

IN THE HIGH COURT OF JUSTICE

[2017] EWHC 1010 (QB)

HQ15D05117

QUEEN'S BENCH DIVISION

MEDIA AND COMMUNICATIONS LIST

MASTER MCCLLOUD

BETWEEN

Mr NADHIM ZAHAWI

Claimant

And

(1) PRESS TV

(2) PRESS TV LIMITED

Defendants

JUDGMENT

For the Claimant: Ms Victoria Jolliffe of counsel instructed by Messrs ACK Media Law LLP, Solicitors, London.

The Defendants did not attend and were not represented.

Hearing Date: 24 March 2017.

Judgment handed down 4<sup>th</sup> May 2017.

*Keywords: libel – defamation – damages – ISIS – Daesh – Islamic State – parliament - terrorism – oil*

1. This is my judgment in this libel claim brought by Mr Nadhim Zahawi who was at the time of the hearing of this case the sitting Conservative MP for Stratford-Upon-Avon. In this judgment the following abbreviations have been used: “PoC”, Particulars of Claim, “WS”, Witness Statement
2. This case came on for final hearing 48 hours after an attack on Parliament and heightened security measures were in place. Those measures were to safeguard against acts of terrorism of the very type with which, by the libels in this claim, Mr Zahawi has been wrongly associated by way of ‘fake news’ on the internet, with the consequence being very significant harm to his reputation which I find below for the reasons set out.
3. This judgment deals with the assessment of damages and other remedies in his claim, arising from the publication of articles stating that Mr Zahawi was connected with raising large sums of money via Israeli oil deals, to help to fund the Islamic State (‘ISIS’ or ‘Daesh’) group’s terrorist activity whilst also making a profit. I was greatly assisted by the well prepared and thorough submissions on law and evidence made by Ms Joliffe of counsel, for the Claimant which greatly expedited the preparation of this judgment.
4. The Claimant was born in Baghdad, Iraq to Kurdish parents. He is the Vice Chair of the All Party Parliamentary Group on the Kurdistan Region in Iraq and is Chief Strategy Officer of Gulf Keystone Petroleum Ltd. He was the co-founder of YouGov and was its CEO until 2010. He is well known in the public and business sphere and has a public reputation in the UK generally and in his constituency, his Party and Parliament. When the Claimant was a child his family escaped from Saddam Hussein’s regime and moved to the UK. The Claimant is married and has three children. At the time of publication his step-sons were aged 17, and his daughter was 2.5 years old.

5. At the hearing of this case I indicated that I would be awarding a substantial sum of damages but that I would give a reserved judgment in view of the importance to the Claimant of being able to provide a clear judgment to those who have become, or will become, aware of the libels in future given the extensive percolation on the internet such that the material is unlikely ever to disappear from the public domain completely.

### **The Defendants**

6. The First Defendant is an English language news and documentary network. It is affiliated with Islamic Republic of Iran Broadcasting (IRIB) which is owned by the Iranian State. It is the publisher of the English language websites [www.presstv.com](http://www.presstv.com) and [www.presstv.ir](http://www.presstv.ir) (“the Website”). The First Defendant has outposts globally. The Second Defendant is registered in the UK. Both have been served in accordance with appropriate permission and directions from the court. The offending article was amended slightly to reflect the fact that the truth of the article was disputed by the Claimant through his lawyers, after service of the letter before action, but it was not taken down.
7. In this case neither Defendant chose to participate in defending the claim, and following an application on notice I granted judgment in default of acknowledgement of service, with damages to be assessed, by my order dated 13 December 2016. Also by that order I gave directions as to the service of evidence relating to quantum and remedies, and made an ‘unless’ order whereby unless the Defendants filed and served their evidence on those issues by 4pm on 17<sup>th</sup> February 2017, inter alia they would be debarred from relying on evidence at the final hearing.
8. No evidence was served by the Defendants and hence this hearing proceeds by way of assessment of damages. I am also asked to grant injunctive relief consequent on judgment. There are therefore two substantive issues before the court, leaving out the question of costs:
  - a. the assessment of damages and/or aggravated damages for libel;

b. whether the court should grant an injunction.

9. I dealt with the question of costs separately and summarily assessed those in the sum of £138,483.29 payable by the Defendants by 10 April 2017, but indicated that this written judgment would follow.

### **The original publication**

10. The Article which is the subject of this action was originally published on 15 July 2015 at the urls: [www.presstv.com](http://www.presstv.com) and [www.presstv.ir](http://www.presstv.ir) under the headline "**Tory MP behind ISIL oil trade.**" The meaning which is to be attributed to that article by reason of the judgment already entered is that:

*"the Claimant plays a pivotal role in ISIL's \$1 million a day black market oil trade by purchasing crude oil from ISIL at a very low price and selling it to markets in Israel and Europe and thereby funds, and profits from trade with, a terrorist group known to carry out heinous crimes."*

11. The Article was amended on a date before 20 July 2015. That version had an amended headline "**Cheap oil to Europe funds ISIL: Reports**" and included the Claimant's denial: "*Meanwhile the MP's lawyer has dismissed the allegations as "entirely false" "There is no truth to these allegations" the lawyer said*". It is pleaded, and I accept, that the sting of the amended article is the same as the original Article. The Claimant also relies on an Article published by the Defendants on the Website on or around 26 October 2015 which repeated part of the amended article.

12. The Article (or its sting) was republished on a substantial number of websites about which more later. The publication and the republications were picked up widely on social media. In December 2015, as a result of parliamentary debates on the case for military action in Syria, there was a resurgence in people sharing the article (or its republications) on-line. The allegation was characterised by counsel Ms Victoria Jolliffe before me as having gone 'viral' and I accept that that is a fair characterisation given the pleaded and evidenced spread of the libel or its sting in

this case. (In that sense the common term ‘percolation’ where libels spread by sharing would perhaps be an understatement.)

13. The Press TV Articles were removed from the Website on a date unknown at some point between 2 August 2016 and 31 August 2016 by which time there had been, as discussed below, extensive repetition of the libel across the internet and on social media.

## **The Law**

### **Principles of assessment of damages in this case and cases like it**

14. The legal principles to be applied when assessing damages where default judgment has been entered are analysed in Sloutsker v Romanova [2015] EMLR 27 637 by Warby J. That decision should be applied by me under the doctrine of comity between courts of coordinate jurisdiction unless I am clear that it is plainly wrongly decided. There is certainly no basis at all for considering that it is anything other than absolutely correct and I therefore must follow it and do so willingly. The same applies to the other decisions of Warby J. referred to in this judgment. The ratio of the decision insofar as it relates to the relevant principles was helpfully provided to me by counsel in her skeleton:

(1) CPR 12.11(1) provides that *“Where a claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case”*

(2) This *“enables the court to proceed on the basis of the claimant’s unchallenged particulars of claim. There is no need to adduce evidence or for findings of facts to be made in cases where the defendant has not disputed the claimant’s allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment...”* [84]

(3) It is neither necessary or appropriate to make a finding of fact that the publications complained of bear the pleaded meanings. [83]

(4) This general approach may need modification in an appropriate case, for example if the court concludes that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency. [86]

(5) At the assessment of damages stage, a claimant may supplement the allegations as to the extent of publication as set out in his particulars of claim "*provided it does not go beyond the boundaries of the pleaded case but fills in the detail.*" [87]

(6) In *Sloutsker* the claimant was permitted to rely on witness evidence as to the effect of the publications on his feelings. [91]

15. In *Sloutsker* at [74] to [82] and in a subsequent case *Barron v Vines* [2016] EWHC 1226 (QB) at [20] – [21], Warby J set out the principles to be applied when assessing damages. In summary and insofar as is relevant to this case:

(1) The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. Sir Thomas Bingham MR summarised the key principles at pages 607 – 608 in the following words:

*"The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must [1] compensate him for the damage to his reputation; [2] vindicate his good name; and [3] take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is [a] the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. [b] The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a*

*handful of people. [c] A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that [d] compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men."* [numbers and letters in bold added by Warby J] see *Barron* at [20]

- (2) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45] see *Barron* at [21(1)].
- (3) In arriving at an appropriate figure for injury to reputation the court must take account of the gravity of the defamation, and the extent of its publication. Republication by third parties where this is a likely result of the original publication, is included in this: *Sloutsker* at [75].
- (4) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it. *Barron* at [21(2)].
- (5) The impact of a libel on a person's reputation can be affected by:
  - a) Their role in society.
  - b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be

someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: C v MGN Ltd (reported with Cairns v Modi at [2013] 1 WLR 1051) [27] see *Barron* at [21(3)].

- (6) A reasoned judgment may moderate or mitigate damages, though the impact of this will vary according to the facts and nature of the case. *Barron* at [21(6)(d)].
- (7) Where the Claimant is an individual it also requires compensation for the injury to his feelings *Sloutsker* at [74]. Damages for injury to feelings may be significant. The court must take account of what the claimant “*thinks other people are thinking of him*”: Cassell & Co Ltd v Broome [1972] AC 1027, 1125 see *Sloutsker* at [76].
- (8) The sum awarded must also be enough to serve as an outward and visible sign of vindication. *Sloutsker* at [77].
- (9) In the case of international libel, the court must always be careful to ensure that it compensates only for the damage caused by the publications that are complained of in the action. *Sloutsker* at [79].
- (10) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John*, 612; (b) the scale of damages awarded



in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: see *John* 608. *Barron* at [21(7)].

(11) At [79] *Barron* Warby J referred to the ceiling on libel awards stating that “awards of that level are reserved for the gravest of allegations, such as the imputations of terrorism or murder. One must seek to place an individual case in its proper position on the scale that leads up to this maximum.” The ceiling is now around £300,000, see eg *Monroe v Hopkins* [2017] EWHC 433 (QB) at [78].

(12) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670. This limit is nowadays statutory, via the Human Rights Act 1998 see *Barron* at [21(8)]. At [86]-[87] the Judge explained the relevance of Article 10 ECHR and political expression to the exercise of the assessment of damages:

*“86. The primary focus of this jurisprudence is on the need to avoid chilling legitimate political expression by ensuring that those who speak out in good faith on political topics are not unreasonably exposed to findings of liability for defamation. I have taken the jurisprudence into account at the liability stage of this case, and concluded that Mr Vines is liable. But I accept that the caution prescribed by these authorities extends to the stage at which damages are assessed for a statement that has been found to be libellous.*

*87. The general point has been acknowledged domestically for over 20 years, albeit the focus in Rantzen was on the chilling effect of excessive awards of exemplary damages. I would accept the more specific proposition that special caution is required when it comes to deciding what is justified and proportionate by way of compensation for libels such as those in issue here, which are published by one politician about another on a topic of public interest. Politicians may in general have thicker skins than the average. Whether or not that is so in the individual case, they are expected to tolerate more than would be expected of others.”*

## **The facts in this case**

16. I am mindful of the principle that the case which has been established is solely that pleaded. To the extent that a Claimant has supplemented the pleadings in evidence and submissions, the basis for assessment remains the pleaded case, but I am satisfied that the Claimant has been careful in his evidence and in counsel's submissions to remain within the boundaries of the pleaded case.

**(i) Gravity**

17. This is not a case where the claimant's interpretation of the words complained of is extravagant or impossible, or not defamatory at all. ISIS/ISIL or Daesh as it is sometimes referred to is a terrorist organisation. An allegation that an individual funds and profits from trade with ISIL, ie an allegation of enabling and funding terrorism (and moreover doing so for profit as well), is exceptionally grave. The comments posted below the offending Article on the Website demonstrate the reaction of readers of the article and speak for themselves para 10(4) PoC: *"he is ataitor (sic) of his owen (sic) country and enemy of world peace what do you expect he should be hanged" "guys like this one should be shot" "hang him!" "he is adding and abetting terrorists so that make him a terrorists (sic)".*

18. I accept that the Claimant's position as an MP and his position as Vice-Chair of the All Party Parliamentary Group on the Kurdistan region in Iraq and on the Foreign Affairs Committee, adds to the gravity of the libel. As in *Rantzen* the impact on the Claimant is more serious than it might be for an individual who is not in a prominent position, albeit the nature of this particular allegation is such that it would be very serious in relation to any innocent person. Members of Parliament are expected to tolerate more than would be expected of others, and to have thick skins typically in matters where one politician publishes about another politician in the usual course of the cut and thrust of legitimate debate in the political domain, but in my judgment the allegations made in the offending publication are so grave that they exceed the scope of that principle. This is not a case relating to legitimate political debate in a democratic society.

## **(ii) The extent of publication**

19. Since the Defendants have failed to engage with the claim it is not feasible to make a specific finding as to the precise extent of direct readership of the Article. The First Defendant was asked to provide information as to the number of page views and other relevant information as to hits but no response was received.
20. I am prepared to infer that the words complained of were published and republished to a large number of readers in this jurisdiction. In support of that inference, the Claimant relies on, in my judgment correctly:
- (1) the nature of the Press TV website;
  - (2) the extent of website republications;
  - (3) the extent of social media republications;
  - (4) approaches made to the Claimant following publication.

### *The Press TV website*

21. The Defendants purport to be a legitimate news source. Press TV is a well known news network affiliated with the state-owned Islamic Republic of Iran Broadcasting (IRIB). It publishes in English and the Article appeared in the UK section of its Website. Alexa ranking figures pleaded at para. 8(2) – (3) PoC relate to traffic to the website as a whole, rather than a particular page and so must be approached cautiously but they do give some indication of the popularity of the Website in this jurisdiction.

### *Website republications*

22. The allegations were shared widely on other websites. A schedule of 21 republications which have been removed from the internet following complaints from the Claimant's solicitors was provided to me, with copies of the pleaded republications. One of the republications was an article on a news aggregator website called "liveleak.com". That republication, which is almost identical to the

Press TV article, was published on 17 July 2015 and stated its source as “*Press TV – this story is ENTIRELY blacked out by UK media*”.

23. A number of the later publications repeated the *Liveleak* article, and links to that article were widely published on Twitter. The version of the article which was being widely shared was not the amended version which included the Claimant’s denial, but the original version. It continued to be shared months after the original publication, evidenced by a ‘Vox Political’ website article published on 7 December 2015. The Vox Political website article was then cited as the source for a further article (at the ‘redicecreations’ website). The sting of the Article was recycled widely.
24. It was not possible for the Claimant and his lawyers to have every republication taken down. I was provided with a Schedule of those which remained online as at 25 January 2017. For example at awdnews.com and on the Middle East News Agency website and were published on 8 August 2015. They use very similar wording to the Article, again without the text of the Claimant’s lawyers’ denial on his behalf.
25. A further example is that of May 2016, in the form of a web article on Al-Masdar News, which includes the words: “*Earlier, British Tory MP Nadhim Zahawi has been accused by local media with getting involved in illegal oil trade with ISIS. The Iraqi-Kurdish businessman has been formerly charged with money laundry (sic)*”. The Claimant’s evidence which I accept is that the Al-Masdar article “went viral”.

### *Social media republications*

#### *Twitter*

26. In support of his application for permission to serve out of the jurisdiction, which was granted on 20<sup>th</sup> July 2016, the Claimant relied on the expert evidence of Mr Burt. His evidence is confined to two 40 day periods, starting on 15 July 2015 and 2 December 2015 and there he sets out a number of limitations of the method which he used such as including the fact that Twitter users who have their profiles set to

'private' would not be picked up using his method for analysing extent of publication. For the 1<sup>st</sup> period, the total number of posts collected was 409, with 210 being in this jurisdiction. During the 2<sup>nd</sup> period 5594 posts were collected, with 2104 in this jurisdiction. His report states that the total number of "followers" for the 1<sup>st</sup> period was 1,302,639, and for the 2<sup>nd</sup> period 10,642,181.

27. Counsel relied on Monroe v Hopkins [2017] EWHC 433 (QB) at [58], in the context of assessing how many times a tweet had been viewed, and the view given there that *"precision is of course impossible, but nor is it necessary. It is enough if I can make a sound assessment of the overall scale of the publication."* I accept counsel's argument that in this case even if a substantial discount is applied to the number of Twitter followers to allow for the fact that not all followers would have seen the tweets and a proportion of followers would not be in this jurisdiction, the allegation was, I find, shared widely on Twitter. The number of 'followers' were in the millions, and it is entirely reasonable to conclude that the likely actual publication via twitter was very substantial.

28. I take note that, increasing the spread of the allegations, various people in the broadly 'political' or at least public sphere posted links to the allegations on Twitter: pleaded at para. 8(4) PoC and reinforced at para. 19 Claimant's WS:

(1) Stephen Yaxley-Lennon (aka Tommy Robinson) the former leader of the English Defence League. I had evidence that his Twitter account at the time of pleading had around 112,000 followers. His tweet on 6 December 2015 was *"Another bent Muslim politician [link to Liveleak article] SHOCK: UK Tory MP Nadhim Zahawi, caught selling ISIL Oil."* That tweet was retweeted 113 times.

(2) John Clarke (the 2015 Labour candidate for the Witham Constituency), whose Twitter account at the time of pleading had around 3,574 followers also tweeted on 6 December 2015 *"If THIS story turns out 2 b true then Tories r in serious trouble: UK Tory 'MP Nadhim Zahawi behind ISIL oil trade'"* The tweet contained a link to the AWD Article. It was retweeted 157 times. There were in evidence

further tweets by Mr Clarke during the ensuing days containing links to the republications and asking for updates if the allegations were true.

(3) Susan John-Richards, a 2015 independent candidate for the Tooting constituency, whose Twitter account at the time of pleading had around 8,784 followers tweeted on 6 December 2015 that “*SCANDAL-UK Tory MP, Nadhim Zahawi, caught selling ISIL Oil [link to the Liveleak article] HE TOO OWNS YOU GOV. !! VOTES!!*”. That tweet included a photograph of the Claimant and was retweeted 268 times. Notably the responses to her tweets commented on the failure of the mainstream media to pick up on the allegations. Later tweets by Ms John-Richards included links to the Liveleak article.

29. The republication of the allegation did not stop after the original Article was removed from the Website in August 2016. There was in evidence a “meme”<sup>1</sup> which made various allegations about the Claimant including “*Accused of trading oil from Islamic State controlled oil fields in Iraq. Have a google*”. The original tweet dated 13 October 2016 containing this “meme” as it was described in submissions was retweeted 606 times, and it was shared on Facebook, for example 1300 times by one Facebook account in January 2017.

#### *Facebook*

30. It is not possible to ascertain with any precision how widely the allegation was republished on Facebook. A document prepared by the Claimant’s solicitors which was provided to me set out in table form a selection of Facebook posts which posted links to the republications. The posts give some idea of the mass scale of republication on Facebook.

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<sup>1</sup> I was told that a ‘meme’ is an image which is easy to share on social media. At the risk of pedantry, correctly, a *meme* is an idea or style that spreads from person to person within a culture, and is not an invention of the twittersphere. It has been described as a unit of human cultural evolution analogous to the gene. It would be a shame to see this rich concept stripped of its subtlety and co-opted away from its origin in Dawkins, *The Selfish Gene*, (1976) OUP. One might better characterise the entire sting of a libel as being closer to a ‘meme’ in the proper sense, and the extent to which people believe it and spread it, as being the ‘survival’ of the meme down the cultural generations.

31. My attention was drawn to the comment of a user on the [www.boards.ie](http://www.boards.ie) website on 6 December 2015: *"I don't recall seeing this news story in 17<sup>th</sup> July but it came up in my Facebook feed just there, in its reveal it uncovers that a UK Tory MP, Nadhim Zahawi was caught selling oil to ISIL. So I thought I'd post the link here if anyone is interested"*. This was followed by a link to the [liveleak.com](http://liveleak.com) article.
32. The Claimant's pleaded case is that the Defendants caused the republications on the websites and social media §7 PoC on the basis that those republications were a consequence the Defendants must readily have foreseen and/or intended when publishing the words complained of. The Article included "buttons" allowing readers to share the Article on Twitter and Facebook. Any publisher publishing online knows and can be taken in my judgment to intend that links to the Article will be shared, and the Article will be republished as a result.
33. Given the above wide spread of this libel across the web, the Claimant's evidence that *"Regrettably, I don't think the spread of the allegations is ever going to stop"* §20 is well-founded. The Court of Appeal in Cairns v Modi [2013] 1 WLR 1015 at [26] – [27] confirmed, that this "percolation phenomenon" is a legitimate factor to take into account in the assessment of damages.

**(iii) Damage to reputation**

34. I accept the submission by counsel that the Website gave the appearance of being a credible source of news information. The nature of those who read the Article or the republications and contacted the Claimant about it suggest that it was in fact taken seriously, thus:
- (1) Those closest to the Claimant - his wife, parents, sister and two step-sons - had to be reassured that the allegations were not true paras. 8 & 12 Claimant's WS.
- (2) The Claimant was contacted by a number of people within the petrochemical and upstream oil & gas industry para. 15 Claimant's WS.

- (3) The Claimant was asked about the allegations by directors of Gulf Keystone Petroleum Ltd. para. 16 Claimant's WS.
- (4) Two days after publication the Claimant was contacted by a journalist from the Daily Mirror asking questions about the allegations. He was also contacted by the local paper in his constituency: see para. 23 Claimant's WS.
- (5) The Claimant was also contacted by a number of individuals who had seen the words complained of or had been contacted by others who had – see para. 8(5) PoC:
  - (a) Chris Bell: correspondence between Mr Bell and the Claimant and Mr Bell and Mark Garnier MP.
  - (b) Pete Matthews: correspondence between Mr Matthews and John Glen MP (which referenced the Live Leak Article).
  - (c) Edward Fila (UKIP candidate for Stratford-on-Avon): see email sent by Mr Fila, the context of which is suggestive of transmission to a substantial number of recipients para. 8(5)(d) PoC.
  - (d) A copy of the Edward Fila email sent to Brian Tustain, Chairman of the Conservative association for Stratford-on-Avon.
- (6) The Claimant was asked about the allegations by the Conservative Whips Office, the then Foreign Secretary's PPS, and a number of fellow Conservative MPs, see para. 21 Claimant's WS.
- (7) In December 2015 the Claimant was contacted by co-founders of YouGov about the allegations para. 16 Claimant's WS.



35. In my judgment counsel was correct in her argument that an allegation of this kind, published on this scale both to the public at large and to those who know the Claimant (and who in fact seem to have treated the source as apparently a respectable or credible one on the face of it) will have caused serious damage to the Claimant's reputation. That it was not published in the mainstream media is of little comfort. It led to suggestions in some quarters of a mainstream "media blackout". Nonetheless the absence of truly mainstream media coverage is a factor I must take into account in moderating the sum of damages.
36. As is common in libel claims, the vast majority of people who read the allegation would not contact the Claimant to ask him about it. But I accept that it is inevitable that his reputation has been seriously tarnished in the minds of those readers. The fact that the Claimant was able to reassure people close to him that the allegations were untrue, and he has continued to work as an MP and in other roles, somewhat reduces the reputational harm that has been caused. The Claimant believes that "*it is something that I am going to have to deal with for the rest of my career*" para. 20 Claimant's WS, and that is not an unreasonable supposition on his part given that republications of the sting or content of the Article are still live and will continue to surface when the Claimant's name is searched.

**(iv) Distress**

37. I have already for the most part said that I have discounted the general point that politicians may be expected to have "thicker skin" than others. It has little bearing on allegations of funding and profiting from a terrorist organisation, which is an allegation very much outside the scope of the sort of routine unpleasantness which politicians and those wishing to discuss politics in the public sphere sometimes engage in. The Claimant's pleaded case is that the publication has "*caused him enormous distress*".

- (1) He states in evidence that on first reading the Article, he felt “*an increasing sense of disbelief and horror*” and “*felt utterly despairing at the implications of what was being said about me*” para. 7 Claimant’s WS;
- (2) that the publication had a serious effect on the Claimant’s close family members which in turn increased the distress caused to the Claimant resulting in him finding it impossible to sleep: para. 11-14;
- (3) that having to explain that the allegations were untrue to colleagues in Parliament was “*humiliating*” and the allegations “*excruciatingly embarrassing and upsetting*” para. 21;
- (4) in November 2016, at a talk the Claimant was giving to around 300 school pupils, he was asked by a pupil “*Is it true that you trade oil for Isil?*” which the Claimant found “*incredibly embarrassing*” para. 24.

38. In respect of the last mentioned example, in my judgment the Claimant is likely being very moderate in his use of descriptive language and I accept that this example and the others are entirely consistent with his case that he has suffered genuine and serious distress, worsened by the (also appropriate) anticipation that the allegation will continue to surface in the future.

#### **The armed conflict between the Kurds and ISIL/ISIS/Daesh**

39. The fact that the Claimant is from a Kurdish background, and ISIL are in armed conflict with the Kurds has increased the distress the Claimant has suffered. The Claimant likened the nature of the allegation that he was funding ISIL to being one of collaboration with those destroying his own people (the specific analogy he gave was that it felt to him akin to alleging that someone of Jewish background was a Nazi collaborator).

#### **Conduct of the Defendants after the dispute arose.**

40. The only formal attempt at a response in this entire action by the Defendants has been:
- (1) a response from Farooq Bajwa & Co Solicitors, at the registered office of the Second Defendant to the pre-action protocol letter from the Claimant's solicitors in which Farooq Bajwa stated that the letter had been passed to Press TV "*and that we await instructions*" ,
  - (2) a subsequent response from Farooq Bajwa on 22 July 2015 stating "*we are not in receipt of any instructions from our client and therefore are not instructed to accept service on their behalf*"; and
  - (3) an attempt by the Second Defendant to file an Acknowledgment of Service, which was rejected by the court.
41. I accept the submission that this persistent failure to engage properly has increased the stress and anxiety caused to the Claimant (§25 of WS). He has been forced to incur very substantial costs attempting to get republications removed over many months, without cooperation from the Defendants.

### **Quantum**

42. It is well understood that a damages award in a Libel case needs to be "*sufficient to convince a bystander of the baselessness of the charge*", per Lord Hailsham in Cassell & Co v Broome [1972] AC 1027 at 1071. I was taken to example awards in various cases as follows:
- Ghannouchi v Al Arabiya [2007] EWHC 2855: Tunisian exile sued a Dubai-based television broadcaster over allegations that he was an extremist figure with links to Al Qaeda. The defendant did not defend the proceedings, save for suggesting that publication was minimal. Eady J awarded £165,000 at a damages assessment.

Veliu v Mazrekaj [2007] 1 WLR 495, journalist sued over allegations in an Albanian language newspaper that he “*through his close friendship with and active support for Mohammad Sidique Khan, the worst of the four terrorist killers who bombed the London underground, was closely involved with or implicated in the terrorist bombing attacks on the London underground.*” Eady J found that the starting point for a damages award under the offer of amends procedure was £180,000.

Berezovsky v Terluk & Russian State Television [2010] EWHC 476 (QB), claimant was awarded £150,000 (upheld on appeal) by Eady J in respect of a satellite television programme broadcast into the jurisdiction which alleged he was a knowing party to a criminal conspiracy to avoid his extradition and obtain asylum by trying to procure a false confession from the defendant by means of bribes and drugs.

Al Amoudi v Kifle [2011] EWHC 2037 (QB) HHJ Parkes QC awarded £175,000 in respect of allegations that there were reasonable grounds to suspect that the claimant knowingly financed terrorism and was responsible for the murder of his daughter’s lover. The allegations were published on the defendant’s website with a readership of several thousand. In a subsequent claim against the same defendant in respect of allegations that the Claimant had been trafficking women who were sold into slavery and abused, where publication was “in the thousands” Eady J awarded £180,000 Al Amoudi v Kifle [2013] EWHC 293.

Sloutsker: Warby J awarded £110,000 in respect of an allegation of conspiracy to murder and an imputation of corruption, published to around 60,000 people in this jurisdiction and a programme heard by several thousand.

Rahman v Ary Network Ltd [2016] 4 WLR 22 Eady J awarded £180,000 in respect of 24 programmes broadcast in Urdu in this jurisdiction, with the following meanings: (i) treason or treachery towards Pakistan; (ii) covertly conspiring with foreign powers or agencies to damage the interests of Pakistan; (iii) doing so in return for payment; (iv) blasphemy; (v) destroying or attempting to destroy evidence at the crime scene of the attack on Hamid Mir; (vi) making threats to Muhammad Ali and authorising

the publication of false allegations against him. The allegations were published to tens of thousands of people in this jurisdiction.

43. In my judgment the more recent of the comparators above are somewhat set apart by the relatively lower degree of publication, whilst the earlier comparators must be seen in the light of the lower 'ceiling' for defamation awards applicable at the relevant times. This was not a Libel published in mainstream media but was nonetheless widely republished and will continue to spread. It was not a libel alleging direct terrorist action by the Claimant but my view is that an allegation of being a funder of terrorism is practically indistinguishable from that. Taking into account all the matters above and the dismissive and uncooperative conduct of the Defendants in my judgment an award of £200,000 is appropriate. That sum in my judgment is both necessary and proportionate and does not amount to an unwarranted interference with Article 10 ECHR.
44. Applying the principles which appear in *Sloutsker*, I consider that Art. 8 ECHR is plainly engaged and that I should consider whether the injunctive relief sought on judgment is merited on the face of the Particulars of Claim. However an injunction must be no more than is necessary and proportionate to pursue the aim of protecting the Claimant's Art 8 rights and his reputation in this jurisdiction. Any injunction of the sort requested risks to some degree or other being an interference with freedom of expression. There was no defence and no justification put forward.
45. In terms of what an injunction would achieve, one has to consider whether there is material which points to some likelihood of repetition of the publication by the Defendants. An undertaking preventing future republication was sought from the Defendants by the Claimant, and was not given. The original publication with minor amendments continued for months after the complaint was notified, and the Defendants have not cooperated with this claim. In my judgment there is sufficient material to justify a concern that republication is reasonably likely in future by these defendants unless restrained. I therefore accede to the application for an injunction restraining future publication by the Defendants and will invite counsel to send a

draft order as to the exact wording sought for my consideration, and also embodying this damages award.

MASTER VICTORIA MCCLOUD

Handed down 4<sup>th</sup> May 2017