the "things we're quite interested in trying to achieve". The reason for wanting the regulations to be changed to require solar glass was explained: "because we'd be

the market leader". The change would thus confer a benefit exclusively on Haemosu, according to what Ms Blake was telling Mr Yeo.

165. Mr Yeo took up the topic with apparent enthusiasm, identifying the objective as one that "will be one of the easy areas". True, Mr Calvert referred to having someone to "advise us" through all that (see [77]). But Ms Blake spoke about "trying to talk to government" ([79], [80]). And Mr Yeo identified "policy-makers" such as ministers and civil servants as one relevant audience sector: [81]. It is a legitimate interpretation of this part of the Meeting that Mr Yeo was expressing a willingness to help CGG and Haemosu "push for" changes in the building regulations (a process fairly described as the creation of "new laws"). Other parts of the conversation can be and were fairly and reasonably interpreted as expressions of willingness to provide this help by means of approaches to ministers and civil servants.

166. It is argued by Mr Browne, first, that Mr Yeo "had not explicitly mentioned Ministers when talking with his very close relationship with … key players 'in government and in the department'…. " This is true, but close to absurd. No explanation has been offered of who Mr Yeo was or could have been referring to, other than Ministers, when he mentioned the "key players … in government", at about 52:00 ([93] above). Mr Calvert understandably responded to cross-examination on this point: "I can't imagine who else he is talking about". The truth is that no other reasonable interpretation is possible. That helps me in my approach to the second limb of Mr Browne's argument, which relates to the inaudible question from Mr Calvert some 8 minutes later, and the unfinished answer of Mr Yeo, stating that ministers would not be "susceptible" to something: [100] above.

167. This incomplete bit of transcript is not, on the face of it, a promising basis for a submission that Mr Yeo rejected the notion that he might approach Ministers. But Mr Browne is able to rely on three documents created by TNL. The first is the transcript prepared by Ms Blake on 3 June 2013. This filled in the wording of Mr Calvert's question: "And would you be able to introduce us to ministers?" Moreover, Ms Blake marked this passage as "exculpatory". The second document is TNL's Defence, which asserted that Mr Yeo had, at this point in the conversation, been "asked to confirm that he could introduce the client's representative to Ministers". This of course was verified by a statement of truth. The third document, also verified by a statement of truth, is Mr Calvert's witness statement which made the same point. This, then, might seem to be a formidable battery of evidential support for Mr Browne's submission. Nonetheless, I have concluded that this is not an accurate version of what actually happened.

168. Mr Millar declined an invitation to admit that this was the question. Cross-examined, Mr Calvert and Ms Blake did likewise. Mr Calvert explained that in the process of preparing to give evidence he had concluded that the position previously adopted was mistaken. I find that he is right about that, for these reasons. The question put into the transcript by, as I find, Ms Blake, is not audible on the recording. So it must have derived from memory or inference. In my view inference is the more likely source. First, and importantly, Mr Yeo had already indicated a willingness to effect (or, as he put it, "facilitate") introductions to ministers: see above. It would be most odd if he had contradicted himself at this

point, a few minutes later – and without Mr Calvert raising the point when he did so. Secondly, given what had gone before Mr Calvert had no need to ask "would you be able to introduce us to ministers?" Thirdly, Mr Calvert is right to say that the answer given by Mr Yeo "is not an answer to that question". Finally, albeit this was evidence given without prior warning, I accept, because it makes sense in context, Mr Calvert's evidence that:

> "I have a distinct recollection of having pushed something slightly further and Mr Yeo suddenly sort of, I don't know how you should describe it really, he was clearly agitated by the question and it clearly got him thinking about something …"

169. Naturally, Mr Calvert was quite robustly challenged about this evidence. But the challenge highlighted the fact that he had said in his witness statement in August 2015 that when this question was asked "there was a moment when he looked at me with a hint of suspicion". I do not need to make a finding about what the question was. Nobody has come up with a suggestion as to that. But what I do find is that it was not the question interpolated in the transcript by Ms Blake in June 2013, or anything similar. Whatever it was, it was something different, which went beyond merely asking about introductions to ministers. It was that something more that provoked a negative response from Mr Yeo.

170. **Preparing the articles.** Three criticisms are made of this part of the process, as distinct from the content of the articles themselves. It is worth noting that this aspect of Mr Yeo's case did not feature prominently, if it featured at all, in his Reply. It was the subject of scant attention in the claimant's Skeleton Argument for trial, but came increasingly to the fore as the trial developed, and in closing submissions. The criticisms, and my assessment of them, are as follows.

(1) That there was little or no focus on the public interest on which TNL now relies. This is an untenable criticism. The editorial process plainly did involve addressing the question of public interest, which had been an issue within TNL since the initial Proposal.

(2) That the 25 May Memorandum contained "distortions", and that the editorial decision that the story was in the public interest was made at least in part on that basis. The allegations of "distortion" are for the most part reflected in Mr Browne's criticisms of the articles themselves, with which I deal below. I reject this limb of the argument.

(3) It is alleged that editorial oversight and the process of verifying the fairness of what was published were deficient. Mr Hymas had been on holiday when the text was prepared. He reviewed it on his return, but is said to have failed adequately to challenge the journalists' views. Mr Ivens, it is said, was relying for this purpose on Mr Hymas (as were others, including the lawyers). Mr Hymas was sent the full transcript, as it then stood, with highlighting applied by Ms Blake. I accept his evidence that he read the key parts of the transcript and discussed them with the journalists. He did not read it in its entirety, and acknowledged that to some extent he relied on Mr Calvert to make sure that what he was told was accurate and fair. In my judgment this process can be criticised as imperfect. Editorial

oversight needs to involve some actual checking of content against source material. But the fact that there is room for improvement does not make this an irresponsible journalistic process.

171. **The Front Up Letter**. I reject the complaint that this failed to afford Mr Yeo a reasonable opportunity to comment. The first criticism relates to the short period of time allowed for a response. A story of this kind, containing what for this purpose I assume to be information which the public is entitled to receive, is not of such special urgency as to make it necessary to provide a short period for pre-publication comment. Such a story is however peculiarly vulnerable to having its impact undermined by spoiling tactics. The subject of the story has a strong incentive to engage in tactics of that kind, and so do competitors. The risks are exacerbated if the story is objectively sensational and the subject is someone, such as an experienced MP, well versed in the mechanisms for managing or influencing the news. If the impact of such a story is dissipated the public interest is harmed. It attracts less attention, and there is some waste of the resources of the media organisation that has created it. That represents a disincentive to investigative journalism of this kind. Fairness to the subject has to be balanced against these factors. I do not regard the judgment made in this instance as open to criticism as irresponsible. It is noteworthy that a very thorough response was possible in the event, even though it put Mr Yeo and his lawyers to some real inconvenience to provide it.

172. The second criticism is that TNL failed to provide Mr Yeo with a transcript of the Meeting, though it had created one and the journalists had been working by reference to it. My response is similar. A judgment has to be made about how much of the underlying evidence needs to be made available in order to allow a reasonable chance to comment. There are risks, referred to in TNL's evidence, if the source material is provided. Put simply, it can be cherry picked by the subject to support accusations of misrepresentation and taking statements out of context. I have never known a full transcript to be provided in a case such as this. That does not mean it would not in some cases be necessary to do that in order to be fair, and responsible. In this instance, however, I do not regard the editorial judgment made as open to serious criticism. As Mr Hymas pointed out, this was not a complex matter and the events were relatively recent. Again, Mr Yeo was able to provide a detailed response in the event.

173. **The Articles.** Mr Browne adopts two broad lines of attack on these. He criticises them for unfair omission of material facts, and for inaccuracy amounting to distortion or misrepresentation. These arguments are advanced in the context of his overarching submission that TNL owed a duty to give a "fair representation of the totality of the evidence", to which I have referred above. That proposition is derived from Mr Calvert's witness statement. In its generality, it is not in dispute - except that TNL would add the word "relevant" before "evidence", which seems to me indisputably correct. The key question is however how this duty is to be interpreted. In my judgment Mr Browne's approach is far too literal and exacting.

174. I have already explained why I reject Mr Browne's submission that TNL should have published the Meeting transcript. The media are not historians or archivists; their job is to distil: see [66]-[67] above. It is fair for Mr Browne to argue that in the absence of a transcript it was important for readers to be given a fair and

accurate account of events. But that is a submission so broad as to amount to little more than a platitude. The real question is: what must be done to satisfy the requirements of fairness and accuracy in this context? I detect two flaws in the approach to this question that is adopted on behalf of Mr Yeo. The first is to treat the acknowledged duty to reflect the "totality" of the evidence too literally, as if it required TNL to present readers with the whole of the relevant evidence. On this approach the omission of a single item of relevant information would represent a breach of duty and defeat the privilege defence. That cannot be right. It would be incompatible with the principles discussed above, and with the realities of journalism, to require such extensive reporting, and such precision, as a condition of *Reynolds* privilege.

175. Secondly, "fairness" is treated by Mr Browne as almost synonymous with getting it right in fact. Repeatedly, he has criticised the journalists for a failure to recognise, and to reflect in their published material, the possibility that their interpretation of Mr Yeo's behaviour was wrong. He came perilously close at times to arguing that there could be no *Reynolds* defence if the conclusions drawn by the journalists were not shown to be right. This is an approach seemingly reflected in the mistaken argument that the central factual issue in all three defences is the same: see [125]-[127] above. It cannot be a correct approach to the application of a defence that protects, on public interest grounds, the publication of factual statements that are not proved to be true. In short, a publication can be wrong but "fair" for these purposes. Mr Millar has suggested that it is legitimate to publish the journalists' "take" on what went on. Speaking generally, I agree. I would rather put it this way: in a case such as this it will be "fair" to present readers with factual conclusions honestly and reasonably drawn by journalists who were themselves witnesses to the key events; it is permissible to summarise, and to be selective; if the evidential picture is misrepresented or presented in a wholly unbalanced way, that may well be unfair; but fairness does not require the publisher to present the reader with all the factual material that could support a competing assessment.

176. This is an approach that seems to me to be in line with the principles I have identified above. It is also compatible with the approach of the common law to the requirements of fairness and accuracy which are invariable conditions of common law and statutory reporting privileges. The extensive jurisprudence in that area shows that, even before the HRA, it was recognised that a Parliamentary sketch may legitimately select the memorable features of a debate and present the impression it made on the author; what is required is fairness in relation to that impression: *Cook v Alexander* [1974] 2 QB 279, CA, 288-291. A two sentence summary of a long Inquiry report can meet the statutory "fairness" requirement of s 7 Defamation Act 1952: see *Tsikata v Newspaper Publishing* [1997] 1 All ER 655, CA. (These are not cases that were cited in argument, but I mention them because they seem to me to lend some support to the approach I have arrived at on the basis of the arguments that were advanced at trial.)

177. I am not persuaded by Mr Browne's submission that the journalists' approach was, irresponsibly, to "exclude everything of substance which demonstrated [Mr Yeo's] integrity". It is suggested that the articles should have included reference to (i) positive or supportive statements about Mr Yeo made by three third parties

who had been approached by the journalists; (ii) the journalists' "failed attempts to provoke" Mr Yeo into saying he could or would influence the Select Committee agenda for them; (iii) his allegedly neutral or negative response to the question about whether he could introduce them to Ministers; (iv) his failure to pick up on a "leading question" about replacing the winter fuel allowance; (v) his failure to show an active interest in taking on a role at director level; (vii) his affirmation that all payments received by him would have to be disclosed on the register; (viii) a series of further "leading questions" identified in the Reply, to which it is said that Mr Yeo responded "in a way entirely consistent with his understanding that what CGG needed was consultancy advice not 'paid advocacy'", and in other ways which were not inculpatory.

178. These criticisms illustrate the unrealistic nature of the overall approach urged on the court by Mr Yeo. It is noteworthy that the Reply, which uses some shorthand, nonetheless devotes 800 words to describing just this last-mentioned series of questions and answers during the Meeting. The extracts quoted above indicate the extent of the additional material that would need to be added to give effect to others of these criticisms.

179. But it is not just that incorporation of all or any substantial part of the allegedly "excluded" material would have required much longer articles. The real nub of the case in support of which these points are advanced is that there were items of evidence that tended to undermine the central message of the article, and that if readers had been made aware of these they might have questioned whether that message was correct. The first, broad answer is as indicated above: it is not incumbent on the responsible journalist to lay out for the reader all the pros and cons relevant to a particular conclusion. Here, moreover, the matters relied on do not directly contradict the defamatory factual message of the articles. Reference to them was not required in order to balance contrary statements which were contained in the articles. They are all collateral to the main issue and more in the nature of good character evidence.

180. As Ms Blake explained when cross-examined about Mr Yeo's confirmation at the Meeting that he would register any payments:

> "Q. In that passage he makes clear to you that any income that he got from a consultancy would have to be disclosed on a monthly basis, didn't he?
>
> A. Yes.
>
> Q. And that is hardly the conduct of a man willing to break the rules, is it, or trying to conceal what he is doing?
>
> A. I don't think we ever suggested that Mr Yeo was prepared to break the rules in terms of a declaration of interests. He clearly has declared his interests very fulsomely ..."

181. That Mr Yeo had declared his interests was apparent from the Articles, which gave details of those interests which the reader is likely to have understood as derived from official records. The complaint made in Mr Browne's closing submissions, that the articles failed to explain to readers that MPs are allowed outside interests, has no force at all in my judgment. The fact that this is allowed is common knowledge. So far from suggesting that there was any ban on outside interests, the article indicated that they were allowed. And all of this is beside the point when the defamatory imputation complained of is a readiness to become a paid Parliamentary advocate for an outside entity.

182. Mr Calvert made similar points in cross-examination. Challenged over the "exclusion" from the articles of reference to favourable remarks about Mr Yeo that had been made by a Mr Hulf, he understandably responded as follows:

> "Q. And on page 581, at the foot of the page, he says of Mr Yeo "He is a nice guy and a very experienced politician." Now, neither your editors, nor the reader, was ever told of that, were they?
>
> A. I am sure Robin Hulf does believe Tim Yeo is a nice guy. It was not of any relevance to our article."

183. Questioned on why the articles did not refer to favourable words spoken about Mr Yeo by Lord O'Neill Mr Calvert said this:

> "Q. Lord O'Neill says that is right, he is a Tory but a thoroughly independent-minded Tory. In other words somebody whose views are not easily influenced by outsiders at all?
>
> A. I think -- isn't he referring to his politics in terms of being a Tory?
>
> Q. He is talking about being independent minded and --
>
> A. I think because it says "Tory" he is referring to his politics, that he is not somebody who would always take the whip. I assume, I mean I don't know".

184. The suggestion that it was irresponsible not to include in the articles a reference to Lord O'Neill's praise for Mr Yeo as a "thoroughly independent-minded Tory" seems to me wholly untenable, whatever view one takes of the point that Lord O'Neill was making. As it happens, having read the transcript of the interview of Lord O'Neill my view is that Mr Calvert's interpretation was not only reasonable but highly likely to be correct.

185. The third reason for rejecting this line of attack on the articles is that it is question-begging (as well as tending to insinuate conscious bias, even though malice has

been excluded). In reality, whether any particular item of evidence "demonstrates Mr Yeo's integrity" is a matter of judgment. The point is illustrated by this exchange in cross-examination of Ms Blake:-

> "Q. There were a number of omissions that I put to [Mr Calvert], but perhaps the most important was that there was nothing here about the exculpatory bits, such as what Mr Yeo said about introductions to Ministers or to you about his lack of influence over the agenda of the Select Committee. Is that something you want to comment on?
>
> A I don't accept that Mr Yeo either said that he wouldn't introduce us to ministers or that he couldn't influence the agenda of the Select Committee. I think the latter would be a very bizarre statement for the chairman to make. But clearly what we did is we sent the draft copy with the full transcript to the managing editor for news and also we gave it to Bob Tyrer, the executive editor and ombudsman of the paper, so they could read it in full ..."

186. So far as introductions to Ministers are concerned, I have discussed above the issue of what in fact was asked of Mr Yeo in the passage relied on by Mr Browne. I have accepted TNL's case on that issue. But even if I had not done that, I would have rejected this line of attack on the content of the articles. It was in my judgment at least reasonable for the journalists to conclude from what he had said earlier at 52:20 and 53:32 ([93] and [94] above) that Mr Yeo had expressed a willingness to approach Ministers on behalf of CGG and its client, if he took the job as a paid consultant that was on offer. Interpretation of what Mr Yeo said or did not say about influencing the Select Committee agenda is more difficult, but Ms Blake's interpretation is likewise a reasonable one.

187. Mr Browne's allegations of irresponsible journalism by inaccuracy, as opposed to unfair omission, are largely phrased in the language of "misleading" or "distortion". This again has overtones of wilfulness. In the absence of a plea of malice or similar I am however concerned only with objective assessment of the articles. In my judgment this limb of the argument for Mr Yeo also fails. There are nine main criticisms, with which I shall deal in turn.

188. It is alleged that readers were misled about the rules themselves, in two ways. First, the Article is said to have suggested to readers – via the Yeo Rebuttal Summary at para [24] of the Front Page Article - that the provision of "Parliamentary advice" would be a breach of the rules and, "worse, that Mr Yeo had accepted this, which he had not". It is true that this is the impression conveyed by this paragraph, but I reject the suggestion that this represents irresponsible journalism.

(1) Para [24] represents a reasonable summary of something said by Carter-Ruck in the Pre-Publication Letter ([118] above, third paragraph). The

Yeo Rebuttal Summary substituted the word "advice" for the word "services", which had been used in Carter-Ruck's letter. But the difference between "services" and "advice" is not, in this context, one of significance.

(2) The Pre-Publication Letter suggested in terms that Mr Yeo regarded the provision of "Parliamentary services" as well as "paid advocacy" as a breach of the rules. In the absence of any material difference between the words "services" and "advice" in this context, there was no unfairness to Mr Yeo in the way the matter was presented.

(3) It is not in fact a breach of the rules to provide Parliamentary advice, so to that extent the article was inaccurate. But this is a collateral inaccuracy buried in a summary of Mr Yeo's rebuttal, which has no or no significant bearing on the thrust of the defamatory imputation complained of. This was that Mr Yeo was prepared to provide paid Parliamentary *advocacy*, and that this was against the rules. Readers will have been quite clear about what the imputation was, and that Mr Yeo had denied it.

189. A complaint is also made about of para [10] of the Inside Article. This quoted Rule 12 of the Code and suggested that it would be contravened by the conduct in which Mr Yeo had (allegedly) offered to engage. The criticism, which is not pleaded, is that this is simply wrong: Rule 12 is concerned only with bribery. This was put to Mr Calvert and Ms Blake. They both disagreed with Mr Browne's construction. Paragraph 12 is not relied on in TNL's justification defence. Nonetheless, I do not think that the right construction is necessarily plain and obvious. But I do not have to resolve that issue. I cannot view this alleged inaccuracy as a matter of real weight.

190. The article did not impute that Mr Yeo had engaged in any form of bribery, and he has never alleged that it did. It is common ground that if Mr Yeo did offer himself as willing to engage in paid advocacy he was offering to do something that was in breach of the Code. The reference to Rule 12 was just one specific way in which the journalists suggested he had done so. They clearly believed that was the case. Rule 12 was quoted in the article, but omitting the reference to bribery. It is not incumbent on a journalist to construe correctly each rule which may have been broken. I do not view as unreasonable or irresponsible the approach of Ms Blake, as explained in cross-examination:

> "A. Well, I think that Mr Yeo had offered to breach rule number 12 in that he had offered to accept fees, or a fee, compensation or reward, from a company which wanted to have the laws of Parliament changed. And that clearly is a fee in connection with a matter that would have had to have been submitted to the House. So I think it is fair to say that that is what the rules say and that is the context in which Mr Yeo offered what he offered. But I certainly don't think we wanted to use such a loaded term as bribery, I think that was the responsible way of reporting what the rules said."

191. Mr Browne advances eight criticisms of what was included in the articles. I take them in more or less chronological order:

(1) It is alleged that para [12] of the Inside Article was misleading in suggesting that "Yeo's name kept coming up" during the journalists' investigations. This is said to have implied falsely that his conduct was repeatedly impugned by sources. I agree with TNL that this is an over-defensive interpretation of this passage. I note that this is not a paragraph that I found contributed to the defamatory sting.

(2) Para [16] of the Inside Article is alleged to be a distortion of the initial approach to Mr Yeo, as the introductory email had not asked him "to discuss becoming their point main the House of Commons" etc. TNL's answer is that it is a composite description of the approach to Mr Yeo, encompassing the email and the Meeting. In my view that is a reasonable answer. It is the substance of the impression conveyed that matters.

(3) Complaint is made of paras [18]-[20] of the Inside Article as involving a "build-up of prejudice". The only one of these paras that I found contributed to the imputation is para [20], with its reference to Mr Yeo "tucking in" at Nobu: see [120] above. I am bound to say that an argument that *Reynolds* privilege should fail because the subject's eating habits are pejoratively described seems to me highly ambitious. True it is, also, that it was the journalists and not Mr Yeo who chose the deluxe bento box option. But this, though faintly unfair, is hardly the stuff of irresponsible journalism such as would deprive a story of public interest protection.

(4) More substantial is the criticism of Inside Article para [20] for distorting what Mr Yeo had said about Ministers. But see my analysis above. I do not accept this was a distortion.

(5) Inside Article paras [21]-[23] are criticised for giving an unreasonable and unfair picture of the Advocacy Discussion. Mr Yeo never said that he could "advocate" behind the scenes, it is said. As my reasoning above makes clear, I disagree. Moreover, none of this material contributed to my finding on meaning.

(6) Criticism is made of Inside Article [26] and para [14] of the Front Page Article for undue selectivity in the account they give of Mr Yeo's statements about the ECCSC. Again, these are criticisms directed at parts of the articles which did not, in my judgment, contribute to the defamatory imputation (or not significantly). I am in any event unimpressed by the criticisms. I consider Ms Blake's answers when challenged in cross-examination to be fair and reasonable.

(7) It is said that para [36] of the Inside Article distorted the position by unfairly omitting Ms Blake's words about extra payment, and "cherry picking" Mr Yeo's comment about tax efficiency whilst omitting his references to monthly disclosure. Again, this is unconvincing criticism directed at passages that are not part of the basis for the defamatory imputation. As Ms Blake said in relation to the second aspect of this

criticism: "there's no suggestion in the article that he wouldn't disclose his interests and so there's no need to exculpate somebody where they haven't been inculpated."

(8) TNL are accused of a failure fairly to present the gist of Mr Yeo's response. The denials were placed at the end of the piece, but this is not in my judgment irresponsible. It enabled TNL to provide the entirety of the response in one place. This was done quite fully, over a number of paragraphs: see [123] above.

192. I add that no criticism is made of the way that Mr Yeo's post-publication rebuttal was dealt with in the online articles. As I have noted, all ten paragraphs of his statement were incorporated, word for word: see [124] above. As also noted in that paragraph, the video material that was incorporated in the online version of the articles was not relied on at the meaning trial. That has severely constrained any use that Mr Browne can properly make of the video material at this trial, in rebuttal of *Reynolds* privilege. The attempt to do so has wholly failed in my judgment.

193. The criticisms advanced are that "the damaging sting" of the video material is contained in material interpolated by the narrator. These interpolations are said to have suggested, falsely, that Mr Yeo had explained how "lobbying rules might be bent" and suggested "ways to circumvent them". I believe the short answer to these submissions is that they are simply not open to Mr Yeo in the light of my findings on meaning. As Mr Browne has correctly submitted in another part of his argument, the applicability of *Reynolds* must be decided by focusing on the defamatory sting of the words complained of. These imputations are not part of that sting. Indeed, Mr Yeo has not previously complained of any such imputations. I add that this part of the argument seems to me to be wrong in principle in so far as it asks the court to consider the "interpolations" in isolation from the rest of the Articles, and to attribute to them defamatory stings which are separate and distinct from those conveyed by those articles.

194. For these reasons I uphold the *Reynolds* defence in respect of the Front Page and Inside Articles of 9 June 2013. It follows that the claim in respect of those articles must be dismissed.

Justification

195. Although it is not necessary to resolve this issue I shall do so, not only in deference to the evidence and arguments on the issue, but also because it is preferable given the nature of the issues and the public interest in a reasoned judgment.

196. I have identified the basic principles in paragraph [17] above. In asking myself whether the substantial truth of the defamatory factual sting of the articles complained of has been established there are three further points that I bear in mind.

(1) First, this sting derives from parts only of the articles complained of. There are other factual statements about Mr Yeo contained in the articles which

are capable of being defamatory of him, but which are not the subject of any claim.

(2) Secondly, it is important to focus on precisely what the defamatory factual sting involves. One must be wary of adding layers of interpretation to what is itself an exercise in interpretation. But it is possible and relevant to make these points.

a) The sting is not a general charge of misconduct, such as an allegation that Mr Yeo was or is generally disposed to provide lobbying services to paying clients. It is a specific charge, relating to events at the Meeting, which concerned work for CGG and its client.

b) The sting asserts conduct at the Meeting, in the form of an offer or expression of willingness. It also asserts a state of mind at that time. What happened later and what Mr Yeo's state of mind was later, may shed light on events at the time of the Meeting, but the issue remains what he did and intended at that time.

c) There are two limbs to the defamatory allegation: willingness to "push for new laws" etc., and willingness to "approach Ministers" etc. But this is not a case to which s 5 of the Defamation Act 1952 or its current equivalent, s 2(3) of the 2013 Act, applies: there are not two "distinct charges" or "distinct imputations". The consequence is that I must ask myself whether the substance of the overall defamatory charge contained in the two limbs has been proved true.

(3) Thirdly, in reaching a conclusion on justification the court must avoid too literal an approach. As Eady J pointed out in *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB) [108]-[109], it is necessary in this context also to allow journalists (and others exercising their right to freedom of expression) a degree of latitude in the form of expression they choose. A measure of exaggeration or inaccuracy may be consistent with conveying the essential truth of the matter. As Eady J said at [111]:

> "one needs to consider whether the sting of a libel has been established having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration ..."

197. The issue here is not, of course, whether it was or is legitimate or reasonable to conclude that Mr Yeo was prepared, and had offered himself as willing, to act as a paid Parliamentary advocate in breach of the Code. It is whether on the balance of probabilities TNL have proved that he was, and had. That brings in questions about Mr Yeo's actual state of mind. What did he understand the journalists to be seeking from him? What was he actually willing to do?

198. The burden of proof is on TNL, but they can rely on the unedited video recording and the agreed transcript. Inevitably, therefore, a key factor in answering these

questions is my assessment of Mr Yeo's credibility as a witness, by which I mean both the plausibility of what he said, and my assessment of how convincingly he said it. As to plausibility, some of what Mr Yeo said was plausible on its face. But by no means all of it was. Indeed, I found some of his evidence utterly implausible. I refer in particular to his evidence about what he understood to be on offer to him, via the Email and at the Meeting.

199. Asked about the 13 May email Mr Yeo's evidence was that the only reason he thought it was right to meet CGG was the sentence that referred to the client's nanocell technologies having the potential to be "a crucial breakthrough" in progress towards meeting renewable energy and zero carbon homes targets. He claimed that "The possibility of a job was of no interest to me at all… As far as I was concerned, this meeting was about learning about this technology." Asked why, in that case, he did not say so when he replied to the email his unconvincing answer was that "There was no reason to do that."

200. When it was put to him that when, during the meeting at 22:32, Ms Blake told him about their client, the "South Korean venture capitalist", he knew that a generous remuneration package was on offer on behalf of a venture capitalist Mr Yeo disputed that. This exchange took place:

> "… At this point in the lunch, I was not interested in the job. I would not have been surprised if they hadn't mentioned it. I had forgotten about the remuneration. I wanted to know why this product could help Britain and when the strategic issues were on which they wanted advice.
>
> Q. You'd forgotten about the reference to generous --
>
> A. Absolutely.
>
> Q. You'd forgotten about it?
>
> A. Yes."

201. Mr Millar pointed out that when, at 34:26 in the Meeting, Ms Blake suggested that the work would take one or two days a month, Mr Yeo had responded "Yup." The cross-examination continued in this way:

> "Q. Why didn't you say at this point: "Blimey, excuse me, I had completely forgotten about the suggestion that there was a job, I'm not interested in that"?
>
> A. Why would I say I completely forgot?
>
> Q. Because that's what you told me your state of mind was.
>
> A. Indeed it was, but I think it might have been rather rude to say I'd forgotten about it because when she mentioned it, I did recall it was mentioned in the email, and I think there it says consultancy work would take up around a day or

> possibly two each month so she's repeating what she'd said in the email.
>
> Q. So you did recall the email at that point?
>
> A. Yes, I was reminded about that, yes.
>
> Q. Did you recall that the email talked about a generous remuneration package?
>
> A. I did not.
>
> Q. Right. So you remembered that bit of the email but not the reference to the generous remuneration package?
>
> A. Correct."

202. I share the incredulity expressed by Mr Millar. I am quite unable to accept this evidence. I accept that Mr Yeo is genuinely interested in green technology, and that he has given advice and help to some in this field without seeking or accepting any material reward. However, the 13 May email was short and clear. It was plainly suggesting a consultancy with generous remuneration. It is not credible that this was not present to Mr Yeo's mind at all. Experience suggests that in general those who are not interested in money tend not to get much. I can think of none who convincingly claim to have no interest in money, yet end up with an annual income in excess of £200,000. I do not consider that Mr Yeo is such a person. In my judgment this evidence was untrue. I am not persuaded that it was honest either.

203. Mr Yeo maintained his composure in the witness box, for the most part. That was unsurprising, given his long experience of public life. He had clearly prepared very thoroughly for the process of giving evidence. But he was wary. For instance, when he said that he had "always felt that lobbying and paid advocacy are pretty much the same thing" he was asked "pretty much or exactly?" His reply was "Well, when lawyers start to say is there some significance in using another term, I suspect they probably have in mind there is some different significance that I'm not aware of. So I don't know. I think pretty much is what I said and pretty much is what I meant."

204. He also resorted on occasion, when under pressure, to answers involving bluster not only in their content but also in his manner. An example of this followed Mr Millar's questioning about the Email. This exchange took place when he was challenged to explain what was meant by a passage in his witness statement about "strategic advice":

> "Q. What was it that you thought they wanted that amounted to strategic advice, and what would that involve?
>
> A. My thought in my mind was that I'd received a genuine email from genuine people who were advising a genuine business who had a genuine technology which might genuinely help Britain meet its renewable energy and zero

> carbon homes target. Unfortunately I was misled in that. Nothing that I was told in the email or at the lunch was true. It was an elaborate construction of lies."

205. This was no kind of answer to the question, and Mr Yeo cannot have believed that it was. He took on an air of exasperation if not anger, which struck me as created or at least exaggerated for effect. This in my view was a deliberate use of a hot-tempered counter-attack as a diversionary tactic. Overall, I did not find that Mr Yeo presented convincingly. I have found it helpful to compare his manner when giving evidence in public, after careful preparation, with his demeanour at the Meeting as shown on the video recording, when he was relaxed, unguarded, and unaware that he was under observation. The contrast was striking. It is the video recording that I regard as the more reliable guide to Mr Yeo's state of mind at the time.

206. A striking instance of the contrast between the two, which is important to credibility, is the passage during the Advocacy Discussion about the witness from GB Railfreight whom Mr Yeo said he had "[told] in advance what he should say" to the ECCSC: [95]-[96] above. This is collateral to the issues, because Mr Yeo has never complained of the part of the articles which presented him as having "coached" this witness. Mr Yeo's evidence dealt with the point nonetheless, and was clear: he did no coaching. But his explanation of what he said makes little or no sense to me. He told me that his words were a joke, prompted by what he suggested was an odd question from Ms Blake ("were you able to ask him questions sort of afterwards or …?"). I still fail to understand the humour that is supposed to have been involved. Mr Yeo's suggestion that Mr Calvert and Ms Blake laughed at the "joke" is clearly untrue, and close to absurd.

207. Mr Calvert was clear that "It was not a joke". As he saw it, the reason Mr Yeo laughed was that "he had done something illicit and it was the sort of thing people do when they are slightly embarrassed when they confide in you that they have done something naughty." Ms Blake was asked "…wouldn't it have been reasonable for Mr Yeo to think it was understood to be a joke…" given that everybody laughed. She replied: " No, I don't think it would. It wasn't funny. We laughed because it was shocking." I find this inherently convincing, and it is supported by viewing of the recording. The issue of whether the witness was in fact coached is not one for my decision. What I do find, however, is that Mr Yeo intended his words at the Meeting to be taken seriously. His evidence about the matter has been false and, in my judgment, dishonest.

208. At the end of the evidence I accept Mr Millar's submission in opening:

> "The claimant clearly had, must have had -- and we mean "must have had" despite his denials -- a clear understanding of the nature of the engagement being proposed by CGG, the extremely generously remunerated engagement. First of all, point (a), it's plainly a job that they're offering. It's utterly hopeless for the claimant to try and deny that he understood that because that's what the email from Robyn Fox is saying. You don't have a role which is extremely generously remunerated without it being a job, without it

> being work, and the flesh was put on that in the meeting when the figures were discussed."

209. In my judgment Mr Yeo went to the Meeting knowing full well that its purpose was to discuss the prospect of a consultancy, involving work for which the client was prepared to pay generously. That prospect was not the only reason he went to the lunch, but it was very much present to his mind. He and Mr Browne are right to say that this was a preliminary meeting, that no agreement was reached, or even proposed in formal terms. Clearly, it would have taken time to reach one. But none of this is really to the point. The important point is what the meeting was preliminary *to*. To a man as intelligent as Mr Yeo that cannot have been in doubt. It was preliminary to a job, for payment. The way that he responded to questions shows that he was not in doubt about this.

210. Mr Yeo's explanation of his position [87]-[88] above was in the nature of a "pitch" designed to impress his listeners with his Parliamentary position, the quality and importance of his business roles (".. quoted … market cap …"), and his ability to undertake the role on offer without conflict of interests. Talk of his ability to "commit to" at least one day a month is not consistent with anything but a job. In the same passage ([89] above) Mr Yeo spoke of "another job I'm talking to people about..." That in itself implies a readiness to accept payment.

211. Mr Yeo was clearly willing in principle to accept substantial payment for the work, if a consultancy was eventually offered. He did not baulk at the sum of £7,000 a month that was mentioned in the money discussion ([90] above). His case is that his references to "getting value" and the prospect of negotiation amounted to a suggestion that he might not earn as much as £7,000 a month, in which case he would take less. I am not convinced by that. The more likely interpretation is that of TNL: that he was keeping open the option to negotiate upwards. Certainly, Mr Yeo was not baulking here at the suggestion that he might earn thousands a month from this consultancy. He was not offering to do the work for nothing. It is noteworthy that he did not quibble when the topic of a bonus was raised.

212. I also find that Mr Yeo understood well enough during the Meeting that the work that the CGG personnel were asking him to consider undertaking, in return for the generous remuneration under discussion, included advocacy for their Korean client. In explaining his position he recognised that if he did the job he would be "involved with *promoting* another solar technology": [88] above, emphasis added. His evidence is that the first reference to his being an "advocate" ([92] above) passed him by. That might have been credible, taken in isolation, but I find it hard to accept in context. There can in any event be no doubt that he heard and understood the word the second time it was used ([93] above). He responded by addressing specifically, among other things, what he could not do by way of advocacy: [93]-[95]. Mr Browne's submission that the question posed by Ms Blake was confusing, as it spoke of Mr Yeo being "our advocate and our advisor", is therefore not persuasive. That submission also overlooks the key facts that (a) Ms Blake's question was about what Mr Yeo could do by way of advice and advocacy "in Parliament", and (b) Mr Yeo's response shows that he understood perfectly well that he was being asked – among other things - what kind of

Parliamentary advocacy he could provide for CGG and its client. He specifically ruled out "getting up and making a speech for you".

213. Mr Yeo, in my judgment, expressed a willingness to undertake Parliamentary advocacy. What he explicitly ruled out was "public" advocacy, such as making public speeches. But it was only public advocacy that he ruled out. He did not expressly or impliedly rule out advocacy "behind the scenes". On the contrary, his answer when asked by Mr Calvert if he would be able to do that was affirmative: [95] above. I reject as unreal the argument – reliant in part on punctuation, or the lack of it - that the words "of course" did not represent agreement by him that he could do so. It is apparent not just from the page but from the recording that those words expressed agreement that he could.

214. Mr Yeo has sought to explain away the words that he then went on to use: "but what I say to people in private is another matter…" This is said to refer to advice and not to advocacy. I reject that. An explanation of what Mr Yeo could do by way of private advice would not have been an answer to Mr Calvert's very clear question, which was about advocacy behind the scenes. It is also hard to reconcile this claim with the story that Mr Yeo then went on to tell, about the witness at the ECCSC hearing. Clearly, that story was meant to illustrate the point that he had just made. Where was the story leading? My conclusion is that it was always intended to contrast Mr Yeo's inability to question the witness at a public session of the ECCSC (because of a conflict, which meant "it would look as though it might be biased about that"), with his readiness, willingness, and ability to work for the same client towards the same end, behind the scenes. It makes sense if the "behind the scenes" work relates to Parliamentary hearings. On Mr Yeo's case, the story was originally leading to something other than the untrue "joke" it ended up with, which was a spontaneous response to Ms Blake's interruption. Mr Yeo's witness statement said that he was "going to elaborate" on his initial reply by explaining that he had on more than one occasion discussed with Mr Smith privately "how the future of GBRf might benefit from more investment either by its parent company… of which I am a director … or by outside investors." I do not find this remotely convincing.

215. It hardly needed stating that Mr Yeo, as a director of the parent company, could privately discuss the strategy of a subsidiary with its MD. That explanation would not have illustrated the point that had just been made. It would barely have related to the topic under discussion. A discussion of that kind with Mr Smith would have had no connection with Parliamentary advocacy, or Parliamentary advice. Moreover, if this was what Mr Yeo had been going to say, one would have expected him to wait for the laughter to die down after his "joke" and, redirecting the conversation ("But seriously…"), provide the intended explanation. There was no impediment to his doing this. He did nothing of the kind.

216. There has been much debate about whether Mr Yeo indicated any willingness to "push for new laws", and which new laws were under discussion. Three areas have been identified: building regulations, planning laws, and FITs. It is not clear that Mr Yeo offered to help push for changes in the second or third of these. In my judgment however Mr Yeo was prepared and showed willing to help CGG and its client by "pushing" for changes to the building regulations in the way suggested by Ms Blake.

217. The nature of the change that CGG had in mind was set out clearly enough by her at 31:05: [77] above. Mr Yeo responded not just positively but also enthusiastically. The substance of his response was that such changes would be easy to secure, because the kind of change suggested would be "working with the grain" that is, in accordance with existing policy. By stating that "this will be one of the easy areas" he was indicating a readiness to participate, and that he could identify other "areas" for action, in order to help promote the product.

218. It was Mr Yeo who identified the audiences for endeavours of this kind: [81] above. They included "policy-makers who would include ministers and civil servants." Asked, later, what sort of thing he would be able to do for CGG "as our advocate and advisor in Parliament" Mr Yeo waffled a little, referring to "help[ing] define how to influence the policy process here": [83] above. This has been presented by him as amounting to no more than an offer to guide CGG on how to influence the process. I am satisfied that he meant more than that. Hence his boast about his "very close relationship with … all the key players in the UK in government and in the department." He was plainly offering at the very least to introduce CGG to such "key players". The submission that his offer to "facilitate" such introductions fell short of this is not plausible. Mr Yeo was putting himself forward as a person with the best possible connections, and the ability to ensure that CGG could meet "anyone ... you needed to get hold of in this country". Asked for clarification he expressly reconfirmed that this extended to "people in government."

219. In my judgment what Mr Yeo had in mind was personal introductions, by which he would bring Ministers or civil servants together with CGG or other representatives of their client. What was contemplated was private not public meetings. Such introductions were plainly envisaged as a way of advancing the interests of CGG and its client, not solar technology in general. The behaviour proposed would have violated the Lobbying Resolution. It was an offer to advocate or initiate a matter by an approach to ministers or servants of the Crown, for consideration. The sense of Mr Yeo's words, taken in the context of the discussion as a whole, was that he could, and would be willing to, advance CGG's interests by "making [an] approach to a Minister or servant of the Crown …" in the course of which he would engage in advocacy "which seeks to confer benefit exclusively upon a body … outside Parliament" from which body he would be receiving "a financial benefit." Among the objectives that had been identified earlier in the discussion was securing amendment of the Building Regulations – in simpler language "new laws".

220. Given these findings, the issue of what exactly was contained in Mr Calvert's partly inaudible question about Ministers at 1:02 ([100] above) fades in importance. But I have explained at [163] of this judgment that I accept TNL's submissions on that issue, and reject the argument that Mr Yeo was there saying that there was no point in approaching Ministers on behalf of CGG because they would not be "susceptible" to any such approach.

221. In reaching the conclusions I have already set out I have of course given careful consideration to Mr Yeo's email of 21 May, in which he made clear that lobbying was "incompatible with my position". Mr Browne's submissions on the facts leaned heavily on this email, which he presented as clear evidence that Mr Yeo

was not prepared to lobby. In opening Mr Browne argued that "Whereas the transcript is a muddle of vague and self-contradictory statements and offers, the email is clear cut and beyond any ambiguity." I do not agree with the first part of this statement. There is truth in the second part but not in the way that Mr Browne suggests.

222. Importantly, the email contains a clear and unambiguous admission that Mr Yeo was aware "during the Meeting" that CGG were "seeking someone to advance their interests by lobbying." Indeed, it says that this was something that became "increasingly apparent" to him during the meeting. The significance of this seems to have been lost on Mr Yeo for some time. His evidence was, initially, that it was not until the evening of 22 May that it occurred to him that CGG might have been looking for a lobbyist. His first witness statement, dated 15 May 2015, said this: "…by the time I finally got home on the evening of 21 May at about 10.30, after a full Parliamentary schedule during the afternoon and early evening, followed by dinner out, I reflected on the conversation. *I wondered if perhaps* the business people with whom I had had lunch did want more in the way of help than the Rules would permit me to provide." A second witness statement made in September 2015 said: "*Reflecting afterwards on the Conversation* it *became apparent* to me that the fictitious client of the undercover reporters *was more interested in Parliamentary services*". (The emphasis in both quotations is mine). The accuracy of both statements was confirmed by Mr Yeo on oath.

223. The disparity between this evidence and the email of 22 May led, predictably, to some uncomfortable cross-examination. In attempting to explain, Mr Yeo did not acquit himself well. First, he reconfirmed the accuracy of his first witness statement. Then, confronted with the contrast between that and his email, he maintained there was no difference: "I don't think there's any incompatibility between what is in my written statement and my email." Next, asked the simple question "Is the email accurate and true?" he launched into a 400-word answer. This was rambling but the gist of it was an attempt to reconcile the statement and the email by saying that the fact that lobbying was wanted had become "increasingly apparent" as he reflected afterwards on some signs that had been there during the Meeting. He was then asked about the words "during our meeting". He answered "I didn't think about it during the talk." Having said that he was driven to admit:

> "So, perhaps, Mr Millar you are right, perhaps it is not absolutely accurate to say that it was apparent to me during the talk. It was apparent to me *on reflection* that the talk had moved in a new direction and I [am] willing to accept that perhaps it was not strictly accurate in my email to say "it was apparent to me during the talk"."

(The emphasis is mine; and I have corrected what seems to me an obvious mistake in the agreed transcript or in Mr Yeo's choice of words; it matters not which.)

224. Mr Yeo then spotted an opportunity to fight a rearguard action. He seized on his use in the email of the word "increasingly" and said this:

> "… I do say increasingly apparent. I think it might be fair to say it was not very apparent during the talk, but from a

> zero start it wasn't apparent at all before the talk or the first half of the talk, towards the end of the talk it became a little bit apparent, so it was increasingly apparent, but the full force of the conversation came home to me when I got back to my flat and had time to think about the day.
>
> Q. So it didn't become increasingly apparent to you during the talk that they wanted a lobbyist?
>
> A. From a zero base I think it might have been a little bit apparent by the end of it."

225. When a fish wriggles on a hook, it goes deeper into the mouth and guarantees that the fish will not escape. So with Mr Yeo's evidence on this issue. His twists and turns in the attempts to escape the obvious served only to emphasise the problem that the 22 May email presented for him. The problem is, of course, that his own contemporaneous account of his state of mind during the meeting tends to support TNL's case and undermine his own. His evidence on this issue was in my judgment unreliable and untruthful. The truth is that Mr Yeo did appreciate during the Meeting that CGG were looking for lobbying services. That is why he said so in his email of 22 May. He knew throughout that the provision of such services was prohibited by the Code. That is why he said in his email of 22 May that lobbying was "incompatible" with his position. He did not object during the meeting to being asked if he would provide such services, because that was something he was prepared to do.

226. In my judgment the reason he did raise the point in his email the following day was that he had by then been told that he was not going to be offered this opportunity and felt it best – with nothing to lose by doing so - to cover his back. The evidence does not bear out the suspicions entertained by the journalists at the time, that by the time he sent his email Mr Yeo had got wind that an undercover journalistic sting operation was under way. It does seem that this was known by some at the Palace of Westminster, but it is not TNL's case that Mr Yeo had got to know of it. There is nothing to contradict Mr Yeo's denial that he had. Even so, the more persuasive explanation of the email is that it was written for the record, rather than reflecting a position held by Mr Yeo at the time of the Meeting.

227. For one thing, Mr Yeo could easily have taken that position explicitly at the point in the meeting when it became "a little apparent" to him that lobbying was being sought, or at some later point when it became more apparent. He did not. His explanation in evidence was that he did not regard this as necessary as he had made no offer to lobby. The inevitable follow-up was to ask why he regarded it as necessary when he wrote the email the next day. The best he could do by way of an answer was to say "I think I wanted to make clear to them that I had not accepted their hospitality under false presences". That is not consistent with the wording of the email, and is unworthy of belief.

228. For these reasons the evidence satisfies me that at the Meeting Mr Yeo expressed a willingness, and was in fact prepared, to act as a Parliamentary advocate who would push for new laws to benefit the business of CGG's client, and approach Ministers and civil servants to benefit that business. He was prepared to do these

things as part of a paid consultancy role, for which he was willing to accept £7,000 a day or more, if he felt it was justified and could negotiate it. His expressions of willingness reflected a preparedness to do things which, if they had been done, would clearly have involved breaches of the Code. These findings are sufficient to lead me to uphold the plea of justification.

229. The defamatory imputation includes reference to approaches to MPs. This is far from being the most significant aspect of the imputation, the substantial truth of which would be made out even if this aspect was not proved. I am however satisfied that Mr Yeo was prepared to make such approaches in ways that would have been in breach of the Code. This does not follow from the fact that he was prepared to engage in prohibited lobbying by means of approaches to Ministers and civil servants, but his willingness to do that does make it more likely. In my view Mr Yeo said enough in the Meeting to justify the conclusion that he was willing to approach other MPs to seek their support for measures to benefit Haemosu, including changes to the building regulations that would specially favour the company's product. That may or may not have involved urging MPs to vote in particular ways, but applying the approach indicated by Parliament itself ([43] above) it would have been a breach of the Code.

230. I add that in my judgment, Mr Yeo also showed willing to do the following in return for the consultancy fees on offer:

(1) to guide CGG and its client on the best ways to influence the ECCSC;

(2) to do so by showing them submissions to the ECCSC which had been influential in the past, and thus giving them privileged access to inside information. This was not just an offer to point them to publicly available sources showing the committee's response to earlier submissions; it was akin to a judge helping out a litigant by pointing out passages in previous skeleton arguments which the judge knew to have influenced the court in those cases.

231. It is not strictly necessary for me to address the issue, raised by both sides, of whether the substantial truth of the defamatory sting would be made out by proof that Mr Yeo had been prepared to act, and had offered himself as willing to act as a paid advocate in breach of the Code in one, but not both, of the ways specified in the defamatory factual imputation. It is my clear opinion, however, that it would. If TNL had proved a willingness, and a preparedness, to act as a paid Parliamentary advocate in one of those two ways the substantial truth of the defamatory imputation would have been made out, even if the other had not been proved. It would be artificial and unrealistic to conclude that Mr Yeo had been libelled because it was not shown that he was willing to use his role as a paid advocate to push for new laws, although he was willing to do so by approaching Ministers. The reverse is equally true. In my judgment this conclusion is consistent with the way Mr Yeo himself presented his case in his evidence. He presented the matter as if any imputation that he was willing and had offered to engage in paid advocacy in breach of the Code was of equal, and considerable, gravity. He did not seek to draw distinctions between the different ways in which he was accused of doing so. I agree with that approach.

Honest comment

232. The defamatory comment and the relevant principles are identified at [18]-[24] above. It is easy to conclude that the comment satisfies the objective test, based on the facts that I have found to be true. TNL has established that enough of the facts indicated in the Front Page and Inside Articles are true to allow an honest person, however prejudiced or obstinate, to make the defamatory comment. There are further facts that lend additional support to the comment, but which do not form part of the plea of justification: the nature and scale of Mr Yeo's outside interests.

233. Mr Millar has urged me to hold that the comment is in any event supported by facts published with the protection of *Reynolds* privilege. I am inclined to think that must be right in principle. It is clear that the statutory defence of honest opinion may now be established on that basis: see s 3(3) and 3(7)(b) of the 2013 Act. However, there seems to be no authority on the point; that is not the way the defence is pleaded; and the issue has not been the subject of any sustained argument. So I see no need to address it.

234. Similar considerations apply to the question of whether *Reynolds* itself might protect the comment. The corresponding statutory defence is clearly capable of doing so: see s 4(5) of the 2013 Act. But again there does not seem to be authority on the issue. TNL's case as pleaded is not inconsistent with this line of defence, but it is not spelled out clearly and again there was limited argument on a point which it is not necessary for me to decide.

The 23 June Article

235. It was this article which, in the event, carried the story about APPGs which had been outlined in the 25 May Memorandum. The passages on which Mr Yeo's claim depends do not form part of that story. They refer the reader to previous *Sunday Times* revelations. The key passage, in paragraph [8], says:

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

The "revelations" are, of course, those contained in the first and second instalments of the Westminster for Sale series, published on 2 and 9 June 2013.

236. Mr Yeo's case is that he was referred to by the words "select committee chairman". He was obviously *identifiable* as such. He was a select committee chairman and he was under investigation by the Standards Commissioner as a result of the articles of 9 June. He invites the inference that a substantial number of readers of the 23 June article did in fact understand those words to refer to him. He relies on three factual allegations: (a) most *Sunday Times* readers are regulars; (b) the 9 June articles were online continuously thereafter; (c) the sting of those articles was also extensively republished by other media.

237. Mr Millar argues that many of the third party publications did not repeat the defamatory sting complained of but focused on other aspects of the articles – and

in particular the "coaching" allegation relating to Mr Smith. Mr Millar points to the fact that no witness has been called to say that they identified Mr Yeo, and submits there is no basis for the inference that Mr Yeo invites, which he suggests is fanciful. I disagree.

238. There is certainly something in Mr Millar's arguments about the third party publications. Their focus was for the most part different, as he says. Moreover, there is no evidence as to the existence or extent of an overlap between the readership of the *Sunday Times* and the third party publications, which include not only its sister paper *The Times* but also *The Independent, The Guardian, Daily Telegraph, Mirror, Daily Mail* and broadcasters such as the BBC, Sky News. Generally, I am wary of inferring that newspaper readers read more than one title on a single day. There may be some who do, but to reach a conclusion on that issue would stray in the direction of speculation. But when, as here, it comes to reporting that takes place across different media, I think it fair to draw on what I take to be common knowledge, that some newspaper readers also absorb broadcast news, and safe to infer at least some modest overlap.

239. More significantly in my view, Mr Millar takes an unduly sceptical view of the ability of *Sunday Times* readers to recall what they have read previously. In my judgment it is perfectly reasonable to infer that among readers of *The Sunday Times* of 23 June there were many who had read the 9 June instalment in the same series, just two weeks earlier (or less, for those who read it online after initial publication). It is reasonable to infer that those who had read the previous articles remembered who they were about. The articles were prominent and, in the objective sense, sensational. They were memorable. There was no risk of confusion or uncertainty, as only one select committee chairman had been the subject of such coverage.

240. It does not follow, however, that Mr Yeo has a case of substance to advance in respect of the 23 June article. The essential defamatory sting of the single paragraph of which he complains is similar to that of the 9 June articles. Mr Browne observes that the 23 June article did not mention Mr Yeo's denial, but that is a weak point. The meaning is unaffected. Those who had read the previous *Sunday Times* articles and recalled them two weeks later are likely to have recalled the denials. The denials were also included in all the third party publications. Most referred to it prominently, in their main headlines, or in sub-headlines. This is a case, therefore, of people being given in a few words a summary of something they already knew from lengthy articles published in the same newspaper a fortnight earlier, or in a third party publication which repeated the same sting.

241. Any harm to reputation caused by a re-publication of this kind is liable to be modest at best. If, as here, a claim has been brought in respect of the original, more prominent, article a brief reminder in the follow-up may nowadays not be actionable at all. That is because, having regard to s 12 of the Defamation Act 1952, the case is unlikely to satisfy the serious harm requirement in s 1 of the Defamation Act 2013: *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2015] EMLR 28 [87], [152]. In this context, the absence of evidence of identification by readers of the later publication and resulting harm to reputation might carry weight. This, therefore, is one respect in which the new law could

affect the analysis of a claim such as this. But that law was not in force when the 23 June Article was first published. It would not have determined the outcome of this claim in any event, for two reasons.

242. First, I accept the submission for TNL that the words complained of are protected by *Reynolds* privilege (and the s 4 defence). The general subject matter of the article was of public interest, and it was in the public interest to include a reference to the previous article. The specific defamatory information was relevant and fair. I do not see merit in the two points advanced by Mr Browne in opposition of the privilege defence.

(1) I have dealt already with the first point: that the article did not report Mr Yeo's denial. It was not necessary to reiterate that Mr Yeo had denied the allegations. He was not named, and anyone who knew him to be the select committee chairman would be likely to remember also the denials published prominently in the print and online versions of the articles, and in the third party publications. Unfairness to Mr Yeo is not established by pointing out that reference was made in the 23 June article to the denials issued by the three peers. Not only were the articles about the peers a week older than the Articles of 9 June, but all three peers were named in the 23 June Article, in contrast to Mr Yeo. Legitimately, a different balance was struck.

(2) Mr Browne's second argument is that the article did not mention that Mr Yeo had referred himself to the Commissioner. I do not accept that this omission deprives the few words of which complaint is made of the privilege they would otherwise enjoy. It is a small point, and its omission is well within the margins of editorial latitude.

243. Secondly, and in any event, I have concluded that the defamatory factual sting of the 23 June Article was substantially true. This is for the reasons given above in relation to the articles of 9 June.

Damages

244. For the reasons given above the claims fail and the question of damages does not arise.