Neutral Citation Number: [2018] EWHC 3525 (QB)

Case No: HQ16D01543

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2018

Before :

THE HONOURABLE MR JUSTICE NICKLIN

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Between :

Zahir Monir	**Claimant**
- and –	
Steve Wood	**Defendant**

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Julian Santos (instructed by **Penningtons Manches LLP**) for the **Claimant**
David Hirst (instructed by **Humphreys & Co**) for the **Defendant**

Hearing dates: 16-20 April and 3-5 July 2018

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Judgment Approved

The Honourable Mr Justice Nicklin :

1. On 7 May 2015, there was a general election in the United Kingdom. One of the parties fielding candidates for election was the United Kingdom Independence Party ("UKIP"). Like most political parties, UKIP had local branches. One of those branches was Bristol UKIP. It had a Twitter account - @BristolUKIP – which was used for campaigning. At 20.42 on 4 May 2015, a Tweet was posted on the Bristol UKIP Twitter account ("the 4 May Tweet"). It consisted of a photograph of Sarah Champion, the Labour member of Parliament for Rotherham, together with two men. One of those men was Zahir Monir, the Claimant in this action. The text of the 4 May Tweet, obviously referring to the photograph, was:

   > Sarah champion labour candidate for

> Rotherham stood with 2 suspended child grooming taxi drivers DO NOT VOTE LABOUR

(Throughout this judgment, I set out various Tweets exactly as they appeared, so what may appear to be errors of spelling, grammar or punctuation appear in the original text.)

2. The 4 May Tweet was actually written, and posted on Twitter, by John Langley, the Vice Chairman of Bristol UKIP branch.

3. Mr Monir is not a taxi driver, and no one suggests that he had been involved in any "child grooming". The allegation was false. Mr Monir has brought these proceedings against Stephen Wood, the then Chairman of the Bristol UKIP branch, contending that he was libelled in the 4 May Tweet and that Mr Wood is legally responsible for it. When the Claim Form was issued, Mr Langley was named as a defendant. However, Mr Monir chose not to serve the proceedings on Mr Langley. Mr Wood therefore faces the claim on his own. It has become clear during the trial that Mr Wood feels very strongly that it is unjust that he should have been sued rather than Mr Langley, the author of the 4 May Tweet.

The parties

4. Mr Monir was born in Rotherham in 1979 and has lived there all his life. His father achieved some prominence in the Rotherham area for his charity and community work and was awarded an MBE in June 2001 for his work. Mr Monir has been active in local politics. He is a supporter of the Labour party and campaigned for Ms Champion when she was first elected as an MP in 2012. His support continued after that election and he was considering standing himself in local elections. He had been successful in gaining a place on the Labour Party's 'Future Candidates Programme' and had attended a training weekend in November 2013 and a further training course in September 2015.

5. In terms of employment, Mr Monir has spent his career in various community engagement and training roles. He has also been involved in charity and voluntary community work in Rotherham.

6. Mr Wood was born, and has lived most of his life, in Bristol. He spent 5 years serving as a police officer with Avon & Somerset Constabulary before leaving to work as a private investigator. In 1995, Mr Wood became a certified bailiff. In 2003, Mr Wood decided to concentrate on enforcement work and he set up his own business, Able Investigations. Able's business grew steadily and now has some 12 full-time and 15 part-time employees. Mr Wood has been a bailiff for over 24 years. Outside of this work, Mr Wood has become a student and affiliate of the Chartered Institute of Legal Executives and he is working towards his associateship and diploma in law and practice. Mr Wood has also volunteered as a mentor for the charity, MIND.

7. Mr Wood started to take an interest in politics in 2010 and became a supporter of UKIP. He joined the Bristol UKIP branch in 2011, becoming Chairman of the branch in February 2013.

Bristol UKIP Branch

8. The Bristol branch of UKIP was staffed entirely by volunteers. It owned no premises. It was an ad hoc group of people who shared a common interest in and support of UKIP. At the end of July 2014, it had a membership of around 115 and over 500 supporters. At one point in his cross-examination, Mr Wood described the Bristol UKIP branch as follows:

> "It was a group of volunteers that I ran. We were a group of volunteers. There is no business activity there. We were not an agency. Nobody got paid. Nobody got expenses. If somebody didn't turn up to a meeting, yes, we got a bit narky, but I couldn't sack them for it. We had no contractual agreements and, therefore, I cannot be held responsible for somebody putting something on [Twitter]. With the greatest of respect to John [Langley], who is sat in this court, if John had posted these I didn't know about it. Why am I being held responsible for somebody else's actions?"

That perhaps neatly encapsulates Mr Wood's objection to (and sense of injustice of) being alleged to be responsible for the 4 May Tweet.

9. The national party had a Constitution and Rules of Procedure. No reference has been made to the Constitution, but it is common ground that the members of the Bristol UKIP branch were bound by the Rules of Procedure. So far as material, the Rules of Procedure provided:

i) branches are responsible for their own actions (B.3.1);

ii) each branch would have a Chairman, Secretary and Treasurer and those three would be members of the branch committee. Additional committee members could be elected by the branch up to a maximum of eight members in total (B.3.2.1);

iii) the Chairman has principal responsibility for the direction of the branch (B.3.8.1);

iv) branch committees should normally meet at least six times per year (B.4.1.1);

v) ordinary meetings of the whole branch could be convened as often as the committee thought appropriate (B.4.4) but an annual general meeting was required to be held each year between 1 October and 31 December (B.4.2.1);

vi) online conduct of members of UKIP was regulated as follows:

J.2.1 a UKIP publication is defined as any publication, whether physical or online, which bears the Party's name and/or logo which purports to represent the UK Independence Party;

J.2.2 apart from the exceptions detailed below, any UKIP publication must be authorised before it can be placed into the public domain…;

J.2.3 the following people may authorise a UKIP publication whose scope is national: the Party Leader, the Party Deputy Leader, the Party Chairman, the General Secretary and the Party Secretary;

J.2.4 in addition to the persons named in J.2.3, the Regional Organiser and the Chairman of the Regional Committee may authorise a UKIP publication whose scope is local or regional. A UKIP branch or constituency association may receive standing authorisation from an above named person to produce local UKIP publications for Council election campaigns…;

J.2.6 any member producing a publication shall be responsible for ensuring that it is compliant with Party policy, electoral law, the publishing requirements of the Electoral Commission, the Advertising Standards code of practice and the law relating to defamation…

J.3.1 for the purpose of these Rules of Procedure, 'online conduct' shall refer to any Facebook status or group, Twitter post, forum post, posting on any social media account, website, email, blog, article or other material published on the internet by a UKIP member…; and

J.4.4 any of the following people may require the immediate withdrawal of a member's online content: … the local Branch of Constituency association Chairman. Failure to withdraw content promptly shall be considered grounds for disciplinary action…

10. Mr Wood was elected Chairman of Bristol UKIP branch in February 2013. He stood as the UKIP candidate for the Bristol South Constituency at the general election on 7 May 2015.

11. Michael Frost became a member of the Bristol UKIP branch in 2013, joining when Mr Wood was Chairman. He was the first to achieve electoral success for the branch when he was elected as a local councillor for the Hengrove Ward in Bristol on 22 May 2014.

12. Mr Langley was the Vice-Chairman of the Bristol UKIP branch. He had also assumed the role of unpaid assistant to Mr Frost following his election as a local councillor in May 2014. In that role, he maintained a Twitter account for Mr Frost (@TheFrostReport) ("The Frost Report") as a means by which Mr Frost could keep in touch with constituents in his Ward.

Bristol UKIP's Website and Social Media Accounts

13. In his evidence, Mr Wood stated that, when he became Chairman, he made it known that he was keen on developing Bristol UKIP's web and social media presence as a way of increasing the profile of Bristol UKIP. The branch's website was registered in Mr Wood's name because, he said, he had purchased the domain name in 2013 and donated it to the branch. The domain also hosted the branch's email accounts.

14. The Bristol UKIP Facebook account was set up on 18 March 2013. In his evidence, Mr Wood did not recall whether he personally had set up the account or whether someone else had done so using his email address. He was one of the administrators of the account. The documentary evidence strongly supports the conclusion that Mr Wood did set up the account himself.

15. The Bristol UKIP Twitter account was set up on 1 April 2013. Mr Wood's email address was registered to the account. Although not the subject of formal evidence, I think I can take judicial notice of the basic operations of a Twitter account. A Twitter account holder can gain access to his/her account via a web browser by visiting www.twitter.com and entering his/her account name (@forexample) and the account password that s/he would have selected when the account was created. An account holder who has forgotten his/her password can reset the password by clicking on a link. After identifying the relevant account, s/he can choose to have a link to reset his/her password sent to the email address registered on the account. If the user follows the instructions in the email, then s/he can create a new password for the account.

16. In his Defence, Mr Wood stated that the Twitter account had been "*set up, managed, edited and used exclusively by Mr Langley*", but in his witness statement Mr Wood stated that he could not remember who had set up the account. In his affidavit, Mr Langley stated that, to the best of his recollection, he had set up the Twitter account and had made the passwords available to certain committee members to enable them to post material if he was not available. Mr Wood was cross-examined on the evidence which showed that his email address had been given when the Twitter account was created. Mr Wood initially stated that he could not remember who had set up the account and that it might possibly have been set up by Mervyn Laxton. Later he accepted that he had set up the account. It certainly appears clear that Mr Langley's recollection that he set up the account is not correct. There is a posting on the UKIP Facebook page on 1 April 2013 from Mr Wood announcing that Bristol UKIP now had a Twitter account, and providing a link to it. Mr Wood also accepted that he had embedded a link to the Twitter feed on the homepage of the Bristol UKIP website.

17. The evidence of Mr Wood, Mr Langley and Paul Turner (who joined in 2013, became a committee member of Bristol UKIP branch from 2014, stood for election as an MP in 2015 and latterly became its Treasurer) is that committee members of Bristol UKIP were given the login details of the Twitter account for administrative access. Mr Turner stated in his statement: "*we were only given access as we were Committee members and may need to access the Twitter account if ever needed*". Mr Turner stated the he had never logged into the Twitter account. There is no evidence that any of the other committee members utilised the access they had been given to the Twitter account.

18. Initially, responsibility for the branch's social media output appears to have been given to Alan Thomas. However, in a post on the Bristol UKIP branch Facebook account on 28 August 2013, Mr Wood informed members of the branch that Mr Thomas had had to step down and that there was a vacancy for a "*social media secretary who is willing to take over the running of Facebook and the twitter accounts, keeping the UKIP name and brand out there*". He solicited volunteers for the post. The minutes of the meeting on 5 September 2013 similarly record that the branch was looking for someone to run the Twitter and Facebook pages. The search for the social media secretary was apparently on-going in January 2014 as Mr Wood is noted in the minutes of the meeting on 13 January 2014 as still looking to fill the post. Another call for volunteers was made at the AGM on 14 February 2014. Mr Wood stated that, before January 2014, the post of social media secretary had been filled by David Hancock and Peter Brown, but neither stayed in post for long as both were unable to devote the necessary time to it.

19. In his witness statement, Mr Wood says Mr Langley had become the branch's "*sole publicist*" at some point in 2014 and that "*control of the Branch's Twitter and Facebook*

was handed to John by June 2014". Certainly, by June 2014 Mr Langley was operating Mr Frost's Twitter account (see [12] above), and Mr Wood said that he had demonstrated a good track record in doing so.

20. In his Defence, Mr Wood stated that the branch Twitter account was used "*exclusively*" by Mr Langley and, in his witness statement, he stated and that it had been agreed that Mr Langley would "*take over responsibility*" for the accounts and that, by June 2014, Mr Langley had become "*the Branch's amateur propagandist and publicist*". Specifically, in respect of the operation of the Twitter account, Mr Wood stated in his witness statement that "*all responsibilities in that regard had been delegated to John*".

21. Other witnesses, relied upon by Mr Wood, described Mr Langley's role in relation to the branch's social media accounts.

    i) Mr Langley said in his affidavit that he "*took full control and responsibility of the Facebook and Twitter accounts*";

    ii) Mr Frost stated in his witness statement that, soon after he had joined the Bristol UKIP branch, Mr Langley was "*given total exclusive control over the Branch's Facebook and Twitter accounts*";

    iii) Mr Turner stated that: "*all social media activity was delegated to John Langley*";

    iv) Lara Cozens, a member who joined the Bristol UKIP branch in 2014, recalled a meeting at which it was decided that Mr Langley would be "*solely responsible for the Branch's social media outreach*" (it is not clear to which meeting she is referring); and

    v) Daniel Fear, another member of the Bristol UKIP branch at the relevant time and subsequently Chairman, stated: "*John Langley was tasked with the sole responsibility of managing the Branch's Twitter page and Facebook account*".

22. At the meeting on 3 January 2015, Mr Wood said that the branch needed a campaign manager. He thought that Mr Langley would be suitable for the role. It was also thought that a support manager was needed. Mr Frost recommended Mr Langley for the post because "*he is a great wordsmith and administrator and, more importantly, he has time on his hands.*" The issue of social media was discussed, in the context of a suggestion by Mr Wood that candidates standing for election should create their own Facebook accounts. He noted that the head office of UKIP had warned against using social media accounts, but Mr Wood thought that, providing people were careful what was posted, there should not be a problem. Mr Langley arrived late to the meeting. Mr Frost recapped that Mr Langley might make a good candidates' support manager. Mr Langley said that he thought that the role was similar to that of a media manager and he was happy to do that.

23. Mr Wood chaired the AGM of Bristol UKIP branch on 4 February 2015. The branch was looking for 6-7 candidates for the local elections to be held in May 2015. The prospective UKIP parliamentary candidate for Bristol South had withdrawn and Mr Wood had been chosen as the replacement. The three other UKIP candidates were James McMurray for Bristol East, Paul Turner for Bristol West and Mr Frost for Bristol North-West. The minutes suggest that the mood of the meeting was upbeat and much

buoyed by the success of Mr Frost's local council victory in 2014: "*UKIP is here to win Bristol*". Mr Wood was re-elected as Chairman and Mr Langley was elected Campaign Manager for Bristol UKIP. There is no reference in the minutes to the branch's social media accounts or activities.

24. There was a candidates' meeting on 17 February 2015. It was attended by Mr Wood, Mr Langley, Mr Frost and Mr McMurray together with the local election UKIP candidates. The purpose of the meeting was to talk about strategy and to allow the candidates to meet each other. Mr Langley was standing for election in the Stockwood Ward in Bristol. The minutes record Mr Wood having stated:

> "What's needed to be done [in the campaign] is to remind [the voters] why we are there. They are very community orientated and we need to remind them of Rotherham and the fact that it was Labour at the heart of it. We need to remind them that it's Labour that started selling off the NHS. We did very well last year in the elections."

The reference to Rotherham was to the child sexual exploitation scandal and the fact that the Council was controlled by Labour when it took place.

Instructions given to Mr Langley on Bristol UKIP's social media output

25. In posting on the branch's social media accounts, Mr Langley was, as a member of UKIP, bound by the Rules of Procedure including the obligation to ensure that any post was "*compliant with Party policy, electoral law, the publishing requirements of the Electoral Commission, the Advertising Standards code of practice and the law relating to defamation*" (Rule J.2.6 – see [9(vi)] above). He also received direct instructions from Mr Wood.

26. Mr Wood accepted that the branch had no formal guide or rules for posting on social media, but he was firm in his evidence that he made it clear to all members of the branch, including Mr Langley, that they should not post anything on social media that was offensive, inappropriate, libellous or racist. He said that he initially told Mr Langley "*not to post anything on social media in the Branch's name without [his] consent*", although he said that it was quickly realised that a requirement of prior approval was impractical.

27. I accept Mr Wood's evidence about the instructions he gave to members of UKIP Bristol. He would not tolerate racism and said that he had a "*strong desire to eradicate racism from the party*". Examples of the instructions that he gave to members of Bristol UKIP are:

    i) in "*Guidance for Candidates*" provided in 2014, members were warned:

    > "You must act in a manner befitting a person in public office and avoid any action/writing/speaking that brings Bristol UKIP or UKIP in general into disrepute or leaves it liable to legal action."

    ii) the minutes of the meeting on 3 January 2015 (see [22] above) record that Mr Wood had stressed that nothing should be posted on social media that was racist or homophobic, there were to be no 'slanging matches' and he warned people to "*remember your dignity*".

28. When he gave evidence at trial, Mr Wood stated:

> "I made it plainly clear, no racist attacks, xenophobic attacks, no homophobic attacks, no attacks personally. I made it perfectly clear, every single meeting, this was to be a clean ship. I detest dirty politics… If you look at my campaign, my campaign was inclusive. There is nothing in my campaign which is racist, homophobic, xenophobic at all…"

29. I accept that evidence. Mr Wood, in this respect, appeared to me to be both genuine and sincere. His evidence is, as I have noted, consistent with the contemporary documents and is also supported by other witnesses: Mr Frost, Ms Couzens and Mr Fear all gave evidence that Mr Wood had made clear how he expected members to conduct themselves.

30. The instruction had clearly been understood by Mr Langley (although I deal below with the extent to which he observed it). In his evidence, he said:

> "I was asked to exercise care in what I published on Facebook and Twitter and not to post anything which might harm UKIP's interests or might be unlawful. In addition, when [Mr Wood] became Chairman, [he] made it clear to all members (including me) that he would not tolerate any form of racism or xenophobia within Bristol UKIP… [Mr Wood] kept telling members (me included) that he wanted a clean-up within the Bristol UKIP when he became Chairman… [and] kept telling members (me included) that he did not want any member to make personal attacks on any individuals and that he wanted a clean fight in the next General Election. I understood these branch-wide house rules…"

When re-examined Mr Langley said:

> "… there was a general guidance not to publish anything which is racist or too contentious, very vague guidelines, but it was very much, I think, I was left to my own devices to decide what was appropriate and what wasn't."

Bristol UKIP Tweets prior to the 4 May Tweet

31. Mr Santos cross-examined both Mr Wood and Mr Langley about some of the latter's postings on Bristol UKIP's social media channels in the run up to the 4 May Tweet. Entirely consistent with his views as to the unacceptability of racism, Mr Wood was visibly discomforted by being taken through some of Mr Langley's Tweets and posts; some he described as "*abominable*". Mr Langley, on the other hand, seemed positively to enjoy the experience, describing himself as a "*maverick*". It was not impressive.

32. I need to set out some of the Tweets posted by Mr Langley on the UKIP Bristol Twitter account because Mr Santos submits that they demonstrate, first, that Mr Langley was disregarding Mr Wood's instruction not to post material that was racist, and second that Mr Langley was nevertheless acting in accordance with the instruction to highlight the Rotherham child abuse scandal and connect that with the Labour Party.

    i) On 11 February 2015, Bristol UKIP retweeted a link to an article in the *Birmingham Mail*: "*Woolfenden on £85k for job he failed in Rotherham".*

ii) On 13 February 2015, Bristol UKIP Tweeted: "*Camden Ukip chairman says 'Islam is organised crime' comment is backed up by Quran*".

In cross-examination, Mr Wood said that he would not have allowed this Tweet if he had known about it: "*I didn't know about it. I don't agree with it, but I didn't post it.*"

iii) On 18 February 2015, in reference to a bus that the Labour party was using to target women's issues in the election, Bristol UKIP Tweeted: "*Labour to dress bus in Burka to attract muslim vote*".

Mr Wood stated: "*I didn't know that was there and I would not have been happy with it*".

iv) On 28 February 2015, Bristol UKIP retweeted a link to an article appearing in the *Daily Star* with the words: "*Sex gang victims were sacrificed to avoid Labour losing votes in the Asian community*".

v) On 3 March 2015, Bristol UKIP retweeted a link to a website, mancunianmatters.co.uk: "*MP Simon Danczuk pocketed £16,000 from Rochdale child abuse exposé*" and also a reference to the *Daily Telegraph* with the words: "*300 victims groomed and assaulted*".

vi) On 7 March 2015, Bristol UKIP Tweeted a link to breitbart.com: "ISLAMIST SYMPATHISER LAUNCHES 'MUSLIM MANIFESTO' IN BRITISH PARLIAMENT".

Asked about this Tweet, Mr Wood said:

> "… I didn't post these. I didn't authorise these and if we're looking at this, again we're looking at March 2015, I was running a business… I was campaigning. I did not have the time to monitor everything that went out and I cannot be held responsible for somebody else's actions"

vii) On 13 March 2015, Bristol UKIP Tweeted a picture of a front-page headline from *The Sun*: "*Labour chief: It's OK to have sex with 10-yr-olds*".

viii) On 16 March 2015, Bristol UKIP Tweeted a link to a YouTube video: "*TRUE FACE OF ISLAM THE VIDEO LABOUR DID NOT WANT LEAKED*".

ix) On 25 March 2015, Bristol UKIP Tweeted a photograph of a Muslim woman wearing a headscarf carrying a placard that read "*UKIP go home*" with the comment added in the body of the Tweet "*hahahahaha*". One of the responses to the Tweet posted the same day was "*LOL there's only one body there that needs 2go home. She should take that sick rag off her head or fk off back*".

Mr Santos put to Mr Wood that this was the sort of response that Mr Langley's Tweets provoked. Mr Wood said: "*I totally accept that that's disgusting… and I do accept that it should have been taken down*".

x) On 29 March 2015, Bristol UKIP Tweeted a link to a website, "sharia unveiled": "*95% of Child Rape and Molestation Convictions in the UK Were Committed by Muslims*".

xi) On 30 March 2015, Bristol UKIP Tweeted a link to the Mail Online: "*Muslim husbands with more than one wife to get extra benefits as ministers recognise polygamy*".

33. It is important to note that these Tweets appeared with others that dealt with many other issues and attacked other political parties and politicians. Many were retweets of material from other third parties, including UK newspapers. Nevertheless, I accept Mr Santos' submission that some of the posts were clearly racist and, overall, there was a distinct theme linking Muslims and the Labour Party with the Rotherham abuse scandal.

34. Mr Santos also submits that the Bristol UKIP Twitter output was the campaigning platform of Mr Wood. He points to the frequent appearance of Tweets promoting Mr Wood. When he was cross-examined, Mr Wood was reluctant to accept that the account was being used as his personal campaigning account. He said that the Twitter account was promoting all the UKIP candidates but accepted that the account was being used by others to campaign on his behalf. Certainly, the Bristol UKIP Twitter account sent out a large number of Tweets promoting Mr Wood's candidacy:

i) On 20 February 2015, a photograph of Mr Wood standing next to an election banner ("the Banner Photo") was Tweeted with the words:

> #BRISTOLUKIP STEVE WOOD
> YOUR FUTURE
> MEMBER OF PARLIAMENT

ii) On 8 March 2015, another photograph of Mr Wood was Tweeted with the words:

> stevewood.org.uk #ukip bristol candidate

iii) Also on 8 March 2015, an image similar to an election poster was Tweeted. It contained two UKIP logos superimposed over a Union flag with the words: "VOTE FOR REAL CHANGE IN BRISTOL SOUTH VOTE UKIP VOTE STEVE WOOD". The words accompanying that image in the Tweet were:

> Lets get some real change in South Bristol. Positive Change.

iv) The Banner Photo was Tweeted again, on 5 April 2015, with the words:

> Vote Steve Wood, South Bristol #ukip

v) A Tweet on 24 April 2015 included the Banner Photo in an election poster image with the words appearing on the right: "VOTE FOR STEVE WOOD IN BRISTOL SOUTH ENOUGH IS ENOUGH, ITS NOW TIME FOR CHANGE".

vi) On 25 April 2015, the Bristol UKIP Twitter account sent out a series of Tweets identifying the UKIP candidates that were standing for election, including Mr Wood in Bristol South.

vii) On 29 April 2015, another election poster image was Tweeted. It contained a central UKIP logo imposed over a Union Flag. Mr Wood's photograph was on the right of the logo and on the left the words: "STEVE WOOD THE BRISTOL SOUTH CANDIDATE FOR UKIP. THE MAN TO MAKE THE CHANGES".

viii) On 6 May 2015, the day before the general election, there was an understandable flurry of activity on the Bristol UKIP Twitter account. The only candidate who was specifically promoted in these Tweets was Mr Wood.

Mr Wood's use of Twitter

35. As to his personal activities on Twitter, and particularly his use of the Bristol UKIP Twitter account, in his witness statement Mr Wood stated that he did not recall posting any Tweets on the Bristol UKIP Twitter account "*at any time*". He explained (in paragraph 38 of his witness statement):

> "I do not recall posting any tweets via the Branch's Twitter account at any time. While I am familiar with Facebook, which I use for Able's business marketing, I do not know much at all technically about how to use Twitter. I would need to be taught or have it demonstrated to me. I do not use Twitter and was not able to monitor the Branch's Twitter account. I did not have the Twitter app installed on my phone or computer or other device."

36. During cross-examination, Mr Wood initially confirmed that this was an accurate statement of his knowledge of and activity on Twitter. However, Mr Santos' cross-examination of Mr Wood on various Tweets from the Twitter accounts of both Bristol UKIP and Able Investigations has left me unable to accept Mr Wood's portrayal of himself as a Twitter ingénu. On the contrary, although perhaps not an habitual user, the evidence satisfies me that Mr Wood was familiar with Twitter, had significant experience of the platform and, contrary to the impression given in his witness statement, he was perfectly capable of using (and did use) Twitter.

i) Mr Wood initially stated in evidence that he did not Tweet via the Able Investigations Twitter account and that it was operated by a combination of a marketing company and his son. However, Mr Santos took Mr Wood to several Tweets on the Able Investigations Twitter account the contents of which strongly suggested they had been written and posted by him. For example:

a) 28 February 2012, in response to a Tweet from @Hutchison_Law: "*Paul, we would happily take services as well. Thanks Steve.*"

Asked whether he Tweeted that, Mr Wood responded: "*That could have been the marketing company. They had authority…*" Asked again whether it was him personally: "*I don't think so, but cannot be 100% certain*".

b) 4 March 2012, again in response to another Tweet: "*celebrating 21st wedding anniversary. Back tomorrow.*"

Mr Wood responded: "*That was possibly me*". Mr Santos put it to him that it *was* him. Mr Wood repeated: "*That was possibly me*". When challenged about his earlier evidence that he had not Tweeted on the Able Investigations Twitter account, Mr Wood said: "*No, I've never said I didn't Tweet on it totally. I did in the beginning a couple of times…*"

c) On 18 March 2012, the Able Investigations Twitter account retweeted a Tweet from Nigel Farage.

Asked whether that retweet was done by him or the marketing company, Mr Wood replied: "*I can't recall posting that, but the marketing company knew my leanings so they could have done*". Mr Santos asked him whether he was really suggesting that a marketing company would retweet a post of Nigel Farage on behalf of Able Investigations. Mr Wood replied: "*The marketing company is owned by a friend of mine, so he knows me fully well.*"

d) 28 May 2012: "*Is at a meeting with Nigel Farge*" followed by a Retweet of a Tweet by Christine Hamilton: "*Standing room only at terrific #UKIP meeting with @Nigel_Farage. Local tories sent 'spies' – they're right to be scared… Very scared*";

As a result of the layout of Tweets, Mr Santos asked Mr Wood about the Retweet first and suggested that he had retweeted it. Mr Wood answered: "*Not necessarily by me*" before adding, "*you say it's by me. I will accept it's a retweet by Able Investigations but that doesn't mean it was by me… it could have been anybody on – who had our account. Just because it was retweeted doesn't mean it was stuff done by me.*" Mr Santos then drew Mr Wood's attention to the immediately preceding Tweet about the meeting with Nigel Farage. Mr Wood accepted that he had Tweeted that. Mr Santos put to him the obvious inference that the Tweet and retweet were sent by the same person, to which Mr Wood responded: "*Not necessarily*".

This is an example of Mr Wood seeking to argue the case rather than answering questions in a straightforward way. It is perfectly plain, from their contents, that the two messages were posted at roughly the same time, by the same person, referring to the same event. Mr Wood accepted that he posted the first Tweet and it would have been extraordinary (and a remarkable coincidence) if someone else had taken it upon him/herself to retweet a political Tweet from Christine Hamilton on the Able Investigations Twitter account.

e) 12 June 2012: "*After a full day of exams yesterday I am taking a week off from studying, back to it next week. Now sitting on pins to see if I passed*".

Mr Santos asked Mr Wood whether he posted that. This was the exchange:

A. It was - it could have been posted on my behalf but I'll accept what you say.

Q. No, it's not - you don't have to accept what I say. It's your evidence. If you don't accept it, then tell the court that you don't accept it. Was it you or was it not?

A. Some of these were me, yes.

Q. Was that tweet you or was it not?

A. Yes.

f) 1 May 2013, in response to the Tweet of another user: "*times are changing Dan, I maybe a Bristol councillor tomorrow*".

Suggesting that he had been the author, Mr Santos put to Mr Wood that he was standing for election at this time. Again, I should set out the full exchange:

A. That could have been me, yes.

Q. It could have been you or it was you?

A. It could have been me.

Q. There was nobody else at Able Investigations standing for councillor, was there?

A. No, but, as I've said, my son also worked with me.

ii) Overall, Mr Wood's answers in cross-examination as to the extent to which he accepted that he had personally Tweeted using the Able Investigations account were unimpressive. Mr Wood was forced to abandon his initial evidence that he had not Tweeted using the Able Investigations account when confronted with clear evidence of him doing so. He suggested that a marketing company or his son may have been responsible for some Tweets. They may have been, but having reviewed the Twitter output from Able Investigations generally, I am satisfied that it was clearly being used by Mr Wood personally over a three-year period. Alongside clearly business-related output, there were Tweets that were personal - even chatty – and which provided a narrative of events in his and his family's life. Although he did finally accept over 25 instances where he had personally Tweeted, generally Mr Wood fenced questions that were put to him and, at times (e.g. the Christine Hamilton retweet), he gave answers that lacked credibility.

iii) As to his Tweeting on the Bristol UKIP account, Mr Wood had stated in his witness statement that he did not recall posting any Tweets. After having been cross-examined on examples of Tweets, similar to those from the Able Investigations account, apparently written by him (some in the first person), in re-examination Mr Wood gave a "*guestimate*" that he Tweeted on the Bristol

UKIP account no more than 20-25 times. When cross-examined, Mr Langley stated that Mr Wood did Tweet "*very occasionally*".

iv) When Mr Santos suggested to Mr Wood that the evidence of his Twitter activity both on behalf of Able Investigations and Bristol UKIP contradicted what he had stated in paragraph 38 of his witness statement, Mr Wood gave very unimpressive answers.

Q. Let's go back to your witness statement … [paragraph 38]: "I do not recall posting any tweets via the branch's Twitter account at any time. While I'm familiar with Facebook, which I use for Able business marketing, I do not know much at all technically about how to use Twitter". That is just a lie, isn't it, Mr Wood?

A. No, technically I don't know much about Twitter at all, but if you fill out a box to post something it's very similar to Facebook.

Q. The next sentence, "I will need to be taught or have it demonstrated to me". That's another lie?

A. No. As I said, technically, I know not a lot about Twitter and I would need to be taught the schematics of it. To fill out a text box and hit post, an idiot can do.

Q. Mr Wood, let's look at the context. You are saying that you do not recall posting any tweets via the branch's Twitter account at any time, that's your evidence?

A. That's my evidence, yes, and I ---

Q. And in support of that evidence you say, I will - "I don't know much at all technically about how to use Twitter. I'd need to be taught or have it demonstrated to me".

A. The schematics, yes…

Q. The schematics? What do you mean by the schematics?

A. Well, anybody can fill out a box and fill text in and hit post but, if you're actually looking at the schematics, I don't understand the technicality of it at all.

Q. What do you mean by the schematics?

A. Well, if you're actually going to look into a product, if you're going to use it, you need to understand how it works. I understand how Facebook works, so I know how to post stuff, how to retweet - repost stuff on Facebook, but Twitter I know very little about how to put stuff on there.

Q. But, Mr Wood, I've shown you about 30 tweets by you and about ten retweets by you?

A. Not all of the retweets were by me, not all the posts were by me.

Q. But you agreed that ---

A. I agreed that some of them were by me.

Q. So, you knew how to use Twitter?

A. I filled in the text box and I hit post.

Q. You knew how to use Twitter?

A. I filled in the text box and hit post; if that's knowing how to use Twitter, then yes…

Q. Then the next sentence, "I do not use Twitter".

A. I don't use Twitter ---

Q. Another lie?

A. No, I don't use Twitter anymore.

Q. Anymore? You didn't use the word "anymore" in your witness statement?

A. Well, we've seen that I used some tweets in early 2011 and 2012. I haven't used it since 2012/13. I don't use Twitter.

v) Mr Wood is an intelligent man. I am satisfied that he fully appreciated that his witness statement did not give an accurate account of his use and experience of and proficiency with Twitter.

37. Mr Santos relies upon this as part of Mr Monir's case that, contrary to his denial, Mr Wood did have a sufficiently active and direct involvement with the Bristol UKIP account to render him liable for the publication of the 4 May Tweet. But it is also has a bearing on the credibility of Mr Wood's evidence as a whole.

Conclusions as to the operation of the Bristol UKIP Twitter account

38. At this point, I can state my findings of fact on the evidence about the operation of the Bristol UKIP Twitter account:

i) The Bristol UKIP Twitter account was set up by Mr Wood on 1 April 2013 and it was registered using his email address. At that point, Mr Wood had effective and sole control of the Twitter account. He could post himself using the account or he could authorise others to use the account by providing them with the login details. At all times, ultimate control remained vested in Mr Wood because his email was registered to the account. By resetting the password, he could reclaim sole control of the Bristol UKIP account and effectively lock out any other person to whom he had previously given the password.

ii) Whatever power Mr Wood had, as Chairman of the branch, to control Mr Langley's Twitter output on the Bristol UKIP account (see e.g. J.4.4 – [9(vi)] above), practically he had the power to curtail Mr Langley's ability to post at any time by changing the account password. In the same way, and at all times, he retained the power to delete any of Mr Langley's Tweets.

iii) At some point, the login details of the Bristol UKIP Twitter account were given by Mr Wood to other committee members of Bristol UKIP. The details were provided, not in anticipation that any of them would use the account to Tweet (and there is no evidence that any of them did), but to enable them to access the account if the need arose.

iv) Mr Wood was fully proficient in using Twitter although he posted only occasionally, and infrequently, on the UKIP Bristol Twitter account.

v) Responsibility for operating the Bristol UKIP Twitter account was given to Mr Langley after Mr Frost's election in May 2014. He was provided with the login details and, as Campaign Manager, was given and assumed responsibility for posting material on behalf of Bristol UKIP via the Twitter (and Facebook) accounts. From May 2014, Mr Wood delegated control and operation of the Bristol UKIP Twitter to Mr Langley to be used by him as a social media channel to promote Bristol UKIP.

vi) Although, initially, Mr Wood had given instructions to Mr Langley (which Mr Langley had accepted) that he was required to submit any content he was proposing to post on Bristol UKIP's social media accounts for approval ("the Prior Approval Instruction"), that system was never observed in practice. It was Mr Wood's choice not to enforce the Prior Approval Instruction.

vii) The Bristol UKIP Twitter account operated as the campaigning platform for Mr Wood in the run up to the 2015 general election. Although the account did not exclusively promote Mr Wood's candidacy, he was the main focus of the campaigning activity on the platform. Mr Wood delegated to Mr Langley the task of promoting him and his candidacy in the election.

viii) In the run up to the 4 May Tweet, Mr Langley was a loose cannon and was posting material, through both the Bristol UKIP and the Frost Report Twitter accounts, that was in clear contravention of Mr Wood's standing instructions against, particularly, racism.

ix) I do not accept, however, that Mr Wood was aware that Mr Langley was doing this. I am quite satisfied that, had Mr Wood become aware, particularly of the Tweets he was cross-examined about, he would have deleted them. Mr Wood may be open to criticism on the basis that he should have been aware of what Mr Langley was posting. He was Chairman of UKIP Bristol (and bore ultimate responsibility for the actions of the branch); he was standing for election as an MP; Mr Langley was using the UKIP Bristol social media platforms to campaign for him; and, most significantly, to his knowledge, Mr Langley had been acting in an increasingly erratic way and specifically had posted the racist material on the Frost Report Twitter account at the end of April, some 10 days before the election.

The events leading up to the 4 May Tweet

39. Mr Langley had agreed, at the January 2015 meeting, that he would collect the necessary nomination papers from each candidate and submit them before the deadline. In the period of February to March 2015, Mr Wood lost confidence in Mr Langley. Mr Wood said, "*the trust that I, and others, had placed in John began to unravel*". In February 2015, Mr Langley failed to attend a branch Committee meeting. He did not let anyone know where he was and was not contactable on his mobile telephone or by email. Mr Wood was very concerned because he had some 20 nomination papers that had to be delivered to Bristol City Council. In his witness statement Mr Wood explained:

> "In March 2015, John resurfaced turning up at my offices in Able. He was in the company with (sic) a young adult female, who by my estimation was no older than 25 and appeared to me to be high on some sort of substance use. John is around 50 years old. I could tell that John was infatuated with her by the way in which he referred to her. I was extremely annoyed that John had shot off without warning at such a critical time. I asked John where he was the past month. John told me that he met this young lady online in a chat room and he went to Newcastle-upon-Tyne. John then said that he and this young lady decided to get married.
>
> I was shocked. I regret to say that this was the start of John's downfall, at least from his position of trust and esteem within the Branch. We did not see clearly at the time that his behaviour would become erratic and unpredictable – this appeared to use as an eccentric blip. I asked John about the nomination papers and what had happened to them. John stated that he would bring them to the next meeting. The next meeting was to be the last week of March 2015 where we would plan for the month ahead.
>
> That meeting was held and again John turned up with his partner. In fact, John now referred to her as his 'slave'. I explained to John that her turning up at our meeting was totally inappropriate. I openly told John that his partner could stay this time but she was not to be invited to any further meetings, as she was not a Committee member and she was not a member of UKIP. John took umbrage but grudgingly accepted that his girlfriend/wife could not attend future meetings."

40. Mr Langley had again forgotten to bring the candidate nomination papers to the meeting, but promised to bring them in to Mr Wood's office the following day. He did not do so, and it took three further attempts before Mr Langley finally provided the necessary nomination papers. Even then, it was discovered that they had been completed incorrectly. Much effort was required to get the forms completed correctly and lodged in time. Mr Wood was concerned that "*all hard work would have been for naught simply because John was exhibiting juvenile and unexpected behaviour*".

41. At perhaps an inopportune moment in the midst of campaigning, on 9 April 2015 an article appeared in *Mail Online* concerning Mr Langley: "*Ukip candidate exposed as a PORN STAR called 'Johnny Rockard' but insists: 'It's no big deal'*". The article gave details of Mr Langley's career in the adult entertainment industry but also quoted a spokesman of UKIP saying that the party was aware of Mr Langley's "*sideline as a porn star and adult film producer*" when he first stood as a candidate and that he was not doing anything illegal.

42. The story was picked up by other newspapers and Mr Wood said it "*spread through the press like wildfire*". Mr Langley gave interviews to BBC News and the *Independent*. Mr Wood gave an interview to the *Independent* defending Mr Langley and was quoted in the headline of the resulting article on 10 April 2015: "*As long as it's not kids and animals, it gets my vote*". In his witness statement, Mr Wood said, "*the* Independent *attributed me as saying 'at least [John] is not a paedophile'. I did not make this statement and would have been mad to have done so a month before a general election that I was standing in.*"

43. More unwelcome publicity about Mr Langley was to follow. In his witness statement, Mr Wood explained:

> "… around 9 April 2015, the Branch learned through the press that John had also made a sex video with a University of the West of England student on campus and a sex video of John engaging in oral sex with her at Castle Park, Bristol. UWE were up in arms about the video filmed on their campus without their consent. The Committee members at the Branch were furious. What goes on behind closed doors between consulting adults is one thing, but making a porn film in public where there were possibly children and young people around was not acceptable.
>
> Inevitably the media approached John about both sex videos. John engaged with them without agreeing with the Branch what he might say. This I felt represented a risk to any success which we might achieve. He was enjoying the notoriety too much, I sensed. Consequently, I sent John an email stating that the Branch was unhappy and concerned with his actions. In it, I asked him not to make any public statements and told him that he was not to do any more media interviews…
>
> John seemed to like the limelight and took no notice of the Branch's request. Contrary to our request, John agreed to do TV and newspapers interviews. It became clear that John loved the attention. I did not move to try to sack or remove John then, as for practical reasons the General Election was almost upon us and I felt there was no time to attend to something like that. All the time he was producing election output, and the immediate run-up to an election is considered critical, as many decide how to vote at the last minute. It was however clear that collectively the Branch would need to look at John's position after the election was out of the way, as he risked bringing us into disrepute."

44. Bristol UKIP branch had a meeting on 23 April 2015. Mr Wood encouraged people to continue campaigning, but insisted that this should not denigrate opponents. Mr Langley did not attend the meeting and there appears to have been no discussion of the publicity concerning him.

45. Mr Wood's hope that he could postpone dealing with Mr Langley until after the election did not go to plan. At the end of April 2015, some 10 days before the election, Mr Langley posted racially offensive material on the Frost Report ("the Frost Report Incident"). Mr Frost explained in his evidence:

> "I had just come home from a Council meeting when I decided to log onto @TheFrostReport at about 11.45pm and check what had been uploaded that day… [T]o my absolute dismay, I saw several verses from the Quran and a tirade of abuse toward followers of Islam. The post, I remember, mentioned 72 virgins with a number of other comments which appeared to be broadly anti-Islamic. I was in

> little doubt that this represented the kind of material which would cast UKIP in a bad light and would only set us back…"

46. Mr Frost immediately contacted Mr Langley. Mr Langley said that he did not see anything wrong with the material he had posted but Mr Frost demanded that it be removed, which it was. Mr Frost believed that, as it had only been online for around 12-15 minutes late at night, few people would have seen it and so he decided to "*let the matter rest*". He did, however, inform Mr Wood. Mr Wood's evidence was that Mr Frost had told him about the incident and that Mr Langley had removed the material reluctantly, believing that "*he was only posting the truth*". Mr Wood telephoned Mr Langley:

> "I reprimanded John telling him that this was not the sort of thing I expected to come from him. The publicity which he had so far brought about had been sex-related, and nothing had suggested that he had anti-Islamic beliefs. I warned John specifically that he was never to post any type of material like this again. I also asked John whether he had any recent problems and whether he had taken his eye off the ball. I also told John that although the Branch had defended his choice of adult entertainment work, I thought what he did in his personal life was beginning to bring Bristol UKIP into disrepute. This included the student sex video and his erratic behaviour with his younger girlfriend. The reply I receive from John was a verbal torrent of abuse back at me…"

47. When cross-examined about this part of his statement, Mr Santos put it to Mr Wood that "*by this point, it should have been absolutely clear to you that Mr Langley should not have been representing the branch?*" Mr Wood answered: "*At that point, I will agree with you*", but added that, at the time, he had many other issues to deal with. The cross-examination continued:

> Q. And he should not have been running the Twitter account that was effectively campaigning on your behalf?
>
> A. I accept that, and hindsight is a wonderful thing.
>
> Q. And yet you decided not to drop him, and the reason for that was political expediency?
>
> A. Not particularly, no. The reason I didn't do anything about it at that particular time, as I mentioned earlier, we were driving to Stevenage twice a week, I was running a business, and we were trying to run an election.
>
> Q. The reason - that is exactly the reason, Mr Wood, you did not want to lose his role of publishing tweets days before an election?
>
> A. Yes, but nobody publishes negative information about their party before an election. Nobody.
>
> Q. So, you did not want to lose the Twitter account before the election, you needed it to keep publishing tweets?
>
> A. The Twitter account was the last thing on my mind, Mr Santos. The first thing on my mind was trying to get my daughter well.

48. Mr Santos put to Mr Wood that, as the election approached, his concerns about Mr Langley's erratic behaviour were at "*fever pitch*". Mr Wood agreed, adding: "*but what you have to remember is I was running an election, running a business, looking after an ill daughter, and trying to do everything I possibly could*." There was then this exchange:

    Q. …You were aware that he risked bringing you and the branch into disrepute?

    A. There was that possibility, yes.

    Q. Then the fact is that you allowed that risk to remain through to the election, regardless of the reasons?

    A. We tried to monitor it until after the elections.

49. In his affidavit, Mr Langley does not refer to any of the incidents that had given rise to these concerns. On the contrary, he said, simply:

    > "To the best of my recollection, there were no problems with my management of the Bristol UKIP Facebook and Twitter accounts… I believe the Committee trusted me and my experience of using social media to communicate the party's message nationwide in a proper way."

    This is one of a number of peculiarities in Mr Langley's affidavit, to which I shall return below ([70]-[72]).

50. In my judgment, Mr Langley's claim that there were "*no problems*" with the Bristol UKIP Facebook and Twitter accounts was, at best, misleading in its omission of any reference to the Frost Report Incident. A more reliable insight into the thinking at the time is to be found in the minutes of two meetings of the Bristol UKIP Committee held after the election.

    i) The minutes of the meeting on 21 May 2015, attended by Mr Wood and Mr Frost, contain the following reference to the problems with Mr Langley:

        > "[Michael Frost] mentioned that during the elections, [Mr Langley] published racist comments on Facebook, Twitter and the Frost Report. This was against a directive that [Mr Langley] should not post anything unless [Mr Wood] okayed it first… [Mr Wood] asked for a no-confidence vote on [Mr Langley] as vice chair… Overall vote was unanimous."

    ii) At the meeting on 18 July 2015, again attended by Mr Wood and Mr Frost, the branch voted to remove Mr Langley from his post as vice chairman. The minutes record:

        > "[Mr Wood] mentioned the issue the Committee had with [Mr Langley]. He began by saying that [Mr Langley] today is not the same [Mr Langley] as last year, who was then a rock solid member and a fantastic Vice-Chair, who worked very hard to get to where he was. Unfortunately, he has now gone down a path where he has posted anti-Muslim rants on u-Tube (sic), Facebook and Twitter.

> The Committee knew [Mr Langley] made a living from filming porn and was okay with it, because what's done behind closed doors is down to personal choice, provided nobody gets hurt and it's within the Law.
>
> However, in the run-up to the elections it was brought to the Committee's attention that [Mr Langley] had posted a video on the internet of himself receiving oral sex in the middle of Castle Park. This is clearly a criminal offence under the Sexual Offences Act. The matter was not dealt with at the time, due to the possibility of the press getting to hear about it…
>
> In June, South Yorkshire Police contacted [Mr Wood] in their investigation of this matter as a 'hate crime'. [Mr Wood] immediately removed the picture from Twitter, as requested by SYP and blocked [Mr Langley] from using the account…"

51. I find that, by the end of April 2015, Mr Wood (and Mr Frost) had lost confidence in Mr Langley as a result of his unreliability and increasingly erratic behaviour. Mr Wood was fully aware of the incident of the racist posting on The Frost Report and the sex video involving Mr Langley. He recognised that there was a clear risk that Mr Langley could bring Bristol UKIP into further disrepute. Nevertheless, Mr Wood decided not to relieve Mr Langley of responsibility for the output of the Bristol UKIP Twitter and Facebook accounts. Although Mr Wood denied it, I am satisfied that this decision was clearly born of political expediency. The election, in which Mr Wood was a candidate, was looming. Mr Wood was worried about further damaging press coverage of Mr Langley's antics but did not want to lose his social media and campaigning services. He was therefore prepared to tolerate whatever risk Mr Langley's erratic behaviour presented and chose to postpone dealing with matters until after the election. I do not accept that the reason for not removing Mr Langley was because Mr Wood was too busy with other matters. Mr Langley's ability to post via the Bristol UKIP Twitter account could have been deactivated in a matter of moments (as subsequently it was). Mr Wood would have been acting well within the UKIP Rules of Procedure had he done so.

The events following the 4 May Tweet

52. I deal with the publication (and re-publication) of the 4 May Tweet below ([117(ix)]-[128]).

53. Mr Monir received a telephone call from a friend, Shakoor Adalat, in the evening of 4 May 2015. Mr Adalat told Mr Monir that he had received "*a disturbing picture of [him] being labelled a paedophile*" (see [126(i)] below). It was this call that first alerted Mr Monir to the 4 May Tweet. Mr Adalat sent Mr Monir a copy of the Tweet via WhatsApp.

54. Mr Monir's evidence was that, once he had seen the 4 May Tweet, he tried to find out who was responsible for it. He carried out a Google search, and discovered Mr Wood's name as the "main man" in Bristol UKIP. He found an election leaflet of Mr Wood's on the Internet and that included his mobile telephone number. In his first witness statement, Mr Monir said that he called this mobile number in the evening of 6 May 2015. He said that he did not use his own mobile telephone to make the call as he did not want Mr Wood to know his number. He used a separate mobile phone which his

wife had bought to call relatives abroad because it offered advantageous calling charges.

55. Mr Monir stated that he got through to Mr Wood when he called. He said that he spoke calmly and clearly and told Mr Wood that he was calling about the Bristol UKIP Twitter account and that he, Mr Monir, was the person in the photograph on the left next to Sarah Champion MP and that the Tweet had accused him of being a paedophile. Mr Monir said that he told Mr Wood that he was from Rotherham and asked him to remove the Tweet from Twitter. Mr Wood, he claimed, told him to "*piss off*" and put the phone down.

56. Telephone records of calls from Mr Monir's landline have been obtained and disclosed. No records are available for the mobile telephone because it was a pay-as-you-go. The landline records show the following calls were made:

i) On 8 May 2015:

a) at 11.30am, a call lasting 58 seconds to Facebook;

b) at 11.33am, a call lasting 1 minute 40 seconds to directory enquires costing £10.20 which may suggest an onward connection to an undisclosed number;

c) at 12.27pm, a call lasting 1 minute 7 seconds to Bristol UKIP's registered 0845 number; and

d) at 2.27pm, a call lasting 15 minutes 10 seconds to the police (see [61] below).

ii) On 11 May 2015, two calls at 2.48pm to Bristol UKIP's registered 0845 number; the first lasting 5 seconds and the second 54 seconds.

Calls to Bristol UKIP's 0845 number diverted automatically to Mr Wood's mobile phone.

57. In his second witness statement, made after disclosure of telephone records and a transcript of a call he made to the police on 8 May 2015, Mr Monir said that he may have been mistaken about making the call on 6 May 2015.

58. Mr Wood's position is that he was not aware of the 4 May Tweet until he was contacted by a police officer from South Yorkshire Police ("SYP") on 1 June 2015 (see [63]-[69] below). Mr Wood accepts that there was a call, which he now believes was from Mr Monir, but his account of the call is very different. Mr Wood has given several accounts of the call, so I need to set out what he has said on each occasion.

i) In his Defence, dated 17 October 2016, Mr Wood said:

> "On or around 6 May 2015, [I] began to receive calls on [my] mobile telephone… from a withheld number. The caller would not give any name and shouted hysterically at [me] as soon as the call was answered to the effect that [I] had published a photograph referring to the caller as a paedophile. [I] tried to take the caller's details and ascertain the precise

nature of the problem but was unable to break the caller's hysterical flow of ranted threats and repeated claims that a photograph had said he was a paedophile. The caller repeatedly stated he was going to cut off [my] head. Finding the caller insensible, [I] hung up. Later the same day, [I] received a second call from the same anonymous caller which continued the stream of screamed threats that the caller was going to kill [me] in respect of a photograph. Once again, [I]… hung up again. The caller did not explain that the photograph was connected with [my] UKIP activities or with Twitter. The calls resumed some days later, with the same caller as hysterical as the calls on 6 May and continuing to refuse to provide a name when asked, or engage in questions about what he was referring to. In this context, and after being repeatedly threatened and screamed at by someone who would not or was incapable of clearly communicating their problem, [I] told the caller to 'piss off' if he was not going to explain what his problem was so that [I] could understand."

ii) In his witness statement for this action, dated 8 November 2017, Mr Wood said:

> "From about 6 May 2015 to the last week of May 2015, I received a number of calls from an anonymous male caller, which I now realise are related to the Twitter publication at the centre of these proceedings. I did not make that connection when I was receiving the calls. The calls ranged in duration from an estimated 1.5 minutes long to a few seconds. The first phone call I received on or around 6 May 2015 was harassing to me. The male caller did not introduce himself and remained anonymous. He started by and simply kept shouting an accusation that I had called him a paedophile. The first call proceeded this way, as I recall:
>
> Me: Hello?
>
> Caller: I am going to come and cut your fucking head off!" (There was no lead up to this. The caller launched straight into this threat)
>
> Me: Hang on, hang on, hang on a minute. What are you on about?
>
> Caller: I am going to come and cut your fucking head off you cunt!
>
> (further repeated vitriol from the caller and me trying to clarify and calm him down)
>
> Caller: You said I am a paedophile! I am going to kill you!
>
> (After repeated vitriol and accusations from the caller and me trying to clarify and calm him down)
>
> Me: Look if you are not going to talk to me sensibly, then I am going to put the phone down!
>
> I then disconnected the call… Later that day, I received a second call from a withheld number. The caller sounded like the same caller from my first

> call, with the same Yorkshire accent… [and he] again repeated his accusation that I called him a paedophile and he threatened to cut my head off. This call was much shorter in duration that the first call as when I realised that I was unable to get any sense out of this person once again, I simply hung up….
>
> A few days later, I received another call again from a withheld number. The caller again sounded like the male caller from the two previous anonymous calls. Again, I questioned him 'what he was on about' and again I only received threats and the same accusation that I called him a paedophile. This made no sense to me as I knew I had not accused anyone of being a paedophile anywhere and could hardly conceive that anyone working for Able to have done so, for any reason. By this time I was getting frustrated with this repeated irate inexplicable calling.
>
> Over the next few days, I received a further 6 or 7 calls to my mobile phone… It did not matter what I said to the caller. The conversation was always the same – it started with irate exasperated shouting followed by the same blunt accusations and the lack of detail followed by threats about how the caller was going to kill me… By this time, I had concluded that there seemed to be no reasonable explanation for these calls other than prank or harassing calls that were concerned with an eviction or a case of mistaken identity.
>
> The final call came through in the last week of May 2015. In this final call, the caller said that a group of people were going to come to Bristol and kill me. The caller said that he knew where I lived and that people were coming to kill me. At this point, I still had no idea as to why the caller was accusing me of calling him a paedophile…"

59. After the final call, Mr Wood stated that he made inquiries, including with members of the Bristol UKIP branch, about whether they knew anything about these accusations or to what they related. No one could help him, he claimed.

60. Mr Wood explained in his witness statement that he had just finished a high-profile eviction of some protesters in Bristol on or around 6 May 2015 and his name appeared "*all over the Internet and local press*". He said that it was easy for the protesters to know that he was the managing director of Able and that, as a result of the eviction, local activists had listed on a website his name, home address and telephone number asking people to 'get him'.

61. As noted already, Mr Monir telephoned the police on 8 May 2015. The call was recorded by the police. I have listened to the recording and a transcript has been prepared for the trial. Mr Monir reported the 4 May Tweet and similar posts about him on Facebook and that the material online was "*wrong*". The police told Mr Monir that it was a civil matter and suggested he should speak to a solicitor. During the call, Mr Monir said that he had called the Bristol UKIP office and they had "*hung up*". As noted above, the call lasted 15 minutes ([56(i)(d)]).

62. On 12 May 2015, the TellMama group reported the Tweet as hate crime to SYP. The matter was assigned to PC (now Sergeant) Adam Wood on 22 May 2015. On 1 June 2015, PS Wood telephoned Mr Monir to inform him that he would be investigating his

complaint. A note made contemporaneously by PS Wood on the SYP Crime Management System Log ("the Log") (disclosed in January 2018 *after* exchange of witness statements) described Mr Monir as "*irate and uncooperative from the start*". The officer noted that Mr Monir was upset at the lack of action from SYP and the suggestion that it was a civil matter. PS Wood offered Mr Monir assistance to help him resolve any issues, but Mr Monir refused to take his contact details. Nevertheless, PS Wood continued his investigations.

63. PS Wood located the 4 May Tweet online. Having attempted – but failed – to contact Bristol UKIP by telephone, PS Wood sent an email, at 09.44 on 1 June 2015. Mr Wood was one of the recipients of the email. The officer said that he was investigating a report of a hate incident relating to Bristol UKIP's Twitter account and requested that the 4 May Tweet be removed.

64. Fortuitously, as a result of Mr Wood serving a witness summons on PS Wood to attend trial to give evidence, PS Wood carried out a search of his emails and discovered further email exchanges with Mr Wood on 1 June 2015. PS Wood was due to give evidence on 18 April 2018. The day before, as it happened when Mr Wood was giving evidence, PS Wood forwarded to Mr Wood's solicitors the emails he had located:

> "I have just returned to Sheffield after working in Coventry today, and due to set off to London shortly. I wanted to make you aware that just prior to me leaving I have double checked my emails and came across one that I was not aware of or had forgotten. It relates to a reply from Mr Steve Wood which is fairly pertinent to the case. I have only just discovered it now but wanted to bring it to your attention. I have printed off a hard copy to bring with me."

65. These emails showed that Mr Wood had responded to PS Wood's email on 1 June 2015 at 11.18. He said that he had tried to call the officer, but he was engaged. Mr Wood provided his mobile telephone number. In his witness statement, PS Wood stated that he then telephoned Mr Wood using the number that he had provided. Mr Wood confirmed that he had read PS Wood's email and there was a discussion over whether the 4 May Tweet was a hate crime.

66. In his witness statement, Mr Wood described the call he had with PS Wood:

> "When I spoke to PC Wood, he explained that there was a picture, which had been placed on Twitter by Branch which the Police were investigating as a hate crime… PC Wood further explained that the post called 2 persons, who were standing next to an MP, paedophiles. My first reaction was 'what picture?'. PC Wood then directed me to the link on his email. During the call with PC Wood, Mr Monir's name was not mentioned. No requests were made by PC Wood save for his request that the referred tweet should be deleted… [W]hilst on the phone with PC Wood, I logged on to the Twitter account, having looked up my original administrator access, and looked for the post. I found the post and saw the picture and read the text with it. I finally understood why the Tweet was being complained about and got around to delete it whilst PC Wood was still on the phone with me…
>
> During the call, I did not form the link that someone had made threatening calls to me because of the tweet. It was only after I put the phone down that the penny dropped that the ravings and threats I had received in the anonymous withheld calls must have been the same matter…"

67. PS Wood made a contemporaneous note of the conversation with Mr Wood in the Log ("the Log Entry"):

> "I have contacted the Bristol UKIP Chairman Steve Wood… asking for the offensive Tweet to be removed, which has now been done. I have been told that the Vice-Chair [name redacted, but clearly Mr Langley] was suspected to be responsible for the post, but has since been sacked from the party on 18 May, due to posting 5 other offensive posts and a separate act of party gross misconduct… Steve Wood stated that a male phoned him 3 weeks ago, being abusive on the phone demanding the Tweet be taken down, although he hung up before he could find out who it was. Mr Wood believed that all the offensive Tweets were removed until being informed by myself."

68. PS Wood's evidence at trial varied, in some limited respects, with the account recorded in the Log. This I ascribe to the natural difficulty of recalling events that took place nearly 3 years earlier. I will rely upon the facts set out in the contemporaneous entry in the Log as this is much more likely to be a reliable record of the facts.

69. That same day, following the call, Mr Wood sent a further email to PS Wood at 16.50 ("the 1 June Email"). This is a very significant document, as it captures, contemporaneously, Mr Wood's account of what had happened:

> "Thank you for your email, firstly I can confirm that the post has been taken down from twitter. If I may introduce myself, I am Steve Wood, the Chairman of the Bristol Branch of UKIP. Up until 18th May the Bristol Branch Twitter account was run by the Vice chair of the branch, during the run up to the elections the VC started to act inappropriately by posting number of Tweets which the committee deemed to be unsuitable for publication these we immediately removed and his access blocked. I regret to say that I missed this one, however a week after the election the VC was removed from his post and a complaint has gone into to National office applying to have his membership cancelled, we are awaiting a decision on that one.
>
> However, that being said I am not sure who your complainant is, but if it is one of the males in the picture this could have been dealt with in a quicker manner. I received two calls from a male who stated that his photo was on our Twitter account, I asked what photo and who I was taking to, the male refused to give his name and stated that I should "Fucking Know" what photo he was talking about, it was also said that If I refused to remove it he would come down to Bristol to sort me out. On the second occasion that the male phoned, I again received a torrent of verbal abuse, informing me that if the photo did not come down he would take my Fucking head off. Once again I asked him what photo (I don't do twitter so rarely on it) to which I again received further abuse, at this stage I will admit to putting the phone down. On both occasions the phone number was withheld, therefore I was unable to identify the caller, or assist further.
>
> The VC Chair has been removed from his post and banned for having any interaction with party activities in Bristol or nationally, we trust that this is sufficient to put a stop to any further line of enquiry. As for me I made no report of these incidents as I receive threats quite regularly working in the sector that I do, so its water off a ducks back. Had the person responded to me with the details, and

> no verbal abuse or threats to my personal safety, I would have worked with them to clear this matter up within minutes
>
> Just one question if I may, I note that your email related to a Hate Crime, as far as I can see and having checked up with 2015 Blackstone's, the photo nor text made no reference to any persons nationality or religion, it also stated "Suspected" So how can it be referred to as a hate crime.
>
> Thanks for your time in this matter and if I can help further please do not hesitate to contact me.
>
> Regards
>
> Steve"

70. Mr Langley, in his affidavit, gave a strikingly different account of the deletion of the 4 May Tweet. He stated that he had received a call from Mr Wood telling him that he had been alerted by the police to the 4 May Tweet and had received death threats in consequence. Mr Langley claimed that Mr Wood told him to take down the 4 May Tweet, but that he had refused to do so. Mr Langley's evidence was:

> "… I told the Defendant that he could 'stuff it', that I would not follow his instruction, and that if someone wanted to put up a battle, I would be happy to put up a battle with them. I do not know what the Defendant then went on to do about taking the tweet down."

71. Some of the contents of Mr Langley's affidavit – and what was done with it – give rise to concern. The affidavit was sworn by Mr Langley on 10 October 2016. On 17 November 2016, it was sent by Mr Wood's solicitors to Mr Monir's solicitors. In the covering letter, the solicitors said:

> "… in the interests of early disclosure and to promote the prospect of early compromise of your client's claim, we enclose a copy of the affidavit of John Langley…"

72. Mr Langley's evidence was materially different from Mr Wood's evidence about how the 4 May Tweet came to be deleted. Mr Wood's account was that he had deleted the 4 May Tweet, on 1 June 2015, whilst he was on the telephone with PS Wood. Mr Langley claimed that Mr Wood had asked Mr Langley to delete it, but he refused.

73. Mr Santos cross-examined Mr Wood about this. Mr Wood confirmed that he had seen and approved the letter of 17 November 2016 and also accepted that Mr Langley's evidence on this point in his affidavit was inaccurate. Asked why he was prepared to rely upon evidence he did not consider was accurate, Mr Wood stated that it was "*John's version of events*". That was a surprising answer. Mr Wood could hardly have failed to appreciate that Mr Langley's affidavit was being submitted as evidence *supporting* his case and, indeed, to try and persuade Mr Monir to reappraise the strength of his claim. It was inappropriate, to say the least, for Mr Wood to allow this affidavit to be relied upon when it contained evidence upon which Mr Wood would not rely and, indeed, would contradict. Mr Wood must also have realised that Mr Langley's claim, in the affidavit, that his operation of the Bristol UKIP social media accounts had been

'trouble-free' (see [49]) was also not true, yet he was also content for that to be deployed to encourage Mr Monir to compromise his claim.

74. It is convenient here to state my assessment of Mr Wood as a witness. Mr Wood certainly appeared intelligent and articulate. He is forthright and confident. In parts of his evidence he demonstrated stubbornness – even intransigence – in refusing to accept obvious points. My clear impression is that Mr Wood does not like his authority being challenged. His role as a bailiff means that he frequently encounters people who do challenge his authority, even to the point of personal abuse and threats of violence. In his evidence, he described his attitude to this as "*water off a duck's back*". He feels very strongly that he ought not to be held liable for the publication of the 4 May Tweet and that he has done nothing wrong. That conviction, together with his stubbornness and self-confidence, has led him to have adopted an uncompromising approach to Mr Monir's claim.

Conclusions as to Mr Wood's knowledge of the 4 May Tweet

75. Assessing the documentary evidence now available together with Mr Wood's and Mr Monir's evidence at trial, I can state my findings of fact as follows:

i) I cannot reach a clear decision as to the number of calls that were made by Mr Monir to Mr Wood, but the evidence clearly supports the conclusion that there was at least one material call made to Mr Wood by Mr Monir in the period between 6-8 May. In his call to the police on 8 May 2015, the transcript records Mr Monir as having said that he had telephoned Bristol UKIP and "*they put the phone down on me*". The phone records suggest that Mr Monir may have spoken to Mr Wood more than the once that he said he had made in his first witness statement.

ii) During the material call (or calls, if there were more than one), Mr Monir clearly told Mr Wood (and Mr Wood clearly understood) that he was complaining about a posting on the UKIP Twitter account (Log Entry and 1 June Email); which published his photograph (Mr Wood's Defence; and the 1 June Email); and which suggested that he was a paedophile (Mr Wood's Defence and Witness Statement).

iii) On the evidence, the call may well have been heated and Mr Monir may have used abusive language towards Mr Wood. I do not accept Mr Monir's evidence that he remained calm during the call. It is likely that the call was heated, and that Mr Monir may well have been irate (as he had been described by PS Wood in his note of his call with Mr Monir – see [62] above). However, I reject Mr Wood's claim that Mr Monir's complaint was incomprehensible. I consider that it is likely that the manner in which Mr Monir complained to Mr Wood, and the challenge to his authority, angered Mr Wood and led him to adopt a dismissive attitude towards Mr Monir and his complaint culminating in him putting the phone down. Mr Wood's claim, in his call with PS Wood, that it was Mr Monir that had put the phone down before Mr Wood was able to get further details from him was false. But it is a telling lie. It was offered as a defence of his not having done anything about the complaint he had received.

iv) Mr Wood did not take the complaint seriously; for him it was an experience of another person ringing him up and abusing him. It was '*water off a duck's back*'.

v) I reject Mr Wood's evidence that he had made no connection between the complaint and the Tweet until he was contacted by PS Wood. The Log Entry and the 1 June Email both demonstrate that Mr Wood told PS Wood that, some three weeks previously, he had been contacted by a man about a Tweet on the Bristol UKIP Twitter account.

vi) I do not consider that Mr Monir made the repeated abusive calls that Mr Wood suggests he made at points through to the end of May. Mr Wood made no complaint to the officer that he had been subjected to a barrage of abusive calls that had included repeated threats to kill him (the most recent of which had only happened a matter of days prior to the call with the officer). In the context of the discussion that took place between Mr Wood and the officer on 1 June, I am quite satisfied that Mr Wood would have mentioned these threatening phone calls had he believed that they were made by Mr Monir. In the 1 June Email he told PS Wood that he had received just two calls from the person complaining about a Tweet on the Bristol UKIP Twitter account. Other witnesses called by Mr Wood corroborated the fact that Mr Wood had received threatening calls. Whatever further threatening calls Mr Wood received during the latter part of May they were not made by Mr Monir. The likelihood is that any further abusive calls were connected to and as a result of Mr Wood's work as a bailiff (possibly in response to the recent eviction of protesters).

vii) Parts of Mr Wood's account of his telephone call with PS Wood ([66]) are inconsistent with the contemporaneous documents. I prefer the evidence in the documents. On the basis of those documents, I find that Mr Wood told PS Wood:

a) that Mr Langley had been sacked from the party for posting 5 other offensive posts; and

b) that Mr Wood had been contacted 3 weeks prior to the call by someone demanding that the Tweet be taken down.

The statement that Mr Langley had been sacked was not accurate. At the 21 May 2015 meeting, a vote of no confidence in Mr Langley had been passed. It was not until 18 July 2015 that UKIP Bristol voted to remove Mr Langley from his post as vice chairman.

viii) The 4 May Tweet was deleted by Mr Wood whilst he was speaking on the telephone with PS Wood on 1 June 2015. Mr Langley's account of his being telephoned by Mr Wood and asked to remove it ([70]) is not true.

ix) From the 1 June Email, it is clear that Mr Wood told PS Wood that, at least by 18 May 2015, he (with others at Bristol UKIP) had identified several other offensive Tweets posted by Mr Langley that had been deleted. Mr Wood also claimed that Mr Langley's access had been "blocked". Neither Mr Wood nor Mr Langley in their evidence have suggested that Mr Langley's access to Twitter or other Bristol UKIP social media accounts was restricted *prior* to Mr Wood's call with PS Wood. In the minutes of the 18 July 2015 meeting

(see [50(ii)]), Mr Wood is recorded as saying that he had blocked Mr Langley's access to the Bristol UKIP Twitter account *after* being contacted by the police. Mr Frost, in his evidence stated that the first he knew of any further issue with Mr Langley's social media posts for Bristol UKIP was after Mr Wood was contacted by the police. There is no mention in the statements of any of the Bristol UKIP witnesses of any sort of social media purge in mid- to late-May and there is no reference to this in the minutes of the Bristol UKIP meetings.

76. An important issue when I come to consider whether Mr Wood is liable for the publication of the 4 May Tweet on the ***Byrne -v- Deane*** basis, is when did Mr Wood first see the 4 May Tweet. I am quite satisfied that, following the complaint by Mr Monir, Mr Wood had been effectively put on notice of the details about the 4 May Tweet set out in [75(ii)] above. But ***Byrne -v- Deane*** liability is about ratification (see below [175]), so precisely *what* Mr Wood knew about the publication is very important.

77. Mr Santos has submitted that following the material call(s) between Mr Monir and Mr Wood, the latter had all the necessary ingredients at his disposal to identify and remove the 4 May Tweet, and yet chose not to do so. He suggests this explains why Mr Wood was able quickly to identify and delete the 4 May Tweet during the call with PS Wood on 1 June 2015.

78. Certainly, I accept that Mr Wood was clearly dismissive of Mr Monir's complaint. This is consistent with (and supportive of) my conclusion as to Mr Wood's attitude generally (see [74] above). It would have taken a matter of moments – as subsequently it did – to locate the 4 May Tweet. In substance, PS Wood was merely providing the same details to Mr Wood that Mr Monir himself had provided previously. Mr Santos relies on the fact that, in the 1 June Email, Mr Wood told PS Wood that "*during the run up to the elections*", he (and others) had removed "*unsuitable*" Tweets by Mr Langley but that Mr Wood had "*missed that one*", referring to the 4 May Tweet. The reference to unsuitable Tweets may well have embraced the Frost Report Incident, but the reference was to Tweets (plural).

79. If what Mr Wood said in his call with PS Wood and the 1 June Email is taken at face value, there is evidence which suggests strongly that Mr Wood *must* have found the 4 May Tweet earlier than on 1 June 2015. However, I have reached the conclusion that Mr Wood was not giving PS Wood an accurate account of what had happened. He was, in material respects, trying to convince the officer that he and UKIP Bristol had more of a grip on the situation then actually was the case. Mr Wood was doing this, in my judgment, to try and reduce the risk of PS Wood taking the matter further: in Mr Wood's own words "*sufficient to put a stop to any further line of inquiry*" ([69] above). If he could persuade PS Wood that the matter was being dealt with firmly by UKIP Bristol, greater was the likelihood (as Mr Wood assessed it) that PS Wood would take no further action. The false or misleading parts of what Mr Wood told PS Wood were: (1) that Mr Langley had already been sacked; (2) that his access to social media accounts had already been blocked; and (3) that unsuitable Tweets had already been located and deleted, but that Mr Wood had "*missed*" the 4 May Tweet. I consider that the true position was that neither UKIP Bristol nor Mr Wood had any real knowledge of the full extent of Mr Langley's racist postings. There had been no combing of the Twitter account to remove any such posts (see [75(viii)] above). Had there been, Mr Wood could not have failed to have found the 4 May Tweet. Mr Santos urges that, for that

very reason, I should reject Mr Wood's evidence and find that he had indeed found the 4 May Tweet earlier, but had allowed it to remain on the UKIP Bristol Twitter . He also relies on what he says is Mr Wood's lack of credibility as a witness generally to support his submission (see [37] above).

80. My assessment of the evidence, however, leads me to the conclusion that Mr Wood did not carry out a review of Mr Langley's Tweets. Either he had failed to appreciate the seriousness of Mr Monir's complaint, or (more likely) he did not care. Mr Wood did nothing to investigate it until he was contacted by PS Wood. I am satisfied, on the basis of my assessment of Mr Wood's genuine attitude towards negative and/or racist campaigning (see [38(ix)] above), that had he found the 4 May Tweet at any stage after it was posted, he would have deleted it. He did not delete it prior to 1 June 2015 because it was only then that he first focused on it and took the matter seriously after PS Wood's intervention. In what I regard to be a telling – and truthful answer – Mr Wood told Mr Santos, when cross-examined: "*I wish I'd found it. I really do*".

81. Mr Wood may be open to criticism on a number of bases for his reaction to Mr Monir's complaint and for not having discovered the 4 May Tweet earlier. Certainly, Mr Wood knew that, on or around 8 May 2015, he had received a complaint about a Tweet on the Bristol UKIP Twitter account that had called someone a paedophile, but I am not satisfied that Mr Wood focused on the precise terms of the 4 May Tweet until he found it when he was on the phone with PS Wood on 1 June 2015.

The Issues for determination

82. The parties are agreed that the issues for determination are:

    i) What is the meaning of the 4 May Tweet?

    ii) Did the 4 May Tweet refer, and was it understood to refer, to Mr Monir?

    iii) Is Mr Wood responsible for publication of the 4 May Tweet?

    iv) Did publication of the 4 May Tweet cause serious harm to Mr Monir's reputation?

    v) Remedies (if appropriate).

ISSUE 1: MEANING

The Law

83. There is no dispute as to the principles the Court must apply when determining meaning:

    i) the natural and ordinary meaning is the objective meaning that the hypothetical ordinary reasonable reader would understand 4 May Tweet to bear – ***Lachaux -v- Independent Print Limited* [2016] QB 402** [15(2)] *per* Davis LJ;

    ii) the single natural and ordinary meaning is assessed by the court using the principles identified in ***Jeynes -v- News Magazines Limited* [2008] EWCA (Civ) 130** [14] *per* Sir Anthony Clark MR;

iii) in assessing meaning no evidence beyond the words complained of is admissible – ***Charleston -v- News Group* [1995] 2 AC 65**, **70** *per* Lord Bridge; and

iv) there are broadly three types of defamatory allegation: (1) that the claimant is guilty of the act; (2) that there are reasonable grounds to suspect that the claimant is guilty of the act; and (3) that there are grounds to investigate whether the claimant has committed the act: ***Chase –v- News Group Newspapers Ltd* [2003] EMLR 11** [45] *per* Brooke LJ. In the lexicon of defamation, these have come to be known as the *Chase* levels. They are not a straitjacket, forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand: ***Brown -v- Bower* [2018] EMLR 9** [17].

The Parties' Submissions

84. Mr Santos submits that the meaning of the 4 May Tweet is plain from its wording. The words "*child grooming taxi drivers*" contain no ambiguity whatsoever. The natural and ordinary meaning of the words is that Mr Monir was a paedophile who was guilty of child-grooming.

85. He contends that the Court should reject Mr Wood's assertion that the 4 May Tweet meant only that "*there were grounds to suspect*" that Mr Monir had unlawfully groomed children for sex because this does not reflect the words used in the Tweet. He argues that there is no equivocation in the 4 May Tweet; the text identifies Mr Monir as a child groomer. It is put forward as the reason why voters should not vote for the Labour party. The 4 May Tweet would not make sense if the allegation was merely at a *Chase* Level 2.

86. Mr Santos emphasises the principle from ***Jeynes*** that the Court should not be over-elaborate in its analysis.

87. Mr Hirst submits that the meaning ascribed by Mr Monir is overly simplistic, ignores the information that the taxi drivers were "*suspended*" and overlooks the nuance in the word "*grooming*".

88. He argues that the ordinary reasonable reader would understand that a person is "suspended" whilst an allegation made against him is being investigated. If the allegation was that the men in the photograph were guilty, a reasonable reader would expect the word "suspended" either to be omitted entirely or replaced with "jailed" or "convicted" or similar word.

89. Mr Hirst submits that "grooming" means that someone, usually a minor, is being prepared for a sexual encounter. It does not have to be with the person doing the grooming. It is an important fact, he argues, that in the words complained of the groomers were expressly identified as taxi drivers. He contends that it was well-known, from the Rotherham child sexual exploitation scandal, that taxi drivers ferried children to people who abused them. "Child grooming", in context, means no more than that, he argues. To infer that the person doing the grooming was also the person engaging in the unlawful sexual act is to jump to a conclusion which the words do not bear.

Decision

90. It is very important when assessing the meaning of a Tweet not to be over-analytical. Twitter is a fast-moving medium. People will tend to scroll through messages relatively quickly. Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader.

91. In terms of the *Chase* level, if analysed closely (which is not the right approach), the 4 May Tweet does have something of a contradiction within it. Mr Hirst is right that the usual connotation of a suspension is that a judgment on the alleged wrongdoing has not yet been reached. There are some professions or jobs in which a suspension can be imposed as a sanction, but use in that sense will usually be clear from the context. Against that, the allegation is clearly that the two men in the photograph are "child groomers", not that they are suspected of being so or are under investigation. There is also a disconnect between the gravity of the conduct alleged and what has been done about it. Suspension from operating as a taxi driver is an unusual response to child sexual abuse. Finally, the conduct of the two men is being clearly put forward as a reason why readers of the Tweet should not vote Labour in the election. That connotes actual wrong-doing rather than grounds to suspect or investigate. Balancing these factors, and avoiding over-analysis, I consider that the 4 May Tweet would be understood as alleging that the two men were guilty of "child-grooming".

92. Child-grooming would be readily understood as the sexual abuse of children. Mr Hirst is strictly correct when he submits that child-grooming is the pre-cursor to actual abuse, and it may or may not be successful. He is also right to say that the grooming may be carried out by someone other than the ultimate abuser. But these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this.

93. I reject Mr Hirst's submissions as to common knowledge about taxi drivers being involved in transporting victims of sexual abuse. First, I have no evidential basis on which to make a finding that this was common knowledge, but more importantly, this is to attribute a meaning to "taxi drivers" that, in context, it cannot bear. It is a forced construction that only emerges as a product of significant over-analysis.

94. In context, I am satisfied that the ordinary reasonable reader would understand the 4 May Tweet to mean that the two men were involved in the sexual abuse of children. I do not consider that, in the context of the 4 May Tweet, the ordinary reasonable reader would reach a precise conclusion as to the nature of the men's involvement.

ISSUE 2: REFERENCE

THE LAW

95. To be actionable, words in a publication that are alleged to be defamatory must refer to the claimant. If s/he is not named, reference to the claimant can be intrinsic – i.e. from the words themselves (e.g. X's father is a thief) – and/or established by the proof of extrinsic facts, knowledge of which would cause a reasonable reader to understand the words to refer to the claimant: ***Economou -v- De Freitas*** **[2017] EMLR 4** [9].

96. Understanding the law relating to reference must start with the appreciation of the fundamental principle that the test is objective. The question is whether the hypothetical ordinary reasonable reader (if necessary, attributing knowledge of particular extrinsic facts) would understand the words to refer to the claimant: ***Morgan -v- Odhams Press Ltd*** **[1971] 1 WLR 1239, 1243B, 1245B,** *per* Lord Reid; **1261E-F** *per* Lord Guest; and **1264A** *per* Lord Donovan. In assessing this, the Court adopts the same approach as to the determination of meaning: **1245G** *per* Lord Reid.

97. That being the rule, it might be thought that inclusion of a photograph of the claimant as the person being referred to in the publication satisfied the requirement, but the majority of the Court of Appeal in ***Dwek -v- Macmillan Publishers Limited*** **[2000] EMLR 284** held that, if a claimant is not named in the matter complained of, s/he must establish that the words (and photograph) were published to people who were able to identify him/her as the person in the photograph (see May LJ at p.291 approving Hunt J in ***Barbaro -v- Amalgamated Television Services*** **[1985] 1 NSWLR 30**).

98. Sedley LJ, doubted this conclusion (pp.294-295):

> "I would not be prepared, without at least fuller argument than has been appropriate today, to adopt the proposition derived by Hunt J. from earlier Australian authority in the case of ***Barbaro -v- Amalgamated Television Services*** that there is a difference of principle between the identification of a claimant by publishing his name and by publishing his picture; a difference such that in the latter case he must be able to give particulars of persons who have identified him before he can be said to have a sustainable case that the publication referred to him. I can see at present no logical or factual distinction between the two. Identification by appearance can, it seems to me, be at least as potent and as direct as identification by name. Either, in a particular case, may be sufficiently plain to fall for no elaboration by particulars or by evidence. Either, by contrast, may require pleading and proof of extrinsic facts to establish that publication was of and concerning the claimant."

99. Sedley LJ was there referring to the well-established general rule that when the claimant is named in a defamatory publication: "*the question is not whether anyone did identify the claimant but whether persons who were acquainted with the claimant could identify him from the words used*" (§7.3 *Gatley*, 10th edition). The general rule is subject to exceptions. The authors of *Gatley* give the example of a defamatory publication that names "John Smith". Not every "John Smith" can bring a claim. Where a common name is included in a publication, the name alone will not suffice to identify any individual who bears that name. The context in which the name appears, coupled with the name may, however, do so: ***Jameel -v- Dow Jones & Co. Inc.*** **[2005] QB 946** [45].

100. Paradoxically, on the issue of reference, a photograph is more likely to identify a particular individual than a common name. For example, if a Twitter user with millions of followers Tweeted a photograph of Elton John together with a defamatory statement, it would be questionable for the law to treat that case differently from one where his name, rather than a photograph, had been used. The position becomes even more stark if, in the example, the Tweet referred to "Reg Dwight". How many more people would identify Elton John from a photograph than from his birth-name? Like Sedley LJ, I am doubtful that it is right to draw a distinction between publication of the name of the claimant and publication of his/her photograph. I agree with the authors of *Duncan & Neill on Defamation* (§7.12, 4th edition) that "*there is no special rule in respect of visual identification and that the question in every case is whether reasonable readers would reasonably understand the statement to refer to the claimant*" and that, relying upon ***Jameel***, "*it is an oversimplification to say that, merely because a claimant's name is used in the statement complained of, reference will be established without more*". The answer, I suggest, is that, while the legal test is clear ([95]), proving reference (whether by name or by photograph or by other extrinsic facts) is a highly fact-sensitive exercise that does not admit of bright-line rules.

101. A claimant seeking to establish that the hypothetical ordinary reasonable reader would have understood words in a defamatory publication to refer to him/her, may rely upon evidence in three main categories:

i) a solely inferential case - typically publication in a mass circulation newspaper, where, in the particular circumstances, the claimant contends that there must have been at least some publishees who would have known the facts from which an ordinary reasonable reader would conclude that the defamatory publication referred to him: ***Fullam -v- Newcastle Chronicle and Journal*** **[1977] 1 WLR 651, 659A** *per* Scarman LJ;

ii) direct evidence - witnesses can be called by the claimant to give evidence that they knew the relevant facts and understood the publication to refer to the claimant: ***Morgan -v- Odhams Press Ltd***; and

iii) indirect evidence - proof of facts from which a reliable inference can be drawn that the claimant had been identified as the subject of the libel: e.g. evidence that the claimant was the subject of ridicule at a public meeting following publication (***Cook -v- Ward*** **(1830) 6 Bing 409, 415**) or that the claimant had been contacted by people who indicated (directly or indirectly) that they had identified him as the subject of the defamatory publication (***Hayward -v- Thompson*** **[1982] QB 47**; and ***Jozwiak -v- Sadek*** **[1954] 1 WLR 275**).

102. Given that the test is objective, the question might legitimately be posed why evidence in categories (ii) and (iii) is relevant and admissible. In ***Economou***, Warby J observed [11]:

> "Some suggest that there is subjective element, in the sense that a claimant has to prove that there were people who did in fact understand the words to refer to him. I do not believe this is the law: see ***Lachaux -v- Independent Print Ltd*** **[2016] QB 402** [15] and ***Undre -v- Harrow LBC*** **[2016] EWHC 931 (QB)** [24]-[26], [31]. In ***Baturina -v- Times Newspapers Ltd*** **[2011] 1 WLR 1526** the majority expressed the view that such evidence was not even admissible: see [56]

> (Sedley LJ) and [57] (Hooper LJ). This was *obiter*, but consistent with the view I take as to the objective nature of the test…"

103. The short answer to the admissibility of this evidence is because, notwithstanding the principled (but *obiter*) remarks in ***Baturina***, the authorities cited in (ii) and (iii) have established that it is. Unlike the issue of meaning (where such evidence has been clearly held to be irrelevant and inadmissible) such evidence is *admissible* in relation to reference, but it is not *determinative*. It is advanced by a claimant on the basis that the Court is invited to accept the evidence as a reliable indicator that the hypothetical ordinary reasonable reader would have understood the words to refer to the claimant. But this is subject to two points:

    i) First, a claimant is not *required* to produce evidence that individual publishees *did* understand the words to refer to the claimant: ***Economou*** [11]; ***Lachaux*** (Warby J) [15(2)]

    ii) Second, as it remains always an objective test, it is open to the tribunal of fact to hold that an individual publishee's identification of the claimant was, in the particular circumstances, unreasonable; s/he may be found to be 'avid for scandal' or simply to have jumped to an unreasonable conclusion (***Morgan -v- Odhams Press Ltd*** p.1246B-D *per* Lord Reid):

    > "What has to be decided is whether it would have been unreasonable for a hypothetical sensible reader who knew the special facts proved to infer that this article referred to the [claimant]… This case could only be withdrawn from the jury if it was proper for the judge to say that all these six [identification] witnesses must be regarded as having acted unreasonably in reaching their conclusions…"

104. Another important principle flows from the fact that the test is objective: it is immaterial, on the issue of liability, that people who were able to identify the claimant as the subject of the libel did not believe the allegations made against him/her to be true. Such evidence is relevant only to damages (and, following the coming into force of s.1 Defamation Act 2013, to the issue of serious harm): ***Morgan -v- Odhams Press Ltd*** (p.1246D-F *per* Lord Reid; p. 1252D-F *per* Lord Morris).

105. Mr Hirst submits that, where the publication relied upon includes a photograph of a claimant but s/he is not named, the extrinsic facts the claimant must establish are known to publishees are (1) what the claimant looks like; and (2) "*knowledge of facts to connect him with the defamatory statement so that it applies to him*". That is unnecessarily to complicate matters. All that is required is proof that the 4 May Tweet was published to individuals who were able to recognise the claimant from the photograph.

106. Relying upon ***Budu -v- BBC* [2010] EWHC 616** at [39]-[43], Mr Hirst also submits that, as Mr Monir has not identified the people who had knowledge of the "extrinsic facts", his claim fails on pleading grounds. I reject this, both as a matter of principle and on the evidence in this case.

    i) First, this is not an 'extrinsic facts' case. The photograph of Mr Monir was included in the 4 May Tweet; it is an *intrinsic* fact.

ii) Second, and in any event, Mr Monir has provided evidence that people identified him from his photograph in the 4 May Tweet (see [129]-[130] below). That evidential position has been clear at least since the exchange of witness statements. The pleading point raised by Mr Hirst has no merit. Mr Wood is fully aware of the claim that Mr Monir is advancing.

107. On the evidence, Mr Hirst submits that Mr Monir's case depends upon his proving that there were readers of the 4 May Tweet who could identify Mr Monir from the photograph and who "*held the belief, as a matter of fact, that [he] was both a taxi driver and suspected of child-grooming (otherwise they did not have a state of knowledge to 'connect the libel with the claimant')*". This leads him to the submission that, as the identification evidence relied upon by Mr Monir includes people who knew him very well, they would know that he was not a taxi-driver and would therefore have not understood the words in the 4 May Tweet to refer to him.

108. A fundamental heresy lurks at the heart of that submission. I accept that, when assessing reference, the Court must consider any pieces of evidence which might tend to negative the conclusion that the ordinary reasonable reader would understand the words as referring to the claimant (***Morgan -v- Odhams Press Ltd*** p.1252D-E *per* Lord Morris). Even if some publishees recognised Mr Monir from the photograph and knew that he was not a taxi-driver, it does not follow that the words of the 4 May Tweet did not refer to him. The test is objective, and it is impossible to say that *every* reader of the 4 May Tweet, who recognised Mr Monir from the photograph, would know that he was not a taxi-driver (and it is also irrelevant – on the issue of reference – if knowledge of that fact caused them not to believe the allegation in the 4 May Tweet).

109. In ***Dwek***, for example, the claimant was wrongly identified in a photograph together with text which the claimant contended referred to him bore the meaning that he "*consorted and had sex with a well-known prostitute*". May LJ summarised the argument advanced by one of the defendants (which has similarities to Mr Hirst's argument in this case):

> "If a reader recognised the claimant, he or she would simply conclude that there had been a mistake; that the obvious intention was to refer to Dodi Fayed and the inclusion of a photograph of the claimant was just a pure mistake, taking the matter nowhere. It is said that reference to Dr Dwek can only be achieved by innuendo, that is to say by relying by relying on additional special facts to the effect that identified individuals in fact recognised the photograph as being that of the claimant and did not appreciate that there was a mistake."

110. The position in ***Dwek*** was different from Mr Monir's case. The caption to the photograph read: "*Fantasies. Louise 'Michaels' was a prostitute who befriended Dodi (left in the photograph) at 'Tramp' and was thereafter seen at 60 Park Lane.*" The person who appeared to the left in the photograph was Dr Dwek not Mr Fayed. That was an important piece of evidence that tended to negative the conclusion that the ordinary reasonable reader would understand the words as referring to Dr Dwek. It was relevant to that assessment because it was intrinsic to the publication: the hypothetical reasonable reader (who, for these purposes, was assumed to be able to recognise Dr Dwek from the photograph) would be taken also to have read the caption. Nevertheless, the Court of Appeal held that; (a) the text was still capable of referring to the claimant and that the issue whether it did would have to be resolved by the jury at

trial (p.293); (b) due to the mass publication, it was open to the jury to find that the words referred to the claimant "*without the identifying or individuals who understood this to be a defamatory publication referring to the claimant*" (p.294); and (c) it was not an innuendo case (p.294).

The evidence on publication and re-publication

111. Before stating my conclusions on the issue of reference, I need to examine the evidence about the publication, and republication, of the 4 May Tweet and make findings about the extent of its publication and republication.

112. I gratefully adopt Warby J's description of "How Twitter Works" from the Appendix to his judgment in ***Monroe -v- Hopkins*** **[2017] EMLR 16**. For the purposes of this case, to that summary I would add the following:

i) A Tweet is unlikely to be read by all followers of the relevant Twitter account. If a Twitter user only follows one account then, barring sponsored Tweets, his/her timeline will consist solely of Tweets (or retweets) from the followed account. As the number of accounts followed increases, so too does the potential number of Tweets in the timeline. And the more active the Twitter accounts that are followed, the greater the number of Tweets that will appear in a user's timeline. A user who follows a large number of active accounts will receive a large number of Tweets. If s/he only looks at Twitter twice a day, s/he is likely to see only a fraction of the Tweets that would have been available in his/her timeline.

ii) In that respect, broadly Twitter is like a conveyor-belt of information. A Twitter user *could* choose to watch it continuously, in which case s/he will see all of the Tweets from accounts that s/he has followed, but more likely, s/he will dip in and out, in which case (unless the user chooses to scroll back) s/he will miss the Tweets that would have appeared in the timeline during the period that s/he was not viewing Tweets.

iii) Twitter has certain features that can cause some Tweets to appear out of their chronological sequence in an account. In addition, individual users can choose to search for specific material on Twitter which may or may not have appeared in his/her timeline at all.

113. The Twitter analytics data is unavailable for the 4 May Tweet because it was deleted on 1 June 2015 (see [75(vii)] above). In default of the analytics data, Mr Wood's solicitor, Paul Wong, has set out evidence as to publication (and his analysis of it) in his witness statement. Of the followers of the Bristol UKIP Twitter account, based upon information from each user's profile or other information in the account, he assessed 144 came from Bristol and the West Country; 27 from the North-West of England; 12 from the North-East; 56 from the South-East; 15 from Wales; 27 in the Midlands and 18 from Yorkshire. Some 208 followers, Mr Wong identified as being Twitter accounts of other UKIP branches, members, councillors, MEPs or candidates. One of these was UKIP Yorkshire Dales. 28 accounts appeared to be registered to users outside the UK.

114. On 13 December 2016 and on 29-30 March 2017, using the Bristol UKIP Twitter account, Mr Wong Tweeted a photograph of Mr Monir with the question whether people who followed Bristol UKIP recognised him. That was followed, between 4 April to 15 May 2017, with individual direct messages being sent to each of the Bristol UKIP Twitter followers asking whether they recognised Mr Monir from the photograph and whether s/he had retweeted the 4 May Tweet. 61 accounts responded. All indicated that s/he did not recognise Mr Monir. A handful of respondents were able to identify MP Sarah Champion. By August 2017, around 10% of the Bristol UKIP Twitter followers had replied. The balance did not respond.

115. In August 2017, Mr Wong sent a further Tweet to 95 of the Bristol UKIP Twitter followers who he had identified as either providing no details as to their location or who he identified as being based in Yorkshire. 10 people responded to Mr Wong's further message. Some of these identified where they lived, but none was from Yorkshire.

116. One of the complicating factors in this case is that the 4 May Tweet did not stand in isolation. At around the same time, others were Tweeting (and publishing via other platforms) the photograph that appeared in the 4 May Tweet and adding comments. Care therefore needs to be taken in analysing the evidence. Mr Wood could only be liable – if he is liable at all – for reputational damage caused to Mr Monir by the 4 May Tweet (and any proved republication of it).

117. Some of the evidence about these other publications has been conveniently gathered in Mr Wong's witness statement. It has not been challenged by Mr Santos. I have added some other relevant material from the documents in the trial bundles.

i) On 14 February 2015, @andreassoridisn tweeted the photograph with the text:

> Rotheram @SarahChampionMP with Pakistani bully [TG]

(I have replaced the name that appeared with initials).

ii) At 15.44 on 3 May 2015, @stardust193 tweeted the photograph with the text:

> #Labour's Sarah Champion pictured with
> two suspended #RotheramAbuse grooming
> taxi driver. [TG] and [KG].

The account had 9,281 followers and the Tweet was retweeted 253 times.

iii) At 02.12 on 4 May 2015, @IpadProphet tweeted the photograph with the text:

> #Labours Sarah Champion mp, with taxi drivers
> suspended for #grooming
> A vote for Labour will put your kids at risk.

The account had 123 followers and the Tweet was retweeted once.

iv) Three minutes later, at 02.15, @IpadProphet directly tweeted, to @TRobinsonNewEra (a Twitter account of Tommy Robinson), the photograph with the text:

> Sarah Champion MP
> #Rotherham with suspended #groomer taxi
> drivers.

v) At 02.25 on 4 May 2015, Tommy Robinson tweeted the photograph with the same text ("the Tommy Robinson Tweet"):

> Sarah Champion MP #Rotherham with
> suspended #groomer taxi drivers.

Mr Robinson's account had some 138,000 followers and the Tweet was retweeted 72 times.

vi) At 05.29 on 4 May 2015, @NF14Words (identified as "National Front 14w") tweeted the photograph with the text:

> Sarah Champion, Rotherham Labour candidate
> stood with two suspended Muslim grooming
> taxi drivers. DON'T VOTE LABOUR!

The account had 1,012 followers. The Tweet was not retweeted.

vii) At 09.27 on 4 May 2015, a Facebook account under the name "Brian Martin" reposted @stardust193's Tweet (see [116(ii)] above) adding "#TeamNigel" (a hashtag linking to UKIP Leader, Nigel Farage).

viii) At 09.53 on 4 May 2015, @lucyk6992 tweeted the photograph with the text:

> "@brassidio: SarahChampionMP with two
> suspended #rotherham grooming taxi
> drivers. [TG] and [KG]. #Labour

The account had 2,217 followers. The Tweet was not retweeted.

ix) At 20.42 on 4 May 2015, the 4 May Tweet was published on the Bristol UKIP Twitter account (see [1] above). The text of the Tweet was:

> Sarah champion labour candidate for
> Rotherham stood with 2 suspended child
> grooming taxi drivers DO NOT VOTE
> LABOUR

x) At 05.41 on 5 May 2015, @jamesoxby tweeted the photograph with the text:

> @Bob_of_Hills Suspended taxi
> driver "groomers" [TG] and [KG] with
> Sarah Chamption, LabourMP for Rotherham

The account had 4,295 followers and the Tweet was retweeted once.

xi) At 07.41 on 5 May 2015, Eddie English posted the photograph on Facebook together with the text ("the Eddie English Facebook Post"):

> Sarah champion labour candidate for Rotherham
> stood with two suspended child grooming taxi
> Drivers…………………………… DO NOT VOTE
> LABOUR

The Facebook account had 1,683 "friends" and the post was liked 6 times and shared 384 times.

118. Mr Hirst submits that, on the evidence, I should find that the Eddie English Facebook Post had been created by Mr English based on the Tommy Robinson Tweet. Mr Santos however contends that I should reject that because there are several differences between this and the Eddie English Facebook Post, namely: (1) it has a different ordering of different words; (2) it capitalises "Champion"; (3) it refers to Sarah Champion as "MP"; (4) it uses a hashtag before "Rotherham"; (5) it refers to Mr Monir as a "groomer taxi driver" rather than a "child grooming taxi driver"; (6) it uses a hashtag before "groomer"; and (7) it makes no reference to Labour.

119. Mr Wong also states in his witness statement that the followers of the Bristol UKIP Twitter account did not include anyone called Eddie English. That may be correct, but Eddie English had clearly been following (and supporting) Mr Wood's election campaign. On 29 April 2015, and again on 5 May 2015, Eddie English posted the same campaign poster image that had been posted on the Bristol UKIP Twitter account on 29 April 2015 (see [34(vii)] above). In relation to the latter posting, Eddie English added the words: "*Mr Steve Wood. UKIP candidate for South Bristol*". In a subsequent post, he also listed the local UKIP candidates in Bath. The obvious inference, and a conclusion that I reach without difficulty, is that even though he was not a "follower", Eddie English was regularly reading the Bristol UKIP Twitter account (whether directly or indirectly) and had taken the image that he had posted on Facebook on 29 April 2015 and 5 May 2015 from the Bristol UKIP Twitter account. There is no other credible explanation, and none has been offered by Mr Hirst.

120. The Eddie English Facebook Post was commented upon by his Facebook "friends". Of particular importance are the following exchanges between Marc David, Jake Cresswell, Tyler Dyas and Liam Terrence that took place around 21.15 on 6 May 2015:

> Marc David: isn't that thingy from youthy?
>
> Marc David: Zahir
>
> Jake Cresswell: It's him isn't it
>
> Marc David: The dirty cunt!
>
> Tyler Dyas: The dirty bastard needs his head caving in fucking horrible prick!!!
>
> Tyler Dyas: His he still working at youthi?
>
> Jake Cresswell: Not a clue not been in yonks
>
> Tyler Dyas: Same here, needs his teeth taking out of his head
>
> Jake Cresswell: Needs his chode chopping off!

Liam Terrence:	He's not working with us no more
Tyler Dyas:	Init pal
Tyler Dyas:	Good the fucking nonce

121. Marc David shared the Eddie English Facebook Post with his "friends" with the comment: "*Denaby main youth club hires people like him on left, dirty cunt!*". Mr Monir knows both Mr Cresswell and Mr David as individuals that live at Denaby, near Rotherham. He knew them from when he worked for Doncaster Youth Services at the Denaby Youth Club called MyPlace. They had both attended MyPlace when they were 16 or 17 years-old and when Mr Monir had worked there in 2014. He used to mentor them and knew them well.

122. Another Facebook user, Barry Horner, also shared the Eddie English Facebook Post with his "friends" on 7 May 2015 with the comment: "*sue your neighbour int it?*". Mr Monir explained in his evidence that Mr Horner lives in East Dene, a 15-minute walk away from his home. The unchallenged evidence is that Mr Horner's question was directed to Sue Horner, one of Mr Monir's next-door neighbours. In his second witness statement, Mr Monir said that he had been receiving "hassle" from his neighbours and attributed that to their knowledge of the Eddie English Facebook Post.

123. The 'percolation' or 'grape-vine' effect of defamatory allegations is well-recognised in defamation: ***Slipper -v- BBC*** **[1991] 1 QB 283, 300** *per* Bingham LJ. The Court of Appeal in ***Cairns -v- Modi*** **[2013] 1 WLR 1015** [27] spoke of this effect being "*immeasurably enhanced*" with the advent of the social media and the opportunity it affords for defamatory allegations to "*go viral*". The evidence I have set out in [117(xi)]-[122] is a good demonstration of this phenomenon.

124. That evidence provides a firm foundation for the conclusion that there were at least some people who could identify Mr Monir from publication of the 4 May Tweet (and its republication), but Mr Monir also relies upon a general inferential case that the 4 May Tweet would have been seen by at least some who could recognise him.

    i) Mr Monir's case is that the Bristol UKIP Twitter account had around 523 followers at the time of the Tweet. Mr Wood's case is that there were 551 followers in September 2016.

    ii) Mr Wood's solicitor, Paul Wong, has carried out extensive analysis of these followers. Based on his evidence, Mr Hirst suggested that only 281 of these accounts were "active". Mr Wong had identified an account as "active" if the relevant user was posting Tweets him/herself. That conclusion does not follow. The fact that someone posts on Twitter may be a reliable indicator that that person is using the platform, but the converse does not follow. It is not necessary to be a contributor to Twitter to be a consumer of its output. There will be users of Twitter who post Tweets very infrequently (if at all), but who nevertheless regularly read the Tweets that appear in their timelines.

    iii) The Tweet was directly re-tweeted 17 times and liked 8 times. Each time it was re-tweeted or liked, the Tweet would have appeared in the timelines of the respective Twitter user's followers.

iv) From investigations carried out by Mr Wong in September 2016, he identified 18 followers of the Bristol UKIP Twitter account who appeared to come from Yorkshire. That figure may not represent the total number of followers in Yorkshire. Any of those who did not identify their geographical location in their Twitter account, but who did live in Yorkshire, would not have been counted in the figure of 18.

125. I was somewhat sceptical of the value of Mr Wong's attempt at a detailed analysis of the extent of publication of the Tweet. Much of it represented speculation or the drawing of conclusions from an inadequate factual base (e.g. the assumptions about "active" accounts). Mr Wong's conclusion that his inquiries with the Bristol UKIP Twitter followers demonstrated that none had identified Mr Monir, falls to be assessed against the actual evidence of identification. As the example of the Eddie English Facebook Post clearly demonstrates, the *direct* publication to actual followers (and retweeting) of a defamatory Tweet may well be just the start of a chain of republication. In this instance, within 48 hours, the defamatory message in the 4 May Tweet had jumped platforms from Twitter to Facebook. That cross-over between social media is both easy and obvious. Again, Mr Wong's conclusion that there were potentially 18 followers of the Bristol UKIP Twitter account in Yorkshire (none of whom responded affirmatively to his question whether s/he had identified Mr Monir) falls to be measured against the clear evidence that, with just one link in the chain, the defamatory contents of the 4 May Tweet had reached Yorkshire and, with two, it had reached Mr Monir's next-door neighbour.

126. Mr Monir has also relied upon other evidence which he contends demonstrates publication of the 4 May Tweet to people who were able to identify him:

i) Mr Monir received a telephone call from a friend, Shakoor Adalat, in the evening of 4 May 2015. Mr Adalat told Mr Monir that he had received "*a disturbing picture of [him] being labelled a paedophile*". Mr Adalat's evidence at trial was that he had received a copy of the 4 May Tweet via WhatsApp from his cousin. Mr Adalat said that he was in two minds whether to let Mr Monir know about the Tweet, but decided that he should. Mr Adalat forwarded the WhatsApp message to Mr Monir after being asked to do so.

ii) Mr Monir's sister, Shazana Monir, gave evidence that she had seen the 4 May Tweet on her Twitter newsfeed during the evening of 4 May 2015, and also told Mr Monir about it. When cross-examined, Ms Monir confirmed that the Tweet that she had seen that evening had come from the Bristol UKIP Twitter account. Mr Hirst asked Ms Monir when she thought she had seen the Tweet. She said that it was when she had gone around to her brother's house, and she estimated that this was "*around 8.30, 9.00pm*". The timing was important, because the 4 May Tweet was not posted until 8.42pm that evening.

iii) Adeal Ali, a friend of Mr Monir who lives in Rotherham, gave evidence that he had seen the 4 May Tweet on 4 May 2015. He did use Twitter but did not follow the Bristol UKIP Twitter account. He said that he had been carrying out a search for information about Sarah Champion MP on Google and Facebook when he found the 4 May Tweet on Google. He telephoned Mr Monir straightaway to tell him about it. When cross-examined, Mr Hirst asked Mr Ali whether he might have seen other Tweets, but Mr Ali was firm that the Tweet he had seen had said

Bristol UKIP on the top corner. He did, however, say that he had seen the Tweet at between 5-7pm on 4 May 2015. If that timeframe is correct, it would mean that he could not have seen the 4 May Tweet.

iv) Shabir Daad lives in Bristol. His evidence was agreed by Mr Wood and Mr Daad was not required to attend for cross-examination. In the run up to the 2015 general election Mr Daad was working with George Galloway, campaigning for him and the Respect Party in Bradford. In that role, he also worked with Mohammed Hussein. Although he did not follow Bristol UKIP on Twitter, Mr Daad saw the 4 May Tweet on 5 May 2015. He believed it to be true due to the child sexual exploitation scandal in Rotherham. He thought that Mr Hussein would be interested in the 4 May Tweet because he was from Rotherham and so he forwarded a copy of it to him via WhatsApp. Mr Daad did not know Mr Monir.

v) Mohammed Hussein provided a witness statement for Mr Monir and was called to be cross-examined. He confirmed that he was campaigning for the Respect Party in Bradford when he received a copy of the 4 May Tweet from Mr Daad. Mr Hussein said that, although he did not know him personally, he had recognised Mr Monir because he was well-known in the Rotherham community. He too thought that the allegation was true. He said that, at some time later, he sent a screenshot of the Tweet to approximately 1,000 people, mostly based in Rotherham, using some 30 WhatsApp groups to which he belonged ("the WhatsApp Republication"). Despite Mr Wood's acceptance of Mr Daad's evidence, Mr Hussein was cross-examined as to whether he was sure that what he had been sent by Mr Daad was the 4 May Tweet. He affirmed his evidence that it was.

vi) Shamraz Monir, Mr Monir's brother, gave evidence that he saw the 4 May Tweet on 8 May 2015 at 12.12pm and telephoned his brother to tell him about it. He stated that friends of his in Rotherham and other local people who knew him had asked him about the 4 May Tweet. Some of them, he said, had seen it on Twitter and some had it passed to them on WhatsApp. He estimated that about 20 people had asked him about the 4 May Tweet, but he agreed in cross-examination that he told these people that the allegation was not true. Shamraz's evidence on this point was not challenged in cross-examination and he maintained that it was the 4 May Tweet that people were asking him about.

127. Mr Monir also invites the Court to draw the inference as to the extent of publication of the 4 May Tweet (and that people must have identified him from the photograph) because of various things that happened to him.

i) In his witness statement, Mr Monir said that he had kept a tally of the number of people who either mentioned the 4 May Tweet or asked if he was a taxi driver. Mr Monir is not a taxi driver – he does not even have a driving licence – so he inferred that if he was asked this it was as a result of the relevant person having seen the 4 May Tweet. By September 2016, he had logged 115 people raising either of these things with him.

ii) He says that he has experienced people calling him "*you Paki groomer*", others have made threatening remarks and he says that he has even experienced people driving past him and shouting abuse.

iii) Mr Monir gives evidence that of other parents at the school to which his son attends – and of which he had previously been a governor – no longer speaking to him when he collects his son from school. He attributes this shunning of him to the 4 May Tweet and he has in consequence avoided doing the school run. He refers to a particular incident in June 2017 when he was dropping off his son at school. Another parent had said "*Let Jimmy Saville go [first]*", in the context of Mr Monir walking in front of the other parent.

iv) In early 2015, Mr Monir applied to the Labour Party to be on its panel of candidates for council elections in 2016. On 14 December 2015, Mr Monir had an interview with a selection committee of the party. As part of the interview, he was asked whether there was anything about him that could potentially embarrass the Labour Party. Mr Monir explained about the 4 May Tweet and he felt that, by their body language, the reaction of the panel was negative. Following the interview, Mr Monir was told that he had not been selected. He asked for feedback, and on 16 December 2015 he received an email from the party which included concern about "*disclosure of potentially embarrassing issues which you alluded to*", which Mr Monir believes could only have been a reference to the 4 May Tweet.

Conclusions as to publication and republication of the 4 May Tweet

128. My conclusions and findings on the evidence are as follows:

i) Beyond noting that the 4 May Tweet is likely to have been seen by a proportion of the followers of the Bristol UKIP Twitter account, I cannot make any finding about the number of publishees or how many of them may have been based in Yorkshire. Any attempt to do so would simply be guesswork. This is not a mass publication case where the Court is able to draw a sure inference as to publication. Mr Monir must demonstrate his case on publication by evidence.

ii) The 4 May Tweet was read by (and published to) (1) Shakoor Adalat; (2) Shazana Monir; (3) Shabhir Daad; (4) Mohammed Hussein; and (5) Shamraz Monir.

iii) I find that Adeal Ali must have been mistaken about seeing the 4 May Tweet. I think it likely that he saw one of the other publications that included the photograph of Mr Monir (see [117] above).

iv) Some 20 people asked Mr Shamraz Monir about the 4 May Tweet.

v) Mr Hussein sent a screenshot of the 4 May Tweet that he had received from Mr Daad to approximately 1,000 people, mostly based in Rotherham, via WhatsApp groups of which he was a member.

vi) The Eddie English Facebook Post was a republication of the 4 May Tweet.

a) I am satisfied, from the analysis in [118] above, that Eddie English was regularly reading the Bristol UKIP Twitter account.

b) The language and contents of the Eddie English Facebook post are almost identical to the 4 May Tweet. Of particular importance are: the grammatical misuse of "stood"; the error in capitalisation of Sarah Champion's surname and "Labour"; and the block capitalisation of the exhortation not to vote Labour. The differences – spelling out the word "two" rather than use of the number and the addition of multiple full stops - are minor in comparison.

c) I reject Mr Hirst's alternative hypothesis that the Eddie English Facebook Post was caused by the Tommy Robinson Tweet. The dissimilarities mean that the it is much more likely that the post was based on the 4 May Tweet.

vii) The Eddie English Facebook Post was published to, at least, the 384 people who shared the post and could potentially have been published to all 1,683 "friends" of Eddie English's Facebook account, although it is not possible to determine how many.

viii) Two particular people who saw the Eddie English Facebook Post were Marc David and Jake Cresswell. Mr David shared the Eddie English Facebook Post with his Facebook "friends" (the number of whom is uncertain on the evidence). The discussion about the post ([120] above) also demonstrates that the post was read by Tyler Dyas and Liam Terrence.

ix) Barry Horner also saw the Eddie English Facebook Post and shared it with his Facebook "friends" (the number of whom is uncertain on the evidence, but one was Mr Monir's neighbour, Sue Horner).

x) Mr Monir has failed to satisfy me that the negative reactions he experienced ([127] above) were caused by publication of the 4 May Tweet. The reactions relied upon could have been caused by any of the publications identified in [117] above.

Conclusions as to reference

129. I am satisfied on the evidence that Mr Monir has established that the following people were able to (and did) identify him from the photograph in the 4 May Tweet and its republication: (1) Shakoor Adalat; (2) Shazana Monir; (3) Mohammed Hussein; (4) Shamraz Monir; (5) Marc David; (6) Jake Cresswell; (7) Tyler Dyas; (8) Liam Terrence; (9) Barry Horner; and (10) Sue Horner. Mr Daad did not know Mr Monir, so he could not have identified him.

130. I am satisfied that the WhatsApp Republication is likely to have led to the 4 May Tweet being published to around 1,000 recipients and that, because of the WhatsApp groups' connection with Rotherham, a significant, but unquantifiable, number of those would have been able to identify Mr Monir from the photograph. It may be that some of the 20 or so people who asked Shamraz Monir about the 4 May Tweet had received it via this route, but I cannot reach a firm conclusion on that.

131. Mr Wong's evidence as to identification of Mr Monir (or lack of it) by the followers of the Bristol UKIP Twitter account does not assist. It certainly does not undermine the very clear evidence of identification that I have found.

132. I am therefore satisfied that Mr Monir has established that the 4 May Tweet was published to people who understood the words contained in it to refer to him.

ISSUE 3: RESPONSIBILITY FOR PUBLICATION

133. Mr Wood did not personally post the 4 May Tweet on the Bristol UKIP Twitter account. However, there are four bases on which Mr Monir contends that Mr Wood is nevertheless liable for its publication:

    i) direct participation in (or authorisation of) the publication of the Tweet;

    ii) agency;

    iii) vicarious liability; and

    iv) subsequent ratification of the publication under the principle in ***Byrne -v- Deane* [1937] 1 KB 818**.

    I shall deal with each of these in turn.

(i) Direct participation/authorisation

134. I can deal with this alleged basis for finding Mr Wood liable for publication of the 4 May Tweet shortly. It fails on the facts.

The Law

135. The basic principles are clear and not disputed by the parties.

    i) The general rule can be stated as follows: under the general law of tort, everyone who knowingly takes part in the publication of a libel, or authorises or ratifies it, are jointly and severally liable (§8.10 *Duncan & Neill on Defamation* (4th edition, 2015);

    ii) However, for a person to be held liable as a *primary* publisher, s/he must be shown to have knowing involvement in the publication of the particular words. It is insufficient that a person merely plays a passive role in the process: ***Bunt -v- Tilley* [2007] 1 WLR 1243** [22]-[23];

136. Mr Santos relied upon ***Ricci -v- Chow* [1987] 1 WLR 1658** as authority for the proposition that members of unincorporated associations are liable as primary publishers for publications by the association. That is to state the proposition too widely. The existence of an unincorporated association does not alter the basic requirement to show that the relevant individual participated in or authorised publication. The liability of individual members of an unincorporated association depends upon their individual involvement with the publication: see ***Mercantile Marine -v- Toms* [1916] 2 KB 243, 246-247** *per* Swinfen Eady LJ.

The Facts

137. It is common ground that it was Mr Langley who composed and posted the 4 May Tweet on the Bristol UKIP Twitter account. Indeed, Mr Monir originally contemplated suing Mr Langley. He was included as a defendant in the Claim Form when it was originally issued. However, his name was deleted by amendment prior to service of the Claim Form. As such, Mr Wood became the sole defendant to the claim. That was a tactical choice by Mr Monir. He decided that Mr Langley was not worth suing whereas he clearly concluded that Mr Wood was. Mr Wood is clearly aggrieved at this, but a claimant is entitled to choose against whom he pursues his claim. If a defendant who is sued considers that another person is jointly liable for the claim s/he faces, then s/he can join another party under CPR Part 20. Mr Wood did not do so, perhaps also recognising that Mr Langley would be unlikely to satisfy any judgment. Nevertheless, where a claimant chooses to sue someone other than the primary publisher, he takes on the burden of establishing that this other person is liable for the publication.

138. The facts are clear. The 4 May Tweet was composed and posted by Mr Langley without reference to (or seeking approval from) Mr Wood. Mr Wood did not write the 4 May Tweet and he had no knowledge of its contents before it was published by Mr Langley. He did not directly participate in its publication. It is true that Mr Wood had given the Prior Approval Instruction to Mr Langley regarding what he posted on the Bristol UKIP branch's social media accounts. And, had this instruction been followed, and had Mr Wood given direct approval to the 4 May Tweet before it was published, then he would have been liable as a primary publisher. But, as I have found, that Prior Approval Instruction was not observed. Indeed, on the evidence there does not seem to have been a single occasion on which Mr Langley sought Mr Wood's specific authorisation or approval for any social media posting. The 4 May Tweet was no different. Mr Langley was the only person who participated directly in its original publication and Mr Wood did not specifically authorise it.

139. In consequence, I find Mr Wood is not liable as a publisher of the 4 May Tweet as a result of personal or direct participation in publication.

(ii) Agency

Preliminary pleading point

140. Mr Monir's reliance upon agency as a basis for establishing Mr Wood's liability has been contentious. Mr Hirst submitted, at the outset of the trial, that neither the case on agency, nor vicarious liability, was properly pleaded in Mr Monir's statements of case. I was never asked specifically to rule upon this point, but I am satisfied that the objection has no substance.

   i) When the point was first raised, I considered what was originally pleaded in the Particulars of Claim. Paragraph 6 set out Mr Monir's case on Mr Wood's responsibility for publication:

      6.1 The @BristolUkip Twitter account is the official Twitter account for the Bristol Branch of UKIP. At the relevant time, the Defendant was the Chairman of the Bristol Branch of UKIP and the UKIP candidate

for the Bristol South constituency in the General Election held on 7 May 2015.

6.2 The Defendant featured heavily in the @BristolUkip account's tweets and feed. By way of example, he was mentioned in six separate tweets published by the @BristolUkip account on 6 May 2015.

6.3 The Twitter account was created and used by John Langley (then the Vice-Chairman of the UKIP Bristol Branch) under the instruction and on behalf of the UKIP Bristol Branch Committee (of which the Defendant was the Chairman). The Committee, including the Defendant, would regularly email Mr Langley with subjects about which they wanted him to tweet. In the circumstances, Mr Langley published the Tweet on behalf of and with the encouragement of the UKIP Bristol Branch and, in particular, the Defendant. The Defendant participated in the publication of the Tweet.

ii) That was Mr Monir's case, pleaded without the benefit of any disclosure.

iii) In the Defence, Mr Wood's response to this case was:

a) Paragraph 6.1 was admitted.

b) As to Paragraph 6.2, contended that the fact that the Defendant was referred to in a number of Tweets did not mean that he was responsible for their publication.

c) His response to Paragraph 6.3 was:

> "… it is admitted that the @BristolUKIP Account was set up, managed, edited and used exclusively by John Langley who was then a volunteer member of Bristol UKIP. Mr Langley was authorised by the Branch Committee, which included the Defendant, to take responsibility for all social media output for Bristol UKIP. It is denied that Mr Langley received detailed or day-to-day instruction or guidance on how to use the @BristolUKIP Account and opther social media accounts, or that any other Bristol UKIP member had prior input or copy approval of any social media output. Rather Mr Langley, was encouraged by the Committee, in general terms, to post content which would advance UKIP's interest in the General Election on the one hand, but which would not be harmful to UKIP's interests on the other. In particular the Defendant issued his own personal warning to Mr Langley that content which was xenophobic or racist, or descended into highly personal attacks, was not tolerated by the Claimant under any circumstances."

iv) The original factual averments in the parties' pleadings have rather been overtaken by developments in the case. For example, it has been clear, ever since there was disclosure as to the creation of the Bristol UKIP Twitter account, that the account was actually set up by Mr Wood **not** Mr Langley. In a perfect world, parties would keep their statements of case under review at stages through the litigation and make necessary amendments to the factual case advanced in their

statements of case in light of, for example, disclosure. In the real world, this is rarely done. No doubt, this is born of pragmatism and a desire to avoid unnecessary expenditure of costs. In most cases, each party's case on the facts becomes clearer as the litigation moves through the phases of disclosure and witness statements. If the factual case (at least) of each party, and the dispute between them, is perfectly clear neither party is prejudiced if the pleadings are not updated. In many trials, the pleadings are not referred to at all, having by that stage served their purpose.

v) Occasionally, as here, a party raises a complaint that part of the case advanced by his opponent has not been raised adequately or at all in the other party's statement of case. Mr Hirst, relying upon paragraph 26.9 of *Gatley* (12th edition, 2013) contends that Mr Monir's Particulars of Claim fails to plead "*the necessary factual averments, namely that the agent or employee was acting on behalf of the defendant within the scope of his authority and set out any additional facts and matters on which he relies in support of such averments*". Mr Santos contends that CPR 16(4)(1)(a) requires pleading of the *facts* upon which the party relies. He relies upon the case that is quoted in the footnote to the passage relied upon by Mr Hirst from *Gatley*: ***Burch -v- Parkinson* [2010] TASSC 42**. That case, from the Supreme Court of Tasmania, was concerned with a defamation claim in which an issue arose as to the sufficiency of the pleading of the claim for vicarious liability. The Tasmanian procedural rules (r227(1)(b)) contained a provision in almost identical terms to CPR 16.4(1)(a). Relying upon an English authority, Holt AsJ held that the claimant had sufficiently pleaded the material facts in support of his contentions as to vicarious liability:

> [16] … The rule in this jurisdiction is that the pleading is to contain only the material facts. The legal consequences which will follow, if pleaded facts are proven at trial, is not a matter for necessary incorporation in the pleadings: In ***Konskier -v- B Goodman Ltd* [1928] 1 KB 421** Scrutton LJ said in relation to pleaded facts at 427: "*But a plaintiff is not now bound to state the legal effect of the facts on which he relies; he is only bound to state the facts themselves ...*". In respect of a rule equivalent to r227(1)(b) Martin J in ***Creedon -v- Measey Investments* (1988) 91 FLR 318** at **320** adopted the statement by Williams in *Civil Procedure in Victoria*, obviously taken from ***Konskier***, that: "*The pleader is not bound to state the legal effect of the facts upon which he relies; he is only bound to state the facts themselves.*" It follows that the fact, if it be the fact, that the plea does not, by its terms, clearly show whether the liability alleged is vicarious or direct or both does not amount to a breach of the rules of pleading.

vi) That statement of the rule certainly accords with my understanding of the historical requirements for a statement of case in this jurisdiction. Whatever the strict rule, however, the cardinal principle is one of fairness. A party is entitled to know the case that he has to meet. If he is ambushed at trial, that is not fair. Statements of Case are one of the ways that parties know the case against them.

vii) When the point was raised by Mr Hirst at the beginning of the trial it seemed to me that Mr Wood did know the *factual* case he had to meet. Mr Monir was

contending that, by his actions in putting Mr Langley in charge of the Bristol UKIP Twitter account, he was liable for the publication of the 4 May Tweet. I therefore asked Mr Hirst what further evidence or disclosure he contended would have been before the Court had the case on agency/vicarious liability been made expressly clear in the Particulars of Claim. He gave general answers about wishing to investigate "*the wider enterprise of UKIP Bristol branch*" and submitted that, on the issue of vicarious liability, I needed to probe more deeply into the operations of the branch. I was sceptical that, given the issues on the existing statements of case and the evidence already before the court, there was likely to be any further documents or evidence that would bear on the issue. I did not consider that there was any real prejudice to Mr Wood in his dealing with the *legal* consequences of the factual position. Nevertheless, I gave Mr Hirst the option to come back at any time during the trial if he were able to identify any factual material that Mr Wood was unable to rely upon because of the alleged failure to flag up the issue of agency/vicarious liability. He did not take up the offer.

viii) Having completed the trial, I am very clear in my conclusion that there has been no prejudice to Mr Wood:

a) Although the Particulars of Claim could have been clearer, the essential basis on which it was alleged that Mr Wood was liable for publication was sufficiently identified. The issue of agency/vicarious liability was raised expressly in Mr Monir's skeleton for the pre-trial review. There has been no ambush at trial. Indeed, Mr Wood's skeleton for the trial dealt with the issue of agency/vicarious liability, albeit prefaced with a contention that Mr Monir would need permission to amend to advance the argument. Critically, however, it was not suggested that an application to amend would be resisted or that it should be refused because of any identified prejudice.

b) These are essentially legal arguments advanced on the same facts that were in issue – and were always going to be in issue – in the trial. The reality is that this is a paradigm example of a case where the argument is one as to the legal consequences that follow from certain factual findings. As I have identified, there are four bases on which Mr Monir contends that, on the facts, Mr Wood is legally responsible for the 4 May Tweet. Three of them are based on the same facts, very few of which are disputed. Only the ***Byrne -v- Dean*** argument is based on different facts. I am quite satisfied that Mr Hirst on behalf of Mr Wood has had ample time to make submissions on the issues of law in relation to agency/vicarious liability, not least because the trial was adjourned between the end of April until the beginning of July.

Submissions

141. Mr Santos contends that, when he published the 4 May Tweet, Mr Langley was Mr Wood's agent. He submits that the general law of agency applies, and Mr Wood thereby becomes liable as primary publisher for the 4 May Tweet. He relies upon ***Gros -v- Crook*** **(1969) 113 SJ 408**; ***Parkes -v- Prescott*** **(1868-69) LR 4 Ex 169**; ***Hewitt -v- Bonvin*** **[1940] KB 188**; ***Veliu -v- Mazrekaj*** **[2007] 1 WLR 495** (at [32] and [40]);

Colonial Mutual Life Assurance Society Ltd -v- Producers & Citizens Co-operative Assurance Company of Australia Ltd* (1931) 46 CLR 41, 50**; ***Regan -v- Taylor* [2000] EMLR 549**; ***Economou -v- De Freitas* [2017] EMLR 4** [224]; and ***Oriental Press Group Ltd -v- Fevaworks Solutions Ltd [64].

142. Further, Mr Santos submits that Mr Langley had been appointed Bristol UKIP's Campaign Manager and was therefore acting as Mr Wood's agent in the context of an election. As such, he argues, the Court should apply by analogy the principles from election law as to the candidate's liability for the actions of his/her agent: ***Erlam -v- Rahman* [2015] EWHC 1215 (QB)** [51] to [58]; and ***Ali -v- Bashir* [2013] EWHC 2572 (QB)** [71] to [76]. Based on these authorities, he contends that, Mr Wood was liable for the actions of his agent, Mr Langley, "*even if they are committed without his knowledge and consent or, indeed, contrary to his express instructions*". Knowledge of what agents are doing does not need to be proved against a candidate for him to be fixed with responsibility for their actions.

143. Mr Hirst argues that, in the absence of express authorisation, a principal will be liable for the acts of his agent (who is not an employee) only in respect of a statement made by the agent in the course of representing his principal and where the agent has actual or apparent authority to make the statement: §§8-176 to 8-182 *Bowstead and Reynolds on Agency* (21st edition, 2017). He submits that agency is a fiduciary relationship where the principal assents to the agent acting on his behalf giving the agent authority to affect the principal's relations with third parties.

144. He argues that, in the context of defamation, a principal is not necessarily responsible for everything said by an agent: ***Bezant -v- Rausing* [2007] EWHC 1118** [72]. Mr Langley's role was not as a representative of any individual and he was not able to affect that person's relations, legal or otherwise, with third parties. The 4 May Tweet was not an act in which Mr Langley was representing Mr Wood with actual or apparent authority. Finally, when Mr Langley posted the 4 May Tweet, he was acting outside the scope of his agreed role.

Decision

145. Before turning to consider the treatment of agents under election law, I will consider the position under the general law of agency.

146. The general principle, as formulated by the authors of *Bowstead* (§8-177) (footnotes omitted) is:

> "A principal is liable in tort for loss or injury caused by his agent, whether or not his servant, and if not his servant, whether or not he can be called an independent contractor, in the following cases:
>
> (a) if the wrongful act was specifically instigated, authorised or ratified by the principal.
>
> (b) (semble) in the case of a statement made in the course of representing the principal within the actual or apparent authority of the agent: and for such a statement the principal may be liable notwithstanding that it was made for the benefit of the agent alone and not for that of the principal.

> (c) where the principal can be taken to have assumed a responsibility for the actions of the agent."

147. There are very few authorities that directly bear on the issue of liability for publication of a defamatory statement by an agent, as opposed to an employee. Many of the cases rely upon principles from vicarious liability and apply them in the context of agency, but it is clear from the discussion in *Bowstead* (§8-176) that care needs to be paid to the circumstances where it is right to do so.

148. The oldest, and clearest, authority is ***Colonial Mutual Life Assurance Society Ltd -v- Producers & Citizens Co-operative Assurance Company of Australia Ltd***. A canvasser and agent, Mr Ridley, was engaged by an insurance company under an agreement, one of the terms of which prohibited him from defaming any other person or institution. While attempting to obtain business, he made defamatory statements concerning another insurance company. It was held that in so doing he was acting, not independently, but as a representative of the first assurance company conducting negotiations for that company, and that company was liable for his statements.

149. In their joint judgment, Gavan Duffy CJ and Starke J held:

> "It was said that the defendant reserved to itself no power of controlling or directing Ridley in the execution of the work he was employed to do or of dismissing him for disobedience of orders: in short, that Ridley was an agent of the defendant in the nature of an independent contractor, and not servant of the defendant for whose tort in the course of his employment the defendant would be responsible. The nature of Ridley's employment, however, gave the defendant a good deal more power of controlling and directing his action than was conceded by the argument addressed to us. Nothing in the agreement or the position of the parties denied the right of the [defendant] to control and direct Ridley, when, where and whom he should canvass. In our opinion the judgment of the Judicial Committee in ***Citizens' Life Assurance -v- Brown* [1904] AC 423** really concludes the present case. But if it does not, still we apprehend that one is liable for another's tortious act 'if he expressly directs him to do it or if he employs that other person as his agent and the act complained of is within the scope of the agent's authority". It is not necessary that the particular act should have been authorised: it is enough that the agent should have been put in a position to do the class of acts complained of… And if an unlawful act done by an agent be within the scope of his authority, it is immaterial that the principal directed the agent not to do it. The class of acts which Ridley was employed to do necessarily involved the use of arguments and statements for the purpose of persuading the public to effect policies of insurance with the defendant, and in pursuing that purpose he was authorised to speak, and in fact spoke, with the voice of the defendant. Consequently the defendant is liable for defamatory statements made by Ridley in the course of his canvass, though contrary to its direction."

150. Dixon J (with whom Rich J agreed) held:

> "… In my opinion, the liability of a master for the torts committed by his servant in the course of his employment is not imposed upon the appellant by the agency agreement, but I do not think that it follows that the appellant incurs no

responsibility for the defamation published by the 'agent' in the course of his attempts to obtain proposals.

In most cases in which a tort is committed in the course of the performance of work for the benefit of another person, he cannot be vicariously responsible if the actual tortfeasor is not his servant and he has not directly authorised the doing of the act which amounts to a tort. The work, although done at his request and for his benefit, is considered as the independent function of the person who undertakes it, and not as something which the person obtaining the benefit does by his representative standing in his place and, therefore, identified with him for the purpose of liability arising in the course of its performance. The independent contractor carries out his work, not as a representative but as a principal.

But a difficulty arises when the function entrusted is that of representing the person who requests its performance in a transaction with others, so that the very service to be performed consists in standing in his place and assuming to act in his right and not in an independent capacity. In this very case the 'agent' has authority to obtain proposals for and on behalf of the appellant; and he has, I have no doubt, authority to accept premiums. When a proposal is made and a premium paid to him, the Company then and there receives them, because it has put him in its place for the purpose. This does not mean that he may conclude a contract of insurance which binds the Company. It may be, and probably is, outside his province to go beyond soliciting and obtaining proposals and receiving premiums; but I think that in performing these services for the Company, he does not act independently, but as a representative of the Company, which accordingly must be considered as itself conducting the negotiation in his person… [the Judge then referred to some academic commentary]

Some of the difficulties of the subject arise from the many senses in which the word 'agent' is employed. 'No word is more commonly and constantly abused than the word agent. A person may be spoken of as an agent and no doubt in the popular sense of the word may properly be said to be an agent, although when it is attempted to suggest that he is an agent under such circumstances as create the legal obligations attaching to agency that use of the word is only misleading' (*per* Lord Herschell in ***Kennedy -v- De Trafford*** **(1897) AC 180, 188**). Unfortunately, too, the expressions 'for,' 'on behalf of,' 'for the benefit of' and even 'authorise' are often used in relation to services which, although done for the advantage of a person who requests them, involve no representation.

If the view be right which I have already expressed, that the 'agent' represented the Company in soliciting proposals so that he was acting in right of the Company with its authority, it follows that the Company in confiding to his judgment, within the limits of relevance and of reasonableness, the choice of inducements and arguments, authorised him on its behalf to address to prospective proponents such observations as appeared to him appropriate. The undertaking contained in his contract not to disparage other institutions is not a limitation of his authority but a promise as to the manner of its exercise. In these circumstances, I do not think it is any extension of principle to hold the Company liable for the slanders which he thought proper to include in his apparatus of persuasion.

> The wrong committed arose from the mistaken or erroneous manner in which the actual authority committed to him was exercised when acting as a true agent representing his principal in dealing with third persons.
>
> I do not think a distinction can be maintained between breaches of duty towards third persons with whom the agent is authorised to deal and breaches of duty towards strangers, committed in exercising that authority. If what he does is done as the representative of his principal, it cannot matter, apart from questions of estoppel and of apparent as opposed to real authority, whether the injury which it inflicts is a wrong to one rather than another person."

151. The most recent edition of *Bowstead* cites the case as authority for the proposition, from the judgment of Bowen J, that "*the principal is liable for the actions of the agent when the function entrusted is that of representing the person who requests his performance in a transaction with others, so that the very service to be performed consists in standing in his place and assuming to act in his right and not in an independent capacity*" (§8-182, and see also Illustration (24) in §8-196).

152. ***Regan -v- Taylor*** and ***Bezant -v- Rausing*** do not assist.

   i) ***Regan*** is a case about whether an authorised publication of a defamatory statement by an agent attracted the same qualified privilege as would have applied had the principal published the same statement himself. The issue was not whether the client, as principal, was liable for what his solicitor published on his behalf (although Chadwick LJ clearly thought he would have been – see 569). Mr Taylor, the solicitor, was being sued personally for what he had published on behalf of the client. Although Chadwick LJ dissented in the result, all three Judges found that the scope of a solicitor's authority to publish statements on behalf of his client was a matter of fact to be determined in each case (at 564, *per* May LJ, 569, *per* Chadwick LJ and 573 *per* Henry LJ).

   ii) ***Bezant*** was a summary judgment application in which Gray J held that the claimant had failed to provide any evidence that the defendant "*caused or authorised or even knew in advance of the allegedly defamatory words published by [his solicitor]*" [72]. There was no consideration of the issue of agency.

153. ***Gros -v- Crook*** is another case of pure agency, rather than vicarious liability for the acts of an employee. The editor of a weekly publication invited a writer to contribute an article. He did, it was published, and the writer was paid for it. The article was defamatory of the claimant who brought a claim for libel against the editor and the publishers. The writer's identity was not known to the claimant and he was not a party. The writer was found to be malicious, but the editor was not. The issue was whether the defendant editor and publishers were responsible for the malice of the writer, as their agent. The defendants contended that the writer was an independent contractor and that they were not responsible for his malice. Relying upon ***Egger -v- Chelmsford* [1965] 1 QB 248** and ***Citizens Life Assurance Co Ltd -v- Brown* [1904] AC 423**, Blain J held that "*there was no doubt about the defendant's liability for the writer's tort*". He noted that there was a "*dearth of authority on the position if the writer had been an independent contractor*", but concluded that "*if the writer had not been found to be contractually the publishers' agent they would not have been held vicariously*

liable for his malice". That is an example of the language and principles of vicarious liability being used in a case concerning a relationship of agency, not employment. Both ***Egger*** and ***Brown*** were employment cases.

154. In ***Brown***, the Privy Council held that the defendant company was liable for the defamatory (and malicious) publication of its employee even if he was acting outside his authority in writing and publishing the libel. Lord Lindley held:

> "[The employee] had no actual authority, express or implied, to write libels nor to do anything legally wrong; but it is not necessary that he should have had any such authority in order to render the company liable for his acts. The law upon this subject cannot be better expressed than it was by the Acting Chief Justice in this case. He said: "*although the particular act which gives the cause of action may not be authorized, still if the act is done in the course of employment which is authorized, then the master is liable for the act of his servant.*" This doctrine has been approved and acted upon by this Board (in ***Mackay -v- Commercial Bank of New Brunswick* (1874) L. R. 5 P. C. 394**; ***Swire -v- Francis (1877) 3 App. Cas. 106***), and the doctrine is as applicable to incorporated companies as to individuals."

155. The authors of *Bowstead* suggest that: "*a person should be liable in respect of all tortious statements, whether in deceit, negligence, defamation or injurious falsehood, made by his agent (not being a servant) in the course of representing him, provided that the statement made was within a category which the agent had actual or apparent authority to make*". In support of this proposition, reliance is also placed on the High Court of Australia's decision in ***Sweeney -v- Boylan Nominees Pty Ltd* [2006] HCA 19**; **(2006) 226 CLR 161**. This was a personal injury claim. The claimant had been injured by the door of a faulty refrigerator in a service station and convenience store. The door had been negligently repaired by an engineer. The engineer was not an employee of the defendant, but a contractor engaged from time to time by the defendant. The trial judge held that the defendant was vicariously liable for the mechanic's negligence. He concluded that the mechanic "*was acting as a servant or agent of [the defendant] with the authority and the approval of [the defendant] to undertake the work that he did*".

156. The finding of liability was reversed by the New South Wales Court of Appeal and the appeal against that decision to the High Court was dismissed. As part of the judgment, however, the Court considered the rationale for the principles derived from ***Colonial Mutual Life***. The single judgment of the Court included the following:

> [22] ***Colonial Mutual Life*** establishes that if an independent contractor is engaged to solicit the bringing about of legal relations between the principal who engages the contractor and third parties, the principal will be held liable for slanders uttered to persuade the third party to make an agreement with the principal. It is a conclusion that depends directly upon the identification of the independent contractor as the principal's agent (properly so called) and the recognition that the conduct of which complaint is made was conduct undertaken in the course of, and for the purpose of, executing that agency…
>
> [24] The conclusion reached in ***Colonial Mutual Life***, that the party engaging an agent (albeit as an independent contractor) to solicit for the creation of legal relationships between that party and others is liable for the slanders uttered

> in the course of soliciting proposals, stands wholly within the bounds of the explanations proffered by Pollock [*Essays in Jurisprudence and Ethics*, 1882, at 122] for the liability of a master for the tortious acts of a servant. It stands within those bounds because of the closeness of the connection between the principal's business and the conduct of the independent contractor for which it is sought to make the principal liable. The relevant connection is established by the combination of the engagement of the contractor as the agent of the principal to bring about legal relations between the principal and third parties, and the slander being uttered in the course of attempting to induce a third party to enter legal relations with the principal.

157. The defendant in ***Colonial Mutual Life*** was liable for the slanders of the agent that were *incidental* to his primary function of soliciting business. Here, the defamatory publication of the 4 May Tweet was part of the *essential* function of the task delegated to Mr Langley: to post material on the campaigning social media platforms for Mr Wood and, in the words of Dixon J, Mr Wood left it to Mr Langley to decide what to include in the "*apparatus of persuasion*".

158. In ***Colonial Mutual Life*** and ***Gros -v- Crook***, the agent was engaged under a contract and was remunerated for his work. Is that a necessary requirement? In my judgment, it is not. There is no need for a contract or payment. A person can act as an agent on an *ad hoc* basis (or as a "*servant without remuneration*") if he is given a task to perform and is doing the principal's work for him: ***Hewitt -v- Bonvin*** at 192 *per* Mackinnon LJ. It is the delegation of performance of a task by the principal to someone to act on his behalf that gives rise to the liability on the basis of agency: at 195 *per* Du Parcq LJ.

159. ***Sweeney*** establishes that the conduct of which complaint is made must have been undertaken in the course of, and for the purpose of, executing the task that the principal had delegated to the agent.

160. What if the agent acts beyond the authority given by the principal? In my judgment the authorities make clear that, in relation to liability for defamatory publications of the agent, where the agent has been delegated the task of sending out publications on behalf of the principal, it is no answer if the agent breaches an instruction given by the principal not to publish certain material. That principle emerges clearly from ***Colonial Mutual Life***; finds support, by analogy, in the passage of the judgment of Lord Linley from ***Brown*** set out above; and is endorsed in a passage in ***Oriental Press Group Ltd -v- Fevaworks Solutions Ltd***:

> [63] Plainly, if a defendant knew the content of a defamatory article and authorised or participated in its publication, that defendant would be liable as a main publisher. As Eady J. pointed out in ***Bunt -v- Tilley***, "*It is clear that the state of a defendant's knowledge can be an important factor*" [21]... But in the present case, it is not in dispute that the respondents were unaware of the offending words until some time after they had been published on the forum. This is not a case where liability as publisher can be founded upon vicarious liability for the publishing acts of employees or upon rules for attributing liability to a corporation for the acts of its organs or agents. How then could it be said that the respondents "authorised" their publication? Mr Thomas's answer is that since, for their own commercial purposes, every posting on the forum was made with the respondents' encouragement, they must be taken to have authorised each such posting, whatever its content.

[64] It is of course possible in law that a principal might attract liability where he authorises his agent to publish whatever statement the latter may choose to publish, including a defamatory statement. However, that would have to be established as a matter of fact with evidence of some pre-existing arrangement between principal and agent or later ratification…"

161. Applying these principles to the current case, in my judgment Mr Langley was quite clearly acting as the agent of Mr Wood when he was posting material on the Bristol UKIP Twitter account, including the 4 May Tweet. I have set out my factual findings as to the operation of the Bristol UKIP Twitter account above (particularly in [38] and [51]), but in summary:

i) Mr Wood set up the Bristol UKIP Twitter account. The account was registered to Mr Wood's email address. He retained effective control over that account both practically (because he could change the password at any time) and by dint of his authority as Chairman of the Bristol branch.

ii) From May 2014, Mr Wood delegated control and operation of the Bristol UKIP Twitter account to Mr Langley. As Campaign Manager for the branch, Mr Langley was given the task of posting material on behalf of Bristol UKIP generally, and, as a candidate standing for election in 2015, Mr Wood specifically. The campaigning function had been entrusted to Mr Langley. It was readily understood and accepted by the Bristol branch generally, and Mr Wood specifically, that Mr Langley would be using his own judgment as to what to Tweet or publish via Bristol UKIP's social media channels. Mr Langley was, as he said in evidence, "*left to his own devices*".

iii) One of the campaigning platforms was to seek to highlight that the Labour Party controlled Rotherham Council when the child sexual exploitation scandal had taken place ("the Rotherham Message").

iv) There were no written guidelines as to what should be posted by Mr Langley, but he understood that he had to exercise care as to what he published in Facebook and Twitter. Mr Wood had given Mr Langley (and the other members of the Bristol branch) a standing instruction that no-one was to make racist or xenophobic attacks.

v) Notwithstanding that instruction, at least in February and March 2015, Mr Langley had posted racist material on behalf of Bristol UKIP. Mr Wood was not aware of this because he had not enforced the Prior Approval Instruction and he did not monitor Mr Langley's social media output. That was so even after Mr Wood became aware that Mr Langley had posted material on the Frost Report that Mr Wood regarded as racist.

vi) The decision not to remove Mr Langley – or even at that late stage to enforce the Prior Approval Instruction – was taken because it was politically expedient. Mr Wood was prepared to tolerate whatever risk Mr Langley presented because he did not want to lose his campaigning services at a critical stage prior to the election.

vii) Mr Wood could have chosen to retain (or at any stage, regain) personal control over the posting material on Bristol UKIP's social media channels in support of his candidacy in the election, but instead he was content to delegate the task entirely to Mr Langley.

viii) The 4 May Tweet was published by Mr Langley, not on his own account, but in discharge of his role as Campaign Manager. It was posted by him in the course of, and for the purpose of, executing the task that had been delegated to him by Mr Wood: *viz*. campaigning for Mr Wood and Bristol UKIP. It was promoting the Rotherham Message.

ix) Mr Wood cannot escape liability because Mr Langley acted against the general prohibition on publication of material that was an attack on others. He was acting within the scope of the job that had been delegated to him by Mr Wood: cf. ***Colonial Mutual Life***.

162. I reach my conclusion on agency without considering the election law authorities, but they are entirely consistent with the conclusion that Mr Langley was acting as Mr Wood's agent.

163. In ***Erlam -v- Rahman***, Commissioner Richard Mawrey QC gave a clear exposition of those who were regarded as agents of a candidate standing at an election for the purposes of election law (he had given a similar explanation in ***Ali -v- Bashir***):

> [53] Electoral law has always drawn the concept of agency very widely. In the days when those standing for election (particularly to Parliament) would be members of the upper classes, it was not supposed that they would do their own electioneering. It was taken for granted that others would carry out the hard work of persuading voters. In an era before political parties were professionally organised, the candidate would collect a body of dedicated supporters who would campaign on his behalf. Electoral law took the position that those who participated in the candidate's campaign would be treated as agents for the candidate. By contrast, members of the wider public who merely manifested support for the candidate would not be 'agents' for electoral purposes.
>
> [54] The increasingly professional organisation of political parties crystallised the distinction between agents and public. Where a political party set up a campaign team, the members of that team would *prima facie* be treated as the candidate's agents. The candidate might not know all the individual members of the team and might not have any idea of what they were getting up to: none the less, the members of the 'team' would be his agents.
>
> [55] The *locus classicus* of the definition is a case arising out of the General Election of 1874 the ***Wakefield Case XVII* (1874) 2 O'M&H 100**:
>
>> By election law the doctrine of agency is carried further than in other cases. By the ordinary law of agency a person is not responsible for the acts of those whom he has not authorised, or even for acts done beyond the scope of the agent's authority … but he is not responsible for the acts which his alleged agents choose to do on their own behalf. But if that construction of

> agency were put upon acts done at an election, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term 'agency' in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge for the purpose of promoting his election canvass and do such other acts as may tend to promote his election, provided the candidate or his authorised agents have reasonable knowledge that those persons are so acting with that object.

[56] 'Agent' is thus not by any means restricted to the candidate's official election agent but covers a wide range of canvassers (see for example ***Westbury Case*** **(1869) 20 LT 16** and ***Tewkesbury Case, Collings -v- Price*** **(1880) 44 LT 192**), committees (see for example ***Stalybridge Case, Ogden Woolley and Buckley -v- Sidebottom*** **(1869) 20 LT 75**) and supporters (see for example ***Great Yarmouth Borough Case, White -v- Fell*** **(1906) 5 O'M&H 176**). The candidate is taken to be responsible for their actions even though he may not have appointed them as agents. Knowledge of what they are doing does not need to be proved against a candidate for him to be fixed with their actions.

[57] The ***Great Yarmouth*** case cited above sets out the principles very clearly:

> There are principles, and the substance of the principle of agency is that if a man is employed at an election to get you votes, or, if, without being employed, he is authorised to get you votes, or, if, although neither employed nor authorised, he does to your knowledge get you votes, and you accept what he has done and adopt it, then he becomes a person for whose acts you are responsible in the sense that, if his acts have been of an illegal character, you cannot retain the benefit which those illegal acts have helped to procure for you … Now that is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not in accordance with their wish, but which are directly contrary to it.

[58] Clearly agency connotes some connection between the agent and the candidate. If, unknown to the candidate and without his consent, members of the public who support his candidature (or his party) engage in corrupt or illegal practices to ensure his election, those unofficial 'supporters' may well not, in law, be deemed to be his agents, although this might set up a situation of general corruption under s.164 [Representation of the People Act 1983]. What the law is designed to achieve is to make a distinction between the candidate's 'team' of supporters and canvassers and wholly unconnected members of the public who may support the candidate and engage in unsolicited acts of a corrupt or illegal nature on his behalf.

164. Although Mr Langley was not Mr Wood's nominated election agent, he would nevertheless comfortably fall within the definition of 'agent' under election law.

165. Mr Santos relied upon these authorities to support the submission that, if an election candidate is held responsible for corrupt or illegal practices by his agents for the

purposes of criminal liability or the voiding of an election result (as recognised in ***Erlam***), there would appear to be no good reason why he should not be held responsible for their tortious actions. I cannot accept that simple submission. The definition of 'agent' in election law is specific, particularly, to election law offences. It cannot simply be applied directly into the general law of agency. I do accept, however, that the authorities provide a very clear indication that, as a matter of policy, candidates standing at elections cannot hide behind their ignorance of what their agents are doing in their name.

166. In the final analysis the point does not need to be resolved because, for the reasons I have set out, I am satisfied on the basis of conventional agency authorities that Mr Langley was acting as Mr Wood's agent when he published the 4 May Tweet and so Mr Wood is liable for its publication.

(iii) Vicarious Liability

167. Vicarious liability is an area of the law that has undergone significant change in recent years. Mr Santos argues that the law has developed to the point that Mr Wood can be held vicariously liable for Mr Langley's actions. That is despite the fact that Mr Langley was a volunteer and he was not employed.

168. Based on the Supreme Court decisions in ***Cox -v- Ministry of Justice*** **[2016] AC 664** and ***Mohamud -v- Wm Morrison Supermarkets plc*** **[2016] AC 677**, Mr Santos contends that a party is liable for torts committed by a person in a position akin to that of an employee.

169. In ***Cox***, the Supreme Court held that the prison service, an executive agency of the defendant, was vicariously liable for the negligent act of a prisoner in the course of his work in a prison kitchen, even in the absence of a contract of employment. In his judgment, Lord Reed JSC summarised the current state of the common law of vicarious liability, and endorsed the approach of Lord Phillips PSC in ***Various Claimants -v- Catholic Child Welfare Society*** **[2013] 2 AC 1** (commonly referred to as the "***Christian Brothers***" case).

170. Mr Santos submits that following principles emerge from the authorities:

i) Several policy reasons were historically regarded as making it fair, just and reasonable to impose vicarious liability on a defendant where, although the defendant and the tortfeasor were not bound by a contract of employment, their relationship was 'akin to that between an employer and an employee'. The principal factors were:

a) the defendant is more likely to have the means to compensate the victim than the tortfeasor and can be expected to have insured against that liability;

b) the tort has been committed as a result of activity being taken by the tortfeasor on behalf of the defendant;

c) the tortfeasor's activity is likely to be part of the business activity of the defendant;

d) the defendant, by employing the tortfeasor to carry on the activity will have created the risk of the tort committed by the tortfeasor; and

e) the tortfeasor will, to a greater or lesser degree, have been under the control of the defendant.

In ***Cox***, of these five factors, (b), (c) and (d) were held to have particular continuing importance ([20]-[22]).

ii) A relationship other than one of employment is, in principle, capable of giving rise to vicarious liability where harm is wrongfully done by an individual who carries on activities as an integral part of the business activities carried on by a defendant and for its benefit (rather than his activities being entirely attributable to the conduct of a recognisably independent business of his own or of a third party), and where the commission of the wrongful act is a risk created by the defendant by assigning those activities to the individual in question: ***Cox*** [24].

iii) The concept of control is interpreted liberally: ***Christian Brothers*** [49].

iv) The defendant need not be carrying on activities of a commercial nature: ***Cox*** [29].

v) Nor need the benefit which it derives from the tortfeasor's activities take the form of a profit. It is sufficient that the defendant is carrying on activities in the furtherance of its own interests, and the tortfeasor must carry on activities assigned to him by the defendant as an integral part of its operation and for its benefit. The defendant must, by assigning those activities to him, have "*created a risk of his committing the tort*": ***Cox*** [30]-[31].

vi) In ***E -v- English Province of Our Lady of Charity*** **[2013] QB 722**, Ward LJ treated the ministry of the Roman Catholic Church as a business carried on by the bishop, and found that the priest carried on that business under a degree of control by the bishop and was part and parcel of the organisation of the business and integrated into it.

vii) In the ***Christian Brothers*** case, the relationship between the institute (an unincorporated association) and the brothers was found to have all the essential elements of the relationship between an employer and employees, even though the brothers were not paid and were simply bound to the institute by their vows (***Cox*** [22]). The general approach adopted was not confined to some special category of cases, such as the sexual abuse of children (***Cox*** [29]).

viii) The approach to vicarious liability adopted in ***Cox*** was mirrored by the Supreme Court's decision at the same time in ***Mohamud***, in which a customer of the defendant chain of supermarkets was the subject of a serious physical attack by an employee of the defendant in one of the defendant's petrol stations. In carrying out the attack the defendant's employee ignored instructions from his supervisor. The Supreme Court gave the following guidance as to the circumstances in which an employer should be held vicariously liable for the actions of an employee (although this extends to similar relationships, as emphasised in ***Cox***)

a) The Court has to consider (i) what functions or "*field of activities*" have been entrusted by the employer to the employee, or, in everyday language, what was the nature of his job; and (ii) whether there was "*sufficient connection*" between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable under the principle of social justice: ***Mohamud*** [44]-[45].

b) In relation to (i), even where the employer has expressly forbidden the act in itself, an employer has to shoulder responsibility on a wider basis, and becomes responsible to third parties for acts within the field of activities assigned to the employee, even if not in furtherance of the employee's employment: ***Mohamud*** [35]-[37].

c) In relation to (ii), in cases where the employee uses or misuses the position entrusted to him in a way which injures a third party the necessary connection has been found for the principle to be applied: ***Mohamud*** [45].

ix) It is possible for an unincorporated association to be vicariously liable for the tortious acts of one or more of its members. The Court adopts a flexible approach as to who is the proper defendant: ***Christian Brothers*** at [20], [27]-[33]; ***E -v- English Province*** [18].

x) The Supreme Court specifically recognised that vicarious liability can exist both (a) between an unincorporated association and one or more of its members ([20]), and (b) between one member of an unincorporated association and another, at least where the former acts on behalf of the other ([27]).

171. Mr Hirst submits in response:

i) A defendant is not to be held vicariously liable for the tortious acts of independent actors who do not stand in a relationship sufficiently analogous to employment: ***Woodland -v- Swimming Teachers Association*** **[2014] AC 537** [3]

ii) For example, an employer is not liable for an employee who takes advantage of a company email system to vent personal views unconnected with his work: ***Pena -v- Tameside Hospital NHS Foundation Trust*** **[2011] EWHC 3027 (QB)**.

iii) The relationship between Mr Wood and Mr Langley was not analogous to employment. Both were volunteers, the chair and vice-chair respectively, as were all other members of the branch. Mr Langley was not obliged to do anything for the branch. On occasions he neglected to perform administrative tasks and refused to do as he was directed. The position of Mr Langley fails all legal tests that might apply to employment.

172. Initially, I was very sceptical that Mr Wood could be held vicariously liable for Mr Langley's publication of the 4 May Tweet. Mr Wood was a volunteer, as were all the members of the Bristol UKIP branch. They had no 'business'; they were a loose coagulation of people who simply shared a common political ideology and

wished to support a political party. Bristol UKIP had no physical emanation; it was a political banner under which its members grouped. It had no assets, no premises, no constitution and no legal personality. It held *ad hoc* meetings of its members at various venues. Further, the policy considerations that have led to the imposition of vicarious liability in cases of serious physical injury or sexual abuse do not easily transpose to liability for defamatory publications.

173. Nevertheless, the arguments advanced by Mr Santos are interesting and raise difficult issues. In light of my conclusion that Mr Wood is liable for Mr Langley's publication of the 4 May Tweet on the basis of agency, I do not need to decide whether he was also vicariously liable. It seems to me that, given the complexity of the arguments, I should leave them to be argued and determined in a case where they arise squarely for determination. The Court of Appeal has cautioned Judges about expressing what would necessarily be *obiter* views in cases that can be and are determined on another basis: ***Floe Telecom Ltd (in liquidation) -v- Office of Communications (T-Mobile (UK) Ltd intervening)*** **[2009] BusLR 1116** [20]-[23] *per* Mummery LJ. If I were wrong in my conclusions as to agency, then I have found the facts which would enable the Court of Appeal to decide the point on vicarious liability if that were to be advanced by Mr Monir as an alternative basis supporting my decision on liability.

(iv) *Byrne -v- Dean* ratification

174. The fourth basis on which Mr Monir seeks to hold Mr Wood liable for publication of the 4 May Tweet is self-standing and is an alternative to the first three bases. In summary, Mr Santos contends that, following Mr Monir's telephone call to him on 8 May 2015, Mr Wood became aware of the 4 May Tweet. He thereafter failed to remove it and is taken therefore to have ratified its continued publication. From that point, it is contended, Mr Wood became liable for its publication.

175. The principle from ***Byrne -v- Deane*** **[1937] 1 KB 818** can be stated, shortly, as follows: where a third party publishes material via a medium over which the defendant has control, the defendant can become liable for the publication if, in all the circumstances, it can be inferred that the defendant, from his failure to remove the defamatory material, acquiesced in or authorised the continued publication.

176. It is important to acknowledge that liability based upon authorisation of publication, albeit on an inferred basis, is as *primary* publisher. Liability as a secondary publisher is different. At common law, all of those who were actively involved in the publication and dissemination of defamatory material were liable, even if they did not know that what was published contained a libel. Those who were ignorant that the publication contained a libel were regarded as secondary publishers. The paradigm example was the distributor of a newspaper. Secondary publishers were afforded defences under common law, but these have now been placed on a statutory footing: principally s.1 Defamation Act 1996 and latterly ss. 5 and 10 Defamation Act 2013: see discussion of Warby J in ***Richardson -v- Facebook, Google (UK) Limited*** **[2015] EWHC 3154 (QB)** [29]-[35]. There is occasionally confusion in the authorities in distinguishing clearly between (1) those who are not publishers *at all* under common law (e.g. ISPs that take an entirely passive role as conduit for a publication – see ***Bunt -v- Tilley***; and ***Davison -v- Habeeb*** **[2012] 3 CMLR 104** [38] *per* HHJ Parkes QC) and who have no need of any form of innocent dissemination defence; and

(2) primary and secondary publishers, in respect of which only secondary publishers could avail themselves of any sort of innocent dissemination defence.

177. Once liability is established under the ***Byrne -v- Deane*** principle based on *actual* authorisation of publication, the defendant cannot avail himself of any type of innocent dissemination defence. From the point of authorisation, he has become a primary publisher (cf. ***Davison*** [47]). In this case, on this issue, Mr Wood either has primary liability for publication of the 4 May Tweet or he has no liability at all. There is no room, in this case, for any form of liability as secondary publisher. I had received submissions on s.1 Defamation Act 1996, but this issue does not arise.

178. The fundamental distinction between primary and secondary liability is *knowledge* that the publication contains some defamatory matter and the ability to *control* its publication or continued publication.

179. To my mind, there is no better summary of the common law than the following paragraphs from the decision of the Court of Final Appeal of the Hong Kong Special Administrative Region in ***Oriental Press Group Ltd -v- Fevaworks Solutions Ltd***:

> [75] As the authorities on the innocent dissemination defence show, in a newspaper setting, the journalist, editor, printers (although they may nowadays better be viewed as subordinate publishers) and (vicariously) the newspaper proprietor are all treated as first or main publishers. In my view, this is because they are persons whose role in the publication process is such that they know or can be expected easily to find out the content of the articles being published and who are able to control that content, if necessary preventing the article's publication. It is because they occupy such a position that the law has held them strictly liable for any defamatory statements published.
>
> [76] In my view, the abovementioned characteristics supply the criteria for identifying a person as a first or main publisher. They are (i) that he knows or can easily acquire knowledge of the content of the article being published (although not necessarily of its defamatory nature as a matter of law); and (ii) that he has a realistic ability to control publication of such content, in other words, editorial control involving the ability and opportunity to prevent publication of such content. I shall, for brevity refer to them as "the knowledge criterion" and "the control criterion" respectively.
>
> *The knowledge criterion*
>
> [77] That the knowledge criterion identifies a distinguishing characteristic of a first or main publisher is clear from the doctrine of innocent dissemination itself: the absence of knowledge is the first requirement of that defence, being a defence only open to subordinate publishers. Thus, in ***Emmens -v- Pottle* (1886) 16 QBD 354** at **357**. Lord Esher MR stated:
>
>> "The question is whether, as such disseminators, they published the libel? If they had known what was in the paper, whether they were paid for circulating it or not, they would have published the libel, and would have been liable for so doing. That, I think, cannot be doubted."

[78] And as laid down by Romer LJ in ***Vizetelly -v- Mudie's Select Library*** **[1900] 2 QB 170** at **180**, to avail himself of the defence, the defendant must establish "*... that he was innocent of any knowledge of the libel contained in the work disseminated by him*".

[79] The knowledge criterion is also reflected in the traditional inclusion of printers as within the class of first or main publishers—and in the more recent tendency to question whether such treatment of printers ought to be maintained.

[80] Thus, in ***Thompson -v- Australian Capital TV Ltd*** **(1996) 186 CLR 574**, the Australian High Court expressed itself in favour extending the innocent dissemination defence to printers on the basis that their knowledge of content can no longer be assumed or expected. In their joint judgment, Brennan CJ, Dawson and Toohey JJ. Stated (at 586–587):

> "… in both ***Emmens -v- Pottle*** and ***Vizetelly*** printers were regarded as outside the ambit of the defence of innocent dissemination. The printing technology of the time made it inevitable that the printer would know the contents of what was being printed. With changes in technology, the logic of treating printers in the same way as distributors was accepted by the Faulks Committee in the United Kingdom and by the Australian Law Reform Commission. The logic is irresistible so long as the printer qualifies as a subordinate publisher..."

Knowledge of what?

[81] What must the publisher be shown to have known or to be expected to have known in order to be treated as a first or main publisher and so deprived of the defence? [The claimant] submitted that it was sufficient that these respondents knew that they were hosting and making accessible a multitude of postings on the forum. They must therefore, he argued, be taken to know the content of the postings or discussion threads complained of since they formed part of that multitudinous body of material. I cannot accept such a broad and indiscriminate basis for deeming an internet intermediary strictly liable as a first or main publisher. It should be stressed that adopting a more focussed requirement as to knowledge does not mean absolving a platform provider from liability. It means treating it as a subordinate publisher and throwing on it the burden of bringing itself within the innocent dissemination defence.

[82] Eady J, in ***Bunt -v- Tilley*** [22]-[23], helpfully explains the nature of the knowledge requirement in the following terms:

> "I have little doubt … that to impose legal responsibility upon anyone under the common law for the publication of words it is essential to demonstrate a degree of awareness or at least an assumption of general responsibility, such as has long been recognised in the context of editorial responsibility. As Lord Morris commented in ***McLeod -v- St Aubyn*** **[1899] AC 549, 562**: 'A printer and publisher intends to publish, and so intending cannot plead as a justification that he did not know the contents. The appellant in this case never intended to

> publish.' In that case the relevant publication consisted in handing over an unread copy of a newspaper for return the following day. It was held that there was no sufficient degree of awareness or intention to impose legal responsibility for that 'publication'. … for a person to be held responsible there must be knowing involvement in the process of publication of *the relevant words*." (Italics in the original.)

[83] In ***Emmens -v- Pottle***, in summarising the situation which gave rise to the innocent dissemination defence, Lord Esher MR stated: "… the defendants were innocent disseminators of *a thing* which they were not bound to know was likely to contain a libel" (at 357, italics supplied). And in ***Vizetelly***, Romer LJ spoke of the defendant being "innocent of any knowledge of the libel contained in *the work* disseminated by him" (at 180, italics supplied).

[84] There may well be scope for argument in any particular case as to what the internet equivalent of the article or "thing" or "work" whose contents are known to the publisher should be taken to be. However, that debate is in my view of little consequence. The important question is whether the publisher knew or can properly be expected to have known the content of the article being published. Eady J stated that knowledge of "*the relevant words*" contained in the article complained of must be shown. That should be taken to mean that the publisher must know or be taken to know the content—not necessarily every single word posted—but the gist or substantive content of what is being published, to qualify as a first or main publisher. Such knowledge may exist in relation to the content of a particular posting or a particular discussion thread or group of discussion threads, it being irrelevant whether the provider realised that such content was in law defamatory (***Bunt -v- Tilley*** [23]). I reject in any event the appellants' suggestion that a discussion forum provider should be treated as having knowledge of the content of every message posted on the forum and deemed to be a first or main publisher thereof.

The control criterion

[85] The requirement that a first or main publisher must also be shown to have control over the published content (meaning the ability and opportunity to prevent its publication) reflects the law's policy of mitigating the strict publication rule in relation to a person who plays a less important role in the publication process and thus does not know the content being published or can do nothing to prevent its publication. Conversely, if the person concerned was aware of the article's content and had the opportunity to prevent its dissemination, there is no reason in principle for excluding the strict publication rule…

[87] In ***Bunt -v- Tilley***, Eady J pointed to knowledge and control (meaning "*an opportunity to prevent the publication*") as the basis for allocating responsibility [21]:

> "In determining responsibility for publication in the context of the law of defamation, it seems to me to be important to focus on what the person did, or failed to do, in the chain of communication. It is clear that the state of a defendant's knowledge can be an important factor.

> If a person knowingly permits another to communicate information which is defamatory, when there would be an opportunity to prevent the publication, there would seem to be no reason in principle why liability should not accrue."

180. Ribeiro PJ uses the terms "first" or "main" publisher to refer to what I have called the "primary" publisher; and "subordinate" publisher for what I have termed "secondary" publisher. Conceptually, there is no difference, but I prefer the terms "primary" and "secondary" because, in the context of ***Byrne -v- Deane*** liability, it avoids the potential confusion that the relevant publisher is not the "first" publisher, yet his liability (by authorisation) is primary. The same would apply to those who consciously choose to republish the publication of another. Chronologically, they are not the "first" publishers, but their liability is also primary.

181. ***Tamiz -v- Google*** is an example of primary liability on the basis of the ***Byrne -v- Deane*** concept of authorisation: the defendant having knowledge of the defamatory publication, after being given notice, and the ability to control its continued publication [34].

182. Mr Hirst has relied upon ***Underhill -v- Corser*** **[2010] EWHC 1195 (QB)**. In that case the defendant, who was on the board of an unincorporated association and was able to prevent publication, failed to do so. He was not liable for publication as the mental element to fix him with responsibility for publishing was absent.

183. The particular facts were that Mr Corser was the secretary and treasurer of an association for steam train enthusiasts. A defamatory editorial was published in the magazine of the association about the former chairman. A draft had been sent by email to Mr Corser, with a suggestion that legal advice should be obtained. Mr Corser admitted he had received the material and had skim read it but neither approved it nor had taken any other action. He had failed to prevent it being published although, as he was on the board, and had seen it, he was in a position to do so.

184. The decision in ***Underhill*** does not, on analysis, assist Mr Wood. The claimant's submission was that, as a result of having read the article prior to publication and done nothing to stop it, the defendant should be taken to have authorised it [25]. However, Tugendhat J found that he had simply not turned his mind to the publication and so it could not be inferred that he authorised the publication [106]-[111].

185. It seems to me that the real question, at the heart of this case, is what knowledge of the publication is sufficient to sustain liability on the ***Byrne -v- Deane*** basis? Does the defendant have to know the precise words of the publication, or will some less detailed knowledge suffice?

186. ***Urbanchich -v- Drummoyne Municipal Council*** **(1991) Aust Torts Reports 81-127**, is a decision which makes it clear that whether a defendant's omission to remove the defamatory publication can be taken to authorise the continued publication is a matter of fact. There, the local council had still not removed a defamatory poster affixed to one of its bus shelters a month after notification. Hunt J held that the imposition of an obligation, on a local government authority, to remove such a poster could be unreasonably onerous or expensive and the council could well decide to schedule its works in a particular way for a wide variety of reasons. Depending upon the particular

facts, this may militate against the drawing of an inference that the council had authorised the continued publication. This really is simply emphasising that an important factor in deciding whether the inference of authorisation should be drawn is "*how readily the offending content could be withdrawn or deleted*": ***Oriental Press Group Ltd -v- Fevaworks Solutions Ltd*** [97] and cf. ***Byrne -v- Deane*** at 838 *per* Greene LJ.

187. As a general proposition, I accept Mr Hirst's submission that actual knowledge, not imputed knowledge is required: ***Murray -v- Wishart*** **[2014] NZCA 461**; **[2014] 3 NZLR 722**. The basis of liability is knowledge not negligence. But this begs the question, 'actual knowledge of what?' To adjust slightly the facts in ***Byrne -v- Deane***, would the defendants have been liable if, instead of seeing the notice for themselves, they had simply been told of its existence? And if yes, how much would they need to know about the publication before they could become liable for its continued publication.

188. In my judgment, the starting point is a passage in the judgment of Greene LJ in ***Byrne -v- Deane*** (at 838):

> "The test it appears to me is this: having regard to all the facts of the case is the proper inference that by not removing the defamatory matter the defendant really made himself responsible for its continued presence in the place where it had been put?"

189. In ***Bunt -v- Tilley*** [23], Eady J held that there must be "*knowing involvement in the process of publication of the relevant words*". In ***Oriental Press Group Ltd -v- Fevaworks Solutions Ltd*** [84], Ribeiro PJ suggested:

> "The important question is whether the publisher knew or can properly be expected to have known the content of the article being published. Eady J stated that knowledge of 'the relevant words' contained in the article complained of must be shown. That should be taken to mean that the publisher must know or be taken to know the content—not necessarily every single word posted—but the gist or substantive content of what is being published…"

190. I do not read Eady J's judgment as suggesting that liability on a ***Byrne -v- Deane*** basis can *only* be sustained if the defendant is shown to have knowledge of the precise words that are being published. In [21], the Judge recognised that the issue was fact sensitive but that, as a general statement, "*if a person knowingly permits another to communicate information which is defamatory, when there would be an opportunity to prevent the publication, there would seem to be no reason in principle why liability should not accrue.*"

191. I consider that Ribeiro PJ is correct when he held that it was not necessary to demonstrate knowledge of every single word that had been posted. Knowledge of the "*gist or substantive content*" may well, depending upon the circumstances be sufficient. In this respect, the element of control that the defendant can exert is likely to be important. The closer the connection of the defendant with the means of publication and the easier it is for him to identify and remove the defamatory publication complained about, the easier it will be to draw the inference of authorisation from the refusal/failure to prevent its continued publication. Ultimately, it is not possible to draw

bright lines around the level of knowledge that is required. The fundamental question to be answered is whether, on the particular facts, the defendant's knowledge of the defamatory publication is sufficient to draw the inference that he has authorised and should be liable for its continued publication. I draw support for this conclusion from ***Dar Al Arkan Real Estate Development Company -v- Majid Al-Sayed Bader Hashim Al Refai* [2013] EWHC 1630 (Comm)** [34] *per* Andrew Smith J.

192. Mr Hirst made an ambitious submission that the Court should hold that nothing short of written notification should suffice to sustain the inference of authorisation from continued publication following notification. No doubt written notification would be powerful evidence to which the Court would have proper regard when assessing the issue, but it is not a *requirement* that, to be effective, notification must be in writing.

193. I have set out my findings of fact about Mr Wood's knowledge of the 4 May Tweet in [75]-[81] above. In my judgment, the evidence of Mr Wood's knowledge of the 4 May Tweet is sufficient to draw the inference that he acquiesced in and thereby authorised its continued publication. My reasons for this conclusion are:

i) Following the complaint by Mr Monir, Mr Wood knew the gist and substantive content of the 4 May Tweet, even if he had not looked at its particular wording. There was nothing more that Mr Wood needed to be told about the 4 May Tweet (a) to understand the seriously defamatory nature of the what was being complained about; (b) to understand that the Tweet was being published on the Bristol UKIP Twitter account; and (c) to enable him, without much difficulty, to locate it on the Bristol UKIP Twitter account. In the particular circumstances of this case, being told Mr Monir's name would not actually have assisted and/or seeing the actual wording of the 4 May Tweet would have provided Mr Wood with any further material information.

ii) Had he chosen to take the complaint seriously, rather than dismissing it, it would have been a simple matter for Mr Wood to locate the 4 May Tweet and, having done so, it would have taken a matter of minutes for it to be deleted. The process of removing it was not onerous in the slightest.

iii) In colloquial terms, Mr Wood has a direct responsibility for publications on the Bristol UKIP Twitter account (a) because the account was registered in his name and he retained control over it; and (b) because he was the Chairman of Bristol UKIP. As a result, it was his responsibility (if not his duty) to take the complaint he received seriously and, if he was in any doubt about to what the complaint related, to investigate it properly. In my judgment, however, Mr Wood had all the information he needed to know full well the nature of Mr Monir's complaint. Mr Wood may have been irritated by the manner in which he raised his complaint, but that was no excuse for ignoring or dismissing it.

194. In the premises, I find that Mr Wood is also liable for the continued publication of the 4 May Tweet after he was put on notice of its publication by Mr Monir's complaint on or around 8 May 2015.

ISSUE 4: SERIOUS HARM

The Law

195. By section 1(1) 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.*"

196. The Court of Appeal considered the issue of "serious harm" under s.1 in ***Lachaux -v- Independent Print Limited*** **[2018] QB 594**. The principles set out by the Court of Appeal have been considered in the cases of ***Dhir -v- Sadler*** **[2018] EWHC 2935 (QB)**; ***Sube -v- News Group Newspapers*** **[2018] EWHC 1234**; ***Morgan -v- Associated*** **[2018] EMLR 25**; ***Doyle -v- Smith*** **[2018] EWHC 2935 (QB)** and most recently in ***Economou -v- de Freitas*** **[2018] EWCA Civ 2591**[1] (in which, with only one qualification ([37]), the Court of Appeal also endorsed the principles set out in ***Sobrinho -v- Impresa Publishing SA*** **[2016] EMLR 12** [46]-[50]). From these authorities, I derive the following principles:

i) The serious harm threshold is designed to weed out trivial and undeserving claims: ***Lachaux*** [75], [77]; ***Economou*** [40];

ii) If the meaning the publication is found to bear conveys a serious defamatory imputation, an inference of serious reputational harm ordinarily can and should be drawn: ***Lachaux*** [70];

iii) The seriousness of the reputational harm is evaluated having regard to the seriousness of the imputation conveyed by the words used, whether an allegation of fact or expression of opinion: coupled, where necessary or appropriate, with the context in which the words are used: ***Lachaux*** [73]; ***Morgan*** [31]; ***Doyle*** [119];

iv) An inference of serious harm can, in principle, be rebutted by evidence; for example by demonstrating that none of the publishees thought any the less of the claimant by reason of the publication. But evidence going beyond the words themselves, and the context and extent of publication, will be more likely to be relevant to quantum: ***Lachaux*** [79]; ***Doyle*** [120];

v) In mass media cases (where all the publishees cannot be identified) it is almost impossible to advance evidence that they did not believe the allegation made against the claimant and in such cases the inference of serious harm may well become "unanswerable": ***Dhir*** [44]; ***Lachaux*** [79];

vi) But, where the publishees are identifiable, a defendant may have a more realistic prospect of displacing the inference of serious harm: ***Dhir*** [45]. For example, in ***Bode -v- Mundell*** **[2016] EWHC 2533 (QB)**, Warby J granted summary judgment for the defendant as the claimant had no real prospect of showing serious harm. In respect of a limited circulation email, the evidence demonstrated that the recipients did not believe the allegation made against the claimant.

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[1] The Court of Appeal decision in ***Economou*** was handed down whilst I was preparing this judgment. On 5 December 2018, Mr Hirst, on behalf of Mr Wood, supplied me with further written submissions on the impact of the decision on the issues I have to decide. I have considered these submissions in reaching my decision as to the impact of ***Economou*** in this case.

vii) Serious harm to reputation is not a 'numbers game'; very serious harm to reputation can be caused by publication to a small number of publishees: ***Sobrinho*** [48]; ***Dhir*** [55(i)]; ***Doyle*** [122].

viii) The requirement is to show serious harm caused to the reputation of the claimant in the eyes of the publishees; not damage to the claimant's reputation in the eyes of people generally: ***Dhir*** [53]-[55]. The harm caused to a claimant's reputation by the publication of a seriously defamatory allegation to one person in the eyes of that person is a constant. It does not change if the same allegation is published to hundreds of other people or to no-one else. The number of people to whom the defamatory imputation is published goes not to the *fact* of the serious harm but to its *extent*. And, as such, is relevant not to liability but to the award of damages (if it arises).

ix) If a defendant is unable to rebut the inference of serious harm, but contends that a claim should nevertheless be dismissed because it involves only a very small-scale publication, it is to the *Jameel* jurisdiction that the defendant must turn: ***Lachaux*** [79]-[80]; ***Dhir*** [56]. The issue is then whether the limited number of publishees (and the likely reputational harm occasioned by the publication) means that there has been no real and substantial tort, or the cost of continued litigation is "*out of all proportion*" to what can be achieved: ***Jameel (Yousef) -v- Dow Jones & Co Inc*** **[2005] QB 946** [69]-[70].

197. Another principle that was reaffirmed in ***Lachaux*** was the rule in ***Dingle -v- Associated Newspapers Ltd*** **[1964] AC 371**: publication by other persons on other occasions of substantially the same libel is of no relevance on the matter of general damages [90], [92]. "*The inference of serious harm… arises from each publication … of these seriously defamatory statements*" ([89] *per* Davis LJ). The rule in ***Dingle*** therefore continues to apply in relation to serious harm (see ***Sube -v- News Group Newspapers Ltd*** **[2018] EWHC 1234 (QB)** [28]-[29]). On the issue of liability, the fact that other publications have also caused serious harm to a claimant's reputation – perhaps on a much larger scale – is no answer to the harm caused by the defendant's publication. Substantial disparity between the harm caused to the claimant's reputation by different publications *may* provide a basis on which the defendant responsible for the more limited publication could argue that pursuit of litigation over that smaller publication was *Jameel* abusive, but that requires a very careful consideration of the facts of the individual case and what the claimant seeks to achieve by the proceedings (see e.g. ***Alsaifi -v- Trinity Mirror plc*** **[2019] EMLR 1** [40]).

198. ***Dingle*** does not dispose of the need to consider the issue of causation, however. As Sharp LJ has observed in ***Economou*** ([40]-[41]), depending upon the facts of an individual case, a claimant may still be required to establish that the publication complained of caused serious harm, rather than some other publication. As is clear from Sharp LJ's analysis, in cases where the Court has drawn the inference of serious harm based upon the seriousness of the defamatory imputation, then there may well be little (if any) room for an argument as to causation.

199. In a case where, either the defamatory allegation is not of such seriousness as to raise the inference of serious harm and the claimant is therefore seeking to establish that harm by evidence, or where (as in ***Economou***) there are live issues as to reference and the effective extent of publication of the defamatory allegation, the issue of causation

may remain to be established by the claimant. Often, this will be bound up with the factual inquiry (where it can be performed) as to whether the publishee believed the defamatory allegation made against the claimant. If the publishee did not believe it, then no matter what the gravity of the allegation, it has not, in fact, caused *any* harm to the claimant's reputation.

Parties' Submissions

200. Mr Santos submits that the allegation made against Mr Monir is of such seriousness that its publication plainly raises the inference of serious harm to his reputation. He refers, by analogy, to the decision of Jay J in ***Umeyor -v- Nwakamma* [2015] EWHC 2980 (QB)**, in which the Judge was satisfied that the publication of an allegation of forgery had caused serious harm to the claimant's reputation [52]. He submits that allegations of the sexual abuse of children are of the utmost seriousness and, to the extent that any authority is required for that proposition, he relies upon ***Lillie -v- Newcastle City Council* [2002] EWHC 1600 (QB)** [1538].

201. Mr Santos submits that there has been significant publication of the 4 May Tweet, "*likely in the thousands*". He suggests that the evidence demonstrates that the publication of the Tweet goes beyond the followers of the Bristol UKIP Twitter account. Mr Santos also relies upon the republication of the Tweet (the Eddie English Facebook Post and the WhatsApp Republication). He also submits that the responses to the Eddie English Facebook Post (see [120] above) demonstrate the serious harm that has been caused by the 4 May Tweet. Mr Monir was called a "*nonce*" who should be castrated, "*needs his head caving in*" and "*his teeth taking out of his head*".

202. The evidence as to whether the identified publishees believed that Mr Monir was involved in the sexual abuse of children is as follows:

i) Mr Adalat stated that he knew the 4 May Tweet was false because he knew that Mr Monir did not drive, still less was he a taxi driver: "*so the Tweet obviously had its facts wrong*".

ii) Shazana Monir did not deal in her witness statement whether she believed the allegation made against her brother. In cross-examination, she agreed with Mr Hirst that she knew that Mr Monir was not a taxi driver and that he had never been arrested for child sexual exploitation. Mr Hirst did not ask Ms Monir whether she believed the allegation.

iii) Shamraz Monir stated in his witness statement that he had explained to people who had asked him about the 4 May Tweet that his brother was not a taxi driver and had not been suspended for child grooming. In cross-examination, he accepted that he knew immediately that the allegation made against his brother was not correct; in other words, he did not believe it. Although Shamraz told those who asked him about the 4 May Tweet that the allegation was not true, there is no evidence as to whether those who asked accepted his assurance that the allegation was not true.

iv) Shabir Daad did not identify Mr Monir from the 4 May Tweet, so I exclude him from consideration of this issue.

v) Mohammed Hussain stated in his witness statement that, when he saw the 4 May Tweet, he assumed that the allegation that the two individuals shown with Sarah Champion MP were "*child-grooming taxi drivers*" was true. In cross-examination he maintained that he did think that the allegation made against Mr Monir was true, and he added that that was why he had decided to share it with his WhatsApp groups. He accepted that he had not sent any retraction to the same groups when he subsequently learned that the allegation was false.

vi) Their discussion of the Eddie English Facebook Post (see [120] above) demonstrates that Marc David, Jake Cresswell, Tyler Dyas and Liam Terrence all believed that the allegation made against Mr Monir was true. There is no evidence that Barry Horner and/or Sue Horner thought that the allegation was false.

vii) There is no evidence that any other person who saw the 4 May Tweet disbelieved the allegation made against Mr Monir. This encompasses those who received the 4 May Tweet via WhatsApp from Mr Hussain and who were able to identify Mr Monir from his photograph.

203. Mr Hirst submits that Twitter is the most ephemeral kind of publication - informal, brief, instant and continuous - where users quickly move on to the next thing. A libel claim based on a single isolated Tweet, in which the claimant was not named, should call for the clearest evidence that some harm has been caused. He contends that, in ***Economou -v- De Freitas***, the Court refused to infer serious harm based on mass media publications in BBC broadcasts and in *The Guardian* where a claimant was not named. Whilst there was evidence that seven different groups of people had the specialist knowledge to identify Mr Economou, and upwards of 148 were identified in his evidence, there was no evidence that any of them responded to him adversely as a direct result of the particular article in question. Hostility to Mr Economou was more likely to have been caused by other contemporaneous oral and media publications not sued upon ([77]).

204. Mr Hirst submits that Mr Monir has not pleaded and shown a sufficient case that publication of the 4 May Tweet has caused serious harm, or any inference of serious harm has been rebutted, for the following reasons:

i) The 4 May Tweet was accessible online between 4 May 2015 and 1 June 2015, just 28 days. Anyone reading it would have done so just after the time of publication. The medium does not lend itself to any reasonable inference of continuing publication. Generally, he submits, people tweet and move on, as in conversation. The time the 4 May Tweet was accessible was far less than the period which the Court of Appeal in ***Tamiz -v- Google* [2013] 1 WLR 2151** ruled was an insignificant enough duration so as not to amount to a real and substantial tort.

ii) Based upon Mr Wong's conclusion as to "active accounts" (see [124(ii)] above), dissemination of the 4 May Tweet was to some 250 followers of Bristol UKIP not the large-scale newspaper circulations which were the subject of ***Lachaux*** or ***Economou***, but more in the nature of a personal communication. As Mr Langley had said in his evidence, the 4 May Tweet would have been "*very quickly buried by later tweets*".

iii) Mr Monir has not produced any emails, tweets, or messages which shows an independent third party asking him about the 4 May Tweet.

iv) Mr Monir has not identified sufficient persons who identified him so as to amount to serious harm (***Economou***, first instance, at [64]). Mr Monir's case that his reputation has been seriously harmed is based on publication to close family (who would know he was not a taxi driver or a child-groomer) and two close friends who knew it was not true.

v) Only one person identified, Mohammed Hussain, recognised Mr Monir and believed he was a child-groomer taxi driver. This is not enough for a case on serious harm where a claimant is not named in a publication.

vi) Any evidence or inference that might otherwise lead to the conclusion that the words complained of have caused serious harm to Mr Monir's reputation is rebutted by evidence that:

a) up to 29 or more other people published contemporaneously the identical or similar information about Mr Monir, almost without exception to very much larger audiences on Twitter;

b) Mr Monir has taken no steps whatsoever to disable or have removed that material;

c) the identical or similar material remains online to this day and can be accessed by anyone at any time. Mr Monir must be taken to have concluded that the ubiquity of his image alongside a statement that the person pictured is a child-grooming taxi driver does not tend to cause his reputation serious harm. No other inference can reasonably be drawn from the fact that the allegation sued upon has been allowed to remain in so many internet locations for some 3 years; and

d) Mr Monir's response to the publication is incompatible with the 4 May Tweet causing serious harm to his reputation. Mr Monir (or members of his family) made complaints to Facebook to have similar material removed but he did not similarly contact Twitter in relation to the 4 May Tweet.

vii) By the time Mr Monir commenced this claim, some 16 months after the 4 May 2015, and 15 months since the Tweet had been deleted, a statement entitled "*Bristol UKIP smears local Rotherham resident of Pakistani heritage*" had been published on 1 June 2015 on Facebook, Twitter and on the web by TellMama, a non-profit supporting reporting of hate crime against British Muslims. TellMama's statement told readers that one of the individuals in the image "*is not a taxi driver, nor has he anything to do with the grooming of young boys or girls*" and the Tweet was "*malicious and libellous*". TellMama's Facebook following is 84,000 and its Twitter following some 26,000. Mr Hirst submits that it is reasonable to infer these large followings will be made up of many in the British Muslim and Pakistani community and will have gone a long way, based on reach alone, to neutralising any damage done by the Tweet, which it expressly criticised. As a result of this act (which Mr Wood says was a sensible

step for Mr Monir to take), it cannot be said that the Tweet remained "*likely to cause serious harm to reputation*".

Decision

205. I have found the meaning of the 4 May Tweet to be that Mr Monir was involved in the sexual abuse of children ([94] above). That is a very seriously defamatory allegation. The conduct alleged is a serious criminal offence that, following conviction, would be likely to lead to the imposition of a substantial term of imprisonment. I have no hesitation in drawing the inference that the publication caused serious harm to Mr Monir's reputation.

206. Has Mr Wood rebutted the inference of serious harm? In my judgment he has not.

207. I have found that the 4 May Tweet was published (or its contents republished) to 10 identifiable individuals (see [129] above) who understood the 4 May Tweet to refer to Mr Monir. Mr Wood has only demonstrated that two of those publishees did not believe the allegation (Mr Adalat and Shamraz Monir - [202(i) and (iii)] above).

208. I am satisfied that there exists an unquantifiable number of further publishees who were members of Mr Hussain's WhatsApp groups and who are likely to have been able to identify Mr Monir because of the connection of the groups to the Rotherham area (see [130] above). It is impossible for Mr Wood to rebut the inference of serious harm that arises in respect of these publishees because he cannot know who they are, and so cannot begin to demonstrate that they did not believe the allegation.

209. I accept that Twitter is an ephemeral medium, but that does not have a direct bearing on the issue of serious harm. As I have recognised ([90] above), this feature is something to be considered when determining the objective single meaning. Once the meaning that the hypothetical ordinary reasonable reader would understand the publication to bear is determined, what other (*ex hypothesi* unreasonable) readers made of the Tweet is irrelevant. Where the seriousness of the defamatory imputation raises the inference of serious harm, it is for a defendant to demonstrate that, in fact, notwithstanding the seriousness of the imputation no serious harm was caused.

210. The submission, based on (1) ***Tamiz -v- Google*** (as to duration of publication); and (2) the limited number of publishees who were able to identify him from the photograph in the 4 May Tweet, that Mr Monir's claim does not amount to a 'real and substantial' tort is misplaced in the context of serious harm. If it had relevance, it would have been to a submission that Mr Monir's claim was *Jameel* abusive. In light of the seriousness of the allegation, a suggestion that Mr Monir's claim was 'trivial and undeserving' and 'not worth the candle' would have been untenable, but no *Jameel* argument was advanced.

211. The suggestion that Mr Monir's response to the publication of the 4 May Tweet is incompatible with it having caused serious harm to his reputation is a confused submission. First, Mr Monir's subjective assessment of what harm was caused to his reputation by the 4 May Tweet is irrelevant to the objective assessment of serious harm. Second, if it be suggested that Mr Monir does not care about the damage to his reputation (a submission I would reject without hesitation on the evidence), then that could only have been relevant to (a) the assessment of Mr Monir's hurt feelings in the

context of an assessment of damages; or (b) a contention that the claim was an abuse of process (whether under *Jameel* or otherwise). The latter argument has not been pursued, but if it had been, I would have rejected it (again, without hesitation).

212. The fact that there were, on Mr Wood's case, 29 other similar defamatory publications to the same or similar effect is not relevant on the facts of this case. They have no bearing on the issue of serious harm because of the principle in ***Dingle*** and, in any event, Mr Monir has satisfied me, on the evidence, that it was the 4 May Tweet (not some other publication) that has caused the reputational damage when it was read by the identified 10 individuals and those in the WhatsApp Republication.

213. Finally, in the absence of evidence that the TellMama publications (asserting the falsity of the allegation made against Mr Monir in the 4 May Tweet) had (a) come to the attention of the relevant publishees; and (b) been accepted by them as completely rehabilitating Mr Monir's reputation in their eyes, these publications have no bearing on the issue of serious harm. They certainly do not rebut the inference that publication of the 4 May Tweet caused serious harm to Mr Monir's reputation.

214. I conclude that Mr Monir has satisfied the requirements of s.1 Defamation Act 2013.

ISSUE 5: REMEDIES

215. The claim having succeeded, I must turn to consider the remedies that are sought.

216. Mr Monir seeks:

i) an award of damages;

ii) an injunction to restrain Mr Wood from further publishing the 4 May Tweet or any similar defamatory allegation; and

iii) an order pursuant to s.12 Defamation Act 2013 requiring Mr Wood to publish a summary of this judgment.

Mr Monir is entitled to an order under (i), whereas (ii) and (iii) are discretionary remedies.

Damages

The Law

217. I gratefully adopt the summary of the relevant principles gathered together by Warby J 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**… 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 [***Rantzen –v- Mirror Group Newspapers (1986) Ltd*** **[1994] QB 670**] 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***... This limit is nowadays statutory, via the Human Rights Act 1998."

Submissions

218. I will group the submissions made by Mr Santos and Mr Hirst on the various factors that they say have a bearing on the assessment of damages

Extent of publication

219. Mr Santos submits that there has been a very substantial publication of the 4 May Tweet when the extent of the republication is taken into account.

220. Mr Hirst contends that the starting point for any award of damages would be "*extremely low*", based on what he suggests is the lack of any evidence of any significant number of people having seen and believed the imputation in the 4 May Tweet.

Impact upon Mr Monir

221. Mr Santos submits that the publication of the 4 May Tweet has had a "*devastating impact*" upon Mr Monir. He suggests that the impact upon Mr Monir is evident from the telephone call he made to the police on 8 May 2015.

222. Before publication of the 4 May Tweet, Mr Santos contends that Mr Monir had dedicated his career to working in community engagement and volunteered with charities that help young people in his community and beyond. The 4 May Tweet, branding him a paedophile, has had a significant negative impact on his family life and relationships with his wife and young children, his charitable work and his employment. He relies upon the evidence of serious harm and distress that emerges from Mr Monir's witness statement and that of his wife, Safia Noreen. In particular, he relies upon the following:

i) As a result of the 4 May Tweet, Mr Monir became greatly distressed and isolated, was diagnosed with depression and is now on prescription medication.

ii) Mr Monir has received counselling for moderate to severe anxiety and lives in fear of physical attacks and reprisals. His confidence and financial position, family and social life have diminished as a result.

iii) Mr Monir has had eggs thrown at his property and a brick thrown through a window.

iv) He has experienced being vilified by members of his community, such as being called "*Jimmy Savile*" by another parent when dropping off his son at his primary school, where he was previously a Parent Governor. Mr Santos contends that the causal link between this incident and the 4 May Tweet is

established through the Eddie English Facebook Post, which was read by four persons who knew Mr Monir and even reached his next-door neighbour.

v) As to Mr Monir's particular sensitivity, he was already experiencing a rise in hate crime, violence towards Muslims and extreme right-wing sentiment in Rotherham. Of particular concern to Mr Monir was the brutal and unprovoked racially-aggravated murder of an elderly Muslim man with a meat cleaver. At the time of the attack, the murderers accused the victim of being a "*groomer*". Mr Monir therefore felt extremely threatened and feared for his and his young family's safety following publication of the libel.

223. Mr Hirst has not sought to challenge any of this evidence.

Previous Awards

224. Mr Hirst has not referred me to any previous awards of damages. Mr Santos has referred me to the following cases:

i) In ***ZAM -v- CFW and TFW* [2013] EMLR 27** damages of £100,000 were awarded (with a further £20,000 for distress and harassment). The defendants had made false allegations that the claimant misappropriated the family trust and was a paedophile. The number of publishees was estimated in the hundreds or, at most, the low thousands and included those responsible for a school of which the claimant was a governor.

ii) In ***Lillie -v- Newcastle City Council* [2002] EWHC 1600 (QB)** the defendant's review team maliciously published allegations that the claimants were part of a paedophile ring abusing children. The Court awarded damages of £200,000.

iii) In ***Bryce -v- Barber* (unreported, 26 July 2010)** the defendant posted indecent images of children on the claimant's Facebook profile with the comment "*Ray, you like kids and you are gay so I bet you love this picture, Ha ha*". The claimant suggested around 800 people (his Facebook friends and those on the network) could have seen the post. The defendant removed the post within 24 hours. Tugendhat J awarded £10,000 for stress and enduring anxiety brought by knowing that those close to him would have seen the image.

Aggravated damages

225. Mr Santos submits that Mr Woods's conduct of these proceedings has been unreasonable, aggressive and high-handed throughout. He contends that it justifies an award of aggravated damages. Mr Monir relies on the following alleged unreasonable behaviour, which have served to aggravate the severe injury caused to his feelings by the original libel:

i) Despite Mr Monir's requests in correspondence, Mr Wood has consistently refused to apologise to Mr Monir for the very serious and damaging libel of him.

ii) Mr Wood republished the image from the Tweet (with a red circle around Mr Monir's face) via the Bristol UKIP and his own Twitter accounts, as well as Facebook and Instagram. This was done on multiple occasions in 2016. It is

contended that these republications led to others repeating the defamatory sting, as would have been reasonably foreseeable to Mr Monir, and has caused Mr Monir great additional distress.

iii) Despite his ability to use the Bristol UKIP Twitter account during the course of these proceedings, Mr Wood has consistently refused to mitigate the damage caused to Mr Monir by publishing a correction and apology via the Bristol UKIP Twitter account. Whilst Mr Wood contends in his Defence that he no longer has responsibility for the Bristol UKIP Twitter account since stepping down as Chairman, he has managed to secure the publication of the Tweets identified in (ii) above.

iv) Mr Wood still refuses to acknowledge that he has done anything wrong. Even on his own account of the subsequent phone call with Mr Monir, Mr Wood stated in his evidence: "*I did not apologise on behalf of myself because I have done nothing wrong*".

v) Daniel Fear, the current Chairman of Bristol UKIP, accepted in evidence that he would have been prepared to publish an apology had Mr Wood asked him to do so. Mr Wood's claim while giving evidence that "*no letter from [Mr Monir's solicitors] has ever asked for an apology*" was incorrect: the first solicitors' letter sent to Mr Wood had requested an apology.

vi) Mr Santos contends that, throughout the litigation, Mr Wood has persistently made unfounded allegations of dishonesty and improper conduct against Mr Monir and this has only added to the already severe distress caused by the original libel and the considerable stresses of litigation. Mr Monir explained in oral evidence that he had found the litigation very tough and that it had made him stressed and anxious.

226. By way of response, Mr Hirst submits that whether the absence of any apology aggravates damages depends on the facts of the case. He contends that where a defence is based on lack of reference (or a denial of responsibility for publication) the absence of an apology is explicable: ***Morgan -v- Odhams Press Ltd* [1971] 1 WLR 1239**.

Mitigation of damages

227. Mr Hirst advances the following points in mitigation "*to reduce or (more likely extinguish)*" any award of damages:

i) Mr Wood immediately deleted the 4 May Tweet when notified of it by PS Wood.

ii) He conveyed his apologies and regret to both PS Wood and Mr Monir when he spoke to them in June 2015.

iii) He has not attempted to justify what was said; rather the contrary, he has always said that it was inappropriate and regrettable.

iv) Mr Wood has left UKIP and has no authority to arrange a tweeted apology. This is for those who now run the branch to agree. He has not been asked to try to

secure any retraction by Mr Monir, at any time, including when he spoke to PS Wood and Mr Monir himself in 2015.

v) Mr Hussein had circulated the 4 May Tweet via the WhatsApp Republication yet Mr Monir did not ask him to send a clarification.

vi) Mr Monir told the police that he was dealing with similar material on Facebook by making a request to Facebook to report it as abusive material and have it taken down by Facebook directly. The police advised him this was a good idea, yet it is submitted, inexplicably Mr Monir failed to make any such request to Twitter even though every Tweet has a "report Tweet" function and Twitter operates a 'Hateful Conduct' policy drafted sufficiently widely as to suggest action would have been taken, as it was with Facebook. Mr Hirst invites the Court to draw the inference that Mr Monir made a deliberate choice not to mitigate damage to his reputation, when he knew he was able to.

vii) Equally, it is claimed, Mr Monir did not take the obvious step of simply notifying the branch, UKIP, Mr Wood or any other relevant person in writing that he had a complaint about the 4 May Tweet, despite having already spoken to solicitors. Mr Wood's response on 1 June 2015 shows that the problem could have been quickly addressed. Mr Hirst invites the inference that Mr Monir "*took time trying to frame a claim rather than mitigate damage to his reputation*".

Decision on damages

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.

229. In this case, the gravity of the defamatory allegation puts it towards the top end of seriousness. The extent of publication, measured simply by the number of publishees who would have understood that the allegation was being targeted at Mr Monir, was very limited. Nevertheless, the assessment of damages is not a 'numbers game'. The Court will also assess the significance of the publishees and the extent to which publication to them (a) has caused damage to the claimant's reputation and (b) has increased the hurt and embarrassment that the claimant feels. Here, Mr Monir was particularly upset that the contents of the 4 May Tweet had ended up being published to people that he knew from his local area and even his next-door neighbour. In this case, the understandable reaction to the publication was not only hurt and embarrassment but what I find to be genuine fear and distress on Mr Monir's part. I find that, notwithstanding the fairly limited publication, there is evidence of serious and significant reputational harm (see e.g. [120] above).

230. I am quite satisfied on the evidence of Mr Monir and his wife that the publication of the allegation that he was involved in the sexual abuse of children was life changing. It has transformed the life of Mr Monir and his family for the worse. Mr Monir has become something of a recluse; afraid to carry on his normal life. The consequences of that extend beyond Mr Monir and touch his whole family. Of course, damages for libel

cannot compensate their hurt, but it is legitimate for the Court to reflect the hurt caused to Mr Monir by seeing the impact on his family of his suffering.

231. One difficulty in this case is that it is very difficult to isolate the harm caused by the 4 May Tweet. As I have set out above ([116]-[117]), there were others who published similar allegations at the time. Save for that consequences that, on the evidence, can be directly attributed to the contents of the 4 May Tweet, it is impossible to determine whether the people who threw a brick through Mr Monir's window were acting as a result of the publication of the allegation that Mr Monir was involved in the sexual abuse of children and, if so, from where they had gained the impression that he was. Mr Wood is only liable for the consequences that flow from the publication of the 4 May Tweet, not the independent and unconnected publications of similar allegations by others.

232. One striking feature of this case is the intransigence of Mr Wood and his refusal publicly to apologise and to withdraw the allegation that Mr Monir was involved in the sexual abuse of children. The fact that Mr Wood regards this allegation as "*inappropriate and regrettable*" makes this refusal even more difficult to comprehend. I am driven to the conclusion that this is a further example of Mr Wood's stubbornness. He has become completely convinced that he has done nothing wrong and therefore he will not apologise for or retract the allegation. On simply a human level, this is a difficult stance to understand. It is possible to maintain the belief that one is not responsible for some wrong done to another, but nevertheless to recognise the harm that has been caused and do what one can to remedy it. Mr Wood could have done that and, as an intelligent man, he must have realised that this was a course that could have been taken. He could have maintained, as a matter of principle, that he was not liable for the publication of the 4 May Tweet yet done the decent thing of making it as clear as he could that there was absolutely no truth in the allegation that was published in the 4 May Tweet by an organisation of which he was Chairman.

233. The consequence of what can only be called a mean-spirited stance has been: (a) to deprive Mr Monir of an unequivocal statement that this allegation was false and should never have been published; and (b) substantially to increase the hurt and stress occasioned to Mr Monir. These are all matters which have a significant effect on the award of damages. Some of the points made on behalf of Mr Wood come perilously close to the unattractive submission that Mr Monir is himself to blame for at least some of the harm to his reputation. I reject that completely.

234. A person in Mr Monir's position could easily have felt completely overwhelmed by the situation he faced. He identified the 4 May Tweet, because that was what he was first alerted to, and he set about doing what he could to have it removed. It is unattractive for any defendant to advance in mitigation that other people have also libelled the claimant, particularly in relation to an allegation as serious as this one.

235. It needs to be stated clearly: Mr Monir is completely innocent. He has been seriously libelled. He has been forced to fight a libel claim all the way through to trial with every single conceivable point being taken against him. That is not to say that a defendant is not entitled to advance legitimate points in defence of a claim, but when this delays the obtaining of what the Court finds is the vindication to which the claimant is entitled, the conduct of the defendant becomes a relevant factor in the assessment of damages. The strain that it has put on him was obvious to me when he gave his evidence. I am

doubtful even the success in this claim, the award of damages and his public vindication through this judgment will restore him to the life he enjoyed before this libel.

236. Had this libel been published in a national newspaper, an award of £250,000 or more could easily have been justified. Necessarily, I have to ensure that the award I make is proportionate to the limited scale of publication and it also has to take proper account of the difficulties of causation to which I have referred. Taking all these matters into account, I consider that the appropriate award is one of £40,000.

Injunction

237. I can deal with the claim for an injunction shortly. An injunction is a discretionary remedy. It is granted only where it has been demonstrated, by evidence, that the defendant threatens to republish the libel and the injunction is necessary to prevent the commission of further torts. There is no evidence of Mr Wood threatening to republish the 4 May Tweet or anything similar. In the circumstances, an injunction is neither necessary nor justified.

Publication of a summary of the judgment

238. s.12 Defamation Act 2013 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).

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 s.12 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 s.12 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 s.12. 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 s.12 is not justifiable or required. The claimant will be able to point to that to assist in his vindication or repair to his reputation.

242. It is difficult to justify ordering a defendant to publish a summary of the court's judgment when there is no realistic prospect that by doing so it will come to the attention of any of those to whom the original libel was published (or republished). Put simply, the legitimate aim cannot be realised, and the order will either not be necessary at all or the requirements as to publication will be disproportionate.

243. In this case, there is no method by which Mr Wood could be ordered to publish a summary of the judgment that would provide a realistic prospect of it coming to the attention of the original publishees or at least a significant number of them. Mr Wood does not have access to a reliable method of reaching the original publishees. As a matter of practical reality, Mr Monir is likely to achieve more effective vindication as a result of his success in this claim being publicised in the Rotherham area, as it is likely to be, by local media.

244. In consequence, I am satisfied that is not a case where it would be appropriate to order the publication by Mr Wood of a summary of the court's judgment. Mr Monir is likely to secure vindication of his reputation through the publicity this judgment is likely to receive through other channels.