



Neutral Citation Number: [2025] EWHC 2565 (KB)

Case No: QB-2022-002648

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 October 2025

Before :

RICHARD SPEARMAN K.C.
(Sitting as a Deputy Judge of the King's Bench Division)

Between :

RASHID NASEER
- and -
ADIL FAROOQ RAJA

Claimant

Defendant

David Lemer (instructed by **Stone White Solicitors**) for the **Claimant**
Simon Harding (instructed by **Gunnercooke LLP**) for the **Defendant**

Hearing dates: 21-24 July 2025

Judgment

This judgment was handed down remotely at 10.30am on 9 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Richard Spearman K.C.:

INTRODUCTION AND OUTLINE OF THE ISSUES FOR TRIAL

1. This case has attracted considerable interest, in particular among freelance journalists and members of the Pakistani diaspora based in the United Kingdom. It is therefore important to make clear at the outset what this trial is and is not about. In order to understand those matters, it is vital to keep well in mind at all times that the claim is governed by English law, both substantive and procedural. In particular, the English law of defamation is extensive and sophisticated, and it provides a detailed framework for determining issues of the kind which arise in this case, which it is the function and duty of the Court to apply.
2. The claim is one for libel, arising from the publication by the Defendant, between 14 and 29 June 2022, of material on Twitter, Facebook and YouTube. The Claimant is a former Brigadier who was at that time a Sector Commander and head of the intelligence command of the Pakistan Army's Inter-Services Intelligence ("ISI") in Punjab, and he lives in Pakistan. The Defendant is a former Major in the Pakistan Army who became a journalist after taking voluntary retirement from the Pakistan Army in 2017, and he lives in England.
3. At the time of publication, elections were taking place in (among other places) Punjab. A central, although not the sole, theme of the publications concerned allegations of actual or attempted manipulation of those elections, in which the Claimant was alleged to have been involved. For example, as determined by me on a trial of preliminary issues concerning meaning on 19 and 20 March 2024 and recorded in my Order dated 5 April 2024: (1) the meaning of the second publication complained of is "The Claimant had allegedly had several meetings with Asif Ali Zardari during his stay [in Lahore] to discuss election manipulation" and (2) the meaning of the tenth publication complained of is "The Claimant played a prominent role in regime change and his corrupt practices have made him a billionaire".
4. The core elements of the cause of action for libel were described by Warby LJ in *Soriano v Forensic News LLC* [2021] EWCA Civ 1952; [2022] QB 533 at [15] as follows:

"At common law, a cause of action for libel is made out by proof that the defendant was responsible for the publication to one or more third parties of a written statement that bore a defamatory meaning about the claimant. Statute has added a requirement that publication caused serious harm to the claimant's reputation or is likely to do so: Defamation Act 2013, s 1(1). If this much is established, the burden shifts to the defendant to raise a defence. So defamation remains a relatively simple tort to prove ..."
5. The claim was brought in this jurisdiction on the basis that (i) there was substantial publication of all of the words complained of in this jurisdiction, and (ii) the Claimant has a reputation in this jurisdiction which was occasioned serious harm by publication of all of the words complained of. Each of those matters was disputed by the Defendant, and fell to be decided at the trial. However, no challenge to jurisdiction was made by the Defendant.
6. By paragraphs 5 and 6 respectively of his Order dated 23 February 2023, Master Davidson ordered (i) that "The Defendant shall make any application challenging jurisdiction, if so advised, by 4pm on 23 March 2023", and (ii) that there should be a trial of preliminary issues concerning the meaning of each of the publications complained of. By application

notice dated 23 March 2023, the Defendant sought (among other things) an Order that his application that there was no jurisdiction to try the claim because the Claimant “has not demonstrated suffering harm in the UK” should be heard before or at the trial of those preliminary issues, or alternatively that paragraph 5 of Master Davidson’s Order should be varied to allow him to pursue his challenge to jurisdiction following exchange of witness statements. The trial of those preliminary issues was heard before me on 19 and 20 March 2024, and resulted in my Order dated 5 April 2024. By paragraphs 5 and 16-22 respectively of that Order, (i) I ordered that the Defendant’s application for the claim to be dismissed for want of jurisdiction on the basis that the Claimant has not suffered serious harm should be determined if and when the Defendant made an application for the claim to be dismissed as an abuse of process, (ii) I ordered that if the Defendant made no abuse of process application, the issue of serious harm should be determined at the trial, and (iii) I gave directions for the determination of an application to have the claim dismissed as an abuse of process if the Defendant should make one. However, he made no such application.

7. Further, although at least part of the reason why the claim has attracted public interest relates to the suggestion that it is in reality brought, or at least funded, by the ISI and constitutes an example of “Strategic Litigation Against Public Participation” (“SLAPP”), that is not an issue that falls to be determined. In accordance with paragraph 16 of my Order dated 5 April 2024, the Defendant was required to issue any application for the claim to be struck out as an abuse of process by 4 October 2024. However, he did not do so, whether by that deadline or indeed at any time. Instead, contentions were advanced in the Re-Amended Defence dated 9 October 2024, which was settled by Counsel (John Campell) on behalf of the Defendant, that the claim is liable to be dismissed or the Particulars of Claim are liable to be struck out, on the ground (among others) that it is a SLAPP. In addition, the Skeleton Argument of Mr Harding, the Defendant’s Counsel at trial, contended that “this is not a genuine attempt by the Claimant to restore [his] reputation”, that the claim is instead “an effort by the Pakistan Military authorities to suppress dissent and criticism”, that it was unclear “where the Claimant gets the means to finance [the claim]”, and that “This is a SLAPP”. No reasons were put forward as to why the Defendant should be permitted to advance these arguments in spite of his failure to comply with my Order dated 5 April 2024 (which allowed him ample time to advance any abuse of process arguments in an application which would have been heard well before trial in accordance with the detailed directions that I gave, and which, if successful, would have avoided the costs of the trial). In any event, that case was not persisted in at the trial with any conviction. For example, questions were put to the Claimant in cross-examination relating to the funding of the claim. However: he replied that he had been funding the claim; that evidence was left apparently challenged; and Mr Harding made no reference to SLAPP in his closing submissions.
8. One of the documents to which Mr Harding made reference during the course of the trial is the US Department of State 2023 Report on Human Rights Practices concerning Pakistan. However, I consider that the 2022 Report is more likely to be germane, by way of general background, to the matters that arise for determination in the present trial. The 2022 Report states (among many other things): “While military and intelligence services officially report to civilian authorities, they operate independently and without effective civilian oversight or control. There were reports that members of the security forces committed numerous abuses.” Further: “Significant human rights issues included credible reports of: unlawful or arbitrary killings, including extrajudicial killings by the government or its agents; forced disappearance by the government or its agents; torture and cases of cruel, inhuman, or degrading treatment or punishment by the government or its agents; ... arbitrary detention; ... serious restrictions on

free expression and media, including violence against journalists, unjustified arrests and disappearances of journalists ...; ... serious government corruption; ...” and “There was a lack of government accountability, and abuses, including corruption and misconduct by security services, often went unpunished, fostering a culture of impunity among perpetrators.”

9. Nevertheless, this is not a trial about these issues, or the accuracy of that appraisal. Nor is it a trial about the role of the ISI in Pakistan. It is not even a trial about whether the Claimant did or did not act in the manner alleged by the Defendant in the words complained of.
10. The Defendant’s pleaded case for trial was set out in the Re-Amended Defence. This included a defence of truth in respect of each of the allegations against the Claimant complained of in the Particulars of Claim. For such a defence to be sustainable at the trial, what is required is: (i) recognition that a defamatory allegation has been made and (ii) evidence that the allegation is true, or substantially true: see s2 of the Defamation Act 2013.
11. No such evidence was adduced by or on behalf of the Defendant. On the contrary, in the Defendant’s witness statement for trial, dated 4 September 2024 (“the DWS”) he stated with regard to the second publication complained of “the content of the Tweet represents my honest opinion and analysis regarding the political dynamics in Punjab, Pakistan” and “It was not my intention to defame [the Claimant], but rather to engage in political discourse and express concerns about the integrity of the electoral process”. That DWS contained evidence to like effect with regard to all the other publications complained of by the Claimant. For example, with regard to the tenth publication complained of, the Defendant stated “It was not intended to make defamatory allegations against the Claimant or to imply any direct involvement on his part in regime change or corrupt practices”. This evidence is contradictory to a case to the effect that “I alleged that the Claimant did X, and that is true”.
12. Even if, in principle, that evidence could have been countered or made good by the evidence contained in the witness statements of the Defendant’s proposed witnesses for trial, their evidence, also, did not support a defence of truth. None of those proposed witnesses claimed to have any direct knowledge of the misconduct alleged against the Claimant. Indeed, at least one of them (Mr Shaheen Sehbai) was careful to say that he did not know whether the Claimant bore any “personal responsibility” for what he described as “the cruelty that is unfolding in Pakistan” before going on to assert that “Either he should stop it because it is his duty to do so, or he is not doing his duty, and he should resign”. The tenor of these last words, while critical of the Claimant, is far removed from alleging “corrupt practices” or the like, to say nothing of being couched in the language of opinion.
13. It is correct that the Defendant’s interlocutory witness statements contained statements such as “The words published were not defamatory. They were the truth as relayed to me through my reliable sources”. However, even if it is permissible to disregard the tension between those words and the Defendant’s trial evidence, contained in all the witness statements for trial, a general assertion in those terms is insufficient to provide proper evidential support for a defence of truth to the detailed allegations about which the Claimant complains.
14. It is also correct that paragraph 2 of the Re-Amended Defence contains a long list of matters which are said to comprise a brief description of the context which is pleaded as being necessary to understand (i) the meaning of the publications complained of and (ii) the defences advanced by the Defendant. This is a mixture of assertions, the evidential basis for which was not made clear. Some are quite general, such as “[The ISI] is used by the army to control the population, politicians, the police, and to target journalists and lawyers

who oppose their goals”. Some are more specific, but do not appear to be relied upon as relating to the Claimant’s role within the ISI, such as “The ISI’s C-Wing has an additional sub-cell responsible for the destruction and derogation of opposing political parties and their leadership, including via assassination” – because while it is pleaded that the Claimant was a Sector Commander of the ISI’s Internal C-Wing Punjab, there is no claim that the Claimant was part of, or controlled, the alleged “additional sub-cell”. Some relate to the Claimant, although in terms that do not appear critical or sinister, such as “Since 2021, the Claimant has actively engaged with political leaders from all sides including opposition parties”. Some make positive allegations against the Claimant, although in terms that lack specificity, such as “In the period 2021-2023 the Claimant was actively involved in political manipulation against the PTI in support of the PMLN, and in controlling the superior judiciary in the Lahore High Court so as to deny the PTI fair recourse to the justice system”. Some appear to roll up general allegations and allegations relating to the Claimant, such as “There is a climate of fear in Pakistan politics, for which the ISI and the Claimant are in large part responsible. On 15 August 2022, the Claimant initiated this defamation case against the Defendant in London as a clear act of intimidation against his journalistic work”.

15. Those matters that relate directly to the publications complained of are contained in paragraph 2(d) of the Re-Amended Defence, which includes the following: “In July 2022, by-elections in 20 seats in the Punjab were held and the ISI, army and corrupt politicians orchestrated a detailed plan of how that was to be rigged against Imran Khan’s ruling party. Having been advised of this by his sources, the Defendant exposed this plan on his news videos and in his tweets on 19 June 2022, 20 June 2022 and 29 June 2022... The Defendant’s sources advised him that his exposure of this plot caused great anger in the ISI and the army, particularly the Claimant and General Bajwa”. This paragraph contains no details of the role alleged to have been played by the Claimant in the rigging of the elections. In contrast, there are specific allegations concerning the Claimant that (i) he was one of those angered by the “exposure of this plot” and (ii) he has brought the present claim for an improper purpose. It is also right to note that the point that the claim has been brought as a “clear act of intimidation” is stated as fact, although no strike out application was made.
16. In light of these difficulties, and following interventions from the Court, the defence of truth was withdrawn on the morning of the second day of the trial, in my view correctly.
17. In addition, the evidence contained in the DWS is, on the face of it, insufficient to support a defence in accordance with the provisions of s4 of the Defamation Act 2013. This requires the Defendant to show, with regard to each of the sets of words complained of, that (a) the statement complained of was, or formed part of, a statement on a matter of public interest and (b) the Defendant reasonably believed that publishing the statement complained of was in the public interest. Limb (a) depends on an objective consideration of each of the statements complained of, and in any event was not in issue. As to limb (b), however, evidence to the effect that “I did not intend to make any defamatory allegation against the Claimant or to imply that he had any direct involvement in wrongdoing” is not easy to reconcile with a defence to the effect that “I reasonably believed that it was in the public interest to publish that the Claimant was guilty of the wrongdoing that was identified”.
18. Nevertheless, on the basis that (i) the Re-Amended Defence contains pleas that the Defendant reasonably believed that it was in the public interest to publish each of the statements complained of in the Amended Particulars of Claim and (ii) that Defence was verified by a statement of truth signed by the Defendant, and with the concurrence of Mr Lemer, the Claimant’s Counsel at trial, and perhaps over-generously to the Defendant, I

was invited by both parties to proceed on the footing that the Defendant's case incorporated sufficient evidential material to support a defence under s4 of the Defamation Act 2013.

19. In these circumstances, the trial involved determination of the following principal issues:

- (1) whether, in respect of each of the publications complained of, and in accordance with the requirements of s1 of the Defamation Act 2013, the publication has caused or is likely to cause "serious harm" to the reputation of the Claimant;
- (2) whether, in respect of each of the statements complained of in those publications, the Defendant has a defence to the Claimant's claim for defamation in accordance with the provisions of s4 of the Defamation Act 2013 (summarised above);
- (3) if the Claimant succeeds on issue (1) above, and the Defendant fails on issue (2) above, the measure of damages to which the Claimant is entitled; and
- (4) if stage (3) is reached, whether the Claimant is entitled to the following further remedies: (a) an injunction, and (b) an order pursuant to s12 of the Defamation Act 2013 requiring the Defendant to publish a summary of the judgment in his favour.

20. In fact, as already stated, it was conceded that each of the statements complained of was, or formed part of, a statement on a matter of public interest. So limb (a) of s4 is not in issue. Further, the Defendant conceded that, if the Claimant succeeds on liability, an injunction to restrain further publication of the same or similar libels would be an appropriate remedy.

THE PARTIES

21. According to paragraph 1 of the Amended Particulars of Claim (amended on 4 April 2024 to take account of the determination of the preliminary issues on meaning), and in addition to the facts summarised in [2] above, the Claimant "joined the Pakistan armed forces in 1989 and has risen through the ranks of the Army through hard work and dedication" and "is a professional soldier who has taken an oath to stay loyal to the Constitution of Pakistan and not to get involved in political, immoral or corrupt practices". Paragraph 3 of the Re-Amended Defence admits all these matters, save that (i) it is pointed out that the Claimant is now retired (which is not in dispute), and (ii) it is asserted that the Claimant's primary loyalty is to the ISI and Pakistan's military establishment and not to the Constitution.

22. Paragraph 2 of the Amended Particulars of Claim pleads (in sum) that the Claimant has received multiple medals and commendations for his service, that he has worked closely with anti-terror forces from the UK, the USA and the European Union, that he enjoys an unblemished reputation, that he was promoted to the rank of Brigadier and appointed to lead intelligence operations in Punjab on merit, and that he has received death threats as a result of his role in countering terrorism both as a frontline army commander and as a senior intelligence officer leading high profile counter-terrorism operations across Pakistan. Paragraph 3 of the Re-Amended Defence puts the Claimant to proof of these matters. However, they were supported by the Claimant's evidence and were not challenged by Mr Harding. In addition, on the basis of concerns about his safety, arrangements were directed by another Judge of the Media and Communications List which enabled the Claimant to access the Court and to wait at Court without public exposure. It is therefore clear that those concerns appeared sufficiently credible to that Judge to warrant those unusual steps.

23. The Defendant's evidence before me is that, in addition to the facts summarised in [2] above, he is a third generation Pakistan Army officer, who served honourably as a fighting arm officer for almost 21 years, had experience of serving in active operations, and was wounded during the war against terror in 2010. In addition, during his time in the Pakistan Army, he collaborated with (among others) the ISI, witnessed the working of the Pakistan intelligence agencies first hand as the officiating wing commander of the Khyber Rifles, and gained "a deep insight into the workings of the military". Furthermore, after his retirement he set up a business with the Defence Housing Authority ("the military estate agent") and was appointed as spokesperson for the Pakistan Ex-Servicemen Society ("an ISI funded organisation"). Through these roles he had regular meetings with (among others) the Director Generals of the ISI and the Inter-Services Public Relations ("ISPR"), was at the heart of the Pakistan military's "information operations and narrative building efforts", regularly visited the headquarters of the ISI internal wing and the ISPR, gained "deep insight into the workings of the military and intelligence establishment of Pakistan, which practically rule the country from behind the scenes", and "made deep rooted connection in the ISI, ISPR and General Headquarters". The Defendant further states that he was aware of "the Claimant's activities as the Sector Commander Punjab of the ISI's internal wing" and of "the business and political relations" of the Claimant and his provincial counterparts.
24. However, it is to be noted that the Defendant (i) does not link this claimed knowledge to the allegations made against the Claimant that are complained of in these proceedings, and (ii) nowhere asserts that he has any personal knowledge of the truth of those allegations.
25. The Defendant states that he supported Imran Khan since childhood, but when he spoke out against the "regime change operation" against Imran Khan in 2022 he was persecuted. His house was raided twice by the ISI, his mother was abducted by the ISI, his properties were seized as a result of "fictitious cases" registered against him by the ISI, and access to his bank accounts was denied - according to what he was told "on the pressure of the ISI".
26. The Defendant accordingly had to flee Pakistan, and join his wife and children in the UK. Here, he has continued to work as an independent journalist. However, according to his evidence, the persecution has not abated: (i) he has faced "multiple assassination threats" from "the Pakistani military and security establishment", (ii) a "fictitious terrorism case" was registered against him by the Pakistani government, (iii) although this case was dropped following lengthy investigation by the British police, in Pakistan it was used (in his absence) as the basis to court-martial him and to sentence him to 14 years' imprisonment; and (iv) his passport and those of his children and mother have been blocked by "the Pakistani state". The Defendant's evidence that his safety would be at risk if he attended the trial was regarded as sufficiently credible by another Judge of the Media and Communications List to grant the Defendant permission to give evidence remotely at trial.
27. The Defendant further states that (i) he is one of the very few voices of dissent against political manipulation by (among others) the ISI, (ii) he maintains "a credible network of sources within the ISI and the military, including but not limited to the political and bureaucratic circles of Pakistan", (iii) the "veracity of my information and credibility deeply hurts the officials of the authoritarian state of Pakistan", and (iv) "ISI officials have a notorious reputation globally, because of gross human rights violations in Pakistan, and facilitating terrorism abroad. I have not stated anything out of the ordinary or something which is not already acknowledged globally about the ISI and its officials". These matters are relevant to, and of importance for, his defence under s4 of the Defamation Act 2013.

BACKGROUND TO THE PUBLICATIONS COMPLAINED OF

28. At the time of the publications complained of, the Defendant used the following media, through which all of the publications complained of were made, in each instance in Urdu:
- (1) A Twitter profile entitled “Adil Raja”, with the handle “@@soldierspeaks”.
 - (2) A YouTube channel entitled “Soldier Speaks”.
 - (3) A Facebook profile entitled “Major Adil Raja @majoradilaja – Armed Forces”.
29. Although the Claimant complained of ten publications, the fifth publication complained of was held not to be defamatory of him. Accordingly, only nine publications remain in issue.
30. The context in which the words complained of were published is, in brief, and without seeking to determine the rights and wrongs of the events in question, as follows. Imran Khan was the leader of the Pakistan Tehreek-e-Insaf party (“PTI”) and became Prime Minister following elections in 2018. In those elections, the PTI won the most votes, but those votes were insufficient for a majority, and so Imran Khan formed a coalition government with other parties. The major opposition parties were the Pakistan Muslim League N (“PMLN”) and the Pakistan People’s Party (“PPP”). In 2020, those parties and others combined to form the Pakistan Democratic Movement (“PDM”). In April 2022, Imran Khan’s government was ousted after a parliamentary vote of no confidence, and he was removed from office. All these events attracted controversy: in particular, the 2018 elections were said by some to have been rigged, and the regime change triggered by the vote of no confidence resulted in mass public protests. In July 2022, by-elections were held in (among other places) Punjab, which the PTI won by a substantial majority. In the meantime, a coalition government was formed by parties opposed to the PTI, and Shehbaz Sharif of the PMLN became Prime Minister and Asif Ali Zardari became President of the Pakistan Peoples Party Parliamentarians (“PPPP”). Later still, well after the dates of publication, Imran Khan was the subject of two failed assassination attempts.

THE WORDS COMPLAINED OF AND THEIR NATURAL AND ORDINARY MEANING

First publication – 14 June 2022 on Twitter

31. The agreed English translation of this publication is as follows:

“I have been told that Imran Khan is being made a fool in the name of elections, although there is no plan to hold elections till 2023 and Hamza’s government will continue in Punjab. It’s because Brigadier Rashid (ISI’s Sector Commander Punjab) has taken complete occupation of the Lahore High Court.”

32. The publication bears the following meaning:

“The reasons why the elections were not proceeding as they should was because the Claimant had taken complete control of the Lahore High Court.”

Second publication – 19 June 2022 on Twitter

33. The agreed English translation of this publication is as follows:

“Allegedly ISI Sector Commander Punjab Brig Rashid Nazeer had several meetings with Asif Ali Zardari during the latter’s current stay at Lahore. Subject: Elections Manipulation. Details in upcoming Vlog.”

34. The publication bears the following meaning:

“The Claimant had allegedly had several meetings with Asif Ali Zardari during his stay to discuss election manipulation.”

Third publication – 19 June 2022 on Twitter

35. The agreed English translation of this publication is as follows:

“I want to make it clear that black sheeps like Brigadier Faheem and Rashid are not even one percent of Pakistan army and the ISI, the proof are those silent soldiers who leak information about their day and night actions and movements; they will behead them at the right time. Just wait a little dear countryman, then there will be a mighty tussle.”

36. The publication bears the following meaning:

“The Claimant is a disgrace (black sheep) in the ISI and Pakistan Army who will be eliminated at the right time by soldiers working covertly leaking information about the actions and movements of such people.”

Fourth publication – 19 June 2022 on YouTube and Twitter and 22 June 2022 on Facebook

37. The agreed English translation of this publication is as follows:

“I seek Allah’s protection from Satan, the accursed. In the name of Allah, the most Gracious, the most Merciful. Dear viewers, Salam from Major Adil Rajah! Dear viewers, before starting today’s vlog, let me tell you something : As I call you ‘dear viewers’ in an adoringly passionate tone, my wife has objected to its protesting that I should also call her ‘my dear’ in such a loving I feel it is unfair to carp with me. Let me tell you that I address her even more passionately. But see, your love is kicking up a row in my house.

As I am on my travels, I was to make today’s Vlog reaching home but the silent soldiers of Pakistan have told me that there is a massive resistance, though stealthily, is brewing among the soldiers of Pakistan army, the silent soldiers, who are corresponding to the thoughts of Pakistani public and whose number has multiplied enormously.

Some information from those silent soldiers has been conveyed to me. It was imperative to share that information with you in time. That’s why during the trip, staying at a place, I am recording this Vlog for you. I will try to upload this Vlog during my travels because this information is very important. It was very necessary for this information to reach you in time. And I hope that PTI media cell among you should convey [sic] this news to Mr Khan. I will also try to do so to convey this news directly. And it shall certainly reach him because this information is also directly related to him.

As I mentioned, I tweeted a few months ago that in these upcoming elections extra ballot papers are being imported, reportedly. And they are in a large number. I just

mentioned it vaguely. Though you can see what happens. It's that these extra ballot papers are reportedly published in a few printing presses in Rawalpindi. The papers are printed. Then they are stamped. And in far-off areas, especially of Baluchistan, there you can see that entire election is managed, ballot papers are stamped.

The information which I am going to convey to you, then you will realise how this entire process is meticulously contrived. I had told you that the Sector Commander in Lahore, the Sector Commander of Inter-Services Intelligence (ISI) Punjab, Mr Brigadier Rashid Naseer ... I have been given information from Pakistan that reportedly an election cell has been set up for the upcoming by-elections in the Sector Headquarter Lahore by the sir. The Sector Headquarter has been given the task to gather daily progress of PDM and PMLN candidates and to gauge their prospects of victory on a daily basis to assess their progress and make a report on it. Then the election cell should hand this over to the Sector Commander and the Sector Commander should obviously send it to the Headquarter at Aabpara.

It is being said reportedly that these people, that candidates are allegedly summoned. Those people are being allegedly called in the Sector Headquarter who can influence the vote bank and who are the local influencers, those who are at the local level. Their lists are already made. They are being summoned and pressurised to cast votes against PTI candidates and support PDM and PMLN candidates to vote in their favour. PTI supporters are being asked to vote for Noon League. They are reportedly being offered different benefits and incentives for this.

The silent soldiers have also told me that Brigadier Rashid has been provided with unaccountable funds to manage these elections. It is also being said reportedly that Brigadier Rashid will allegedly use the police and Dolphin Force to harass the PTI supporters in the PTI election campaign. Once again, the Punjab Police and Dolphin Force will be blatantly used. As I have told you, huge funds have been provided, reportedly, to Brigadier Rashid to ensure the victory of PMLN and PDM in the by-elections.

The entire staff of the ISI Sector Headquarter Lahore and the ISI Punjab has been allegedly deputed on this exercise. I have been informed and all other things are relegated to the second priority, while the forthcoming election is on the top priority, as you know. They are employed in its management.

Let me tell you also that as my silent soldiers have said it is fake news that Imran Khan is being engaged by giving him some good offer. It is out and out fake news because they are just luring Imran Khan. This is just a time buying exercise from Imran Khan. These are just time buying tactics. That's why Imran Khan is raising this slogan.

Besides, let me tell you and I have been told by silent soldiers that I should tell Imran Khan and his supporters that the people who are advising him to mollicoddle General Bajwa, he should not pay heed to them because they are traitors in his ranks. This is being told to me to let you know.

And here I have breaking news of today for you though there is not much room for detail in thumbnails. However, I should tell you that Brigadier Rashid Naseer, the Sector Commander Punjab has held several meetings with Mr Asif Ali Zardari and I had tweeted on it that he has reportedly come to Lahore for, reportedly, such meetings

with the objective of helping Pakistan People's Party (PPP) win more and more election seats in the by-elections in Punjab.

Reportedly, the father-in-law also joined such a meeting from Rawalpindi on Zoom. Just see their interest. And Mr Zardari wants to bag more and more seats in Sindh and Punjab so that Bilawal Bhutto Zardari should become the next Prime Minister with the collaboration of other coalition partners. The deal is that Bilawal will succeed Shahbaz Sharif and his son as the PM. I feel that Punjab will again be given to Noon League as they strike such deals as usual. But very interesting news is that they want to designate Faryal Talpur as the next President of Pakistan. Zardari reportedly wants to make her the next president. Just look at their mindset. Just reckon. Let me drink some water. I needed a water break. Sorry for that. Let me once again tell you and let it sink in that they want to designate Faryal Talpur as the President of Pakistan, especially Mr Zardari.

I am being told that PTI needs to synergise its efforts in the by-elections because one thing is encouraging for PTI that despite this entire manoeuvring, lying and investing such huge funds, despite such ploys, Brigadier Rashid Naseer, the Sector Commander Punjab has purported assessment and this is the official view that PTI enjoys better position to win the elections even now. And to counter it, to nullify the advantage PTI cherishes, they are working hard day in and day out. What a performance. What a performance, Sir Rashid! What a performance! You have destroyed your life in the hereafter just to serve one person. May Allah hold you accountable.

Besides, let me tell you a very important news that General Bajwa considers himself very weak this time. The silent soldiers have told me that. That's why he is seeking American help and against this help he has allegedly promised America that they will recognise Israel and develop good relations with India as their top priority.

The silent soldiers also tell me that DGISI General Nadeem Anjam has reportedly called on the US Ambassador the previous day in this regard. You see how anyone can know such things. Let him deny it if he hasn't met. Let him deny the meeting. But verily they met yesterday.

Let me tell you another core thing that Mr Bajwa thinks and only he thinks that Bilawal is the future of Pakistan. Just imagine. Bilawal Bhutto Zardari should not be angry with me, though he follows me. I have taken the screenshot as he may unfollow me in the days to come. In that case, I should have some proof. General Bajwa sees Bilawal as the future of Pakistan and Bilawal Bhutto can call the Chief any time. I am told that only Bilawal Bhutto allegedly enjoys this favour. Even Maryam doesn't enjoy such a favour. I am told that even Maryam doesn't have such a direct favour. Only Bilawal Bhutto enjoys this exclusive favour because he has become General Bajwa's favourite personality.

In the end, the silent warriors of Pakistan have given a very important news that I should share with you. The staff of the Election Commission and Chief Election Commissioner have reportedly convened many meetings with the Returning Officers in the Safe House, the Safe House on Iqbal Road, Lahore Cantt. It is the house of such frequent meetings between ISI Sector Punjab and the staff of the Election Commission, District Returning Officers and Chief Election Commissioner. Their meetings are going on. Let me repeat : the Safe House on Iqbal Road, Lahore Cantt. This venue may

be changed after the broadcast of this Vlog. But we will tell you the next one. Your silent warriors are there. I tell you in the end that the topic of discussion of these meetings is rigging in the forthcoming by-elections which are going to come off the next month. No other issue is being discussed other than how to manage them.

Let me tell you a thing in the end that why these silent soldiers are doing this duty. The majority of ISI, let me put it as 99% ISI and 99% Pakistan Army don't get any money for managing these elections. This ploy, as you know, has been in vogue since forever. They certainly do not get any money for managing these elections. They are told that it is betterment of Pakistan and they should carry out this task. They are motivated. They do so to serve Pakistan. They do so with their conviction. In the present case, they are also being briefed about the same thing but nobody is going to buy it. There is no-one to buy this narrative of the high command of a few people. That's why the silent soldiers have continued their resistance.

I leave it to you with this information which I have shared with you is to reach as to how you relay it further and how. Dear viewers, please share this information as much as possible. Convey it to your dear friends. And get yourself mobilised in the elections to beat them as it is the only way to outdo them. You should come out of your home in massive numbers and cast votes. This is the only way to beat them. I will also tell Mr Khan pertaining to this situation so that he may devise some strategy. Thanks very much. Allow Adil Rajah to leave till the next Vlog."

38. The publication bears the following meanings:

"(1) The Claimant has set up an election cell in the Sector Headquarters in Lahore tasked with gathering daily progress reports of PDM and PMLN candidates, summoning local influencers and pressurising and bribing them into casting votes against PTI candidates.

(2) The Claimant is part of a meticulously contrived process set up by military and intelligence officers to rig elections in Pakistan.

(3) The Claimant has been abusing his position, using huge unaccounted funds to ensure the victory of PDM and PMNL and manipulating elections in Pakistan.

(4) The Claimant will be abusing his position and power to use the Police and Dolphin Force to harass PTI supporters during the PTI election campaign.

(5) The Claimant has sinned and destroyed his chances of a promised life in the hereafter just to serve one person."

Sixth publication – 29 June 2022 on Twitter

39. The agreed English translation of this publication is as follows:

"Just wonder why would I get 25,000,00 Rupees from a Dates' trader while doing business of millions and billions of Rupees with the DHA. There is no proof of that. Have some shame and show some @OfficialDPRPP.guts instead of playing in Rashid's hands #shameOnBrigRashidNaseer."

40. The publication bears the following meaning:

“The Claimant had caused the police to do his bidding by making a baseless allegation of bribery against the Defendant.”

Seventh publication – 29 June 2022 on Twitter

41. The agreed English translation of this publication is as follows:

“According to my sources, both brigadiers belong to ISI Internal Wing (C Wing) which is involved directly in political interference and horse-trading for General Bajwa.

@10DowningStreet I will take this matter to
@FCDOGovUK @UKParliament @UKoffice
@hrw @democracynow
@ImranKhanPTI.”

42. The publication bears the following meaning:

“The Claimant is directly involved in political interference.”

Eighth publication – 29 June 2022 on Twitter

43. The agreed English translation of this publication is as follows:

“According to my sources, this FIR has been registered against me by Brigadier Rashid Naseer, sector commander ISI Punjab, who did so through IG Punjab in order to block my identity card and my passport so that to defame me because I have exposed his role rigging plans in by elections. This is the reality of fraudster from Lahore.”

44. The publication bears the following meaning:

“The Claimant registered a complaint against the Defendant in order to defame him and prevent him receiving his identity card and passport because the Defendant had exposed his plans to rig elections and this is how the Claimant, a fraudster from Lahore, operates.”

Ninth publication – 29 June 2022 on Twitter

45. The agreed English translation of this publication is as follows:

“When nothing else worked, then they registered a fake case against me in an old date on a fake location and arrested my brother-in-law from my home. According to my sources, the ISI is directly involved in this fraud and this case was registered on the instructions of Brigadier Rashid Naseer and Faheem Raza.”

46. The publication bears the following meaning:

“On the instructions of the Claimant a fake case was registered against the Defendant and his brother-in-law was arrested.”

Tenth publication – 29 June 2022 on Twitter

47. The agreed English translation of this publication is as follows:

“According to my sources, both these Brigadiers are the left and the right arm of the Regime Change. Both of them, while carrying out illegal actions to please their masters, have become billionaire themselves.

@ImranKhanPTI

@SSEHBA/1

@Dr_YasminRashid”

48. The publication bears the following meaning:

“The Claimant played a prominent role in regime change and his corrupt practices have made him a billionaire.”

ISSUE 1 - SERIOUS HARM

49. In accordance with s1 of the Defamation Act 2013 (“A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant”), serious harm is a threshold requirement for a claim in defamation. As Lord Sumption explained in *Lachaux v Independent Print Ltd* [2020] AC 612 at [14] and [21]:

“... section 1 necessarily means that a statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it “has caused or is likely to cause” harm which is “serious”. The reference to a situation where the statement “has caused” serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is “likely” to be caused. In this context, the phrase naturally refers to probable future harm.

... [the claimant] must demonstrate as a fact that the harm caused by the publications complained of was serious ... (or, I would add, likely to be serious)”.

50. Further: (i) the assessment of harm of a defamatory statement is not simply “a numbers game” (see *Mardas v New York Times Co* [2009] EMLR 8, Eady J at [15]); (ii) indeed “Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person” (see *Sobrinho v Impresa Publishing SA* [2016] EMLR 12, Dingemans J at [47]); (iii) “Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication” (see *Doyle v Smith* [2019] EMLR 15, Warby J at [117]); and (iv) decided cases recognise the “grapevine effect” whereby the defamatory imputations complained of percolate beyond the original publishees, adding to the harm arising from publication.

51. In the present case, all of the words complained of plainly have a seriously defamatory meaning, and their inherent tendency to cause harm to reputation is equally plainly great.

52. In addition, it is clear that the extent of publication was, in each instance, considerable. It is common ground on the statements of case that (i) the Defendant's Twitter account has 319,000 followers; (ii) the Defendant's YouTube channel has over 104,000 subscribers; and (iii) the Defendant's Facebook profile is (or was prior to its termination on 17 May 2024) followed by almost 89,000 persons (see paragraphs 5-7 of the Amended Particulars of Claim, paragraphs 6-7 of the Re-Amended Defence). In fact, paragraph 2k of the Re-Amended Defence claims higher figures, namely around 800,000 Twitter followers, around 451,000 YouTube subscribers, and around 175,000 Facebook followers. The reasons for this disparity were not bottomed out during the course of the trial. It is possible that the differences are explained because the figures relate to different dates. In any event, neither the Defendant's pleaded case nor his evidence detailed contrasting figures as at June 2022.
53. These figures concern international dissemination, and the Claimant accepted that only a proportion of these figures would have related to publication within this jurisdiction.
54. In this regard, the Claimant relied on the documented statistics relating to the Defendant's YouTube audience, which showed that 6.7% of that audience were in the United Kingdom. Mr Lemer submitted that this was a reasonable guide to the distribution of the Defendant's audiences generally. On this basis, on the Claimant's figures the Defendant's Twitter followers in this jurisdiction would have numbered approximately 21,373 (i.e. $319,000 \times .067$), and on the Defendant's figures they would have numbered approximately 53,600 (i.e. $800,000 \times .067$). The like figures for YouTube subscribers would be 6,968 or 30,217 respectively. Finally, the like figures for Facebook followers would be 5,896 or 11,725.
55. In addition, the Amended Particulars of Claim pleads that all the publications complained of were the subject of re-tweets, quotes, likes, and viewings as follows:
- (1) First publication: 9,450 re-tweets; 391 quotes; 21,100 likes.
 - (2) Second publication: 3,916 re-tweets; 136 quotes; 9,895 likes.
 - (3) Third publication: 5,242 re-tweets; 135 quotes; 16,700 likes.
 - (4) Fourth publication: 135 re-tweets; 3 quotes; 382 likes (Twitter); 158,077 viewings (YouTube); and over 1,000,000 viewings; 77,000 likes; 6,500 comments (Facebook).
 - (5) Sixth publication: 511 re-tweets; 9 quotes; 1,387 likes.
 - (6) Seventh publication: 2,396 re-tweets; 37 quotes; 5,962 likes.
 - (7) Eighth publication: 5,664 re-tweets; 172 quotes; 12,700 likes.
 - (8) Ninth publication: 2,089 re-tweets; 41 quotes; 5,378 likes.
 - (9) Tenth publication: 1,681 re-tweets; 20 quotes; 4,160 likes.
56. Mr Harding pointed out that these figures were not supported by any evidence in the Claimant's trial witness statement. I do not consider that there is anything in this point, however, because all these figures are admitted in the Re-Amended Defence. They are an imperfect guide to the number of persons who read the words complained of in each of these publications. On the footing that the total number of those who re-tweet, quote, like, or comment on any particular article or video that is made available on social media is

typically a small, if not tiny, fraction of the total audience who read or view the material in question, however, these figures are consonant with a very substantial number of readers or viewers. For example, there are many works available on YouTube that have been viewed or listened to many millions of times, perhaps over the course of many years, and at the same time they have attracted only a few thousand likes or comments. In addition, and in any event, these figures evidence a substantial element of “grapevine” dissemination.

57. Mr Harding further submitted, and I accept, that the fact that 6.7% of the Defendant’s YouTube audience were in the United Kingdom did not mean that the same percentage of his Twitter and/or Facebook audiences were in the United Kingdom. At the same time, the Defendant put forward no case as to the geographical distribution of his various audiences, other than to plead that his followers in the UK are a “small fraction” of the total of his followers elsewhere. Further, Mr Harding advanced no argument as to the applicable UK percentage for the Twitter and/or Facebook media. Accordingly, as Mr Harding was constrained to accept, the UK percentages for those media might be either higher or lower than the YouTube percentage. Against this background, and in the absence of any evidence or argument to suggest that there is any reason why the Twitter and Facebook audiences should be composed materially differently to the YouTube audience, I consider that, doing the best I can, it is appropriate to accept Mr Lemer’s argument. (If literacy levels among the Pakistani diaspora in the UK were particularly high in comparison to other territories, there might be a case for saying that the percentage of the Defendant’s Twitter and/or Facebook audiences based in the UK is likely to be greater than applies with regard to his YouTube audience, and vice versa. However, no such arguments were advanced.)
58. In this regard, as all the words complained of were published in Urdu, and on the basis that there is only an actionable publication to persons who understand the language of publication, Mr Harding submitted that the Claimant needed to establish publication to speakers of Urdu within this jurisdiction. In my judgment, there is also nothing in this point. As the Defendant’s posts and videos are all in Urdu, they are only of interest to persons who understand that language (wherever they may be located). The overwhelming inference, therefore, is that all those to whom the words complained of were published did understand Urdu. The only exception that comes to mind is that, conceivably, a non-Urdu speaker might access the publications using a programme or tool to translate the content to another language that they do understand. However, although the point was not argued before me, my provisional view is that this would still involve an actionable publication to them: the intervening act of translation gives rise to no independent publication to them.
59. Other things being equal, these facts and considerations would be amply sufficient, in my judgment, to justify the inference that publication of words with such an inherent tendency to cause harm to the reputation of the Claimant as is true of words having the meanings of all the words complained of in the present case did indeed cause serious harm to his reputation, without the need to call evidence that such harm was in fact occasioned to him. In this regard, it is to be noted that in *Doyle v Smith* [2019] EMLR 15, at [121] Warby J said with regard to an article bearing the meaning that the Claimant in that case had been lawfully arrested by the police for serious criminal offences, namely blackmail and sending malicious and menacing communications, and accordingly that there were reasonable grounds to suspect that he had committed those offences, and which had been viewed on 69 occasions, that “Publication on this scale is not trivial or insignificant” and “the inference of serious reputational harm is properly drawn on the basis of these facts”. Even 6.7% of the re-tweet figures would, in most instances, exceed this order of publication.

60. In the present case, however, there are three particular contentions which were said by Mr Harding to militate against the conclusion that the requisite serious harm is made out.
61. First, that publication was unlikely to have changed the mind of anyone with regard to the Claimant's reputation. In its broadest and most simplified form, this submission boils down to saying that those publishees who supported the Defendant's stance that the ISI is steeped in political manipulation and other wrongdoing will have thought just as badly of the Claimant in any event, and that those who rejected that stance will not have credited the allegations contained in the words complained of or have thought less well of the Claimant.
62. In my opinion, however, that line of argument faces insuperable difficulties on the facts, for the following principal reasons: (i) It is inherent in the Defendant's position, and indeed is reflected in the language of the material publications, that not every officer in the ISI is guilty of wrongdoing, and, also, that not all the guilty ones are guilty of equivalent wrongdoing. If the position were otherwise, there would be no "breaking news" (in the language of the fourth publication) to reveal about the role alleged to have been played by the Claimant, and the Claimant would not be in the 1% of the Pakistan Army and the ISI who are "black sheep" (see the third publication) and whose activities are being revealed by "silent soldiers" who "are doing their duty". (ii) The Claimant gave evidence that, prior to the publications complained of, he had not been the subject of public criticism or opprobrium of any kind, or, if I understood his evidence correctly, even publicly identified as an officer in the ISI. That evidence was not challenged, and was not contradicted by any public documents before the Court (which referred to numerous other prominent Pakistani figures who featured in the evidence, but not to the Claimant). (iii) It is contradicted by the Claimant's evidence, which on these matters I accept. For example, in his witness statement for trial he stated that "my reputation was critically important especially given the sensitive work I carried out both in Pakistan and with foreign counterparts including in the UK", and that the material publications tarnished his reputation, made others question him and his work, and were "incredibly embarrassing". And in his oral evidence he explained that the publications reached three particular categories of people who were important to him: (a) his immediate family, who did not believe the allegations, but felt worried, sad, threatened and fearful; (b) his extended family, some of whom did not believe the allegations but were nevertheless concerned, and some of whom (essentially supporters of Imran Khan) "thought I was involved and thought very badly of me"; and (c) professional colleagues, who had previously held him in great respect, and pressed him to clear his name, but whose concern had the result that his plans to work with them after leaving the ISI were ruined.
63. Second, that the Claimant's case lacked consistency, in that: a number of allegations relating to serious harm to reputation that are contained in the Amended Particulars of Claim are not supported by his trial evidence; a number of such allegations that are contained in the trial evidence are not foreshadowed in the Amended Particulars of Claim; and the Claimant's evidence at trial as summarised in [62] above represented a third articulation of his case on serious harm to reputation. In my judgment, there is force in some of the points made by Mr Harding in this context. Other points, however, seem to me to focus on differences of language, although the thrust of the points being made is the same. At the end of the day, however, I do not consider it necessary to resolve these issues (such as whether the threats that the Claimant says that he has received since the publications complained of emanate from the UK as pleaded, although that source of threat is not repeated in his witness statement; and whether threats made and/or received outside the jurisdiction provide support for a case that the Claimant has suffered serious harm to

reputation in this jurisdiction). The evidence summarised in [62] above is sufficient to provide any supplement to or support for the inferential case that may be required.

64. Third, that even if the Claimant can establish serious harm to his reputation flowing from each of the publications complained of, he has not established the same in this jurisdiction. This is, in substance, a re-iteration of points already considered above. As to the extent of publication in this jurisdiction, this was plainly considerable, extending to significant numbers in relation to each publication (although much more in relation to some, the fourth publication in particular, than others). As to the question of harm in this jurisdiction, the Claimant made clear that some members of his extended family are based in this jurisdiction, as are some of the professional colleagues who learned of the publications and manifested concern about them. I also agree with Mr Lemer that the fact that the Defendant admits that in some publications he tagged the UK Government (among others) “to bring to their attention practices of corruption, abuses of power, and the undermining of the Judiciary and of the democratic process in Pakistan by [among others] the Claimant” (see paragraph 11 of the Amended Particulars of Claim; paragraph 11 of the Amended Defence) – and see, further, the promise in the seventh publication to “take this matter” to a number of institutions in the UK – supports the case that serious harm was occasioned to the reputation of the Claimant within this jurisdiction, and indeed that this was contemplated.
65. In reaching these conclusions I have had regard to, and have applied, the principles and considerations articulated in the material authorities to which I was referred: *Sivananthan v Vasikaran* [2023] EMLR 7, *Amersi v Leslie & Anor* [2023] EWHC 1368, and *Banks v Cadwalladr* [2023] KB 524.
66. Among other things, in *Banks* Warby LJ said at [55]-[56]: “Where a defendant publishes a specific allegation of a seriously damaging kind in circumstances which would ordinarily lead to an inference of serious reputational harm the fact, if it be so, that those to whom that allegation is published are politically opposed to the claimant or dislike him or have a generally low opinion of him for some other reason is not a proper basis on which to reject that inference ... judges of the Media and Communications List have consistently, and in my view correctly, rejected arguments to the effect that a serious allegation of specific wrongdoing does not cause serious harm if the audience dislikes the claimant for some other reason”. This supports the Claimant’s case on serious harm, and the conclusion that the first of Mr Harding’s contentions discussed above is unsustainable in any event.
67. On the other hand, again among many other things, Warby LJ made clear in *Banks* at [46] that the true meaning and effect of s1 of the Defamation Act 2013 is that “A statement is defamatory *only if and to the extent* that its publication causes serious harm to reputation or is likely to do so, and not otherwise”.
68. This raises the prospect that, if a defendant publishes a series of defamatory allegations to a particular audience, it becomes increasingly unlikely as time moves on that serious harm to reputation will be occasioned by the impact on members of that audience who re-encounter those allegations in the course of reading or viewing that series. Accordingly, it is possible that one or more earlier publications of a defamatory allegation may satisfy the serious harm requirement, and that one or more later publications may not. In the present case, however, it is neither asserted nor established that the statements complained of were published to identical audiences, and nor do those statements make identical allegations.

69. Further, the number of publishees was in each instance sufficiently large that even if there may have been a substantial overlap between successive audiences, and even if (which was not argued before me) one or more of the later publications did not add materially to the defamatory imputations already conveyed by the series, an inference can properly be drawn that publication of each of the statements complained of caused serious harm to the reputation of the Claimant in this jurisdiction, applying the reasoning set out above.

70. For all these reasons, I consider that the Claimant succeeds on the issue of serious harm.

ISSUE 2 – PUBLIC INTEREST

(i) Applicable law

71. Section 4 of the Defamation Act 2013 (“s4”) provides (as far as material):

“4. Publication on matter of public interest

(1) It is a defence to an action for defamation for the defendant to show that—

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

(3) ...

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

(6) The common law defence known as the Reynolds defence is abolished.”

72. It was common ground between the parties that, when considering a defence under s4, there are three questions to be addressed (see *Economou v de Freitas* [2019] EMLR 7, Sharp LJ at [87]): (1) Was the statement complained of, or did it form part of, a statement on a matter of public interest? (2) If so, did the defendant believe that publishing the statement complained of was in the public interest? (3) If so, was that belief reasonable?

73. The first issue is an objective question for the court, and is not disputed in the present case.

74. The second issue concerns the Defendant’s state of mind at the time of publication. They must prove that they believed that publication was in the public interest. A failure to do so means the defence will fail. See *Doyle v Smith* [2019] EMLR 15, Warby J at [75]-[76]; *Harcombe v Associated Newspapers Ltd* [2025] 1 WLR 405, Nicklin J at [274].

75. If the Defendant establishes that they did believe that publication was in the public interest, the final question is whether, judged objectively, that belief was reasonable.
76. As Nicklin J pointed out at [275] in *Harcombe*, the Code of Practice of the Independent Press Standards Organisation (“IPSO”) contains the following provision: “Editors invoking the public interest will need to demonstrate that they reasonably believed publication - or journalistic activity taken with a view to publication - would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time”. (In the present case, the Defendant stated at [23] of his witness statement for trial that “I have followed the journalistic code of conduct to the best of my abilities in these publications”. Further, it is clear that the lack of professional skill, training, or expertise of a “citizen journalist” is not a relevant circumstance for the purposes of s4: *Doyle v Smith* [2019] EMLR 15, Warby J at [95]-[96].)
77. In assessing the second and third issues, contemporary documents are likely to be important. This is because the best guide to the truth is often to be found not so much in the demeanour of the protagonists, or even concessions made in cross-examination, but in the contemporary documents and in an objective appraisal of the probabilities overall. These matters were discussed more fully in *Gestmin SGPS SA v Credit Suisse (UK) Limited, Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm), in which Leggatt J (as he then was) considered not only the fallibility of memory but also the difficulties to which the process of civil litigation gives rise, before concluding at [22] as follows:
- “In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”
78. In the present case, the potential importance of contemporary documents is underlined by a number of considerations which make the appraisal of oral evidence more difficult. First, the material events happened more than three years ago. Second, this is a case in which feelings run high, and in which individuals have entrenched positions. In cases having these features, there is a particular risk that a witness may be honest but mistaken about what took place, and may give evidence about what they would like to think happened rather than what they can truly recollect. Third, as Sir Thomas Bingham wrote in “*The Judge as Juror: the Judicial Determination of Factual Issues*”, (1985) 38 CLP 1, at 10-11: “... however little insight a judge may gain from the demeanour of a witness of his own nationality when giving evidence, he must gain even less when... the witness belongs to some other nationality... To rely on demeanour is in most cases to attach importance to deviations from a norm when there is in truth no norm.” Finally, not only were both the Claimant and the Defendant former officers with extensive intelligence and army experience, from which I believe that it is reasonable to infer – and certainly this was my impression - that they were each likely to have a resolute disposition under the relatively

tame fire of cross-examination, but in addition the Defendant and two of his witnesses gave evidence remotely, which did not assist me in the task of assessing their demeanour.

79. These points apply in the context of s4. In *Harcombe*, Nicklin J said at [276]: “The lack of ... documents recording, and evidencing, the decision-making process prior to publication, can harm the prospects of success of a public interest defence. That is because, without records of what steps the journalist took prior to publication, and what documents s/he had and considered, it is unrealistic to expect him/her to have a reliable recollection of the detail of the steps taken and information that had been obtained pre-publication”.
80. Further, at [277] in *Harcombe*, Nicklin J referred to his earlier judgment in *Lachaux v Independent Print Ltd* [2022] EMLR 2, in which he said (among other things) at [122] “.. as the burden of establishing a public interest defence under s4 ... lies upon the defendant, a defendant seeking to prove that s/he reasonably believed that publishing the statement complained of was in the public interest is likely to find that the prospects of success are enhanced by being able to produce contemporaneous records of the decision(s) taken” and at [124]: “The Court may ultimately disagree with the journalist’s assessment that it was in the public interest to publish, but contemporaneous documents will at least assist the journalist in being able to demonstrate his/her thought processes at the time ...”.
81. Nicklin J provided the following helpful summary of the applicable case law in *Harcombe* at [279]-[283] (citations largely omitted):

“279. In assessing the reasonableness of a defendant’s belief that publication was in the public interest, the focus is on the things the defendant said or knew or did, or failed to do, up to the time of publication. Events that post-date publication are unlikely to have any real bearing on the issue. *“Could whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?”*.

280. When determining the reasonableness of a defendant’s belief that publication was in the public interest, the Court must *“make such allowance for editorial judgement as it considers appropriate”*: s4(4). In *Banks v Cadwalladr* [2022] 1 WLR 5236, Steyn J summarised the principles that emerge from the authorities on this point:

[112] The importance of giving respect, within reason, to editorial judgment is relevant when considering the tone and content of the material and the nature and degree of the steps taken by way of verification prior to publication.

[113] It is important to consider the process and the publication in the round. As Lord Mance noted in *Flood*, in *Bonnick v Morris* [2003] 1 AC 300 the journalist had fallen short both in not making further inquiries about the anonymous source and in not including the claimant’s explanation, but the Privy Council was *“prepared to overlook some respects in which the journalist’s conduct could legitimately be criticised”* in reaching an overall judgment as to the availability of the public interest defence ([130]). Lord Mance continued at [131]:

“The need to look at the position in the round was also identified by Lord Bingham in *Jameel* [34] when he disclaimed too close a focus on particular ingredients which have (or have not) been included in a composite story. He said: ‘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.’”

[114] Journalistic freedom covers possible recourse to a degree of exaggeration or even provocation. It is well established that this is something the court must tolerate. It is not for the court to substitute its views for those of journalists as to what techniques of reporting should be adopted.

281. An issue that arises frequently when considering a public interest defence is the approach the Court should adopt to the meaning of the publication. It is well-established that the public interest defence is not to be assessed simply by reference to the single natural and ordinary meaning of the publication. In *Riley v Murray* [2023] EMLR 3, Warby LJ explained:

[82] ... In *Bonnick*, Lord Nicholls said at [24] that a journalist should not be penalised for making a wrong decision on a question of meaning on which people might reasonably take different views. But he went on at [25] to say that this “*should not be pressed too far*”.

“In the normal course a responsible journalist can be expected to perceive the meaning an ordinary reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article”.

In *Banks* Steyn J, DBE applied these observations in the context of the s4 defence. At [123] she summarised her analysis in this way:

“A defamatory meaning should not be ignored by a journalist if it is ‘*obviously one possible meaning*’ ([25]) or ‘*glaringly obvious*’ ([27]); to do so would not be reasonable. But if that threshold is not reached, the reasonable belief of a journalist who did not perceive the more damaging meaning falls to be assessed by reference to the less damaging meaning”.

[83] It may be that these principles do not transpose directly into a situation such as the present, but I do not think the defendant can reasonably argue for any more generous test. She has never done so. She has not addressed the issue. The defendant’s argument has always been that her conduct should be assessed exclusively by reference to what she reasonably believed the GAT to mean, and that on that footing it was reasonable for her to believe that it was in the public interest to publish the Factual Allegation and the Opinion. That, in my view, is simplistic and wrong. When assessing the reasonableness of a belief that it is the public interest to denounce a person as dangerous and stupid for what they have said in a public statement, it must be relevant that the statement has an obvious

alternative and lesser meaning which is not worthy of such denunciation. Here, the Judge was entitled to conclude that the defendant ought reasonably to have appreciated that the GAT could also be interpreted as conveying the hypocrisy meaning and that it was therefore unreasonable for her to believe that presenting the position unambiguously, as she did, was in the public interest.

[84] This approach seems to me consistent with one strand of the authorities to date, which is that "*a belief [is] reasonable for the purposes of s.4 only if it is one arrived after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case*"... endorsed by the Supreme Court as "*no doubt helpful*" ...

[85] I see no inconsistency with my judgment in *Yeo*, aspects of which are relied on by the defendant. In the passages relied on, at [175] and [179], I said that in a case such as that one "*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; ... fairness does not require the publisher to present the reader with all the factual material that could support a competing assessment ... it is not incumbent on the responsible journalist to lay out for the reader all the pros and cons relevant to a particular conclusion*". *Yeo* was very different from this case. It was a decision on the application of the *Reynolds* defence to newspaper reports of an undercover journalistic investigation of a leading politician. But I also said (at [175]) that "*if the evidential picture is misrepresented or presented in a wholly unbalanced way, that may well be unfair*". Here, the Judge found that the evidential picture had been unreasonably misrepresented."

282. The Court must have regard to all the circumstances of the case: s4(2). Although s4(6) has abolished the old *Reynolds* defence (*Reynolds v Times Newspapers Ltd* [2001] 2 AC 127), the rationale for the statutory defence was not materially different and the common law principles remained relevant to the interpretation of the statutory defence ... The ten so-called *Reynolds* factors - although not to be regarded as any sort of checklist - "*may well be relevant to whether the defendant's belief was reasonable within the meaning of subsection 1(b)*" ... In *Hijazi -v- Yaxley-Lennon* [2021] EMLR 7 [24], I noted:

"... At the stage of the assessment as to what information the defendant had and what inquiries s/he made, Lord Nicholls' third to fifth factors are likely to remain valid in many cases:

'3. The source of the information. Some informants have no direct knowledge of the events. Some may have their own axes to grind, or are being paid for their stories. 4. The steps taken to verify the information. 5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.'"

283. A factor, identified by Lord Nicholls, which remains relevant to the assessment of any public interest defence, is the extent to which the defendant attempted to verify the allegations it intends to make. Save in cases of neutral reportage (under s.4(3)),

efforts to verify are usually regarded "*as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest*" ... In *Lachaux*, I explained:

[134] It is also clear ... as endorsed by Lord Wilson in *Serafin* [69], that providing they are not treated as any sort of 'checklist', the *Reynolds* factors will remain potentially relevant when assessing whether a defendant's belief that publication was in the public interest was objectively reasonable. Lord Wilson traced the legislative history of s.4 through the post-*Reynolds* authorities in [57] to [59], and observed in [60]:

"In [*Flood -v- Times Newspapers Ltd* [2012] 2 AC 273] ..., the defendant published an article taken to mean that there were reasonable grounds to suspect that the claimant, a police officer, had corruptly taken bribes. The allegation was false. This court held that the defendant nevertheless had a valid defence of public interest. Lord Phillips of Worth Matravers, the President of the court, said at [26] that in that case analysis of the defence required particular reference to two questions, namely public interest and verification; at [27] that it was misleading to describe the defence as privilege; at [78], building on what Lord Hoffmann had said in the *Jameel* case at [62], that the defence normally arose only if the publisher had taken reasonable steps to satisfy himself that the allegation was true; and at [79] that verification involved both a subjective and an objective element in that the journalist had to believe in the truth of the allegation but it also had to be reasonable for him to have held the belief. Lord Brown at [113] chose to encapsulate the defence in a single question. 'Could', he asked, 'whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?'. Lord Mance at [137], echoing what Lord Nicholls had said in the *Reynolds* case at p.205, stressed the importance of giving respect, within reason, to editorial judgement in relation not only to the steps to be taken by way of verification prior to publication but also to what it would be in the public interest to publish; and at [138] Lord Mance explained that the public interest defence had been developed under the influence of the principles laid down in the European Court of Human Rights."

[135] As Lord Wilson noted ([66]), the Explanatory Notes to the Defamation Act 2013 stated that the intention behind s.4 was to: "*reflect the common law as recently set out in the Flood case and in particular the subjective and objective elements of the requirement now both contained in subsection 1(b)*".

[136] In [60], Lord Wilson referred to Lord Brown's question from *Flood*. To similar effect, in *Economou* [2017] EMLR 4 [241], Warby J held:

"I would consider a belief to be reasonable for the purposes of section 4 only if it is one arrived at after conducting such inquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case".

This statement was approved by Sharp LJ in *Economou* [101] and by the Supreme Court in *Serafin* [67]. See also Warby J's observations as to reasonableness of belief in *Economou* [239].

[137] The requirement in s.4(3), in cases of neutral reportage, that the Court should disregard any omission by the defendant to take steps to verify the truth of the imputation conveyed by the statement complained of, is an implicit recognition that efforts to verify will usually be regarded as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest. That is not to say that a failure to verify will *necessarily* lead to the s.4 defence being rejected; everything depends upon the particular circumstances of the case. However, recognition of the general importance - outside neutral reportage - of steps taken to verify defamatory allegations is consistent with both domestic and Convention jurisprudence.

[138] In *Flood*, Lord Phillips explained why neutral reportage justified a journalist being relieved from the normal obligation to verify:

[77] ... Reportage is a special, and relatively rare, form of *Reynolds* privilege. It arises where it is not the content of a reported allegation that is of public interest, but the fact that the allegation has been made. It protects the publisher if he has taken proper steps to verify the making of the allegation and provided that he does not adopt it. *Jameel v Wall Street Journal Europe Sprl* [2007] 1 AC 359 was analogous to reportage because it was the fact that there were names of substantial Saudi Arabian companies on the black list that was of public interest, rather than the possibility that there might be good reason for the particular names to be listed. Just as in the case of reportage, the publishers did not need to verify the aspect of the publication that was defamatory.

[78] The position is quite different where the public interest in the allegation that is reported lies in its content. In such a case the public interest in learning of the allegation lies in the fact that it is, or may be, true. It is in this situation that the responsible journalist must give consideration to the likelihood that the allegation is true. *Reynolds* privilege absolves the publisher from the need to justify his defamatory publication, but the privilege will normally only be earned where the publisher has taken reasonable steps to satisfy himself that the allegation is true before he publishes it. Lord Hoffmann put his finger on this distinction in *Jameel* [62] when he said

“In most cases the *Reynolds* defence will not get off the ground unless the journalist honestly and reasonably believed that the statement was true, but there are cases ('reportage') in which the public interest lies simply in the fact that the statement was made, when it may be clear that the publisher does not subscribe to any belief in its truth.”

[79] Thus verification involves both a subjective and an objective element. The responsible journalist must satisfy himself that the allegation that he publishes is true. And his belief in its truth must be the result of a reasonable investigation and must be a reasonable belief to hold. What then does the responsible journalist have to verify in a case such as this, and what does he have to do to discharge that

obligation? If this were a *Chase* level 1 case he would have to satisfy himself, on reasonable grounds, that the claimant had in fact been guilty of corruption. His defence would not "get off the ground" unless he reasonably believed in the claimant's guilt. This is not, however, a *Chase* level 1 case..."

[139] In *Axel Springer AG v Germany* [2012] EMLR 15 [82], the Grand Court held, under the heading "*Limits on freedom of expression*":

"However, art.10(2) of the Convention states that freedom of expression carries with it 'duties and responsibilities', which also apply to the media even with respect to matters of serious public concern. These duties and responsibilities are liable to assume significance when there is a question of attacking the reputation of a named individual and infringing the 'rights of others'. Thus, special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations ..."

[140] Similarly, from *Times Newspapers Ltd v United Kingdom* [2009] EMLR 14 ("*Loutchansky*"):

"[41] The Court observes that the most careful of scrutiny under art.10 is required where measures or sanctions imposed on the press are capable of discouraging the participation of the press in debates on matters of legitimate public concern ... The Court further recalls that particularly strong reasons must be provided for any measure limiting access to information which the public has the right to receive ...

[42] However, the Court reiterates that art.10 does not guarantee a wholly unrestricted freedom of expression to the press, even with respect to press coverage of matters of serious public concern. When exercising its right to freedom of expression, the press must act in a manner consistent with its duties and responsibilities, as required by art.10(2). These duties and responsibilities assume particular significance when, as in the present case, information imparted by the press is likely to have a serious impact on the reputation and rights of private individuals. Furthermore, the protection afforded by art.10 to journalists is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with responsible journalism ...

[141] A key feature of Mr Price QC's submissions is that the articles were reporting, rather than adopting, the allegations made by Afsana. In the case of the Standard Article, he relies particularly on the fact that there was an express statement at the end of paragraph [4] that the allegations of domestic violence had not been tested in court and were denied by the Claimant. Rightly, he has referred to the well-known statements of principle, from the jurisprudence of the European Court of Human Rights, emphasising the importance in not fettering the media's ability to report on matters of public interest. By way of recent example from the ECtHR's decisions, in *Ólafsson v Iceland* (2018) 67 EHRR 19 [56] (with footnotes omitted):

“The Court further reiterates that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation is not reconcilable with the press’s role of providing information on current events, opinions and ideas, and that ‘punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so’.”

[142] This principle cannot be seen in isolation and needs to be properly understood in the context of Convention jurisprudence (particularly the importance attached, usually, to verifying defamatory allegations recognised in *Axel Springer* and *Loutchansky*). Seen in that context, it does not support a contention that, where a publisher is reporting allegations made by others, which can damage the reputation of another, a publisher is relieved of the onus to observe what the ECtHR has referred to as the “*ordinary journalistic obligations*”: Ólafsson [57].

[143] Publishers have at their disposal a variety of reporting techniques. For example, those who are unable or unwilling to take steps to verify defamatory allegations, and who wish potentially to rely upon a public interest defence to defend their publication, may well have to adopt a reporting technique that reduces the overall defamatory impact (for example the inclusion of statements that are effective in indicating that the publisher is not adopting the allegations). Alternatively (where the circumstances permit), the publisher might be able to present the allegations as part of an accurate and impartial account of a dispute to which the claimant was a party. In that latter respect, although the publisher is likely, by reason of s4(3), thereby to be relieved of the need to take steps to *verify* the allegations, s/he will nevertheless be required to *obtain* and publish the other side of the dispute. These are examples to demonstrate the sort of issues that a publisher is likely to have to consider when deciding what technique of reporting is chosen. Difficult questions of judgment may arise, for example, the extent to which it is necessary to include defamatory allegations against others in an article which otherwise makes a significant contribution to a matter of public interest. If a journalist or publisher can demonstrate that s/he has carefully considered the necessity for, and proportionality of, the harm to the reputations of those included in the publication, then a Court is likely to accord due weight to that assessment. Ultimately, in each case where a defendant relies upon a defence under s4, the Court has to make an assessment of all the circumstances and to make due allowance for proven exercise of editorial judgment.”

82. Mr Harding made reference to the remainder of Lord Nicholls’ factors in *Reynolds* (viz. “1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true. 2. The nature of the information, and the extent to which the subject-matter is a matter of public concern. 6. The urgency of the matter. News is often a perishable commodity. 7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary. 8. Whether the article contained the gist of the plaintiff’s side of the story. 9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of

fact. 10. The circumstances of the publication, including the timing.”). Mr Harding also relied on Lord Nicholls’ observations in *Reynolds* at p205: “Further, it should always be remembered that journalists act without the benefit of the clear light of hindsight. Matters which are obvious in retrospect may have been far from clear in the heat of the moment. 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.”

(ii) Immediate points

83. With regard to sources, the Defendant’s pleaded case with regard to each of the publications is that “The Defendant was told this by reliable sources from within the ISI, military intelligence and the army who he cannot name because their lives, and the lives of their families, will be imperilled if he does and he has promised not to identify them”. The pleaded case also pleads steps taken to verify. In some instances, the pleaded steps involved consulting extraneous materials, such as “research papers” and international media reports. In most instances, however, the pleaded case on verification is or includes: “The Defendant made every effort [in some instances “strenuous efforts”] to verify the allegation, including cross-verification with sources in the military and political establishment of Pakistan”.
84. The Defendant’s evidence about sources is in part to like effect. At [20] of the DWS he states: “I continue to maintain a credible network of sources within the ISI and the military, including but not limited to the political and bureaucratic circles of Pakistan”. Further: (1) with regard to the first publication, the Defendant states: “The information I shared was not concocted out of thin air but rather derived from personal experiences and corroborated by insights shared with me by trusted colleagues who currently serve within the ISI, an organisation with which I had deep ties. However, for their safety and security, I must withhold their identities” (DWS, [25]); and (2) with regard to the ninth publication, he states: “The mention of [the Claimant] and Faheem Raza in the tweet was based on information I received from credible sources and was not intended to falsely implicate them in any wrongdoing. It was simply an expression of my belief that they may have been involved in orchestrating the alleged fraud and wrongful arrest” (DWS, [64]).
85. In fact, however, the Defendant does not state with regard to any other publications that he relied on “trusted” or “credible” sources within the ISI, the military or the establishment. Nor does he state, in any instance, that he sought to obtain verification from such sources.
86. The Defendant produced no contemporary documents whatsoever evidencing either what he was told by his sources, or the steps he took to obtain verification. He provided no explanation for this in his written evidence. The gist of his oral evidence, however, was that all the material input from his sources was provided electronically or over the telephone, possibly through the medium of one or even two intermediaries or cut-outs, and that any contemporary electronic data was wiped out, perhaps as a result of being set up to self-delete after a short interval, in order to leave no trail which could lead back to the source. At one stage during the course of the trial the Defendant referred to written records in what he described as diaries but were later clarified as being more akin to notebooks, which had

not been disclosed, and which it appeared might contain some supporting contemporary records, but he later clarified that they contained nothing material to the issues in the case.

87. Assuming, without deciding, that the Defendant's case as to the need to safeguard his sources is correct, both an inability to name sources and the steps that are said to have been taken as to records which could lead to identification of sources are readily understandable. In any event, a journalist's refusal to identify a source should not be held against them. However, that does not mean that the lack of contemporary written records should be disregarded. For example, if a source told the Defendant that the Claimant had participated in meetings to discuss election manipulation (the second publication) or had registered a complaint against the Defendant (the eighth publication) there is no obvious reason why a contemporary note or jotting could not have been made by the Defendant recording what information he was given, and in what words, in a form which would do no more to identify or to lead to the identification of the source of the information than publication of the allegation itself. Similarly, any efforts that he made to obtain verification could have been recorded by him in terms which would not jeopardise anyone, for example detailing how many calls were made and when. The fact that he has nothing to produce is remarkable.
88. The combined effect of the lack of any contemporary record about the nature of the source material or the attempts to verify is to leave the Court in great difficulty in the present case in assessing Lord Nicholls' third to fifth factors, namely "3. The source of the information. Some informants have no direct knowledge of the events. Some may have their own axes to grind ... 4. The steps taken to verify the information. 5. The status of the information."
89. For example, the second publication relates to alleged meetings between the Claimant and Asif Ali Zardari to discuss election manipulation. The Defendant's pleaded case as to sources is "reliable sources from within the ISI", and his pleaded case concerning "every effort to verify" is one of cross-verification with military and political sources. The DWS contains no evidence as to the source(s) for this publication, and no evidence as to the steps taken to verify it, although it does state "Mr Zardari is known to be allegedly involved in corruption and political manipulation at [sic] Pakistan, just like the ISI" (DWS, [33]). As there is no suggestion that anyone other than the Claimant and one other person attended these alleged meetings, neither of whom can realistically be suggested to be one of the Defendant's sources, and there is also no suggestion that any such meetings were publicised in any way, questions arise as to whether the Defendant in fact believed whatever source(s) told him that such meetings had taken place, and whether, if he had any such belief, that belief was reasonable. On the face of it, the Defendant's source(s) could not have had any direct knowledge of these alleged meetings. (If they had, they would form part of a small pool, such that publication of the article would, presumably, identify them or lead to a serious risk of identifying them.) Therefore, they must have obtained the information that they claimed to be in a position to pass on by some other means. However, neither the Defendant's pleaded case nor his evidence provides any clue as to why they were in a position to provide that information, or why it was reasonable for the Defendant to regard them as reliable. In his oral evidence, the Defendant suggested that actions taken towards election rigging would be the subject of reporting back within the ISI, and accordingly that persons within the internal ISI chain of command would be in a position to provide information about meetings of the kind alleged. However, leaving to one side that this explanation was not previously provided by the Defendant, if making that point at trial did not place his source(s) in jeopardy, there is no reason why a contemporary note reflecting

this should not have been made. There is, in addition, a question (which is of general application to all the publications) of whether the Defendant's claimed source(s) may have had an axe to grind against the Claimant. There is no evidence, and certainly no contemporary record, that the Defendant considered or investigated this issue at the time.

90. In these circumstances, there is no contemporary material which assists the Court in assessing the Defendant's thought processes at the time of publication of any of the publications complained of. The authorities explain why, for this and other reasons, the lack of documents recording or evidencing the decision-making process prior to publication can harm the prospects of success of a public interest defence. In my judgment, those factors apply in the present case. In fact, they are bolstered because there is no real detail even in the Defendant's trial evidence either that he believed the particular allegations concerning the Claimant that he published, or as to why any such belief was reasonable. In this regard, it is important to bear in mind that what s4(1)(b) requires is a belief that the publication of "the statement" is in the public interest, such that what is required is a belief concerning the words complained of, rather than a belief concerning the defamatory imputation which those words convey: see *Doyle v Smith* [2019] EMLR 15 at [74]-[75].
91. Indeed, as already touched on above, the tenor of the Defendant's evidence is not that he believed, or reasonably believed, the specific allegations against the Claimant that the publications contain, but is instead that he was commenting on the position in Pakistan more generally. For example, with regard to the first publication, the DWS does not set out a focussed basis, in terms of information provided to the Defendant, for the allegation that the Claimant had taken complete control of the Lahore High Court, but instead states "The Tweet in question was a commentary on the political situation in Pakistan, based upon intelligence gathered and analysis drawn thereafter, specifically regarding the alleged influence of certain individuals over political processes" (DWS [25]) and "[this] is a matter that affects the fabric of our nation, and as a patriot deeply invested in the welfare of Pakistan, I felt compelled to share my perspective" (DWS, [26]).
92. This leads on to another point, concerning meaning. In summary, for purposes of s4, where a journalist intended a meaning that is less defamatory than the single natural and ordinary meaning of the publication, the reasonable belief of the journalist falls to be assessed by reference to the less damaging meaning - unless the natural and ordinary meaning is one obvious possible meaning. In the present case, in my judgment, the natural and ordinary meaning of all or many of the nine publications in issue was, at lowest, one obvious possible meaning. In at least some instances, that is an understatement. For example, the third publication states that "black sheeps like Brigadier Faheem and Rashid are not even one per cent of Pakistan Army and ISI", and it is impossible to see how this can be regarded as anything other than an accusation that the Claimant is a "black sheep". Further, the third publication goes on to state that "silent soldiers" will "behead them (i.e. the two Brigadiers) at the right time", which makes it plain that being a "black sheep" is a serious matter. However, the Defendant's evidence is "It was not my intention to defame Mr Rashid Naseer personally, but rather to express concerns about the conduct of certain individuals based on information available to me from my ex-colleagues in the military" (DWS, [38]). The attempt to create clear water between the application of a defamatory epithet to two individuals, both of whom are clearly identified in the third publication, and one of whom is the Claimant, and an expression of "concern" about "certain individuals" seems to me both implausible and unconvincing. Accordingly, in each instance, whether the Defendant

reasonably believed that publishing the statement complained of was in the public interest falls to be assessed by reference to the natural and ordinary meaning of the publication.

93. This point alone is probably sufficient to mean that the defence under s4 cannot succeed, although it may be necessary to consider whether it holds good for all nine publications. The key consideration here is that the journalist's state of mind falls to be assessed at the time of publication. The issue, stated shortly, is how can a journalist hope to prove that they believed, let alone that they reasonably believed, that it was in the public interest to publish a statement that they disavow that they had any intention of publishing? It is necessary to look at matters in the round and to accord due latitude to editorial judgment. Even so, it seems to me that it is one thing to recognise that a journalist who, say, intends to publish nothing more than there are "reasonable grounds to suspect" an individual of wrongdoing (for example, being instrumental in election rigging) but instead publishes that the individual is "guilty" of that same wrongdoing may nevertheless be entitled to rely on s4, but quite another to say that a s4 defence is available to a journalist who, for example, intends to express "honest opinion and analysis regarding ... political dynamics" and does not intend to defame X, but "rather to engage in political discourse and express concerns about the integrity of the electoral process" (see the Defendant's evidence concerning the second publication) but who in fact publishes a specific allegation that X allegedly attended several meetings to discuss election manipulation (compare the second publication itself).
94. Allied to this, when considering "all the circumstances of the case", it may well be relevant to have regard to other so-called *Reynolds* factors. These include (1) the seriousness of the allegation – and, in the present case, as Mr Harding accepted, all the allegations are serious; (2) the urgency of the matter – and, in the present case, although this was not pressed in argument before me, I am prepared to proceed on the basis that this factor favours the Defendant; (3) whether comment was sought from the Claimant – and, in the present case, the Defendant accepted that no attempt was made to seek any comment from the Claimant; (4) whether the publications contained the gist of the Claimant's side of the story – and, in the present case, self-evidently, and perhaps inevitably as no comment was sought from the Claimant, none of the publications contained any hint of his side of the story; (5) the tone of the publications – and, in the present case, the Defendant did not "raise queries" or "call for an investigation", but instead "adopt[ed] allegations as statements of fact"; and (6) the circumstances of the publications, including timing – and, in the present case, I consider that this factor adds nothing to the other factors, including "urgency" (which I have addressed above). Overall, therefore, these factors weigh heavily against the Defendant.
95. In particular, the fact that numerous serious allegations were made (i) as statements of fact and (ii) without any attempt to seek comment from the Claimant militates strongly against the conclusion that whatever subjective belief the Defendant may have had was a reasonable belief. As to (i), it would have been open to the Defendant, in the words of Lord Nicholls, to raise queries or call for an investigation, and not to adopt as statements of fact the specific allegations concerning the Claimant with which the Defendant says his sources provided him. There is no evidence that the Defendant considered these alternatives at the time of publication, although the tenor of his evidence for trial (such as that he intended "an expression of belief" that the Claimant "may have been involved" in wrongdoing) is more consistent with them than with his published statements of fact. As to (ii), I am unable to accept the suggestion (put forward by the Defendant in his oral evidence) that the Defendant had no means of reaching, or at least of attempting to reach, the Claimant. As

the Claimant occupied a senior position in the ISI, it seems to me unlikely that any journalist wishing to convey a message to the Claimant would have been unable to do so, if not directly at least through the medium of the headquarters of the ISI. In my judgment, the Defendant is likely to have been in a better position than most to do this, as his extensive contacts in the ISI and the military could surely have assisted him if he had asked them. In any event, if the Defendant truly was unable to make any contact with the Claimant, that alone pointed to the need for caution in the tone and content of what he elected to publish.

96. If contact had been attempted, it is uncertain whether and if so in what terms the Claimant would have replied. That does not negate the fact that no attempt to contact him was made. Indeed, one obvious potential means of verifying the allegations was to ask the Claimant if they were true. In my judgment (see *Axel Springer*) there were no “special grounds” in the present case which dispensed with the “ordinary obligation” of the Defendant, as a journalist, “to verify factual statements that are defamatory of private individuals”.
97. The general thrust of Mr Lemer’s cross-examination of the Defendant was to suggest that his true motivation was not as he claimed but was instead to attract an audience, and that to that end he was more than happy to be sensational. In broad terms, Mr Lemer suggested, with regard to each publication, that (i) the Defendant did not, in truth, have any source(s); (ii) the Defendant did not obtain the information that he published from any source(s) he may have had; (iii) if the Defendant obtained the information in question from any source(s) he did not, in fact, believe it; and (iv) if all the other points were wrong, the Defendant’s belief was not reasonable. In equally broad terms, the Defendant answered in respect of each publication that (i) he had a source or sources; (ii) his source(s) provided him with the information that he published; (iii) he believed what his sources told him, not least because, in his view, they were well placed to provide him with that information, and he took steps to verify it; and (iv) it was reasonable for him to believe that it was in the public interest to publish what he published. Although this line of questioning was entirely proper, and indeed perhaps unavoidable, I gained very little specific from it, or from the Defendant’s answers, for the reasons concerning demeanour of witnesses which are discussed above.
98. Nevertheless, there are two findings that I do consider that I am in a position to make. First, at least with regard to those publications which contain specific allegations against the Claimant, for example the first publication and the fourth publication, I consider it more likely than not that the Defendant did indeed have a source or sources. Second, however, I am not persuaded on the balance of probabilities in respect of any of the publications that the information that any source(s) provided to him supported the specific allegations that he published concerning the Claimant. This is for two main reasons: (i) although I tried my level best to do so, I was not able to determine from observing the Defendant give oral evidence whether his evidence on these points was reliable, as opposed to being the product either of honest but mistaken recollection or of embellishment; and (ii) the Defendant produced no contemporary record of any kind which supported that evidence, or enabled it to be tested. At the end of the day, although I address each publication further below, it seems to me that these findings are probably fatal to the Defendant’s case in reliance on s4.
99. As the authorities make clear, the burden is on the Defendant to prove that he believed that publication of each of the statements in question was in the public interest, and if he fails to do that his defence under s4 will fail. If the Defendant is unable to satisfy me that his

source(s) provided him with information sufficient to support the allegations that he made against the Claimant, then in my judgment the Defendant cannot discharge that burden.

100. One criticism which Mr Lemer made of the Defendant was to the effect that he consistently elided or transmogrified information or allegations concerning the state of affairs in Pakistan, including the activities of the ISI, with accusations concerning the Claimant personally. In the absence of any documents enabling that criticism to be tested by comparing, in relation to any of the publications, (i) what the Defendant knew or was told with (ii) what the Defendant published concerning the Claimant, attention focussed on aspects of the evidence where it was possible to compare (i) a source of information and (ii) the Defendant's take on that information, and it is that topic that I now turn to address. Although Mr Lemer relied on several examples, I propose to refer to only three of them.

(iii) The Arshad Sharif Report

101. As part of a wider case concerning the role of the ISI and other organisations in Pakistan, the Defendant made reference, in an interlocutory witness statement dated 23 March 2023, to the life and death of Arshad Sharif, who he described as "a famous investigative journalist in Pakistan" who "exposed many stories of military and bureaucratic corruption". Following the sudden and violent death of Arshad Sharif in Kenya on 23 October 2022, the Federal Investigation Agency ("FIA") in Pakistan organised a Fact Finding Team ("FFT") to investigate the matter, and it produced a long and detailed Report on 2 December 2022.

102. At [78] of that witness statement, the Defendant states (emphasis added): "This report sets out how Arshad Sharif was tortured and killed and how ISI officers were linked to that incident, how he was hunted in Pakistan, the fake police case against him, how he tried to flee to Dubai and [was] then forced to leave there as well. It is no longer a conspiracy theory to state that the ISI was involved in this killing, it has now been made official by a government report." The Defendant maintained at trial that this evidence is accurate, while Mr Lemer submitted that it did not, in truth, accord with the contents of the Report.

103. Mr Lemer's main point was that the Key Findings at paragraphs 283-291 in the Report do not bear out the Defendant's evidence. That appears to me to be correct. There is no mention of the ISI in those Key Findings. Among other things, they state at paragraph 289 "there is no concrete evidence to establish that Arshad Sharif was tortured before killing".

104. Mr Harding submitted that the Key Findings should not be read in isolation. That proposition is uncontentious. However, it is, or should be, in my view, equally uncontentious that if the FFT had concluded that the ISI was involved in the killing of Arshad Sharif that is a matter that would have been given prominence in the Key Findings.

105. Mr Harding's second submission was "This is a Pakistani report and, therefore, it must be read in the way a Pakistani committee puts forward suggestions". In other words, as I understand it, the Defendant's argument is to the effect: "Although the FFT does not overtly state that the ISI was involved in the killing of Arshad Sharif, one would not expect the FFT to do that, and the FFT has nevertheless 'made this official' by the fact findings that it has made in the Report". In my judgment, this line of argument reflects two cardinal features of the present case. First, it encapsulates a major problem which was posed for the

Court, namely how to evaluate evidence concerning events in Pakistan when viewed through the prism of propositions such as “not everything in Pakistan is as it seems”, and “things are done differently in Pakistan to the way in which they are done in the UK”. The parameters of these points are unclear, and any endeavour to heed them leaves the Court rudderless and without a compass on an open sea. For example, if a statement such as “there is no concrete evidence of torture” is not to be understood as meaning what it actually says, is to be understood as meaning (i) that there is concrete evidence, but the maker of the statement cannot or will not say so, or (ii) something else, and, if so, what? Second, it reflects what I find, on the balance of probabilities, to be the Defendant’s attitude to information obtained by him from sources, namely to interpret that information according to his own understanding and beliefs and in keeping with his own standpoint, but without indicating in the statements that he published that this was the process involved. In this regard, in keeping with s4, if a source tells a journalist “there is no concrete evidence of X”, it may be that the journalist could reasonably believe that it is in the public interest to publish words to the effect “although Y says there is no concrete evidence of X, in my opinion (having regard to other statements that Y has made, and the constraints that Y is under) those words are in fact to be taken as revealing that X is true”. However, it is difficult to see how the same applies to publishing as an unvarnished fact the statement “X is true”.

106. In support of his case that the Report does indeed support his evidence as to what it “makes official”, the Defendant referred to the following further paragraphs of the Report: 70-72, 251, 255, 260, 275, 279, 283, 286. Mr Harding additionally relied on paragraph 269.

107. In brief, paragraphs 70-71 of the Report rehearse that allegations were made against Arshad Sharif in Pakistan, including that he was involved in false propaganda against the Pakistan Army. Paragraph 251 details the involvement of an individual known as Waqar with certain events after Arshad Sharif’s death, and states that Waqar is well connected with Kenyan police and intelligence services. Paragraph 255 states that Waqar is also extremely well connected in Pakistan, including to the ISI Sector Commander Islamabad, but that it is unclear whether this relationship only came about as a result of inquiries after Arshad Sharif’s death. Paragraph 260 says that Waqar’s brother Khurram, who was driving the car in which Arshad Sharif was a passenger when he was shot, is deeply under the influence of Waqar. Paragraph 269 states that after the vote of no confidence in Imran Khan’s government in March 2022, Arshad Sharif became critical of the military’s stance, and was particularly sharp in his criticism of some individuals. Paragraph 275 states that Arshad Sharif left Pakistan due to a fear of getting arrested, and was told by the police in the UAE that there was pressure to have him deported from the UAE and that he would be better off going to a country that did not have good ties to Pakistan. Paragraph 279 states that not only was there ambiguity as to the narration of facts emerging (essentially, in this instance, from the authorities) in Kenya but also there was ambiguity as to the role of the institutions in Kenya with regard to their investigation of the killing of Arshad Sharif. Paragraph 283 states (as the first of the Report’s Key Findings) that “There were compelling reasons for Arshad Sharif to leave Pakistan because of criminal cases registered against him in different districts”. Paragraph 286 (which contains another of the Report’s Key Findings) states “Waqar is connected to National Intelligence Service (NIS) of Kenya and International Intl. agencies and police. The fact that he handed over the personal cell phone and iPad of Arshad Sharif to an NIS officer rather than to the police establishes his links with NIS. His linkage with national and international agencies provides a scope of possibility of transnational characters in this case”. To all this, I would add the following

Key Findings in paragraphs 290 and 291 of the Report: “The transnational roles of characters in Kenya, Dubai and Pakistan in this assassination cannot not be ruled out. Both the members of the FFT have a considered understanding that it is a case of planned targeted assassination with transnational characters rather than a case of mistaken identity.”

108. In my judgment, on any reasonable reading of these passages they fall a long way short of “making it official” that the ISI was involved in the killing of Arshad Sharif. In my opinion, the Report supports conclusions to the effect that (i) the murder was a “planned targeted assassination” rather than a case of mistaken identity, (ii) there are grounds to believe that persons outside Kenya played a part in the murder, (iii) Arshad Sharif had made enemies in Pakistan, in particular within the Pakistan Army, and (iv) there are therefore grounds to suspect that the Pakistan Army was or may have been implicated in the assassination. At least in the eyes of English law, however, that is very different from the conclusion that “the ISI was involved in this killing” which the Defendant claims the Report contains. Among other things, it is important to note that, while the Report highlights the involvement of Waqar and his brother in the incident and its aftermath, the Report is careful to say that (i) it is unclear whether Waqar had any relationship with the ISI before the date of the murder and (ii) transnational roles in the assassination merely “cannot be ruled out”.

(iv) General Durrani

109. At [6] and [7] of his interlocutory witness statement dated 20 June 2023, the Defendant states respectively: “The Claimant uses his official role for implementing the illegal and extrajudicial agenda of the military junta” and “This is confirmed by a tweet by the ex-head of the ISI, General Asad Durrani. I exhibit this tweet ...”. However, this tweet does not, in fact, refer to the Claimant at all, let alone to him [mis]using his role for those purposes.

110. When cross-examined about this discrepancy, the Defendant said that he was addressing “the large picture”. Mr Lemer submitted that this is a fair reflection of what the Defendant has done in relation to each of the publications complained of in this claim – i.e. to treat information having a general tenor as providing a basis for specific allegations concerning the Claimant although the source material contains no such allegations. On the basis of this example, and the Defendant’s approach to the FFT Report concerning Arshad Sharif and what Amnesty International published (see below), I consider that this is probably correct.

111. This tweet fell to be considered in conjunction with an article, in respect of which Mr Harding submitted (i) General Durrani was the former head of the ISI, (ii) this article reports that General Durrani has admitted that the ISI has a political cell and that it was involved in the 1990 elections, and (iii) this contrasts with the Claimant’s evidence in his trial witness statement that “The ISI does not involve itself in Pakistani politics or the elections”.

112. In my judgment, these submissions do not address the point made by Mr Lemer. In fact the article relied on contains an admission that the ISI carried out a “political assessment ahead of the 1990 elections”, which is not necessarily the same as being “involved” in those elections. Leaving that aside, however, the question is not whether the ISI was involved in the 1990 elections but whether the Claimant’s misuse of his official role (as it happens, in connection with by-elections in 2022) has been confirmed by General Durrani. It has not.

(v) The Amnesty International Tweet

113. At paragraph 30 of his interlocutory witness statement dated 20 June 2023, the Defendant states: “Amnesty International and other human rights groups have expressed direct concern over the disappearances of so many journalists, activists and politicians”. In support of this assertion, the Defendant refers to a Tweet dated 15 June 2023. However, this does not, in fact refer to disappearances of journalists, or to concerns about the same.

114. Mr Harding advanced no submissions to either explain or defend this inconsistency.

(vi) The first publication

115. In addition to the points already made concerning the first publication, the following points arise. The Defendant’s pleaded case with regard to this publication is that the “strenuous efforts” that he made to verify the allegation that the Claimant was interfering in elections by taking “complete control of the Lahore High Court” was that he relied on research papers. In addition, it is pleaded that “The role of Pakistan’s military and ISI in election interference has been widely reported in the international media by outlets such as the New York Times, The Intercept and France 24”.

116. The first of these “research papers” is an article that was published in 2020. It was written by Dr Jyoti M. Pathania, who is described as a Senior Fellow at the Centre for Land Warfare Studies, New Delhi, and is entitled “ISI in Pakistan’s Domestic Politics: An Assessment”. According to the Abstract which appears at the beginning:

“The article showcases a larger-than-life image of Pakistan’s Intelligence agencies highlighting their role in the domestic politics of Pakistan, by understanding the Inter-Service Agencies (ISI), objectives and machinations as well as their domestic political role play. This is primarily carried out by subverting the political system through various means, with the larger aim of ensuring an unchallenged Army rule. In the present times, meddling, muddling and messing in, the domestic affairs of the Pakistani Government falls in their charter of duties, under the rubric of maintenance of national security. Its extra constitutional and extraordinary powers have undoubtedly made it the potent symbol of the ‘Deep State’.”

117. The second of those “research papers” is another article that was published in 2020. It was written by Dr Bindra M. Chengappa, who is described as a Senior Fellow, IDSA, and is entitled “The ISI’s Role in Pakistan’s Politics”. In an early paragraph, it states: “The aim of this paper is to examine the ISI role in Pakistani politics during the post-Zia period which begins from September 1988 till the late 1990s.” The conclusions include the following:

“The theoretical framework conceived three models of intelligence agencies namely (a) bureau of domestic intelligence (b) political police (c) independent security state. The ISI would fall under the category of an independent security state with the following characteristics. It lacks external controls and differs from the political police because its goals are determined by agency officials and are likely to differ from that of the political elite. Importantly, agency officials rather than elected officials direct its operations.

The rationale for the ISI turning into an 'invisible government' has much to do with Pakistan being a 'weak state' which depends on a strong state apparatus to compensate for the problem of ideology ...

Former Prime Minister Nawaz Sharif successfully used the ISI to collect evidence of corruption by political rivals like Benazir Bhutto and other bureaucrats involved in major contracts with foreign companies. The intelligence agencies have played a frontline role in the struggle for power between the PPP and the PML (N). So much so, the political leadership in the post-Zia period has not really used these intelligence agencies for promoting good governance; it has instead only used them in their internecine warfare which has contributed to instability and led to a crisis of governance in the country.

The import of the ISI wielding power in the country has a strong bearing on Islamabad's national security and foreign policy. It is a major decision influencing element in the security and foreign policy formulation process and tends to adopt an anti-India policy ...

The other aspect of ISI involvement in domestic politics is its linkages with Islamic fundamentalist groups which are anti-India in character ... This relationship between the ISI and fundamentalists, fostered among other objectives on anti-India interests, clearly characterises a close-minded approach to any improvement in relations with India.”

118. The Defendant did not explain why the contents of these articles provided a basis for the specific allegation against the Claimant that is contained in the first publication, and the connection between those contents and that allegation is not obvious to me. The second article, in particular, seems far removed, save in the most general of terms, from the allegations in the first publication, as it is dealing with matters 30 years or more earlier.
119. There was no suggestion that the reports in international media took matters any further. In short, whatever may be said about the role of the ISI, nothing is said about the Claimant.
120. The Defendant's trial witness statement also made reference to various publications which showed that “the information shared as opinion in the [first] publication became a reality of the ground”. However, leaving aside the fact that later events are typically irrelevant to what a journalist reasonably believed at the time of publication, none of that later reporting supports the allegation that the Lahore High Court was improperly suborned.
121. In fact, the evidence of one of the Defendant's witnesses (Mirza Shahzad Akbar) is that the material by-elections “were indeed delayed despite orders from the Lahore High Court. It was widely understood that the government and the Election Commission's refusal to implement the court's order was due to pressure from the military, which did not want the elections to proceed”. In other words, and directly contrary to what was alleged in the first publication, the Lahore High Court was not under anyone's improper control. It was instead intent on ensuring that the elections proceeded, although its orders were not implemented.

122. The closest that the later publications come to providing any support for the Defendant having a reasonable belief that it was in the public interest to make the specific allegation against the Claimant relating to taking control of the Lahore High Court that is contained in the first publication is that it was later reported (on or about 3 April 2024) that six high court judges in Islamabad had written a letter alleging that improper pressure had been placed upon them in relation to claims involving Imran Khan, including the abduction of family members, torture, installation of cameras in their bedrooms and threats from the ISI. According to a report in the Guardian on that date “Supreme court justice Athar Minallah said the letter addressed what has been happening in Pakistan for the last 76 years”. These allegations, if right, are consistent with the sentiment underlying the first publication. However, they do not support the specific allegation made: they concern a different topic (court cases involving Imran Khan), a different city, and a time almost two years later.

(vii) The second publication

123. The Defendant’s pleaded case does not give rise to any points concerning the second publication in addition to those already made above.

124. The DWS refers to an article concerning Asif Ali Zardari in the Telegraph of 3 August 2010 entitled “Asif Ali Zardari: life and style of Pakistan’s Mr 10 Per Cent” which begins “As an investment minister in his wife’s administration in the 1990s, Mr Zardari was accused by political rivals of taking personal commissions on government contracts”. However, this again, in my judgment, is far removed from providing reasonable grounds to believe that it was in the public interest to publish in June 2022 the statement that the Claimant had had several meetings with Mr Zardari concerning election manipulation.

(viii) The third publication

125. The Defendant’s pleaded case with regard to this publication is that the “strenuous efforts” that he made to verify the allegation that the Claimant was a “black sheep” were the same as the “strenuous efforts” that he made in respect of the first publication.

126. The same points apply, and the same conclusions follow, as in the case of the first publication.

(ix) The fourth publication

127. The like considerations apply to the fourth publication, save that the Defendant’s pleaded case with regard to the fourth publication as to the “strenuous efforts” to verify the allegations contained in it, “includ[ed] finding corroboration for it in the international media such as the New York Times, France 24 and The Intercept”. In the DWS, the following publications are identified: (1) an article in the New York Times of 21 February 2024 entitled “An Election Shatters the Image of Pakistan’s Mightiest Force”; (2) an article in France 24 of 9 February 2024 entitled “The ‘generals’ elections’ in Pakistan that turned against the military”; (3) an article in The Intercept of 28 February 2024 entitled “Members of Congress Demand Biden Withhold Recognition of Coalition Claiming Power in Pakistan”; (4) an article in the Guardian of 5 February 2024 entitled “Army looms large as

Nawaz Sharif eases towards fourth term in Pakistan”; and (5) an article in Nikkei Asia of 23 February 2024 entitled “Pakistan’s army was the clear election loser”.

128. All of these articles post-date the publications concerned by many months, and none of them can have been relied upon by the Defendant at the time of publication. Accordingly, the “strenuous efforts” that were made to verify the fourth publication before or at the material time (i.e. the date of publication) cannot have included considering the contents of any of these articles. Further, if and in so far as the reference in the Defendant’s pleaded case to “finding corroboration” is intended to refer to efforts that were made after the time of publication, that is immaterial for the purposes of a s4 defence.

(x) The sixth publication

129. The like considerations apply to the sixth publication as apply to the previous publications, save that the Defendant’s pleaded case with regard to the allegation contained in the sixth publication (that the Claimant caused the police to make a baseless allegation against the Defendant) is that “He has verified this allegation through his own lawyers in Pakistan who were pressurised by the ISI and forbidden to represent him in the matter”.

130. The DWS makes no reference to the Defendant’s lawyers, or to verification being obtained from them. It begins by saying that “the tweet in question was made in response to an allegation of bribery levelled against me by the Claimant”. In fact, although the meaning found at the trial of preliminary issues does relate to an allegation of bribery, the Defendant explained at trial that this interpretation did not reflect the underlying facts or the allegations in fact made against him, which involved an alleged dispute with a “dates trader” which had nothing to do with bribery. It is therefore curious that the DWS should say that, as a matter of fact, the tweet was responding to an allegation of bribery instigated by the Claimant. Be that as it may, the thrust of the DWS is to say that the purpose of the tweet was “to refute and challenge the validity of the accusation, rather than to defame or disparage the Claimant personally”, that “the tweet reflects my personal disbelief and frustration at the baseless accusation made against me”, and that “I questioned the logic and credibility of the accusation made against me, emphasising the lack of evidence”.

131. In cross-examination, the Defendant accepted that he had produced no contemporary material from his lawyers. He said that his lawyer had said that he would not give evidence because he got scared, that “Logic will tell you that a Section Commander has the power [i.e. to do what the tweet says the Claimant did]”, that “The ISI hacked my phone. The report [i.e. from the lawyer] got wiped out”, and (reflecting his evidence with regard to each of the publications) “I did believe it, and that publishing it was in the public interest”.

132. In light of the lack of consistency between (i) the DWS (ii) the Defendant’s pleaded case and (iii) his oral evidence, in the absence of any contemporary corroborating material, and in spite of the explanations given in cross-examination for that lack of material, I feel unable on the balance of probabilities to accept that the Defendant reasonably believed that it was in the public interest to publish the allegation made against the Claimant in this tweet.

(xi) The seventh publication

133. The Defendant's pleaded case concerning his sources and concerning his "strenuous efforts" to verify relate to sources in the ISI and in the military and political establishment. The DWS states that "the tweet reflects my analysis/comment, based on information from reliable sources, regarding the involvement of certain individuals within the ISI's Internal Wing (C Wing) in political interference and horse-trading activities". It also makes the points that the tweet contains no direct accusation against the Claimant, that it does not name him, and that any connection drawn with him "is purely speculative and unfounded".
134. The meaning of this tweet has been held to be "The Claimant is directly involved in political interference". This meaning is not easy to reconcile with the line adopted in the DWS. Nevertheless, in this particular instance I consider it right to uphold the defence under s.4. My reasons are as follows: (1) literally, the tweet states (a) that "both brigadiers" [i.e. having regard to the clear identification of these individuals in the series of tweets of which this tweet forms part, the Claimant and one other brigadier] belong to the ISI Internal Wing (C Wing) and (b) that the ISI C Wing is involved directly in political interference; (2) statement (a) concerning the Claimant is true, and accordingly there is no reason to doubt that the Defendant reasonably believed it; (3) turning to statement (b), having considered all his written and oral evidence, I have little doubt that the Defendant believed at the time of publication that the ISI C Wing was involved directly in political interference; (4) further, whether or not statement (b) was true, and regardless of the fact that it may also have been reasonable for people to believe the contrary, it is clear from the contemporary materials in the public domain that are before the Court that it was widely believed – and widely reported – that it was true; (5) on this basis, I further find that the Defendant's belief of statement (b) was reasonable; (6) the suggestion that making any connection with the Claimant "is purely speculative and unfounded" radically misstates the true position; (7) nevertheless, the Defendant is right to say that there is no direct accusation against the Claimant; (8) it would not have been unreasonable for him to believe that all that was being published was that two particular brigadiers were part of an organisation which (as he reasonably believed) was involved directly in political interference; (9) there is no obvious reason why he should not have considered that the public had a right to know that; and (10) in all the circumstances, including that the statement that he published was either true or reasonably believed by the Defendant to be true, and the restrained nature of this particular publication, it was reasonable for him to believe that publishing it was in the public interest.

(xii) The eighth publication

135. The like considerations apply as apply to the first to sixth publications. In particular, the Defendant's pleaded case concerning his sources and concerning the "strenuous efforts" that he made to verify the allegation that the Claimant was behind the registration of this complaint against the Defendant are the same as in respect of the first publication.
136. The DWS states (among other things) that the tweet was published "in response to a perceived injustice involving the registration of an FIR (First Information Report) against me, allegedly orchestrated by [the Claimant]", that the tweet "was not intended to defame the Claimant but rather to bring attention to potential misconduct and interference in legal proceedings" and "The term "fraudster from Lahore" was not directed specifically at the Claimant but rather at individuals who abuse their authority for personal gain".

137. This evidence is difficult to reconcile with the plain language of the eighth publication. In particular, even if the expression “fraudster from Lahore” was not intended to be directed specifically at the Claimant, it is inescapable, and in my judgment must have been apparent to the Defendant at the time, that the tweet was accusing him of being one such fraudster.

138. I am unable to see any grounds upon which to uphold a s4 defence in this instance.

(xiii) The ninth publication

139. The like considerations apply as apply to the first to sixth and eighth publications. The Defendant’s pleaded case concerning his sources are that they were “within the ISI” and his pleaded case concerning verification is that “He has made stringent efforts to verify these allegations, including family, legal and journalistic sources in Pakistan”.

140. The DWS states (among other things) that “It was not intended to defame the Claimant or make baseless allegations against him, but rather to bring attention to potential misconduct and abuse of authority within the ISI” and “The mention of Brigadier Rashid Naseer and Faheem Raza in the tweet ... was simply an expression of my belief that they may have been involved in orchestrating the alleged fraud and wrongful arrest”.

141. As in the case of the eighth publication, this evidence is hard to reconcile with the plain and unambiguous language of the ninth publication: “When nothing else worked, then they registered a fake case against me ... and arrested my brother-in-law from my home. According to my sources ... this case was registered on [their] instructions ...”.

142. I am unable to see any basis for upholding a s4 defence in this instance either.

(xiv) The tenth publication

143. The considerations that apply to the first to sixth and eighth and ninth publications are also applicable to the tenth publication. The Defendant’s pleaded case concerning his sources are that they were “within the ISI” (or possibly, as this is mentioned under the plea of truth, “within the ISI, military intelligence and the army”) and his pleaded case concerning verification is a repeat of his case on verification of the first publication.

144. The DWS states (among other things) that (as already mentioned in [11] above) “It was not intended to make defamatory allegations against the Claimant or to imply any direct involvement on his part in regime change or corrupt practices” and, further, that “The language used in the tweet may have been strong, but it was meant to convey a sense of frustration and disillusionment with perceived corruption and abuse of powers within certain sectors of the government and the military” and “The references to “both brigadiers” were general in nature and did not necessarily implicate the Claimant individually”.

145. It is true that the Claimant and the second brigadier were not named in the tenth publication, which was tweeted on 29 June 2022 at 16.42 UK time. However, they were each named in the ninth publication which was tweeted on 29 June 2022 at 16.38 UK time, a mere four minutes earlier. Further, both tweets were tweeted on the same account and

formed part of the same thread. In these circumstances, the suggestion that the reference to “both brigadiers” in the tenth publication was “general” and did not necessarily implicate the Claimant is unsustainable. Indeed, to my mind it is clear that the reason why the Defendant felt able to refer to “both these brigadiers” without naming them and without being obscure was because he was writing a follow up to the ninth publication in which they had already been named, and he assumed both tweets would reach the same audience.

146. In addition, I consider that it is not credible to suggest that describing two people as “the left and right arm” of regime change does not imply direct involvement in regime change.

147. Similarly, in my judgment, it is not credible to suggest that stating that “[b]oth of them, while carrying out illegal actions ... have become billionaires” does not imply any direct involvement on their part in corrupt practices. Shifting the debate onto this ground - i.e. whether any allegation of corruption was made (or intended) against the Claimant – distracts from the issue of whether the Defendant had any basis for believing that the Claimant had become a billionaire due to carrying out “illegal actions”. That is an extravagant allegation. The Defendant’s answers in cross-examination were expressed in very general terms (“I had sources. I’ve cross-checked. I believed the statement to be true. I shared it in the public interest.”), and he failed to persuade me he had any basis for it.

148. More generally, the DWS ends by saying “It is essential to recognise the broader context in which these publications were made, as they reflect ongoing discussions and debates about governance, transparency, and accountability in Pakistan.” That context is important, but it cuts both ways. While great value is, rightly, accorded to freedom of political speech, to paraphrase the words of Lord Nicholls: the more serious the subject matter, the more the public is misinformed if what is published is not true. Further, the fact that the general topic is important cannot justify harming the reputation of an individual without a proper basis.

149. The DWS also refers to a number of articles in relating to claims such as “The democratically elected government of Imran Khan was toppled through a ‘staged’ vote of no confidence, backed by the military chief of Army Staff and ISI” and “in Pakistan, the military is still running the show, over and above the constitution of the country”. These articles support a case for reporting on general issues of the type mentioned in the tenth publication, and for invoking the protection of s4 in relation to such reporting. They provide no such support for statements like those made in the tenth publication, which focus on the Claimant and which contain very serious allegations which are put forward as statements of fact and not as material for discussion or debate, let alone general discussion or debate.

150. For all these reasons, I consider that there is no s4 defence to the tenth publication.

(xv) The Defendant’s witnesses

151. The Defendant called three witnesses: (1) Shaheen Sehbai, a retired journalist, who made a witness statement dated 1 September 2024 and gave oral evidence remotely; (2) Syed Akbar Hussein, a retired Lieutenant Colonel in the Pakistan Army, who made a witness statement dated 4 September 2024, and who also gave evidence remotely; and (3) Mirza Shahzad Akbar, a non-practising barrister who has had a number of prominent roles in Pakistan, including being Chairman of the Assets Recovery Unit (a coordinating unit set

up by the Prime Minister to harmonise efforts to return undeclared wealth of Pakistanis abroad) from 2018 to 2022, who made a witness statement dated 13 September 2024 and gave evidence in person. They were all experienced, articulate, and impressive witnesses.

152. However, the only live defence at trial was under s4, and - in circumstances where there is no dispute that each of the material statements was, or formed part of, a statement on a matter of public interest - the focus of the factual inquiry relating to that defence is on what the Defendant believed and did at the time of publication. It is also possible that a witness may be able to give evidence which corroborates the evidence of the Defendant. For example, if the Defendant's case is that a source told him that "the Claimant has taken control of the Lahore High Court" or that "the Claimant is a billionaire", a witness who can speak to the truth of those matters may be able to give evidence which supports the Defendant's case – because the fact, if it be the case, that information was true may enhance the prospect that it was, in fact, provided. Accordingly, unless a witness was one of the Defendant's sources, or can give evidence about what the Defendant knew and did at that time, or can corroborate the Defendant's account, their evidence is unlikely to be relevant.
153. In broad terms, the evidence of all three of the Defendant's witnesses was that issues of the kind which are addressed in the publications complained of in this claim are real, and that problems of the kind which are mentioned are both real and very widely acknowledged. For example, Mr Sehbai states (among other things) that "The ISI grew and gradually became a state within a state. Eventually, they even became stronger than the state, the Parliament, and the judiciary. They began to control media and governmental institutions as they liked", that the ISI has "use[d] its power to rig elections and make policies according to its world view" and that it seems that "mass blackmail of the judiciary is taking place".
154. Mr Sehbai also expresses the views that the current claim has been brought to silence the Defendant, and that the Claimant has not suffered any particular harm to his reputation "as the workings of ISI and its field operatives especially its sector commanders have been much talked and written about including in some international publications". However, he does not identify these publications, or suggest that any of them "exposed" the Claimant. In any event, in accordance with English law, even if such prior publications exist they do not affect the validity of the Claimant's claim. These views thus have no evidential weight.
155. In any event, when it comes to the specific matters with which the Court is centrally concerned – namely, in sum, the Claimant's personal involvement in wrongdoing or abuses, and the reliability of the Defendant's reporting – the evidence is less clear and more scant.
156. Mr Sehbai's evidence is that he knows the Defendant in professional capacity, has a great deal of respect for him, and regards him as a principled man who takes strong positions. He considers that the Defendant "is very direct" and this "contrasts with the tone of objective neutrality" that Mr Sehbai and many other journalists take, but that does not mean that the Defendant is wrong. The two men share mutual sources, who Mr Sehbai does not identify.
157. Moving from these general points to the publications in issue:
- (1) Mr Sehbai says the information contained in the first publication "has proven to be true". In my view, however, he is here focussing on the threat of election rigging. He is

not suggesting that the Claimant took control of the Lahore High Court, or that the Defendant had any reasonable grounds for believing that the Claimant had done so.

- (2) As to the second publication, Mr Sehbai “cannot say whether the specific meetings mentioned took place, but election manipulation is now common knowledge”.
- (3) As to the third publication, Mr Sehbai recognises that the Defendant’s language may have been “a little strong and emotional” but states “that does not detract from the meaning”. Those views lend no support to the Defendant’s defence under s4.
- (4) As to the fourth publication, Mr Sehbai says that the claims made by the Defendant “correspond with common knowledge” and that “Something like ninety percent of what he reported on in the video has turned out to be absolutely right”. However, this does not address the allegations made against the Claimant, as opposed to the “big picture”.
- (5) As to the sixth publication, Mr Sehbai says that he has no knowledge of the Defendant’s business dealings, and the Defendant “is well positioned to know whether the ISI has intervened in those dealings”. This does not advance the Defendant’s case under s4.
- (6) As to seventh publication, Mr Sehbai considers this says “nothing remarkable”, and that the Defendant had a right to publish. I am inclined to agree, for reasons given above.
- (7) As to the eighth publication, Mr Sehbai says that the Defendant was “rightfully protesting” what had happened to his ID card, and that this had proved correct in hindsight. However, Mr Sehbai does not grapple with the point that the Claimant’s complaint concerns the allegation that he instigated measures against the Defendant.
- (8) As to the ninth publication, Mr Sehbai says that the Defendant was “speaking the absolute truth”, that his brother-in-law was arrested, and that “the ISI has a history of abducting people”. This, again, does not address the allegations against the Claimant.
- (9) As to the tenth publication, Mr Sehbai says that the facts support the allegations that the Defendant made and “the situation has turned out to be ten times worse than he reported”. As to that, the concluding points made in (4), (7) and (8) above apply.

158. In the round, therefore, Mr Sehbai’s evidence does not materially assist the Defendant.

159. The like points apply to the evidence of the Defendant’s other two witnesses.

160. Mr Hussain (who says that he is an activist who has been declared a digital terrorist by the military regime in Pakistan, court-martialled for sedition in a “sham trial”, and been targeted by assassins sent “on contract” to eliminate him), states that he does not personally know the Claimant. Further, as I read his evidence, he claims no personal knowledge of any of the allegations made against the Claimant in the publications complained of, nor any knowledge, personal or otherwise, of the circumstances in which the Defendant prepared and published the same. He states that (i) “it was practically [the Claimant’s] job” to carry out the type of activities alleged in those publications, (ii) (without identifying a source)

the Claimant was “involved” in “the ISI’s manipulation of local administration and politics” in Punjab, (iii) “former colleagues in the military” have told him that the Claimant was appointed as sector commander of the ISI in Punjab on the recommendation of an individual whose business interests he had facilitated, and (iv) in their private conversations with him “journalists, common citizens of Punjab and [the] judiciary” told him that the Claimant was responsible for harassing them. It is not suggested that the Defendant was aware of the allegations at (iii) and (iv) before or at the time that he published any of the material publications, and there is no mention of them in any of those publications. The allegations at (i) and (ii) are sweeping, and Mr Hussain does not explain the basis for them.

161. Mr Akbar (who served under the government of Imran Khan from 2018 to 2022 and who during that time maintained regular contact with ISI officials including sector commanders in the province of Punjab), states that he had no personal interactions with the Defendant at the time of the material publications, and first came into contact with him in 2024. He further states that at the time when the Claimant was appointed as sector commander for Punjab it was “widely believed” he had been handpicked to work against the PTI government in Punjab. He states that before his resignation in January 2022 he had a meeting with the Claimant and “raised concerns regarding his direct interference with the functioning of accountability court judges and special court judges, particularly those handling serious cases of corruption and money laundering involving opposition leaders”, which allegations the Claimant denied. He never met the Claimant again, but he states that “I now believe most of the stories about Imran Khan and his family and friends were planted in media by his office”. It is not suggested that the Defendant was aware of these allegations before or at the time of publication of any of the publications complained of in this claim, and they do not feature in those publications. If Mr Akbar had provided this narrative to the Defendant in June 2022 and the Defendant had decided to feature these allegations in his publications, that narrative would have included the Claimant’s denial, which the Defendant would almost certainly need to publish if he hoped to succeed on a s4 defence.

162. Mr Akbar also ventures an opinion on the publications complained of in this claim, although “[he] cannot verify the exact manner in which these events occurred or the specific sources of the Defendant’s information”. Mr Akbar’s main point is that “subsequent events unfolded largely as predicted [by the Defendant]”. Mr Akbar cites as a “prominent example” a tweet about the Claimant “meeting with various political figures, including Hamza, who was the Chief Minister at the time” which “suggested that the government would be prolonged and that elections would be delayed – a prediction that ultimately came true”. In my judgment, this approach betrays the same error as has infected the Defendant’s case throughout, namely to suggest or believe that what matters is a journalist’s political analysis, not whether there is any proper basis for making allegations against individuals.

(xvi) *The Claimant’s evidence*

163. As the consideration of a s4 defence places the focus on the knowledge and actions of the Defendant, the evidence of the Claimant is unlikely to be of much relevance.

164. In the present case, it seems to me that the only likely relevance of the Claimant’s evidence to the issues which arise from a s4 defence is that it is crystal clear that, if he had been asked, he would have denied all the allegations made against him in strong terms. To take just a single example, the Claimant states with regard to the second publication “I did

not meet Asif Ali Zardari during his stay in Lahore, and certainly have not discussed election manipulation with him”. In this regard, if the Defendant had managed to make contact with the Claimant concerning this allegation before publishing it, and the Claimant had provided this response at the time, what would have happened is uncertain. One live possibility, however, is that the Defendant would not have felt confident in publishing the allegation without checking whether his sources were right, and that one matter which the Defendant would have wished to be reassured about was whether they were at least able to provide a convincing rebuttal to the denial that any meeting had taken place. One can only speculate, but these considerations demonstrate why there is often a need to check a story.

ISSUE 3 – THE MEASURE OF DAMAGES

165. The Claim Form limits the claim for damages to £50,000. Mr Lemer submits that the Claimant is entitled to damages of at least that amount. He relied, in particular, on the following factors: (i) the seriousness of the allegations; (ii) the scale of publication; (iii) the percolation, borne out by the number of retweets, quotes, likes and views; (iv) the impact on the Claimant, which, according to his evidence, was severe; and (v) aggravating factors, including (a) the failure to approach the Claimant or afford him an opportunity to comment before and at the time of publication, (b) the assertion of a defence of truth, which was persisted in until the second day of the trial, (c) a failure to apologise, or to remove or retract the publications (as admitted in the Defendant’s pleaded case), and (d) the Defendant’s pleaded case that he “will continue to publish, or cause to be published, the same or similar allegations” and that “an injunction will have very little effect on this because ... it will only operate to prevent publication to the Pakistani diaspora in England and Wales”. I would add that in the present case the tenor of the evidence of the Defendant’s witnesses was that he was regarded as credible. Also, he claimed to be well placed to know the facts.
166. Mr Harding did not address the measure of damages in his opening Skeleton Argument, or substantively, if at all, in his oral closing submissions.
167. The relevant principles as to quantification of damages in a defamation case were set out by Warby J (as he then was) in *Barron v Vines* [2016] EWHC 1226 (QB):

“20. The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. 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.'

21. I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

- (1) 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].
- (2) 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.
- (3) The impact of a libel on a person's reputation can be affected by:
 - a) Their role in society. The libel of Esther Rantzen was more damaging because she was a prominent child protection campaigner.
 - 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].
- (4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.
- (5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to

achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) "Directly relevant background context" within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c) An offer of amends pursuant to the Defamation Act 1996.

d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) 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.

(8) 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."

168. As Warby J said in *Doyle v Smith* [2019] EMLR 19 at [131]: "The authorities suggest that the Court should have regard to other awards made by Judges and/or approved by the Court of Appeal, in respect of comparable libels". At the same time, as Eady J said in *Al Amoudi v Kifle* [2013] EWHC 293 (QB) at [24]: "comparable awards ... are ... of limited assistance only because circumstances vary so much from one case to another". As Nicklin J said in *Monir v Wood* [2018] EWHC 3525 at [228]: "Damages for libel cannot be calculated on any mathematical basis. By definition, they seek to provide compensation for harm that it is almost impossible to quantify in monetary terms. The Court attempts to achieve consistency in awards by applying the principles I have identified above, but in reality, no case presents exactly the same circumstances and only some level of commonality or general principle can be extracted".

169. For these purposes, Mr Lemer drew my attention to awards which have been made in other cases. The cases which I consider to be of most assistance are the following, one of which I have added myself:

(1) In *Cairns v Modi* [2013] 1 WLR 1015, the Court of Appeal upheld an award of £75,000 (plus a £15,000 uplift for the way in which the proceedings had been conducted on the defendant's behalf) to a claimant who was accused of match-fixing in a tweet sent to about 65 people (albeit "almost certainly" comprising a "specialist [readership], consisting of those with a particular interest in cricket" - see Lord Judge CJ at [26]). These figures are around £135,000 and £27,000 in present day terms.

(2) In *Monroe v Hopkins* [2017] 4 WLR 68, Warby J awarded £24,000 to a claimant who was accused, in tweets which were posted to tens of thousands of publishees, of

condoning and approving of scrawling on war memorials and monuments. This award is around £35,000 in present day terms.

- (3) In *Doyle v Smith* [2019] EMLR 19, Warby J awarded damages in the sum of £30,000 in respect of an article published on a “village news” website which had 242 views, and which alleged that there was very good reason to believe that the claimant had been guilty of participation in an attempt to defraud members of a rugby club of many millions of pounds. This award is around £42,000 in present day terms.
- (4) In *Fentiman v Marsh* [2019] EWHC 2099 (QB), I awarded damages of £55,000 (made up of a basic award of £45,000 and £10,000 for aggravation) in respect of allegations that the claimant was a computer-hacker responsible for illegal cyber-attacks on a company, made by blog posts read by about 500 people, which had deeply troubled people who were close to the claimant and who had previously trusted and admired him. In that case, the allegations were particularly harmful to the claimant in view of those to whom they were published, and there was actual evidence of specific harm. These figures are around £63,000 and £14,000 in present day terms.
- (5) In *Glenn v Kline* [2021] EWHC 468 (QB), I awarded £75,000 in respect of allegations published to around 1,700 twitter followers that the Claimant was involved in child abuse, fraud, corruption, bribery, conspiracy, and money laundering, and had covered up racism and misogyny. This figure is around £101,000 in present day terms.

170. In the present case, I agree that all the factors identified by Mr Lemer are relevant. I also consider that it would be appropriate to make one award in respect of all the defamatory publications complained of. In my judgment, applying the principles I have identified and taking account of all the factors mentioned, an appropriate award, including aggravated damages, would be in excess of £50,000. Anything less would fail to serve the relevant purposes, as rehearsed in *Barron*. However, the Claim Form limits the claim to £50,000.

ISSUE 4 – OTHER REMEDIES

171. It was accepted that the Claimant was entitled to an injunction if he succeeded on liability.

172. That leaves the application under s12 of the Defamation Act 2013, which provides:

- “(1) Where a court gives judgment for the claimant in an action for defamation the court may order the defendant to publish a summary of the judgment.
- (2) The wording of any summary and the time, manner, form and place of its publication are to be for the parties to agree.
- (3) If the parties cannot agree on the wording, the wording is to be settled by the court.
- (4) If the parties cannot agree on the time, manner, form or place of publication, the court may give such directions as to those matters as it considers reasonable and practicable in the circumstances.

- (5) This section does not apply where the court gives judgment for the claimant under section 8(3) of the Defamation Act 1996 (summary disposal of claims).”

173. In *Monir v Wood* [2018] EWHC 3525, Nicklin J said at [239]-[241]:

“239. The purpose of this section is to provide a remedy that will assist the claimant in repairing the damage to his reputation and obtaining vindication. Orders under the section are not to be made as any sort of punishment of the defendant.

240. Orders under s12 are discretionary both as to whether to order the publication of a summary and (if the parties do not agree) in what terms and where. Exercising the power to require a defendant to publish a summary of the Court’s judgment is an interference with the defendant’s Article 10 right. As such, the interference must be justified. The interference may be capable of being justified in pursuit of the legitimate aim of “the protection of the reputation or rights of others”. Whether an order under this section can achieve this aim will be a matter of fact in each case. If the interference represented by a s12 order is justified, then the Court would then consider whether (if the parties agree) the terms of the summary to be published is proportionate. The Court should only make an order that the defendant publish a summary of the Court’s judgment if there is a realistic prospect that one or other of these objectives will be realised and that the publication of a summary is necessary and proportionate to these objectives.

241. There is an obvious purpose, in an appropriate case, for ordering a newspaper to publish a summary of the judgment because there is a realistic basis on which to conclude that the published summary will come to the attention of at least some of those who read the original libel and others who may have learned about the allegation via the “grapevine” effect. In a smaller scale publication, where it is possible for the original publishees (or at least a substantial number of them) to be identified, again an order requiring the publication to them of a summary of the judgment may well help realise the objectives underpinning s12. Each case will depend upon its own facts. If the defendant has already published a retraction and apology then, depending upon its terms, that may mean that an order under s12 is not justifiable or required. The claimant will be able to point to that to assist in his vindication or repair to his reputation.”

174. In the result, Nicklin J refused to make the order sought in that case because there was no realistic prospect that ordering the defendant to publish a summary of the judgment would cause it to come to the attention of those to whom the original libel was published.

175. In contrast, in *Serafin v Malkiewicz* [2019] EWCA Civ 852, the Court of Appeal ordered the defendants to publish a summary of its judgment in their magazine. In *Glenn* I was told by Counsel who appeared in that case that this matter was not dealt with in the judgment of the Court of Appeal because it arose in submissions after the hearing on the form of the order, and that when that case went on appeal to the Supreme Court no appeal was made in respect of this point. The Order of the Court of Appeal was placed before me in *Glenn*.

176. Mr Lemer applied for an Order under s12 on the following grounds: (i) there has, to date, been no retraction of the publications nor any apology from the Defendant; (ii) ordering the

Defendant to publish a summary of this Court's judgment will cause the judgment to come to the attention of the same people who read the original libels and also, it was submitted, those who learned of them through the "grapevine" effect; and (iii) in consequence, this would assist in vindicating the Claimant, further or alternatively repairing his reputation, particularly as £50,000 is materially less than the damages to which he is entitled.

177. As to point (ii), a summary of the judgment would not directly reach those who learned of them through retweets and so forth. I am not persuaded that it would reach them at all. Otherwise, Mr Lemer's points seem sound, and they were not contested by Mr Harding.

178. Such an Order would constitute an interference with the Defendant's Article 10 rights to freedom of expression, and it is necessary to consider whether such interference is reasonable and proportionate in the light of the damage done by the Defendant's publications to the Claimant, and is outweighed by the need to protect the Claimant's Article 8 right to reputation in all the circumstances. These include that the Defendant has not apologised to the Claimant and cannot be forced to do so, or to express any regret. In my judgment, the publication of a summary is reasonable and proportionate in this case.

179. The contents of any summary that may be ordered is, in the first instance, a matter for the parties to seek to agree, as are the time, manner, form and place of publication of the same. Understandably, no submissions about those matters were addressed to me. Nevertheless, it may be helpful to mention that in *Glenn* I observed that a short statement could be formulated which would be no more than a factual account of the Court's actions. Transposing the wording discussed there to the facts of present case, this could say something along the following lines: "*On [date] I was ordered by the High Court in London to pay [the Claimant] £50,000 in damages for libel [plus his legal costs], on the grounds that between 14 and 29 June 2022 I made a number of defamatory allegations about him and I had no defence to his claim. The full judgment is available here: [link]*".

180. For these reasons, I propose to make an Order that (a) the Defendant is to publish a summary of this judgment, (b) the Claimant and the Defendant should endeavour to agree the wording of that summary and the time, manner, form and place of its publication, and (c) if the parties cannot agree on those matters, they will be settled by the Court. (For the assistance of the parties, in the absence of any agreement to the contrary, the Court is presently minded to order the publication on all the Defendant's media outlets of a summary similar to the wording quoted above, to continue for one month from the date of the Order.)

DISPOSAL

181. For the detailed reasons set out above: (i) the Claimant's claim for defamation in respect of the publication by the Defendant of the words complained of in this claim in the first, second, third, fourth, sixth, eighth, ninth and tenth publications succeeds; (ii) the Claimant is awarded damages in the total sum of £50,000 in respect of all his causes of action for defamation against the Defendant; (iii) the Claimant is also entitled to an injunction to restrain repetition of the same or similar libels; and (iv) pursuant to s12 of the Defamation Act 2013, the Defendant is ordered to publish a summary of this Judgment, the wording of that summary and the time, manner, form and place of its publication to be agreed between the Claimant and the Defendant, and in default of agreement to be settled by the Court.

182. I ask Counsel for the parties to endeavour to agree an Order which reflects the above rulings. I will deal with submissions on any points which remain in dispute as to the form of the Order, and on any other issues such as costs and permission to appeal, either when judgment is handed down, or on an adjourned hearing on some other convenient date.