Neutral Citation Number: [2019] EWHC 3547 (QB)

Case No: QB-2018-000892

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2019

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

Anna Turley	**Claimant**
- and –	
(1) Unite the Union **(2) Stephen Walker**	**Defendants**

- -
- -

Kate Wilson (instructed by **Hamlins LLP**) for the **Claimant**
Anthony Hudson QC and Mark Henderson (instructed by **Howe & Co**) for the **Defendants**

Hearing dates: 11-15 and 19 November 2019

- -

Approved Judgment

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

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THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. This judgment is divided into the following sections:

A. Introduction

2. This is the judgment following the trial of the claims for libel, misuse of private information, breach of confidence and breaches of the Data Protection Act 1998.

3. After the close of the evidence, the parties notified the Court that they had resolved by agreement the non-libel claims. That has narrowed the issues that I have to decide. The First Defendant has agreed to pay the Claimant damages of £2,000 for these claims. The parties have agreed no order for costs. That settlement does rather support the conclusion that resolution of the issues (several of them complicated) in relation to the non-libel claims risked being wholly disproportionate.

4. At the heart of the claim is the publication of an article on a blog operated by the Second Defendant, *The Skwawkbox*, on 7 April 2017 ("the Article"). The text of the Article is set out in Appendix 1 to this judgment. The Claimant claims that the Article defamed her. The First Defendant denies that it is liable for the publication of the Article and both Defendants rely upon substantive defences of truth and public interest.

B. The Parties

5. Until Parliament was recently dissolved in advance of the general election, the Claimant was the Member of Parliament for Redcar representing the Labour Party. She was first elected at the general election in May 2015 and was re-elected in June 2017. In the 2015 election, the Claimant received 17,946 votes (representing 43.9%) and had a majority of 10,388. In 2017, the Claimant received 23,623 votes (representing (55.5%) but her majority reduced to 9,485). Largely that appears to be a result of an improvement in the Conservative Party vote (and reduction in the votes for UKIP and the Liberal Democrats). The Claimant was unsuccessful in her re-election campaign in the general election last week. She lost her seat to the Conservative candidate, who was elected with a majority of 3,527.

6. The Claimant is a member of the trade union, Community, which she joined in 2012. In her evidence, the Claimant has identified herself as being on the centre-left of the political spectrum and within the Labour Party as a 'moderate'. She has previously worked as a Special Political Advisor to 'New Labour' politicians, David Blunkett MP and Hilary Armstrong MP. She supported, respectively, Andy Burnham and Owen Smith against Jeremy Corbyn in the Labour Party leadership elections of 2015 and 2016. The Claimant served briefly in Jeremy Corbyn's shadow cabinet, as Shadow Civil Society Minister, but resigned from it on 27 June 2016 in advance of the Parliamentary Labour Party's vote of no confidence in Mr Corbyn, which she supported.

7. The First Defendant is a trade union. It was formed on 1 May 2007 by the merger of Amicus and the Transport and General Workers' Union. It is the UK's largest trade union, with a membership of nearly 1.3 million. The First Defendant is affiliated to the Labour Party. Len McCluskey is the General Secretary of the First Defendant. He has held that post since 2011. The First Defendant and Mr McCluskey have been supporters of Jeremy Corbyn as leader of the Labour Party.

8. On 6 December 2016, Mr McCluskey called an election for a new General Secretary of the First Defendant. Gerard Coyne was one of the candidates who stood against him.

In evidence, it was stated that the closing date for votes in the General Secretary election was 18 April 2017. News of this election broke the evening before the official announcement, on 5 December 2016, in an article on the *PoliticsHome* website, under a headline "*Len McCluskey could quit as Unite Boss to trigger snap election*", which included the following:

> "The veteran left-winger [Mr McCluskey] is believed to have told members of Unite's ruling executive committee about his plan this evening…
>
> Senior Labour party figures believe it would be a 'game changer' if Mr McCluskey were to be defeated by a moderate candidate.
>
> 'Deposing Len as general secretary would give us a chance of winning the next election,' said one source.
>
> 'At a stroke it would remove Unite's support for Jeremy, leaving him vulnerable if there was another coup. The stakes are huge.'…"

9. The Second Defendant is the publisher and editor of *The Skwawkbox* which he established in May 2012. In his evidence, the Second Defendant stated that he had established the blog to report information and analysis and to offer opinions which he believed were not receiving sufficient or fair coverage from traditional media outlets. He is a member of the Labour Party and has in the past been the chair of his local Constituency Labour Party. In his statement he said that he supported the leadership of Jeremy Corbyn and also supported Mr McCluskey as General Secretary of the First Defendant. He stated that his blog had a completely open editorial position and political stance, but added this in relation to the blog's support for Mr McCluskey in the General Secretary election:

> "My support for his 2017 re-election campaign was based on a political assessment of his candidacy and the importance of his winning to the wider Labour movement. This is entirely in line with the well-publicised and completely open left-wing political stance of both the blog and personally. The blog is highly opinionated and strong in its defence of Mr Corbyn's leadership, to which a significant number in the Labour Party are vehemently opposed. As a result, my blog is often under strong attack from political opponents of Mr Corbyn whom I have criticised…"

C. The Witnesses

10. During the trial, in addition to giving evidence herself, the Claimant called the following witnesses: (1) Sarah Freeney, the Claimant's Senior Case Worker; (2) Christopher Leslie, MP for Nottingham East; (3) Ruth Smeeth, MP for Stoke-on-Trent North; (4) Alec Brown, the Claimant's Constituency Office Manager; and (5) Jordan Hall, the Claimant's Parliamentary Researcher.

11. The Defendants called the following witnesses: (1) Stephen Walker, the Second Defendant; (2) Karen Reay, the First Defendant's Regional Secretary for the North East, Yorkshire and Humberside region; and (3) Howard Beckett, one of First Defendant's Assistant General Secretaries responsible for political and legal affairs.

12. By agreement, the witness statements of the following witnesses for the Claimant were admitted into evidence without the witness being required to attend for cross-examination: (1) Charles Brady, one of the Claimant's Caseworkers; (2) Jonathan Keenan, the Claimant's husband; and (3) Simon Gallant, the Claimant's solicitor.

13. The Claimant has relied upon the witness statement of Angela Smith, MP for Penistone and Stocksbridge, as a hearsay statement. Ms Smith was unable to attend the trial because she was campaigning for re-election in the forthcoming election. The Defendants have relied upon the witness statement of Pauline Doyle, Director of Campaigns and Communications of the First Defendant, as a hearsay statement. Ms Doyle was unable to attend the trial because of a family bereavement.

14. There have not been many areas of factual dispute in the witness evidence. The few matters upon which I must make an assessment of the credibility of the witnesses are addressed in my factual findings in Section D of this judgment.

D. The Facts

Unite Community Membership

15. The First Defendant established a new category of membership in 2012, called Unite Community. Mr Beckett, in his evidence, explained:

> "[Unite Community] was intended to promote equality, dignity and respect for all. In particular, Unite Community allows for those who may be on the margins of society, who are not in employment, to organise collectively and obtain support, particularly for local and national activist campaigns…"

16. The launch of Unite Community was noted in a *Guardian* article on 1 May 2012:

> "**UK's largest union redefines Cameron's 'big society'**
>
> Unite is offering legal, debt and benefits advice for out of work people in their local communities to win new followers to its cause.
>
> When a visitor enters the Casa Bar in central Liverpool, evidence of a community's transformation is visible from the front door… The Casa is one of the founding branches of a community membership programme launched by Britain's largest trade union, Unite. For 50p a week, people not in work over the age of 16 can receive a range of benefits, including access to Unite's legal helpline, debt counselling and assistance on claiming benefits. Unite says the scheme is a natural extension of its activities and values, but it is also an attempt to reclaim members who have been lost to economic upheavals in the past three decades…"

17. In December 2016, the First Defendant published information, principally on its website and in publicly available videos, about Unite Community membership. During the trial, particular reference was made to:

    i) the First Defendant's Rule Book (which in December 2016 ran to 46 pages and extracts of which are set out in Appendix 2 to this judgment), under which it is common ground that Unite Community Membership was not available to those who were in employment (see Rule 28.1).

ii) the "Community membership" page on the First Defendant's website, ("the Unite Community Homepage") which contained the following (emphasis in original text):

> "Unite's mission is to organise people to strive for a society that places equality, dignity and respect above all else.
>
> But our union recognises that we can only achieve this if we bring people together from all walks of life.
>
> Even now in the 21st century, too many people in our country are being pushed to the margins of society. They deserve to be heard; they too deserve the support to organise collectively.
>
> It is with this in mind that Unite has founded its community membership scheme, making us the leading community trade union in the UK and Ireland.
>
> ***Unite's community membership scheme brings together people from across our society.***
>
> ***Those not in employment are welcomed into the union family, adding another dimension to our strength in thousands of workplaces across the UK and Ireland.***
>
> Organising and activism are at the centre of strong communities, which is why Unite's community membership provides a way people can find and use their political voice. Whether it is taking a stand against a service closure or coming together to improve your living environment, as a community member, Unite will be on your side.
>
> These are seriously hard times for ordinary people. Incomes, housing, our health, education and legal services – the very pillars of our society for more than 60 years – are now under assault.
>
> **It is only as standing together that we can defend our lives.**
>
> Through Unite's community membership we will work with you to make life better; we will give you the platform you need to create a fairer society. Our trade unions are the biggest voluntary group in the UK and Ireland. At 6.5 million strong, we are the Big Society. At Unite we have 1.5 million members – just imagine what you can achieve with them standing by your side?
>
> For information on the scheme send us an email.
>
> For more information and to see what benefits Community Membership brings you – providing support, helping you save money and claim your entitlements click here
>
> Or call the Community membership information line – 0333 240 9789…

JOIN UNITE

Community Membership: together we are stronger

- Community membership information guide – download the guide [LINK 1]
- 15 reasons to become a community member [LINK 2]
- UK's largest union redefines Cameron's 'big society' – read the article from the Guardian about Unite's Community membership, 1 May 2012
- Yes – I want to join for just 50p per week – download a Community membership join form or join online and become a Unite community member now
- Questions/want to know more? – then email Unite's community membership team and Unite will get back to you…"

iii) a document, titled "UNITING COMMUNITIES Getting involved", which was provided as a pdf if "LINK 1" on the Unite Community Homepage was followed, which included the following (emphasis in original text):

"**What is Community Membership?**

Unite's new category of membership brings people outside of the workplace into the union community, linking families and workplaces together to strive for a better, more caring society. Community membership places organising and activism at the centre of local communities: it provides a structure through which people can use their political voices to campaign for change.

Community membership also offers a variety of individual benefits and services, designed to look after the interests of our members and make their lives easier. These benefits range from discounts at major high street retailers, to debt counselling and a free 24-hour legal helpline.

How do you join and what does it cost?

If you are not in paid employment; a student, carer, retired or unemployed, membership costs just 50p a week which can be paid annually or monthly by Direct Debit. Unite is currently looking into other forms of payment for those who do not have bank accounts, such as pay point and cash payments.

You can join online, collect an application form at any one of Unite's local offices or download a form via the website **www.unitetheunion.org/community**.

If a member finds paid work after joining Unite Community, they will either transfer onto the full Unite membership rate or be advised to join the appropriate union if the work is not in an area covered by Unite.

> If you join another union for work, you can still maintain your Unite Community Membership and continue campaigning for a better society within your community group.

iv) a document titled "Unite Community Membership 15 REASONS TO JOIN", which was also provided as a pdf if "LINK 2" on the Unite Community Homepage was followed, which included the following:

> "Being part of a trade union is not just about having a voice in the workplace, it's about being part of a movement to create a better society.
>
> Unite is now offering community membership to members of the local community who are not working. Whether you are unemployed, volunteering, retired, at school/college or university or raising children, there is a home for you in Unite.
>
> As the biggest trade union in the UK and Ireland, Unite has negotiated great benefits and services for our members which we are now able to offer to our community members.
>
> For just 50p a week, you will have access to a range of services and benefits designed to improve your life and protect your rights. Most importantly, Unite will help you find your voice and shape your local community in a way that improves life for you and your family."

It also identified 15 benefits of Community Membership, including "*CV and application letter writing*" and "*Interview tips*".

v) the membership subscription rates published on the website, in the following four categories:

(1) "Enhanced" - ranging from £15.14 per month for those in full-time employment to £7.93 for those in part-time employment;

(2) "Basic" – ranging from £14.06 per month for those in full-time employment to £7.37 per month for those in part-time employment;

(3) "Apprentices" – starting at £2.79 per month in the first year of apprenticeship and rising to £11.27 per month in the fourth year; and

(4) "Special Discounted Rate Categories" a rate of 50p per week (or £2.17 per month) for "People not working or in further education.

vi) three videos promoting Unite Community available on YouTube, one of which was embedded on the Unite Community Homepage, which were played in full during the trial. One of these videos was available until 23 January 2017 and then replaced, from that date, by a revised version. I have re-watched these when writing this judgment.

18. My conclusions on the information provided by the First Defendant in the categories (ii) to (vi) in the preceding paragraphs are that the message was diffuse, and did not clearly communicate that Unite Community membership was solely for those not in

work. The videos generally promoted the Unite Community membership – particularly the message "Uniting Communities" – but did not state clearly the membership eligibility. There are references to the problems confronted by those who are unemployed, but this is in the context of identifying problems confronting communities generally. In the video, which was embedded on the Unite Community Homepage, one contributor refers to the fact that Unite Community provides a way for those who cannot join an industrial branch of the union to become a member. That might have raised a question as to eligibility in the mind of a particularly astute viewer, or someone who was watching the video specifically with a view to ascertaining who could join Unite Community. However, I do not consider that someone watching the videos out of general interest would have been alerted to the fact that the First Defendant's rules limited membership to those who were not employed.

19. In the written materials, again, the overall message was promoting the value (and strength) of communities acting together: "*Unite's community membership scheme brings together people from across our society*". Whilst the next sentence, "*Those not in employment are welcome into the union family*", is relied upon by the Defendants as a clear statement of eligibility for membership, in context it does not signal clearly that membership was limited *exclusively* to this category of member. The document in (iii), similarly referred to Unite Community membership as "*bring[ing] together people outside of the workplace into the union community, linking families and workplaces together to strive for a better, more caring society*". It is true that the document includes a statement, "*If you are not in paid employment… membership costs just 50p*", but the overarching message of the document is inclusivity, not a membership category that had strict limits. I accept that if one looks at these materials asking the specific question, "who is eligible for Unite Community Membership?" a close reading of the text might lead the reader to have some doubt, but this is not how these documents would be read by ordinary people. Poring over these documents in the intensive theatre of a trial, subjecting them to minute – word by word – analysis is unlikely to divine the message that would be conveyed to an ordinary reader.

20. Screenshots of the process of joining Unite Community via the First Defendant's website have been produced in evidence. These show that someone seeking to join as a member of Unite Community would, in December 2016, have gone through the following steps:

    i) Stage 1:

    > "**Join Unite online**
    >
    > You can use our Join Online form if you wish to pay by Direct Debit, either from a UK bank account or a SEPA registered bank account if you reside in the Republic of Ireland. To continue, please click the 'Join' button below."

    The applicant was then given the option of joining either as a UK resident or Republic of Ireland resident.

    ii) Stage 2: If the applicant chose 'UK Resident' then s/he was taken to the following page:

"**Join Unite online**

Please identify how you wish to pay, by selecting one of these options."

The three options were:

UK Direct debit payment

"I want to pay by direct debit from a UK bank account."

Community Member

"I want to join as a Community Member. For more information click here"

[clicking the link would take the applicant to the Unite Community Homepage]

Join as Retired

"I want to join as a retired member"

iii) Stage 3: If the applicant chose 'Community Member' then s/he was taken to a page stating that Community Membership is only available if paying by direct debit.

iv) Stage 4: If the applicant confirmed that s/he was content to pay by direct debit, the next page required the applicant to provide his/her name, date of birth and email address. Once provided, the applicant could click on to the next page.

v) Stage 5: The applicant was required to provide a postal address and at least one telephone number. The applicant was given a link to the First Defendant's data protection notice and given a choice to opt to receive Unite Magazine and/or "Partner mail".

vi) Stage 6: On the next page, the applicant was advised that the subscription rate was £2.17 monthly and then asked to enter bank details to set up a direct debit instruction.

vii) Stage 7: The applicant was then asked to select and confirm a password, for logging in to the membership section of the First Defendant's website, and to provide answers to security questions (e.g. name of first school).

viii) Stage 8: On the final page, the details provided by the applicant were set out (with an option to edit them) and confirmation of the direct debit instruction. Finally, the applicant had to tick a box stating: "*I agree to abide by the union's rules*". The underlined words were a hyperlink to a page entitled "*Structure*", which stated (bolding in original text):

"Unite is a modern trade union for the 21st Century, democratic and responsive to member's needs. Unite's structure is one in which members are encouraged to get involved and have their say. This page includes information about and links on the Unite executive council, the structure of

> the union, having your say and the Unite rule book effective from Rules Conference 2015 (approved by Executive Council September 2015) and EC Guidance on the implementation of rule (sic).
>
> ***Please note: Printed copies of the rule book are available to members from their regional office, and members that require braille or large print formats may request this by emailing Unite's Support Unit***
>
> - Unite the union rule book
> - EC Guidance on implementation of rule
> - Unite the union executive council members
> - Unite the union executive council minutes and record …
>
> [each of the bullet points linked to other pages/materials]."

The double-underlined references to the First Defendant's Rule Book linked to the full text of the Union's rules (see [17(i)] above and extracts in Appendix 2 to this judgment).

21. It is here convenient to note that at no stage in the application process was an applicant required to confirm or declare that s/he was not in employment or even that s/he was eligible for membership of Unite Community. An applicant who wished to learn more about Unite Community membership – and who accepted the invitation to follow the offered link – would have been taken to the Unite Community Homepage (see [17(ii)] above). If the applicant clicked on the link to the First Defendant's rules at Stage 8, then s/he would have been taken to the page headed "*Structure*" and, if s/he had then clicked on a link to the "Unite rule book" then s/he would have been provided with the full text of the First Defendant's Rule Book (see [17(i)] above). Only the Rule Book made it clear – by Rule 28.1 – that Unite Community Membership was limited "*to all not in paid employment as well as those not seeking employment*".

22. Once the applicant had completed the online process, s/he would receive a welcome email, generated automatically, in standard form:

> "Thank you for completing your application for Unite's Community membership which has now been processed.
>
> Your Member Number is: XXXXXXX
>
> Your User ID is: [applicant's email address]
>
> Thank you for joining Unite and welcome to our community membership. Unite is the UK and Ireland's largest trade union. Unite is organising in workplaces and communities across the nations and working hard to ensure fairness, dignity and respect for all within our society.
>
> You will soon receive your union card and details of the wide range of individual benefits you will get with your membership, in particular can I draw your attention [to] our freephone legal hotline…

> In addition to the personal benefits, trade unionism is about collective support. We are at our best when acting together, uniting to resolve the issues that really concern us.
>
> Effective campaigning that unites the broadest range of people and organisations is a skill. We intend to offer practical training to our community activists that will give you the benefits of collective organisation and effective campaigning.
>
> Unite will work with you to ensure that your voice is heard and that you gain the respect and recognition you deserve in your community. If you are interested in becoming a Unite Community Activist and would like details of how to access training options and organise a community branch in your area contact Community Support.
>
> We hope you have a long and happy association with Unite."

The Birthday Club WhatsApp Group

23. In December 2016, the Claimant was a member of a private WhatsApp group, called *The Birthday Club*. The group chat facility on WhatsApp enables members of a group to exchange messages privately with other members of the group.

24. *The Birthday Club* WhatsApp Group ("*The Birthday Club*") was set up by Christopher Leslie in late 2015/early 2016. As a result, Mr Leslie became the group administrator, and he could join others to the group. In his evidence, Mr Leslie stated that *The Birthday Club* emerged from discussions between Labour Party Parliamentarians who were disenchanted with the direction in which the Party was going after the election of Jeremy Corbyn as the party leader. Mr Leslie described *The Birthday Club* as a "*mechanism that allowed for the efficient and confidential exchange of information amongst a trusted group of politicians who shared the same outlook*".

25. The membership of *The Birthday Club* numbered some 50 MPs, and, in December 2016, included the Claimant, Ruth Smeeth, Stella Creasy and Angela Eagle.

26. At 22.40 on 5 December 2016, Ruth Smeeth posted to *The Birthday Club* a link to the *PoliticsHome* article (see [8] above) with the comment:

> "And in other news it's game on in Unite. We'll need to be careful though to ensure that it's not positioned by McCluskey as him versus us…"

27. Other members of *The Birthday Club* responded as follows (with times shown in brackets; ellipses in the original text):

The Claimant (22:42):	"Reckon they will notice if I try to join?
Ruth Smeeth (22:42):	"Nope. Join the community branch it's cheaper"
The Claimant (22:43):	"Ok you're on x"
Stella Creasy (22:44):	"Share the link Ruth – am going to enjoy this recruitment exercise … #payback"

Chris Leslie (22:44):	"Send around the link to community branch so we can all do it pls…!"
Stella Creasy (22:44):	"Great minds chris… great minds…. [picture of a baby winking]"
Ruth Smeeth (22:46):	"Here you go https://www.unitetheunion.org/join-unite/. follow the links to the community membership x"
Ruth Smeeth (22:47):	"Download the form here http://www.unitetheunion.org/uploaded/documents/Community%20application%20form11-3170.pdf"
The Claimant (22:51):	"Done. Now for a shower".

The link provided by Ruth Smeeth at 22:46 was to the Stage 1 of the online joining process (see [20(i)] above).

28. In her evidence, Ms Smeeth said that she had been a member of the First Defendant since its creation in 2007, and before that a member of its predecessor unions since she was 18 years old. She stated that until she read the Article, she was not aware that Unite Community membership was reserved for the unwaged. On the contrary, in her witness statement she said:

> "I knew in December 2016 (and continue to know today) people in my local branch of Unite who were in the Community branch even though they were in work. I believed that the Community membership was at least partly a way of allowing people to join a Union who were based in a non-unionised workplace. So, even to today's date [19 June 2019], I still believe that Unite Community membership is held by a large number of people in work… I would never have encouraged my colleagues in the Birthday Club group to join the Community section of Unite if I thought for one moment that that was contrary to the rules of the Union or was in any way dishonest…"

29. When cross-examined, Ms Smeeth did not accept that Unite Community was established to provide access to union-support for those who were not employed. Ms Smeeth maintained that, in her experience, people in non-unionised workplaces joined Unite Community. When it was put to her that this was not in accordance with the First Defendant's rules, Ms Smeeth said that she had not read the rulebook. She accepted that, in December 2016, she knew that the subscription rate for Unite Community membership was discounted. In relation to her message in *The Birthday Club* suggesting that others should join the First Defendant, she accepted that she wanted people to join to vote in the General Secretary election and to vote against Mr McCluskey. She did not accept that encouraged others to join Unite Community because this was the best means of joining without it coming to the attention of the union; she said "*No, it genuinely was cheaper*".

The Claimant joins Unite Community

30. The Claimant, as indicated in her message at 22.51, took up Ms Smeeth's suggestion and joined Unite Community, and did so in little more than 9 minutes. In her witness statement, she confirmed her recollection that she went through the online process in the stages identified in [20] above. She stated that at no stage in the process had it been indicated to her that employed people could not be members of Unite Community and she did not have to make any declaration that she was not in employment. She stated: "*If at any point there had been any indication that employed persons could not join Unite Community, I would not have submitted my application to the Community section.*" The Claimant's evidence was that she had "*no inkling*" that Unite Community was reserved for the unwaged. She had not read or seen any of the materials or videos describing and promoting Unite Community (described in [17] above). When she was cross-examined, the Claimant accepted that there was a link at Stage 2 of the online process which offered more information about Unite Community, but she stated that she had not followed it because she felt she had a sufficient understanding of Unite Community. This was based on her knowledge of its campaigning activities in her constituency. The Claimant accepted that she had ticked the box – at Stage 8 – confirming that she agreed to abide by the First Defendant's rules, but stated that she had not read them. In relation to the subscription rate, she accepted that 50p per week was substantially lower than a member of a union could expect to pay and what she paid for membership of her own union, but stated that she thought that the lower rate was because it was for membership of a community action group rather than conventional membership of a union providing work-place representation.

31. In cross-examination, Mr Hudson QC suggested to the Claimant that the reason that she had not read Unite's rules was because she had been desperate to join to gain a vote in the General Secretary election. The Claimant did not accept this and stated that she had believed that she was entitled to join. She accepted that she had breached the rules by joining Unite Community, because she was in employment, but stated that she had not done so knowingly. Pressed as to her reason for joining, the Claimant frankly accepted that she had joined for the sole purpose of gaining a vote in the General Secretary election and, had it not been for that, she probably would not have joined at all. She had intended to vote against Mr McCluskey's re-election. She also accepted that she had joined the Community section of the union as she believed that would enable her to join covertly and that was what she had had in mind when she had asked Ms Smeeth whether she thought that the union would notice her joining. The Claimant stated that she believed that if Mr McCluskey had become aware that MPs had joined, he would have tried to stop them getting a vote in the General Secretary election, but she denied that she had demonstrated that she was willing to conceal and deceive. The Claimant stated that she had wanted to join as a lay member, not as an MP. She feared that if she joined as an MP, she would then become a "Unite MP" and forced to follow Len McCluskey's 'whip', which she did not want to do.

32. After she had completed the online membership application, the Claimant confirmed that she received the welcome email (see [22] above), but had not received any membership materials – or membership card – through the post. Mr Hudson QC put directly to the Claimant that she was lying in her evidence about not receiving this correspondence. At the time, I could not immediately see why the Claimant would lie about this point. Subsequently, it became apparent from an examination of some of the

documents in the trial bundles that the Claimant's address was not accurately recorded in the First Defendant's records. The house number was recorded as 59 whereas the Claimant lived at 69. This point had not apparently been picked up by any of the parties prior to trial. Although the Defendants made some inquiries to seek to establish whether the occupants of No.59 had delivered post from Unite to the Claimant at No.69, eventually, on the last day of evidence, the Defendants withdrew the allegation that the Claimant had lied in her evidence about not having received any post from the First Defendant in connection with her Unite Community membership. Whilst making due allowance for the heat of battle during a trial, in my judgment, this allegation of lying ought never to have been made in the first place.

Unite becomes aware that the Claimant has joined Unite Community

33. It is clear that at some point in January 2017, staff at the First Defendant became aware that the Claimant had joined Unite Community. On 31 January 2017, Liane Groves, Head of Unite Community, emailed John Coan, Unite Community Coordinator for the North East, Yorkshire & Humberside region, with the text of a proposed email to be sent by Mr Coan to the Claimant:

> "Dear Anna,
>
> Thank you for joining Unite.
>
> I note that you have joined as a Unite Community member. However, I understand that as an MP you are in full time employment.
>
> As a paid worker you need to switch your membership to industrial. If you need assistance in this please let me know. I'd be grateful if you confirm this email.
>
> Best wishes
>
> John Coan"

Ms Groves said that the draft would need to be run past Karen Reay. When she gave evidence, Ms Reay said that she did not think that she had been consulted about the email (and certainly there are no email communications suggesting that she had been). On 4 February 2017, Mr Coan sought (and obtained) final approval from Ms Groves to send the draft email to the Claimant.

34. Mr Coan did not actually send the email to the Claimant until 1 March 2017 (in the terms of the draft in the preceding paragraph). I accept Ms Wilson's submission that the email exchanges between Mr Coan and Ms Groves do suggest that there was a sensitivity about contacting the Claimant. It is not clear on the evidence why the issue was regarded as sensitive or indeed why there was a further delay before Mr Coan sent the email.

35. The Claimant responded to Mr Coan's email on 7 March 2017:

> "Hi John
>
> Apologies for this – I didn't realise I had joined the wrong section, thanks for letting me know.

> Yes I would like to transfer to the appropriate membership please – do let me know how I can do this.
>
> Many thanks
>
> Anna"

36. That same day, Mr Coan forwarded the Claimant's email (copying the Claimant) to his assistant, Rose Ridley with the message: "*Can you help Ms Turley move from Community membership to full time subscriptions please.*"

37. Mr Hudson QC put to the Claimant that she had been 'found out' by the First Defendant. The Claimant said that this was the first time she had become aware of a suggestion that she was not eligible to join Unite Community. Mr Hudson QC put to the Claimant that she had not responded to Mr Coan that she did not want to become an industrial member, a 'Unite MP'. The Claimant said that she wanted a vote in the General Secretary election and was prepared to remain a Unite MP for as long as she needed to get a vote. She accepted that she did not respond to Mr Coan that she thought that she was eligible for Unite Community membership or probe why he claimed that she was not eligible. The Claimant said that she was not going to argue with him. She accepted that she did not contact Ms Ridley (and, although after publication of the Article, it is clear that Ms Ridley and Mr Coan had great difficulty in contacting the Claimant to effect the transfer of her membership).

38. On 20 March 2017, a rally in support of Mr McCluskey's re-election was held in Durham. Karen Reay attended the rally and John Taylor, Secretary of the Tees Unite Community Branch, had spoken to her. In her evidence, Ms Reay said that Mr Taylor had approached her at the rally, and he asked whether he could have a word with her. He said that he was concerned that he had members of his branch who were employed. Ms Reay said that it was a busy rally and she had asked him to email her and she said that she would look into it.

39. On 22 March 2017, Mr Taylor followed up this meeting with an email to Ms Reay:

> "Further to our chat at Len McLuskey's (sic) Rally in Durham on Monday night, here are the details of 2 members on my list who should not be in the Unite Community as one is an MP and the other, is one of her Parliamentary Staff, here are the details:
>
> Anna Turley MP [membership details given]
>
> Jordan Hall [membership details given]…"

40. Ms Reay responded to Mr Taylor stating that she would look into the matter and then forwarded Mr Taylor's email to Mr Coan on the same day and asked him if they could discuss. Mr Coan responded a few minutes later to Ms Reay and Mr Taylor:

> "I have already emailed Ms Turkey (sic) regarding this several weeks ago. I was polite but made it very clear that as a member of Parliament she needed to be paying full subscriptions and explained the criteria for Community Membership. She did reply to my email explaining that this was an error on her part and that she

> would update her membership. It's the first I have heard of the other individual but will of course look into this issue further."

It is not a point of any substance, but Mr Coan's suggestion that he had explained the criteria for Community Membership to the Claimant is not accurate. His email of 1 March 2017 did not contain any such explanation. It may be that Mr Coan had misremembered the contents of his message to the Claimant.

41. A point of potential significance is whether Mr Taylor's notification to Ms Reay as to his concern over the Claimant and Mr Hall's membership of Unite Community was an "official complaint" that was being investigated by the First Defendant (see Article §§11 and 14). In a response to a Request for Further Information, dated 22 November 2018, seeking clarification as to an investigation into the Claimant, the Defendants stated:

> "No formal investigation had begun. A complaint had been received, which needed to be investigated, but matters had not progressed beyond that point before the Claimant left the Union. Accordingly, no individual had been appointed to take charge of the investigation."

In her evidence at trial, Ms Reay said that, prior to publication of the Article, there had been a complaint and it needed to be investigated. There was no formal investigation at that stage, and she had no further contact with Mr Taylor in relation to the matter. She did confirm, however, in answer to a question by Ms Wilson, that any investigation would have been an internal matter and the First Defendant would not comment on that. She was not aware of any contact from the Second Defendant in relation to any article on the issue and she had not been aware of *The Skwawkbox* before the Article was published.

The Second Defendant's sources for the Article

42. In his witness statement, the Second Defendant gave an account of how he was given information about the Claimant's membership of Unite Community from a source. As he is entitled to do, the Second Defendant has declined to identify any of the sources who provided him with information for the Article. Whilst protecting their identities, the Second Defendant explained:

> "A few days before publication of the Article (I believe it may have been on the evening of Tuesday 4 April 2017 or the morning of Wednesday 5 April 2017) I was informed by the Primary Source that a 'flood' of new members had joined Unite Community on the concessionary rate who were ineligible for membership because they were in employment. The word 'flood' was used by the Primary Source, and I understood it to mean a significant and abnormal number over a short period, but specific numbers were not given to me. I was told that they included MPs and councillors. I was given the name of one MP, who was the Claimant, and two councillors. I decided not to identify the other two people who were named as they were not particularly newsworthy. I was told that this was a co-ordinated plan, and because of the timing, and given the political profile of those joining, that it was evident that the plan was to increase the vote for Coyne. The timing was consistent with joining to beat the cut-off date of 1 January 2017 to be eligible to vote in the election for General Secretary. I was told that a complaint had been made about the Claimant, which was being investigated at regional level.

> The above is not verbatim, as I have not retained a note of the conversation. The substance was that the source understood that the complaint was being investigated at regional level, but the words could have been 'looked into' or similar term. The source did not convey that it was being investigated in any particular way, or that there was any formal procedure under union rules."

The Second Defendant stated that this "Primary Source" was someone with whom he had a long-standing relationship and who had "*consistently proved reliable*". The "Primary Source" had, he said, never previously provided him with information that had turned out to be false. The source was described as "*active politically with extensive connections across the Parliamentary Labour Party*" and who talked regularly to MPs and parliamentary staffers. The Second Defendant stated in his witness statement that the Primary Source "*does not work for the First Defendant, and to my knowledge never has done. I have no knowledge of any other connection [the source has] with the First Defendant or what union [the source is] a member of, if any.*"

43. Thereafter, the Second Defendant stated that he contacted two further sources to whom he put the information that 'right-wingers' including the Claimant were joining Unite Community. The Second Defendant described these as "Secondary Sources" and he said that they confirmed to him that: "*there was indeed a co-ordinated move to join Community to vote against the General Secretary, being done by people who clearly did not qualify for the concessionary Community rate, and that these included the Claimant.*"

44. All that the Second Defendant has been prepared to reveal in evidence as to the status of the various sources is that:

    i) neither Mr Taylor nor Ms Reay were sources;

    ii) the Primary and Secondary Sources did not work for the First Defendant; and

    iii) the employer of one of the Secondary Sources was a Labour MP.

45. Mr Taylor has not given evidence, but Ms Reay also denied when she gave evidence that she had provided information to the Second Defendant. During the trial, Ms Wilson generally kept open the possibility that she would invite me to conclude, notwithstanding this evidence, that Ms Reay and/or Mr Taylor were included amongst the Primary and Secondary Sources identified by the Second Defendant. However, in her closing submissions, she has submitted that, although the Court would not be able to resolve who were the sources, I should nevertheless conclude that someone at the First Defendant must have supplied the information.

46. My conclusions on the evidence are as follows:

    i) I accept the evidence of Ms Reay and the Second Defendant that Ms Reay and Mr Taylor did not provide information to the Second Defendant for the Article.

    ii) Although, given the nature of the information that was provided, the likelihood is that it must have originated from the First Defendant, it is not possible to identify how that information was passed to the Second Defendant (e.g. via some an intermediary).

iii) The Claimant has not demonstrated that anyone at the First Defendant passed the information to the Second Defendant. Without establishing that, it is also impossible to resolve whether the First Defendant would be legally responsible for this person's actions (whether by vicarious liability or on some other basis).

The First Defendant's Press Statement

47. In his witness statement, the Second Defendant stated that it was his usual practice to have the information for an article settled before he started to approach people for comment. In relation to the Article, he said that he wished to obtain a comment from the First Defendant before approaching the Claimant so that the information that he put to her "*was as corroborated as possible*".

48. So, on 6 April 2017, he contacted the press office of the First Defendant by telephone. Although he did not know her name, it is common ground that he spoke to Pauline Doyle. Ms Doyle was the Director of Campaigns and Communications at the First Defendant, a post she has held for some 9 years. The Second Defendant said that he put the substance of §11 of the Article to Ms Doyle; that he was aware that a complaint had been made about the Claimant and was being investigated or 'looked into'. The Second Defendant said that he asked which regional officer was dealing with the complaint and was told that it was Karen Reay. Finally, he asked whether Ms Doyle would give him a general comment on a move by ineligible people joining at the concessionary rate in order to vote in the election. Ms Doyle, he said, told him that she would have to get back to him.

49. Ms Doyle did not give evidence at the trial, and her statement has been admitted as hearsay. In it, she said that she did not have a clear recollection of what she had said to the Second Defendant and did not keep notes. She said that she was busy – because of the General Secretary election – and that her priority and focus at the time "*was to shut down any inquiries regarding the election*". There were two reasons for this, she said. First, it was not for the First Defendant to make statements or comments about the candidates in the election. Second, she was seeking to limit any possible reputational damage that the General Secretary election was causing to the First Defendant. She recalled that the Second Defendant had initially sought a comment on the Claimant having joined the union on reduced Unite Community rates and a complaint having been raised about this. Prior to receiving this inquiry, Ms Doyle had had no prior dealings with the Claimant and told the Second Defendant that she would need to look into the points that he had raised and get back to him.

50. Ms Doyle then raised the substance of the Second Defendant's inquiry with Ms Groves. She could not recall whether they had spoken on the telephone or whether she had spoken to her in person, as they both occupied offices in the same building. Ms Groves was aware that the Claimant had joined Unite Community and put Ms Doyle in touch with Mr Coan. Ms Doyle believed that she spoke to Mr Coan later that day, or possibly the next day. Her recollection was that Mr Coan had told her that the Claimant had contacted his assistant, Ms Ridley, to change her membership category (and subscriptions) and it was only subsequently that a complaint had been raised. Although Mr Coan did not provide Ms Doyle with copies of his email exchanges of 1 and 7 March 2017 with the Claimant, having seen them subsequently, she believed that Mr Coan had "*talked [her] through the substance of them*". Following the complaint, Mr Coan had discovered that the Claimant had not responded to Ms Ridley

and that the Claimant's direct debit mandate for her subscriptions could not be increased without speaking to her. Ms Doyle was aware that there was no formal membership discipline investigation into the Claimant. The outstanding issue related to the Claimant's subscriptions.

51. With this information, and explaining her decision as to the comment she gave to the Second Defendant, in her witness statement, Ms Doyle stated:

> "The fact that the Second Defendant, as a journalist, knew what he did about the Claimant's membership and a complaint, was not something I wanted to be commenting on. The First Defendant is a trade union and its main priority is getting on with trade union business, and not enquiries like those of the Second Defendant. I just wanted to close down the enquiry from the Second Defendant, whilst at the same time making it clear that those in work could not join Unite Community.
>
> I therefore decided to keep the statement factual and as limited as possible, with no names mentioned. My intention was to prevent the union's internal business being dragged into the media. I think that I suggested to John Coan that I would see if I was contacted again, rather than going back to the Second Defendant and, if I was, I would say something along the lines of the statement the Second Defendant subsequently published. Looking at the statement, I would have suggested that I respond generally about the fact that the First Defendant welcomes new members, but anyone joining on a fraudulent basis would prompt an investigation. This statement was true and it was not a statement about the Claimant. Then in terms of responding regarding the complaint about the Claimant, which the Second Defendant knew about, I would have just confirmed a complaint had been received and was being looked into. My intention again, was to close down the enquiry and I think John Coan would have agreed with my approach at that time.
>
> The Second Defendant did call me back and I provided the First Defendant's statement… I did not write down the statement I gave, but I have read what is included in the Second Defendant's article… I believe that what the Second Defendant has published is a broadly accurate reflection of what I said to him…"

52. In her statement, Ms Doyle stated that, on reflection, in the statement she provided to the Second Defendant, her suggestion that a complaint into the Claimant was being "investigated" may have given the wrong impression:

> "I can see now that by saying it was being 'investigated', as opposed to perhaps saying 'considered', 'examined' or 'looked into' could have led people reading more into the statement than was intended. I was not saying that there was a formal 'investigation' underway and I did not intend my statement to be interpreted in this way. To me this was a 'nothing' enquiry by a blog with a limited readership…"

53. In relation to the – now resolved – claim for breach of the Data Protection Act 1998, Ms Doyle said:

> "I had no intention when making the statement of breaching any data protection duties owed to the Claimant. I really did not think about this at the time. I do not know if it was because the Claimant is a MP and media enquiries regarding MPs are normally on matters of public record. The union would generally treat an enquiry about a MP as something we could answer because their membership

> should be a matter of public record. A MP is a public person and being in a union is something that the Labour Party requires and promotes, so to me it was not something out of the norm to respond to an inquiry which may relate to a MP. It just did not cross my mind that what I was saying was revealing personal data. Now, with hindsight, I would not have provided to the Second Defendant the personal data which is referred to in [the Press Statement]. However, from my best recollection, the Second Defendant already indicated that he knew the Claimant had joined as a Unite Community member and that a complaint had been raised about this. By responding as I did, I was just trying to shut the enquiry down at what was a very busy time dealing with extraordinary high volume (sic) of enquiries."

54. In his witness statement, the Second Defendant said that, by the early afternoon on 7 April 2017, he had not heard back from Ms Doyle. He had created a working draft of the Article and telephoned Ms Doyle again to follow up on his request for a comment that he had made the day before. He said that Ms Doyle gave him the response that he recorded in the Article and that he had typed what appears in §14 of the Article ("the Press Statement") directly into the text whilst she was on the telephone. The Second Defendant said that he asked Ms Doyle whether Unite Community had an exception to the 'unwaged' rule for MPs and Ms Doyle confirmed that there was not.

55. The First Defendant does not dispute that Ms Doyle gave the Press Statement to the Second Defendant as it appeared in the Article. It is convenient for me to state, here, my further conclusions of fact in relation to this part of the evidence. In doing so, I am conscious that I am rejecting some parts of Ms Doyle's evidence without that evidence being tested in court. Nevertheless, I am satisfied that, assessed against the evidence as a whole, I am justified in reaching these conclusions:

i) From her conversations with him, Ms Doyle knew that the Second Defendant intended to publish an article which would contain at least the following basic facts:

   (1) that the Claimant had joined the First Defendant on reduced Unite Community rates;

   (2) that, as she was in full-time employment as an MP, she was not entitled to join Unite Community; and

   (3) that a complaint about the Claimant's conduct in doing so had been received and was being investigated by the First Defendant.

ii) Ms Doyle was an experienced press officer. She would have been fully aware that she did not need to provide a comment to the Second Defendant at all but, if she did provide one, it was liable to be published as a statement made on behalf of the First Defendant in an article that was likely to include at least the basic facts she had been told by the Second Defendant together with any additional facts she provided or confirmed. Knowing this, Ms Doyle provided an 'on-the-record' statement for publication as the official response from the First Defendant to the allegations against the Claimant outlined by the Second Defendant. She would have understood fully that, once she had provided a

comment for publication, there was little practically she could do to prevent the Second Defendant from publishing it.

iii) Ms Doyle had sufficient time to investigate the points that had been put to her by the Second Defendant and to consider what, if any, statement the First Defendant would give for publication and its terms; she was not 'bounced'. If she had wanted to take care over the terms of any statement to ensure that her meaning was clear, she could have taken time to provide a written statement for publication (or drafted one that she could read to the Second Defendant).

iv) If Ms Doyle's intention had been to "*shut down*" the inquiry made by the Second Defendant, providing the Press Statement for publication which referred to people "*joining on a fraudulent basis*" was, as she must have realised, likely to excite, not diminish, interest in the story. It was the equivalent of throwing a substantial quantity of fuel over a very small fire. Ms Reay stated in her evidence that the First Defendant did not usually comment on internal investigations. Ms Doyle could simply have given that answer to the Second Defendant. If Ms Doyle thought that she was dealing with a "*nothing enquiry by a blog with limited readership*", that might explain her incautious choice of words in the statement she provided for publication.

v) My conclusion is that, objectively judged, the Press Statement provided by Ms Doyle was probably the most powerful contributor to the overall defamatory meaning of the resulting Article; in just two sentences she delivered the unambiguous element of fraud. Ms Doyle should have recognised this.

vi) She also provided confirmation of further facts that appeared in the Article: she confirmed that the First Defendant was carrying out an investigation into the Claimant; that this was being conducted by Ms Reay; and there was no exemption to the First Defendant's rules that would allow an MP to join Unite Community.

vii) The fact that Ms Doyle did not use any names in the Press Statement had no practical effect, a fact that, given her experience, Ms Doyle must have realised. Ms Doyle knew that her statement, given in the context of the allegations the Second Defendant had put to her about the Claimant's joining Unite Community in breach of the rules, was liable to appear in an Article reporting the same allegations and identifying the Claimant. Certainly, the Second Defendant had given Ms Doyle no indication that he would not be naming the Claimant in any article he published.

viii) I cannot accept that Ms Doyle really thought that the first sentence of the Press Statement was not referring to the Claimant, and I reject as wholly unrealistic the explanation she gives in her witness statement as to how she reached that conclusion. Ms Doyle has not suggested that the two sentences that appeared in §14 of the Article had been separated by some other words, omitted by the Second Defendant, that thereby distorted her meaning. I accept the Second Defendant's evidence that he typed her comment for publication into the draft Article as she gave it to him on the telephone. The reference in the second sentence to the "complaint" that had been received could, in context, only have been understood as a complaint about the Claimant. Further, it must have been

obvious to Ms Doyle that both sentences would, if published in an article containing the allegations that the Second Defendant had outlined to her, be understood as referring to the Claimant.

Efforts to obtain comment from the Claimant

56. Having obtained the First Defendant's comment for publication, the Second Defendant sent an email to the Claimant, at her Parliamentary email address, at 15.17 on 7 April 2017, headed "*Your Unite Community Membership*":

> "Dear Ms Turley
>
> The SKWAWKBOX had received information indicating you joined Unite Community union earlier this year – a section of Unite for unemployed people – in order to vote for Gerard Coyne.
>
> Do you wish to provide any comment on why you didn't join the main Unite union for an extra £10 or so a month before the story goes out.
>
> Regards,
>
> Steve
>
> Editor
>
> The SKWAWKBOX"

57. Ms Wilson cross-examined the Second Defendant as to what his email did not contain. She put it to him that he had not included what the First Defendant had told him: that a complaint had been received and was being investigated by the First Defendant, that membership of Unite Community was exclusively for the unwaged, that there was no exemption for MPs to join Unite Community; that she had made a false declaration in order to join Unite Community and that the First Defendant's spokesperson had said that anyone joining Unite on a fraudulent basis would prompt an investigation. The Second Defendant accepted that his original email had not contained these details. He said that he did not put all the information to her because he did not want her to be "*fully forewarned*". He said that when he telephoned her office, at 16.07, he had outlined the nature of the article (I deal with this call in [61]-[66] below).

58. Not initially giving the subject of an article the full facts is a strategy that may be used by a journalist (by analogy, it can be effective when used in police interviews of a suspect). It is sometimes adopted in cases where the facts of the individual case, or prior experience of the subject, suggest that s/he may tailor his/her answer to fit the facts that are put to him/her and/or s/he will try to "spoil" the story by providing information to another publisher. It must be recognised, however, that this strategy is not without risk. If only limited information is given to the subject it may mislead him/her as to the seriousness of the inquiry. If the subject does not respond – and, in consequence, the publication does not contain his/her response – the journalist may face criticism for not having given the subject a fair and accurate description of allegations prior to publication. Ultimately, whether the subject has been given a fair opportunity to give his side of the story will be a relevant factor if the journalist seeks to rely upon the public interest defence in response to any defamation claim.

59. The Second Defendant received an automated response to his email to the Claimant, which included the following:

> "Thank you for contacting the office of Anna Turley MP for Redcar.
>
> This is an automated response to acknowledge receipt of your email…
>
> I will deal with correspondence in the order that I get it. Please be patient whilst I process your email and request. It may take up to 4 weeks to respond to your email, but we will always aim to respond as soon as possible…"

60. The Second Defendant sent a further email to the Claimant's email address at 15.53:

> "The article will be published tonight, so please respond by return if you wish any comment to be included".

61. The Second Defendant has a record showing a call – of 2 minutes 12 seconds duration – to the landline number of the Claimant's constituency office at 16.07. There is some confusion in the witness accounts about this call (and whether there was another call), in particular to whom the Second Defendant spoke during the afternoon. The following summarises the (at times conflicting) evidence:

i) The Claimant was not in her constituency office that afternoon. There had been serious flooding in the Redcar area, and she was out of the office – together with her office manager, Alec Brown – assisting some constituents who had been affected. The Claimant's evidence is that, at some point during the afternoon, Mr Brown told her that he had received a call from Sarah Freeney, who was in the constituency office, to say that they had received an email and a voicemail message from *The Skwawkbox* which was intending to publish an article about the Claimant. The Claimant told Mr Brown that she would deal with the inquiry when she returned to the office. Later that evening, from 18.15, the Claimant attended an Executive Committee meeting of her local constituency Labour Party.

ii) The only other person who was at the constituency office that afternoon – with Ms Freeney – was Jordan Hall. Ms Freeney's evidence was that as they were down to half the normal staff in the office, she and Mr Hall left any calls to go to voicemail that afternoon. Mr Hall said, in his evidence, that he would not normally answer the phone in any event. Ms Freeney said that she would check voicemail messages when she had an opportunity, perhaps each hour or every couple of hours. She left the office that afternoon at 17.00. At some point – she estimated between 15.30 and when she left at 17.00 – she checked the voicemail and found a message from a person calling from *The Skwawkbox*. She could not remember the content of the message but said, in her statement, that "*it was not a significant message and it was quite short*". Voicemail messages are not routinely kept. Ms Freeney recalled mentioning the message to Mr Hall and she may even have played him the message, she could not recall. Mr Hall told her that they had received an email as well from *The Skwawkbox*. Ms Freeney said that she telephoned Mr Brown at about 15.30 to tell him about the contact from *The Skwawkbox*. She thought it was about that time because of the timing of a particular meeting that afternoon. Mr Hudson QC put it to Ms Freeney in cross-

examination that she had answered a call from the Second Defendant at 16.07. Ms Freeney said that she did not recall that, and she did not think that she had answered any calls that afternoon. Ms Freeney's evidence was that she had not spoken to anyone from *The Skwawkbox* that afternoon.

iii) Mr Hall said that that afternoon he was in the constituency office and was monitoring the Claimant's email. He picked up the email from the Second Defendant sent at 15.17. He was told by Ms Freeney that someone from *The Skwawkbox* had left a voicemail message and Mr Hall asked her to phone Mr Brown (who was with the Claimant) and tell them of the message. Mr Hall was aware of *The Skwawkbox* but said that he did not consider it a credible media organisation and would not normally treat it as a priority. Nevertheless, he considered, from the content of the email, that it did need to be brought to the Claimant's attention. Later, at 16.42, he forwarded the 15.17 email from the Second Defendant to the Claimant's personal email account, and said, in the accompanying message: "*This is one of those far left news organisations like the Canary. My bet is on John Taylor or someone in the local Tees Unite Community branch being the source for this.*" It is plain from the terms of his message that Mr Hall did not consider that the matter was urgent, and this is consistent with his evidence that he had not seen the further email from the Second Defendant at 15.53 indicating an intention to publish that evening.

iv) Mr Hudson QC specifically asked Mr Hall whether he had taken the call from the Second Defendant at 16.07. Mr Hall said that he had not done so. He confirmed what Ms Freeney had said about letting all calls go to voicemail that afternoon.

v) In his witness statement, Alec Brown said that he had been out of the office with the Claimant visiting flood victims during the afternoon of 7 April 2017. He said that he received a call from Ms Freeney at around 15.30 and was told that the Claimant had received an inquiry from *The Skwawkbox* about her membership of Unite. Mr Brown passed the information to the Claimant, he thought, limited simply to the fact that *The Skwawkbox* had been in touch about her Unite membership. The Claimant had said that she could not deal with the inquiry at that time but that she would deal with it later. When cross-examined, Mr Brown denied that he was aware that *The Skwawkbox* was demanding a comment that day.

vi) In his witness statement, the Second Defendant stated that he had made one call to the constituency office – at 16.07 – after he had not received a response to his emails. He said that he spoke to a man who told him that he was a member of the Claimant's constituency office staff. The Second Defendant said that this man told him that the Claimant was in the office, but that she was busy. The Second Defendant described the rest of the conversation, as follows:

> "I told him that I had sent two emails about the Article, that it was going to be published that evening, and that I needed her comment, if any, urgently. I had not mentioned a complaint and investigation in the original email because I wanted to see first what she came back with before disclosing everything I had been told. However, since she had not responded, and to try to encourage her staff to deal with my request for comment urgently in the

> hope she would respond, I gave the person I spoke to the additional information that I had been given: that there had been a complaint about the Claimant that was being investigated. The Claimant's staff member told me that he would get the message to the Claimant, and that she would return my call. I left him with my mobile number and instructions that the Claimant could reach me at any time. I did not receive any return telephone call from the Claimant, and I heard nothing further from her, in relation to the Article…"

vii) When he was cross-examined, the Second Defendant said that he had no recollection of having left a voicemail message that afternoon, but that, if Ms Freeney and Mr Hall had a clear recollection of one having been left, he was prepared to accept that he may well have done. He also had a recollection of only having made one call to the constituency office.

62. In his closing submissions, Mr Hudson QC did not set out what findings of fact he contended I should make in relation to the telephone call at 16.07. Ms Wilson submitted that the evidence supported the following factual findings:

i) that the Second Defendant had left a voicemail which was picked up by Ms Freeney;

ii) that the Second Defendant made only one call to the Claimant's office and that it must have gone to voicemail (i.e. that the call made by the Second Defendant at 16.07 went to voicemail and was not answered, by a man, as claimed by the Second Defendant); and

iii) that the Second Defendant did not speak to Mr Hall that afternoon and there was no other male in the office to whom he could have spoken.

63. At the time the Article was published, the Second Defendant said that he was not in the habit of taking notes. The journalistic practice of taking – and preserving – notes in circumstances like this can prove to be very important. For example, the Second Defendant did not apparently identify the person to whom he said he spoke in the call at 16.07; he could say only that it was a man. It would have been of considerable assistance – both generally and specifically on this point – if the Second Defendant had noted down basic facts of the process of preparing the Article for publication; to whom he had spoken and what they had said. If a journalist or publisher is seeking to rely upon a public interest defence under s.4 Defamation Act 2013, then s/he may well find it of benefit to be able to document the process of investigating and preparing the article for publication. Ultimately, it is for the person who seeks to rely upon a defence of public interest to prove the necessary facts in support of it. This includes proof that the defendant believed that it was in the public interest to publish the statement and that such belief was reasonable.

64. On the evidence I have, I find it impossible to reach clear conclusions about the call(s) made that afternoon by the Second Defendant to the Claimant's office. Whilst I am satisfied that there was a call at 16.07, the evidence as a whole cannot support a finding that the Second Defendant had a conversation, in the terms described in his witness statement, with anyone in the Claimant's office.

65. Mr Hall was the only viable candidate given that the Second Defendant claimed to have spoken to a man, but I am sure that the Second Defendant did not speak to Mr Hall, for the following reasons:

    i) Mr Hall would not have told the Second Defendant that the Claimant was in the office when she was not.

    ii) The terms of Mr Hall's email to the Claimant (at 16.42) are inconsistent with Mr Hall having had a conversation with the Second Defendant, only some 30 minutes beforehand. If the Second Defendant had given Mr Hall the information he claims he provided, then Mr Hall would, I find, have:

        (1) considered the matter urgent, and would almost certainly have telephoned the Claimant;

        (2) given her the further information that the Second Defendant provided during the call and which he said he intended to publish; and

        (3) warned the Claimant that the Article was going to be published that evening.

    iii) Finally, as was apparent when he gave evidence, Mr Hall also has a stammer. Had the Second Defendant spoken to Mr Hall on the telephone that would have been a memorable fact that I am satisfied the Second Defendant would have mentioned.

66. If, as I find, the Second Defendant did not speak to Mr Hall, I cannot identify another candidate to whom he could have spoken – and Mr Hudson QC has not suggested one. Neither Mr Hall nor Ms Freeney was challenged on his/her evidence that it was just the two of them who were in the office that afternoon. As the evidence clearly supports the fact of a call at 16.07, the most likely explanation is that the call went to voicemail. That finding would also be consistent with Ms Freeney and Mr Hall's evidence that calls were being left to go to voicemail that afternoon. But, it is not an altogether satisfactory conclusion because I consider that it would be most unusual (even if technically possible) to leave a voicemail that was over 2 minutes long. Neither Mr Hall nor Ms Freeney suggested in their evidence that they had listened to a voicemail message of that duration (the voicemail message Ms Freeney received was described by her as short and not important – see [61(ii)] above) and it was not put to them that they had. The only other explanation is that some other man answered the phone to the Second Defendant in the office that afternoon, but no party is advancing that as a finding that I could or should make.

The Second Defendant's investigation of the procedure for joining Unite Community

67. Ms Wilson cross-examined the Second Defendant on the stages of the online process to join Unite Community (see [20] above). Although not mentioned in his witness statement, at trial the Second Defendant stated that he had gone through some of the stages of applying for Unite Community membership. He said that he had clicked the join button but "*did not get very far*". He got to the page on which the applicant was asked for his/her name and address (Stage 4), and said he stopped at this stage. His evidence was somewhat vague as to whether he had in fact entered his name and

email address, and been rejected by the website because he was already a member, or whether he gave up (without entering these details) because he thought that the website would reject a further application from him because he was already a member of the Union.

68. I did not find this evidence very convincing. In the Article, the Second Defendant stated (§10) that the Claimant: "*would have had to declare herself unwaged*". This supports the conclusion that the Second Defendant had not, prior to publication, investigated fully the online process to see what the Claimant *actually* had to declare as part of joining Unite Community. This was a significant failure on the Second Defendant's part. Given that he stated in the Article that the Claimant had "*made a false declaration*" (emphasis added (§5 of the Article)), the importance of establishing *what* the Claimant had declared as part of the joining process was obvious.

69. Even if the Second Defendant abandoned his 'dummy run' of joining Unite Community, for the reasons he stated, the fact that he attempted to do so shows that he recognised the importance of establishing what the Claimant had declared as part of the process. If he did not want to put in his own (or other) details into the website in order to complete the process, he could easily have asked the First Defendant to confirm what an applicant had to declare in order to join Unite Community. He did not do so. In consequence, prior to publication, he never established what the Claimant had been required to declare or verify in the stages of the online joining process.

70. Shortly after publication, in the early hours of 8 April 2017, a Twitter user, Katie Curtis, had challenged the Second Defendant on the Article. In a series of Tweets, Ms Curtis said:

> "Here's the thing yesterday @skwawkbox run an article that a Lab MP had join Unite Community & saying she'd falsely declared she was unemployed.
>
> I wondered if it stipulated whether only unemployed people were eligible & once reading some of the info online it seemed unclear so I thought the only way to see if you're asked to declare unemployment during the online joining process was to join myself. So here we go…"

Ms Curtis then posted screenshots of the stages of the joining process from the First Defendant's website (see [20] above):

> "… From the Unite Community page I clicked the join button and then that I was a UK resident
>
> [Stage 1 screenshot]
>
> Then I'm asked if I want to be pay (sic) by direct debit, if I want to join as a Community member or if I'm retired. I click on Community Member.
>
> [Stage 2 screenshot]
>
> Then I'm told I need to pay by direct debit, so I agreed to that
>
> [Stage 3 screenshot]

> It's now full steam ahead. I'm asked for my personal details.
>
> [Stage 4 screenshot]
>
> then more details & it's at this point that I'm asked to tick a data protection statement, this is important as I'll be returning to this later
>
> [Stage 5 screenshot]
>
> Then I opt to pay monthly followed by my bank details. I feel we're getting somewhere now but I've still not been asked my employment status
>
> [Stage 6 screenshot]
>
> Now I'm asked for details of my online log-in
>
> [Stage 7 screenshot]
>
> I'm now near the end as I'm at the confirmation screen, I notice the union rules so I click on that to see if I've missed anything
>
> [Stage 8 screenshot]
>
> … Then that's it I'm done. I'm a Unite Community member & at no point in the process have I been asked my employment status."

71. The Second Defendant Tweeted a response to Ms Curtis on 8 April 2017:

> "Deeply flawed. The home page *tells* you UC for unwaged people. By applying to join you're declaring you're unwaged. Katie barrel-scraping."

and a little later

> "Jesus, you lot. *By joining* you declare you're unwaged. UC is *only* for unwaged, as Unite membership and press offices confirmed."

72. In his evidence, the Second Defendant confirmed that the reference to Unite membership having provided confirmation was to his own check of the Unite Community Homepage. Ms Wilson put it to the Second Defendant, in cross-examination, that Ms Curtis had – by going through the stages of the membership joining process – done precisely what he should have done before publishing the Article. The Second Defendant disagreed, and said that Ms Curtis did not like *The Skwawkbox* blog. In my judgment, far from "*barrel scraping*", Ms Curtis had identified a point of some importance; without apparent difficulty, she had done the exercise that the Second Defendant had, he said, started but not completed.

73. The Second Defendant appears to have been satisfied, on the basis of his own knowledge and his investigation of the information about Unite Community on the First Defendant's website, that it should have been obvious to the Claimant that this membership category was reserved for the unwaged and she was not therefore entitled to join Unite Community. In his witness statement he said:

> "I understood from my own knowledge that the concessionary Community membership was restricted to unwaged persons. As part of my checks before publishing the Article, I nevertheless went onto the First Defendant's website to check that that remained the position. I did this in addition to asking the press officer of the First Defendant for confirmation whether MPs had an exemption from the unwaged rule. When I went to the First Defendant's website, the landing pages made clear to me that Unite Community was for unwaged people. I was satisfied that it was sufficiently clear on the First Defendant's website for anyone looking to join Unite Community at the reduced subscription rate that it was for unwaged people only, and certainly to put people on notice that eligibility was an issue they ought to check."

74. It may be that the Second Defendant's existing knowledge of Unite Community influenced his interpretation of the materials on the Unite Community Homepage, and served to confirm his belief that membership was limited to those who were not employed. His responses to Ms Curtis on Twitter also tend to support that conclusion. But, in my judgment the information provided did not make that point clear. Apart from Rule 28.1, the information on the First Defendant's website on membership eligibility is unclear; it certainly does not admit of only one construction. Whatever view the Second Defendant took of how obvious the eligibility criteria were in sections of the First Defendant's website, there were two critical points:

i) was the Claimant aware of this material before completing the membership application; and

ii) had she made any false declarations as part of the online joining process?

75. The first question was a matter that the Second Defendant needed to put to the Claimant. He had not established the answer to the second, whether by putting it to the Claimant or otherwise.

Publication of the Article

76. The Article was published by the Second Defendant – without his having obtained a response or comment from the Claimant – at 18.20 on 7 April 2017. The Second Defendant said in his evidence that if he had received a comment from the Claimant then he would have included it in the Article.

77. In his witness statement, the Second Defendant explained his decision to publish without waiting for a comment or response from the Claimant:

> "The Article was published with a clear view to the public interest. Voting was underway for the General Secretary of the First Defendant, which at that time was the UK's largest trade union. Given the long and historic links between the trade union movement and the Labour Party, the General Secretary of a large and important union such as the First Defendant can have a wide and far-reaching impact on the direction and makeup of the Labour Party and the British political landscape. Moreover, the contest was widely understood to be a proxy for the right-left battle in the Labour Party, given Len McCluskey's strong support for Jeremy Corbyn, and main challenger Gerard Coyne's close alignment with the right of the Labour Party…

> With voting already underway, members would be returning their postal ballots steadily on each day that passed up to the closing date of the ballot on 18 April 2018. That method of voting (postal ballots) does not depend on a single polling day, and it was important to get stories out so that as many members as possible had the opportunity to see them before they actually returned their postal vote. Members of the First Defendant, Labour supporters and the wider public had a clear interest in what was happening out of sight and in particular whether the outcome of the election was being influenced by illegitimate means.
>
> My view was that joining the First Defendant in order to cast a vote in the election for General Secretary was legitimate so long as the application was above board, and I actually stated this in the Article… I had myself previously encouraged people to join the First Defendant in order to vote for Len McCluskey…
>
> The Article was in the public interest particularly in circumstances where there were reasonable grounds to suspect that the Claimant, an MP vocal in opposing the First Defendant's general secretary Len McCluskey, had joined the First Defendant in an ineligible category of membership in order to vote surreptitiously while depriving the First Defendant of the subscription to which it was entitled from a joiner in full time employment."

Extent of, and reactions to, publication

78. The evidence as to extent of publication is that a total of 3,672 people read the Article in the first year that it was available online. 97% of that figure (3,557) accessed the Article in the first three weeks after publication.

79. The Second Defendant's blog permitted readers to add their own comments. There were 14 such comments in the period from 19.45 on 7 April 2017 to 07.45 on 9 April 2017. Although a couple of readers' comments suggested that they had reserved judgment, the majority of comments were negative towards the Claimant. The Claimant has relied particularly upon the following:

    i) On 7 April 2017, at 22.07, "Mike Hamblett" commented:

    > "Too, may gullible female MPs ruining their careers as Mandelson's cannon-fodder."

    ii) On 8 April 2017, at 09.20, "simplyshirah" commented:

    > "Any idea how many MPs have done this? Why is the NEC not taking action against these MPs… There is a lot of bullying, warmongering & corrupt MPs who don't give a toss for the poor. Time to deselect the lot of them."

    iii) On 8 April 2017, at 14.39, "4foxandhare" commented:

    > "Please keep us informed on the outcome of this. I don't have time today to write more but I need to hear that people who have mendaciously joined Unite with the intention of skewing the vote for its leader have been thrown out and publicly disgraced."

80. The Claimant has also adduced some evidence of publication/republication:

i) On the day of publication, John Taylor shared the Article on Facebook, in a group called "Redcar and district 4 Corbyn", and commented: "*Looks like someone is under investigation comrades*". The posting received numerous responses from other users.

ii) Also on 7 April 2017, Steve Turner, a councillor on Redcar and Cleveland Council for UKIP, shared the Article via Facebook with the comment: "*If true, this is a new low even for a career politician like Anna Turley*". The post was liked 705 times.

iii) It is apparent from comments posted under the Article on the blog that one reader, "elizapdushku" 'reblogged' the Article on her own blog.

iv) The Article was shared on a Facebook post by Steve Goldswain, one of the Claimant's constituents and a former local Labour councillor, who commented:

> "How disappointing that the Redcar MP appears to have lied and said she is unwaged to save £10 per month this is despite picking up £6166.66 a month in her parliamentary wage. Her monthly wage is akin to some Teessider's (sic) yearly wage those that would truly benefit from a reduced union membership rate. Her private school obviously never taught her morals or what integrity means."

v) Chris Williamson, previously the MP for Derby North, sent the Claimant an email on 8 April 2017 advising her that the Article was "*doing the rounds on social media*".

Events following publication

81. It is sometimes the case that events following publication can shed light on and assist in the determination of issues prior to publication. I have not derived much assistance in resolving the issues I have to decide by post-publication events. In summary, the Defendants make the point that, even after publication, the Claimant still did not come back to the Second Defendant with a comment. The Claimant's response is that the Article had been published and she had decided to consult solicitors about it. For good measure, the Claimant makes the point that, even when she had provided her response to the allegations in the letter of claim dated 18 April 2017, the Second Defendant did not amend the Article. The letter of claim contained the following statements by the Claimant's solicitors:

> "Our client did not know when she made her application that the Community membership was reserved for the unwaged. <u>She chose the Community membership because she was aware of some of their work in her local constituency.</u> There was nothing in the forms that she completed online to make her believe that the membership was limited in this way. Our client did not, as alleged sign any declaration to the effect that she was unwaged."

I will need to return to the statement made in the underlined sentence when I deal with the Defendants' allegations that the Claimant's alleged dishonesty in the conduct of her claim should disentitle her to any remedy and/or should lead the Court to strike out her claim as an abuse of process (see Section J below [157]-[170]).

E. The Issues

82. There is no dispute that the issues are as follows:

i) is the First Defendant responsible for publishing the Article on the basis either (a) information was supplied to the Second Defendant; or (b) provision of the Press Statement for publication in the Article?

ii) what is the meaning of the Article (this has been agreed by the parties)?

iii) has publication of the Article caused, or is it likely to cause, serious harm to the reputation of the Claimant? If so,

iv) is the imputation conveyed by the Article substantially true? If not,

v) have the Defendants shown that:

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

(2) the Defendants reasonably believed that publishing the statement complained of was in the public interest. If not

vi) should the Claimant's claim be dismissed as an abuse of process, or any remedies to which she would otherwise be entitled, be refused as a result of allegedly false and dishonest statements made in pursuit of her claim? If not

vii) what sum in damages should the Claimant be awarded?

viii) what, if any, further remedies should be granted to the Claimant?

F. Liability for publication

83. The Second Defendant has admitted responsibility for publication of the Article. The Claimant contends that the First Defendant is also liable for publication on two bases:

i) either because it caused the publication of the entire Article; or alternatively,

ii) it provided the Press Statement to the Second Defendant for publication aware of the context in which it would be published.

(1) Law

84. At common law, the basic rule is that each person who knowingly participates in the publication of a libel, or causes or authorises or ratifies its publication, is jointly and severally liable ***Watts -v- Times Newspapers Ltd*** **[1997] QB 650, 670f-h** *per* Hirst LJ; ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)** [135].

85. In ***Speight -v- Gosnay*** **(1891) 60 LJQB 231**, the Court of Appeal identified four ways in which a person could be liable for the republication of a defamatory statement (*per* Lopes LJ at p.232):

i) where a defendant has authorised the republication of the statement;

ii) where a defendant intended that the statement should be republished;

iii) where the republication of the statement was "*the natural consequence*" of the original publication; or

iv) where there was a moral obligation to republish the statement.

86. Consequently, a person who supplies another with information intending or knowing that it is liable to be republished has been held to be *prima facie* liable for the publication of what s/he has provided: ***Webster -v- British Gas Services Ltd* [2003] EWHC 1188 (QB)** [18] *per* Tugendhat J. In ***Bataille -v- Newland* [2002] EWHC 1692 (QB)** Eady J summarised the principle [25]:

> "To participate in a publication in such a way as to be liable in accordance with the law of defamation is not, I should emphasise, to be equated with being a source of the information contained within the relevant document. There are various acts that can give rise to legal responsibility, for example, encouraging the primary author, supplying him with information intending or knowing that it will be republished, or, if one is in a position to do so, instructing or authorising him to publish it."

87. Importantly, however, "*the mere furnishing by one person of some of the materials used by another in the preparation of a libellous article does not constitute a publication of it by the former if, when printed, the article as a whole is something very different from the material so furnished by him*: §6.54 *Gatley on Libel & Slander* (12th edition, *Sweet & Maxwell*, 2013) citing ***Howland -v- Blake Manufacturing Co* (1892) 156 Mass.R 543**.

88. If the information originally provided for publication was innocent and devoid of a defamatory meaning, then – absent some subsequent approval/ratification – the source or contributor cannot be held liable if the information is subsequently republished in a defamatory form: ***Samsun Pty Ltd -v- Wily* [2000] NSWSC 281** [21] *per* Kirby J:

> "Having made the press release, the defendants may be taken as having intended its dissemination to the news media. However, if, as they contend, the press release was not defamatory of the plaintiffs, then its republication by others in some different form (which may be defamatory) is not their responsibility. In short, responsibility for republication presupposes, not simply the dissemination of material to persons likely to reproduce that material, but that the material disseminated was defamatory."
>
> (see also discussion in [31]-[37])

89. But where the original words of the source or contributor are defamatory of the claimant and s/he knows that his words are liable to be republished, it is not necessary to show that the published libel is verbally and literally the identical communication which originated with the defendant provided that the sense and substance or the same defamatory message is conveyed: ***Dar Al Arkan Real Estate Development Co -v- Al Refai* [2013] EWHC 1630 (Comm) [34]** *per* Andrew Smith J.

(2) the Article

90. The Claimant's pleaded case in respect of the First Defendant's liability for publication of the Article is:

> "On a date or dates unknown but, it is to be inferred, … on or shortly before 7 April 2017 [the date of publication of the Article], an employee, representative and/or agent of the First Defendant (or more than one person) disclosed to the Second Defendant that:
>
> (1) the Claimant had become a member of the First Defendant;
>
> (2) her application had been for a particular category of membership, namely community membership; and
>
> (3) a complaint about the Claimant's application had been passed to the First Defendant's Regional Secretary for the north-east, Karen Reay, and the First Defendant was conducting an investigation into the Claimant's application."

I will refer to this as the "Source Information".

91. In my judgment, the Claimant has failed to establish that the First Defendant is liable for the publication of the Article as a result of the alleged supply of the Source Information.

i) The provision of the Source Information did not *cause* the publication of the defamatory material in the Article. Had only the Source Information been published by the Second Defendant, the resulting publication would not have been defamatory of the Claimant. Applying the relevant legal principles (see [87]-[88] above), someone who provides basic non-defamatory facts to a journalist is not liable if the journalist chooses to add a gloss to or interpretation of those facts, or adds further facts, resulting in a published article that defames the subject. What made the Article defamatory of the Claimant was the addition of:

   (1) that fact that she had joined Unite Community when, because she was employed, she was not entitled to;

   (2) the suggestion that she had falsely declared herself to be unwaged in order to do so; and

   (3) the Press Statement that the First Defendant would investigate those (in context, including the Claimant) who joined the union on a fraudulent basis.

   Put simply, the provision of the Source Information did not *cause* the publication of the defamatory sting of the Article.

ii) I have found that the Claimant has failed to prove that anyone at the First Defendant directly supplied the Source Information to the Second Defendant (see [46] above). Even had the Claimant been able to establish an inferential

case to the required standard that someone at the First Defendant *must* have provided the Source Information, that fact, on its own, would not have established liability of the First Defendant. The Claimant would still have had to establish that the person who had provided the information was someone for whose actions the First Defendant was liable (whether by vicarious liability or otherwise).

(3) the Press Statement

92. The Claimant's pleaded case in respect of the First Defendant's liability for publication of the Press Statement is:

> "17B. … by supplying to the Second Defendant [the Press Statement] for publication, caused to be published… the contents of paragraph numbered [14] in the Article…
>
> 17C. The First Defendant was aware of the context in which the Press Statement would be published."

93. There is no dispute that the First Defendant is vicariously liable for Ms Doyle's providing the Press Statement to the Second Defendant and, in the Defence, the First Defendant pleaded in response to the Claimant's case:

> "11B. As to paragraph 17B… it is admitted that the First Defendant is responsible for the Publication of the Press Statement.
>
> 11C As to paragraph 17C…, the First Defendant was aware of the following context at the time that it published the Press Statement to the Second Defendant:
>
> (a) The Second Defendant publishes the Skwawkbox blog which had a limited left-wing readership and little traction and coverage with the wider mainstream media.
>
> (b) The Second Defendant was aware that the Claimant had joined the unwaged section of Unite despite being waged and a complaint had been made about this which was being investigated (as in looked into).
>
> (c) The Second Defendant proposed to report this fact and proposed to include the Press Statement supplied by the First Defendant in the Article."

94. The admission in Paragraph 11B of the Defence is ambiguous. It is not clear whether the admission is of the publication of the Press Statement to the Second Defendant, or its publication in the Article.

95. Based on Ms Doyle's evidence as to how she intended her comment to be understood, Mr Hudson QC submitted that the Press Statement had two distinctly separate elements to it corresponding to the two sentences published in §14 of the Article. He contends that the first sentence did not relate to the Claimant. The second sentence did relate to the Claimant and confirmed that a complaint had been received (about the Claimant's membership of Unite Community) and was being "*investigated*". The Press Statement

given by Ms Doyle did not involve the First Defendant in participating in or authorising the publication of the Article. Ms Doyle (and therefore the First Defendant) was not knowingly involved in the process of publication of the Article. The First Defendant did not know what, if any, article the Second Defendant was going to publish, much less that it would be defamatory of the Claimant. Moreover, the First Defendant could not have prevented the publication of the Article.

96. Based on my factual findings (see [48]-[55] above), I am quite satisfied that the First Defendant is liable for the publication of the Press Statement in the context of the Article.

i) Ms Doyle knew that the Press Statement was liable to be included in any article published by the Second Defendant and she also knew the broad gist of the article, and the basic facts relating to the Claimant's joining Unite Community, that the Second Defendant intended to publish and therefore the context in which the Press Statement would appear (see [55(i)] above). Finally, she knew that the Article would identify the Claimant and that the Press Statement she provided would be understood as referring to the Claimant. By giving an 'on-the-record' statement for publication to the Second Defendant, Ms Doyle therefore authorised the publication of the Press Statement knowing that it was liable to be presented in the context in which ultimately appeared in the Article. The fact that the First Defendant could not, once the Press Statement had been provided, have prevented publication of the Article is not an answer.

ii) The Press Statement itself was defamatory of the Claimant. On its own, and in context, it bore (at least) the meaning that there were reasonable grounds to suspect that the Claimant had joined the First Defendant's Community section on a fraudulent basis. It is strongly arguable that it bore a meaning more serious than this. Although there is a reference to an investigation, in context, this is not one to establish *whether* there has been fraud, but rather what would be done about it. The thrust of Ms Doyle's comment was that those, like the Claimant, who joined the First Defendant on a false basis would be investigated and action taken against them. That meaning, in terms of gravity, was at least as serious as the meaning that the Article as whole ultimately bore. The Article conveyed substantially the same defamatory sting as the Press Statement. This was not a case where the information supplied by a contributor or source was non-defamatory and it was the publisher who subsequently presented it in a way that produced a defamatory sting.

G. Meaning

(1) Law

97. There is no dispute over the principles to be applied when determining the natural and ordinary meaning of a publication: ***Koutsogiannis -v- The Random House Group Limited*** **[2019] EWHC 48 (QB)** [11]-[15]. Mr Hudson QC had additionally relied upon the principle that the context of the publication will often affect its meaning: ***Bukovsky -v- Crown Prosecution Service*** **[2018] 4 WLR 13** [12]-[13]; ***Stocker -v- Stocker*** **[2019] 2 WLR 1033** [40]-[41].

98. Where a contributor's words are included in a publication ("the quote"), and a claimant seeks to sue the contributor for publication of the article, the quote cannot be read in isolation to produce a more injurious meaning than the publication as a whole: ***Monks -v- Warwick District Council*** **[2009] EWHC 959 (QB)** [12]-[14] *per* Sharp J; ***Economou -v- De Freitas*** **[2017] EMLR 4** [17] *per* Warby J; ***Alsaifi -v- Trinity Mirror plc & Others*** **[2017] EWHC 1444 (QB)** [65] *per* Warby J;. The balance of the publication must be read together with the quote. In ***Economou***, Warby J said [17]:

> "A media publication will often include some material for which the [source or contributor] bears responsibility and some for which he bears none. ... Such additional material is likely to affect the meaning of the publication. The additional material may make things worse, in which case the [source or contributor] cannot be blamed; or it may make the meaning less damaging, or even innocent, in which case the claimant must take the meaning as it emerges from the entire publication. A source or contributor cannot be sued for a defamatory meaning which only arises from part of the media publication to which he has contributed: see ***Monks -v- Warwick District Council*** [12]-[14] (Sharp J).".

99. There is limited utility in ascertaining the meaning of the quote, in isolation. Where it is published as part of a longer article, the rules of meaning prescribe that, in determining the single natural and ordinary meaning, readers must be taken to have read the quote in the context of the article as a whole: ***Koutsogiannis*** [12(viii)]. The point made by Warby J in ***Economou*** is that if there is a significant variance between the natural and ordinary meaning of the article and the meaning of the quote (taken in isolation), then this is a point that is likely to go to the contributor's liability for publication of the article as a whole. If the quote, in isolation, bears a meaning that is more defamatory than the resulting meaning of the article as a whole, the contributor is liable only for the resulting meaning. If the quote, in isolation, bears a materially lesser or no defamatory meaning compared to the single meaning the article is found to bear, then (applying the principles in [86]-[89]) the contributor is not liable, by dint of providing a quote, for publication of the article as a whole.

(2) Decision on meaning

100. The meaning of the Article was resolved by agreement between the parties and recorded, in the consent order of Warby J on 26 July 2018, as follows:

> "there are reasonable grounds to suspect that the Claimant chose to join the Community Section of Unite at a concessionary subscription rate knowing that the section was restricted to unwaged persons and that, by joining it, she submitted an application that she knew was false in this respect, and accordingly acted dishonestly in submitting it."

101. In addition to her claim that the First Defendant is responsible for publication of the Article, the Claimant claims, in the alternative, that the First Defendant is liable for the publication of the Press Statement, as it appeared in the context of the Article (at §14).

102. The Claimant contends that, in the context of the Article, the natural and ordinary meaning of the Press Statement is:

> "there are grounds to suspect that the Claimant joined the Community Section of Unite on a fraudulent basis by declaring herself unwaged, and accordingly acted dishonestly in submitting her membership application."

103. In its Re-Amended Defence, the First Defendant has advanced three possible meanings of the Press Statement:

> "a. In its natural and ordinary meaning, the Press Statement meant and was understood to mean that there are grounds to investigate the complaint that had been made about the Claimant choosing to join the Community section of Unite at a cheaper concessionary subscription rate for unwaged persons.
>
> b. In the alternative, in its natural and ordinary meaning, the Press Statement meant and was understood to mean that there are grounds to investigate whether the Claimant chose to join the Community section of Unite at a concessionary subscription rate knowing that the section was restricted to unwaged persons and that, by joining it, she submitted an application that she knew was false in this respect, and accordingly acted dishonestly in submitting it.
>
> c. In the alternative, the Press Statement conveyed the natural and ordinary meaning of the Article as a whole, being the agreed meaning of the Article as approved by the Court. If or to the extent that the Claimant intends to allege a different and more serious meaning at paragraph 19B RAPOC, such allegation is not open to the Claimant, given the agreed meaning which the Court has ordered by way of determination of the preliminary issues."

The final words of sub-paragraph (c) are a reference to the rule that a contributor cannot be held responsible if the meaning of the article in which his/her quote appears is more injurious than the quote itself: (see [98] above).

104. Taken in isolation, the quote provided by Ms Doyle on behalf of the First Defendant was highly defamatory (see [96(ii)] above). Although I consider that, read in isolation, Ms Doyle's quote bore a meaning that was probably more serious than the meaning of the Article as a whole, application of the principle I have identified mean that the First Defendant is liable only for the resulting meaning of the Article as a whole.

105. Consequently, the meaning for which the First Defendant is responsible, is therefore the meaning of the Article as a whole:

> "there are reasonable grounds to suspect that the Claimant chose to join the Community Section of Unite at a concessionary subscription rate knowing that the section was restricted to unwaged persons and that, by joining it, she submitted an application that she knew was false in this respect, and accordingly acted dishonestly in submitting it."

H. Serious Harm

(1) Law

106. Section 1(1) of the Defamation Act 2013 provides:

> "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant"

107. This provision was considered by the Supreme Court in ***Lachaux -v- Independent Print Ltd*** **[2019] 3 WLR 18**. Although, the Supreme Court agreed with the ultimate decision of the Court of Appeal dismissing the defendant's appeal (**[2018] QB 594**), it disagreed with its reasoning and held that Warby J's analysis of the law, at first instance (**[2016] QB 402**), was "*coherent and correct, for substantially the reasons he gave*" [20] *per* Lord Sumption. The Supreme Court held:

i) s.1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined "*by reference to actual facts about its impact and not just to the meaning of the words*" [12]-[13].

ii) Reference to the situation where the statement "*has caused*" serious harm is to the consequences of publication, and not the publication itself [14]:

> "It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."

iii) Reference to the situation where the statement "*is likely to cause*" serious harm was not the synonym of "*liable to cause*" in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].

iv) The conditions under s.1 must be established as facts [14] and "*necessarily calls for an investigation of the actual impact of the statement*": [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious [21].

v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation, little substantive change would have been effected by the Act [16]:

> "The main reason why harm which was less than 'serious' had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want

of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

108. At first instance in ***Lachaux***, Warby J expressed his conclusion on s.1 as follows:

> [65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.

109. Finally, and consistently with Lord Sumption's analysis in ***Lachaux***, there are three further relevant principles:

i) In an appropriate case, a Claimant can also rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications, which has been "*immeasurably enhanced*" by social media and modern methods of electronic communication: ***Cairns -v- Modi*** **[2013] 1 WLR 1015** [26] *per* Lord Judge LCJ. In the memorable words of Bingham LJ in ***Slipper -v- British Broadcasting Corporation*** **[1991] 1 QB 283, 300**:

> "… the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."

ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: ***Doyle -v- Smith*** **[2019] EMLR 15** [122(iv)]; ***Sobrinho -v- Impresa Publishing SA*** **[2016] EMLR 12** [48]; ***Ames -v- Spamhaus*** **[2015] 1 WLR 3409** [55].

iii) Assessment of harm to reputation has never been just a 'numbers game': "*one well-directed arrow [may] hit the bull's eye of reputation*" and cause more damage than indiscriminate firing: ***King -v- Grundon*** **[2012] EWHC 2719**

(QB) [40] *per* Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: ***Sobrinho*** [47]; ***Dhir -v- Sadler*** **[2018] EWHC 2935 (QB)** [55(i)]; ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)** [196].

(2) Submissions

110. Ms Wilson submits that the extent of publication of the Article is significant and that the Court should infer that within such extensive publication, the Article would have been published to a significant number of people whose opinions of the Claimant were affected in a seriously adverse way as a result.

111. She identified the following particular parts of the evidence which she contends supports the drawing of this inference:

i) The Claimant's evidence that "*any whiff of dishonesty*" is "*hugely damaging to anyone's reputation and is particularly damaging to an MP*", which would also apply to anyone standing for election to be returned as an MP.

ii) The evidence of reaction of various individuals to the Article - said to be "*doing the rounds on social media*" – including comments of readers and its use by political opponents of the Claimant (see [79]-[80] above).

iii) The Second Defendant's acceptance when he gave evidence that, in general terms, his blog was having "*a substantial impact*" and had risen to some prominence by April 2017.

iv) The evidence that, following publication, the Second Defendant had promoted the Article – by sending Tweets – to mainstream media outlets and journalists, although there is no evidence that any of them picked up the story.

112. Mr Hudson QC for the Defendants submitted that *The Skwawkbox* was a specialised political blog with a limited readership. It had a transparent editorial position – to the left wing of the Labour Party - with which its readers would have been fully familiar.

113. He argued that the Claimant has not proved any facts which establish that her reputation suffered serious harm as a result of publication of the Article. On the contrary, he contends:

i) Mr Hall's evidence was that he was "*aware that Skwawkbox existed but did not consider them to be a credible media organisation*";

ii) about 2 months after publication of the Article, the Claimant was re-elected with a significant increase in the number of votes she received (see [5] above);

iii) the Article was not picked up or published by the national media. It had a relatively low number of readers who would have been aware of the editorial policy of the blog and would have appreciated that it was published in a highly political context. They would have seen it as part of the 'rough and tumble' of politics;

iv) the Article did not state that the Claimant was guilty of impropriety but that there were reasonable grounds to suspect that she had claimed a concessionary subscription rate knowing that she was not entitled to it; and

v) the Article made it clear that it was reporting on the unresolved question of whether or not the Claimant had, in plain words or by omission, declared herself unwaged to join a low-cost section of Unite. Readers would understand that the complaint which had been made against the Claimant had not been decided or upheld and they would therefore suspend judgment pending the outcome of the complaint.

(3) Decision on Serious Harm

114. I am satisfied that the Claimant has demonstrated, on the balance of probabilities, publication of the Article has caused serious harm to her reputation. I reach this conclusion having regard to the following matters, including particularly the evidence of what happened after publication, and by drawing inferences from the totality of the evidence as to the harm that has been caused by the publication of the Article.

i) Although this is a *Chase* Level 2 meaning, the conduct of which the Claimant was said reasonably to be suspected of having committed is serious; it concerned her integrity and honesty, qualities generally expected of someone holding a public office. Although ordinarily the fact of someone joining Unite Community might be regarded as a fairly trivial matter, the Article suggested that there were reasonable grounds to suspect that, in her case, the Claimant had acted dishonestly when she did so. Even allowing for the 'rough and tumble' of political commentary, that was a serious allegation to make against anyone, particularly a Member of Parliament.

ii) The Claimant has produced evidence of actual harm to reputation caused by the publication of the Article (see [79]-[80]). This is clear evidence of what has been described in previous cases as "*tangible adverse consequences*"; adverse reactions to the publication expressed on social media, or other "*visible re-publication and comment*": ***Ames*** [55]. Further, those who publicly commented adversely by posting comments under the Article will inevitably represent only a fraction of those who will have held similar views having read the Article, but who did not want to post them publicly on the blog.

iii) I cannot accept Mr Hudson QC's submissions that the typical readership of *The Skwawkbox* (an issue on which I have no real evidence) makes it less likely that serious harm has been caused to the Claimant's reputation. There is a danger of generalising here, but even if there is a 'typical' reader of *The Skwawkbox* who held some pre-existing hostility towards the Claimant – either because she had campaigned against Jeremy Corbyn or because she was perceived by such a reader as being on the 'right-wing' of the Labour Party – this cannot lead to the conclusion that such a reader would discount what they read about the Claimant in the Article. On the contrary, any readers who already had a negative view of the Claimant were likely to have that reinforced by the allegations in the Article. Indeed, there is evidence that at least one political opponent of the Claimant took the opportunity to circulate further the Article (see [80(ii)] above).

iv) Insofar as Mr Hudson QC was suggesting that *The Skwawkbox* was not generally regarded as credible by its readers, I share the scepticism of Warby J when a similar submission was made to him in ***Doyle -v- Smith*** [122(iii)]:

> "I am not clear about the basis on which it is submitted that other people would have had 'very significant doubts as to whether it was credible.' If the argument for Mr Smith is that he was not a credible source in the eyes of his own readers, I reject it. This is an inherently odd argument, as it presupposes that people opt to read material which they do not consider credible. I deal with the argument further below, in the context of the Second Article, but note here that Mr Smith's own evidence was that after he published the First Article, people were coming up to him in the street and asking what it was all about. This supports the view that there was widespread interest and that he was regarded as a trustworthy source."

I suppose that there may be cases in which the evidence shows that the almost uniform reaction to the publication of some seriously defamatory allegation is derision and ridicule of the publisher. That, by contrast, might provide a firm evidential basis upon which to invite the Court to conclude that, notwithstanding the gravity of the defamatory allegation, it had not in fact caused serious harm to reputation. That is not this case. On the contrary, in this case, the social media and other visible commentary supports the Claimant's contention that serious harm to her reputation was caused by the publication of the Article.

v) I do not consider that the increase in votes for the Claimant in the 2017 general election rebuts the evidence that the Article caused serious harm to the Claimant's reputation. I do not know how many of the electors in the Claimant's constituency had read the Article and whether any of them nevertheless chose still to vote for the Claimant. It is not possible to draw any firm conclusions from this evidence.

I. Defences

(A) Truth

(1) Law

115. The old common law defence of justification has been repealed and replaced with a statutory defence of truth. Section 2(1) of the Defamation Act 2013 provides:

> "It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true."

116. The meaning that the Defendants seek to prove substantially true is set out in [100] above. This is a *Chase* level 2 meaning of "*reasonable grounds to suspect*" (for an explanation of the *Chase* levels, see ***Koutsogiannis*** [13]).

117. The principles applicable to, and parameters of, a defence of truth of a *Chase* level 2 meaning have been identified by the Court of Appeal in ***King -v- Telegraph Group Ltd*** **[2004] EMLR 23** and ***Miller -v- Associated Newspapers Ltd*** **[2014] EWCA Civ 39**. In ***King***, Brooke LJ identified the following principles [22]:

(1) There is a rule of general application in defamation (dubbed the "repetition rule" by Hirst L.J. in ***Shah -v- Standard Chartered Bank*** **[1999] QB 241**) whereby a defendant who has repeated an allegation of a defamatory nature about the claimant can only succeed in justifying it by proving the truth of the underlying allegation – not merely the fact that the allegation has been made;

(2) More specifically, where the nature of the plea is one of "reasonable grounds to suspect", it is necessary to plead (and ultimately prove) the primary facts and matters giving rise to reasonable grounds of suspicion *objectively judged*;

(3) It is impermissible to plead as a primary fact the proposition that some person or persons (e.g. law enforcement authorities) announced, suspected or believed the claimant to be guilty;

(4) A defendant may (for example, in reliance upon the Civil Evidence Act 1995) adduce hearsay evidence to establish a primary fact – but this in no way undermines the rule that the statements (still less beliefs) of any individual cannot themselves serve as primary facts;

(5) Generally, it is necessary to plead allegations of fact tending to show that it was some conduct on the claimant's part that gave rise to the grounds of suspicion (the so-called "conduct rule").

(6) It was held by this court in *Chase* at [50]-[51] that this is not an absolute rule, and that for example "*strong circumstantial evidence*" can itself contribute to reasonable grounds for suspicion.

(7) It is not permitted to rely upon post-publication events in order to establish the existence of reasonable grounds, since (by way of analogy with fair comment) the issue has to be judged as at the time of publication.

(8) A defendant may not confine the issue of reasonable grounds to particular facts of his own choosing, since the issue has to be determined against the overall factual position as it stood at the material time (including any true explanation the claimant may have given for the apparently suspicious circumstances pleaded by the defendant).

(9) … [T]he defendant may rely upon facts subsisting at the time of publication even if he was unaware of them at that time.

(10) A defendant may not plead particulars in such a way as to have the effect of transferring the burden to the claimant of having to disprove them.

118. In ***Bokova -v- Associated Newspapers Ltd*** **[2019] QB 861** I explained how circumstantial evidence might be admissible to prove the truth of a *Chase* level 2 meaning. This was at the pleading stage, but the same principles would apply to the evidence ultimately relied upon at trial.

> [24] The "conduct rule" and "circumstantial evidence" have been further elucidated.

(i) While it is an essential requisite of a *Chase* level 2 defence… that the particulars must focus on the conduct of the claimant said to give rise to the suspicion, in a complicated case it may be necessary to portray some of the background and to connect the main facts relied upon. But the fundamental – and ultimate – question is: whether taken as a whole the particulars demonstrate conduct of the claimant that gives rise to the suspicion: in other words, on the facts pleaded, a person could suspect that the claimant was implicated: ***Miller -v- Associated Newspapers Ltd*** **[2012] EWHC 3721 (QB)** [14]-[15] *per* Sharp J; and ***Miah -v- British Broadcasting Corpn*** **[2018] EWHC 1054 (QB)** [33]-[34] *per* Warby J.

(ii) In ***JSC BTA Bank -v- Ablyazov (No.8)*** **[2013] 1 WLR 1331** [52], Rix LJ said:

> "It is, however, the essence of a successful case of circumstantial evidence that the whole is stronger than individual parts. It becomes a net from which there is no escape. That is why a jury is often directed to avoid piecemeal consideration of a circumstantial case: ***R -v- Hillier*** **(2007) 233 ALR 634**... Or, as Lord Simon of Glaisdale put it in ***R -v- Kilbourne*** **[1973] AC 729, 758**, '*Circumstantial evidence ... works by cumulatively, in geometrical progression, eliminating other possibilities*'."

[25] I have no difficulty with the interplay between circumstantial evidence and the "conduct rule". To take an example, in a drugs importation conspiracy it is usual for the prosecution to rely upon a number of sources of evidence including, typically: (1) cell-site analysis showing the presence of mobile telephones at various locations; (2) calls and messages passing between those telephones; and (3) ANPR and CCTV "hits" of various vehicles at particular places. If the same factual issues arose in defence of a libel claim, including alleged facts from these three categories, there would be some evidence in each that did not focus on the conduct of the claimant; indeed, there is likely to be evidence relating to the activities of the other alleged conspirators. However, the strength of the case, and why it gives rise to suspicion falling on the claimant is that, cumulatively and taken together, the evidence implicates the claimant because of his connection to the evidence as a whole. What matters, and what would be essential for the truth defence to have a realistic prospect of success, is the evidential link to the claimant. Without that, the rest of the evidence cannot give rise to a reasonable suspicion.

119. In ***Miller***, Moore-Bick LJ (giving the judgment of the Court) summarised the task of the trial judge when assessing a defence of truth to a *Chase* level 2 allegation [15]:

> "It follows from … the fact that the existence of grounds for suspicion is to be judged objectively, that the question for the court when considering a defence of justification is whether, viewed at the date of publication, the claimant had behaved in a way that would give a reasonable person grounds for suspecting him of the wrongdoing in question. That much was not in dispute. Nor, subject to one point, was it in dispute that the reasonable person is to be taken to be aware of all the primary facts and matters subsisting at the date of publication: see ***King***, principles

> (8) and (9). The allegation that the claimant has behaved in such a way as to bring suspicion on himself necessarily assumes the response of a reasonable person to observable primary facts. A person's conduct can be observed and assessed, but his state of mind cannot, except by inference from other, primary, facts…"

And later in [44]:

> "It is necessary to remember that a Chase Level 2 imputation involves an allegation that the claimant has by his conduct brought suspicion upon himself. That is a matter to be judged objectively by reference to the facts, taken as a whole, as they were at the time of publication and as they would be viewed by an ordinary reasonable person." (emphasis added)

120. Explaining the importance that it was an assessment of the totality of the evidence, Moore-Bick LJ added [46]:

> "… in seeking to justify a Chase Level 2 imputation, both parties are entitled to rely on facts as they were at the date of publication, whether they knew them or not…"

121. The task for the Court is to make the objective assessment of the evidence relied upon as giving rise to reasonable grounds to suspect at the date of publication, excluding from consideration events that occur subsequently – described as the 'rule against hindsight' [16]. On this point, the Judge explained later in the judgment [27]:

> "… it is necessary to draw a distinction between events occurring after the date of publication and statements, whenever made, which tend to prove or disprove the existence of facts subsisting at the date of publication. The latter are admissible. The former are not."

122. The Court rejected the newspaper appellant's criticisms of the Judge's acceptance of explanations given, at trial, by the Claimant for his actions [20]:

> "… [A] defence of this kind is to be determined objectively by reference to the facts at the date of publication. I agree… that attempts by a claimant after the event to explain away his actions cannot help, but I can see no reason why evidence given a trial which sheds light on matters that occurred before the date of publication should be excluded just because it comes from the claimant, although that might be a reason for looking at it with some care."

123. In addition to the guidance from ***King*** (set out in [117] above), based on the above analysis, I derive the following principles from ***Miller*** as to the proper approach to a defence of truth to a *Chase* level 2 meaning:

i) whether there exist grounds for suspicion is to be judged objectively at the date of publication;

ii) the question is whether, viewed at the date of publication, the claimant had behaved in a way that would give a reasonable person grounds for suspecting him of the wrongdoing in question;

iii) events that occur after publication – including attempts by a claimant after the event to explain away his/her actions – are to be excluded from consideration,

but statements, whenever made, which tend to prove or disprove the existence of facts subsisting at the date of publication are admissible; and

iv) because the Court is required to make an objective assessment, it is to be determined by reference to *all* relevant facts at the date of publication not just those facts which were known to the publisher or included in the publication.

124. An important difference, therefore, between a *Chase* level 2 truth defence, under s.2 Defamation Act 2013, and a public interest defence, under s.4, is that, whilst the publisher's belief as to what was proved by the evidence s/he had is highly material to the s.4 defence, it is irrelevant to a s.2 defence.

125. Finally, Mr Hudson QC has relied upon the following further general principles as to the assessment of a truth defence:

i) The defendant has to establish the "*essential*" *or* "*substantial*" *truth* of the sting of the alleged libel: ***Bokova*** [28(i)].

ii) The court should not be too literal in its approach. Proof of every detail is not required where the relevant fact is not essential to the sting of the publication. The task is "*to isolate the essential core of the libel and not be distracted by inaccuracies around the edge - however extensive*": ***Bokova*** [28(ii)].

iii) In deciding whether any given defamatory imputation is substantially true, the court will have well in mind the requirement to allow for exaggeration, at the margins, and have regard in that context also to proportionality. Having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration, has the substantial sting been proved? It is no part of the court's function to penalise a defendant for sloppy journalism – still less for tastelessness of style: ***Turcu -v- News Group Newspapers Ltd*** **[2005] EWHC 799 (QB)** [105] and [111] *per* Eady J.

(2) Submissions

126. Mr Hudson QC submits on behalf of the Defendants that the Court should find that they have demonstrated the substantial truth of the meaning. He contends:

i) On the basis of the primary facts (objectively judged) a reasonable person would suspect that the Claimant knew – when she applied to join Unite at a concessionary subscription rate – that she was not eligible for that concessionary subscription rate of membership.

ii) A reasonable person would therefore suspect that the Claimant had submitted an application that was false and that accordingly she had acted dishonestly in submitting her application to join Unite at the concessionary subscription rate.

iii) A reasonable person would expect the Claimant (an MP and trade union member) to have checked her eligibility for a special discounted concessionary rate of membership of Unite before applying for (and thereby declaring/indicating that she was eligible) and obtaining that concessionary rate

of membership. Had the Claimant carried out even the most cursory check then it would have been obvious that she was not eligible for such membership.

iv) A reasonable person would suspect that the Claimant had known she was not eligible to benefit from that concessionary subscription rate but had applied for it nonetheless because of her very strong desire to join Unite to vote in the General Secretary election and – critically – to join without being noticed by Mr McCluskey and/or the First Defendant. The only way that the Claimant could do that was by applying for and obtaining the category of membership which was for those not in work and therefore which did not require applicants to provide details of their occupation, workplace etc.

127. Supplementing their closing written submissions, the Defendants have provided the Court with a "*Schedule of Primary Facts and Matters*" upon which they rely in support of their truth defence, but have identified the following particular submissions as to the objective facts:

i) when cross-examined, the Claimant accepted that she wanted to join Unite so as to enable her to vote in the 2016/17 General Secretary election and that she wanted to join without being noticed by Mr McCluskey and/or the First Defendant because she was concerned that if her application was noticed she thought that efforts would be made to prevent her from voting in the election;

ii) Unite Community membership entitled a member to vote in the 2016/17 General Secretary election: Rule 15.1 (see Appendix 2);

iii) Unite Community membership was available only to those not in paid employment: Rule 28.1;

iv) as a result, the Claimant was not eligible to join Unite on the special discounted subscription rate available to those not in work;

v) the subscription rate for Unite Community membership was a special discounted rate category of 50p per week (or £2.17 per month);

vi) the Claimant knew that the subscription rate for Unite Community was "*cheaper*" and was many times cheaper than the subscription rate payable by a worker;

vii) Unite's website, brochures, leaflets and videos all made it clear that Unite Community membership was available only to those not in paid employment;

viii) because Unite Community membership was for those not in paid employment applicants would not be asked for any details about their occupation, employer, workplace, etc.; and

ix) the Claimant chose, however, to apply for the special discounted rate category of 50p per week (which was restricted to people not working or in further education).

128. In all the relevant circumstances, Mr Hudson QC contends a reasonable person would suspect that the Claimant knew that she was not eligible for the special discounted rate

category or, at the very least, would have checked her eligibility before submitting her application and thereby declaring herself eligible. It would have been apparent to a person who carried out even the most cursory of checks that the special discounted rate category was only available to people not working or in further education. He argues that the fact that, during the application process, the Claimant had to select "*Community member*" in contrast to a regular member or "*Retired*"; that she was given a link to click "*For more information*" about "*join[ing] as a Community Member*"; that her annual direct debit was only £26.04 (rather than £169 per annum); and that she had to click a box confirming that she would abide by the Union's rules – which contained a hyperlink to the Union's rules, which had a contents page which listed "*RULE 28 COMMUNITY/STUDENT MEMBERS*", all meant that a reasonable person would expect the Claimant (a Labour MP) to check her eligibility for concessionary subscription rate to the Union, before signing up and thereby declaring that she was eligible.

129. The Defendants also submit that a reasonable person would consider that the Claimant's conduct after joining Unite was consistent with her knowing that she was not eligible for the special discounted rate category.

i) When the Claimant replied to Mr Coan's email of 1 March 2017 (see [33]-[35] above), she simply asserted that she "*didn't realise [she] had joined the wrong section*". She did not give any explanation as to how she had come to do that or why she thought she was eligible for Unite Community membership. Mr Hudson QC argues that a reasonable person could properly take the view that the Claimant "*would say that, wouldn't she*" as the Claimant could not be expected to admit that she had applied for the discounted rate knowing that she was not eligible for it.

ii) The Claimant did not give any (much less any credible) explanation as to why she believed that she was eligible for the hugely discounted subscription rate. A reasonable person would, the Defendants argue, also consider it telling that after being contacted by Mr Coan on 1 March 2017, and following her reply on 7 March 2017, the Claimant took no steps to transfer her membership to the correct subscription rate and pay to Unite the money she owed. The Claimant ignored repeated calls and emails from Ms Ridley and Mr Coan from March 2017. This, it is submitted, was not consistent with the behaviour of someone who had made a genuine mistake.

iii) When the Claimant was contacted by the Second Defendant prior to publication on 7 April 2017, it was clear from his first email (see [56] above) that he was asking the Claimant to comment on why she had joined a section of Unite for unemployed people rather than joining the main Unite union for an extra £10 or so a month. The Second Defendant followed that email up with another email, at 15:53 (see [60] above), and a telephone call to the Claimant's office at 16:07. The Claimant did not respond to the Second Defendant before (or after) publication and she did not provide any explanation for why she applied for (and obtained) a concessionary subscription rate to which she was not entitled. Mr Hudson QC submits that a reasonable person would consider that – at the very least – highly suspicious and indicative of the fact that the Claimant could not give an innocent explanation for her conduct which was in clear breach of Unite's rules.

130. On behalf of the Claimant, Ms Wilson has submitted that the Court should reject the Defendants' defence of truth. Taking account of the ***King*** principles, including the conduct rule, the evidence cannot support a finding that that meaning is substantially true; it points the other way. Ms Wilson made the following points:

i) The Claimant was sent the link to join Unite Community by Ms Smeeth, and it is clear, from the WhatsApp messages, that she completed the process within a few minutes (see [28] and [30] above).

ii) The Claimant's evidence, clear and not shaken in the witness box, was that she had not seen or read any of the published materials relating to Unite Community to which she was taken. Only two of the videos that were played during the trial were actually available online when she completed the online application to become a member of Unite Community. Neither did the Claimant read the Rule Book.

iii) The case put to the Claimant in cross-examination was, in substance, that had she had been negligent in not researching eligibility requirements. Mr Hudson QC had put it to the Claimant that: "*It was plain and obvious to anyone who bothered to check, that you were not entitled to be a member of Unite Community.*" Later, when cross-examined about the membership categories offered by the First Defendant, it was put to the Claimant that "*anyone who bothers to check*" would have appreciated the eligibility requirements for Unite Community Membership. But negligence is not sting of the defamatory allegation.

iv) The Claimant was clear in her evidence that she had no reason to doubt her eligibility. Her evidence was that she was aware of Unite Community, and had seen it campaigning in her local area. She had understood that it was "*doing something quite ground-breaking and new*" and that she welcomed that. She stated that she "*thought anyone could join*" and that it was not her understanding at the time she joined that Unite Community was reserved exclusively for the unwaged. There was nothing in the surrounding circumstances of her application to throw doubt on that.

v) Ms Smeeth provided the link to join Unite Community in a private WhatsApp group of MPs who were political allies. Her encouragement of the Clamant to join Unite Community did not suggest that there would be any issues about her eligibility. Ms Smeeth was a person who the Claimant trusted.

vi) The application process asks no questions about a person's employment status. Further, the Claimant's evidence was that, when she clicked on the link and started to apply, she did not know what questions would be asked.

vii) The automatic email generated in response to the Claimant's membership application says nothing about eligibility for Unite Community membership.

viii) The cheap rate for Unite Community membership cannot, of itself, provide grounds to suspect. The Defendants conceded that there existed people not eligible for membership of Unite Community who had joined by mistake. The relative cost of Unite Community membership measured against 'full'

membership was explicable in ways other than the fact that it was reserved for those not in paid employment. In any event, as to the cost, the Claimant said in her evidence: "*In as much as I even thought about it. Fee was not an issue*" and she compared it with membership of the RSPB. She was, she said, not expecting to get work-place representation from Unite Community membership.

ix) When her ineligibility for Unite Community membership was pointed out to her (in Mr Coan's email of 1 March 2017), the Claimant responded in a straightforward manner, with an apology and a request to be moved to the correct membership category. The criticism of the Claimant for failing to take steps herself to switch the membership category is criticised by Ms Wilson as unrealistic. It could equally be said that it would have been a simple matter for the First Defendant to effect the switch.

(3) Decision on truth

131. In my judgment the key facts – and my findings – are these:

i) The Claimant joined Unite Community in less than 10 minutes late in the evening on 5 December 2016. She did so because she was encouraged to do so by Ruth Smeeth, someone that she trusted, by completing the online process on the First Defendant's website. At no stage of that online process was the Claimant required to confirm or declare that she was not in employment and/or that she was eligible for Unite Community membership. Further there was nothing in the online joining process that alerted potential members to the eligibility criteria for Unite Community membership.

ii) The First Defendant's Rule Book did make it clear that Unite Community membership was limited to those who were not in (or seeking) employment. The Claimant was, as a matter of fact, therefore, not eligible to join Unite Community. However, the online joining process did not require an applicant to confirm that s/he had read the Rule Book. An applicant who wanted to learn more about the rules would have to click the relevant link at Stage 8 and then follow one of the further links to reach the Rule Book (see [20(viii)] above). The Claimant did not read the Rule Book before she joined; she was ignorant of the fact that she was ineligible for membership.

iii) Whilst the Rule Book was clear, I do not consider that the other material published by the First Defendant describing Unite Community made it clear that Unite Community was *exclusively* for those who were not in work (see [17]-[19] above). Of more relevance are the facts, accepting that Claimant's evidence on these points, (a) that she had not read or watched these materials before completing her application; and (b) that she relied upon her own experience of Unite Community and did not realise that she was not entitled to join because she was in employment.

iv) Neither the email welcoming her to membership or any events before the Claimant received Mr Coan's email on 1 March 2017 alerted the Claimant to the fact that she was not eligible for Unite Community membership.

v) Once she was alerted to her ineligibility by Mr Coan, the Claimant apologised, stated that she had been unaware that she had joined the wrong section and confirmed that she wished to "*transfer to the appropriate membership*". I reject Mr Hudson's submissions that this response itself provides grounds to suspect the Claimant of having joined a section of the Union knowing that she was not eligible. On the contrary, I find the Claimant's response to be entirely consistent with her having been made aware, for the first time, that she was not eligible for Unite Community membership.

132. Assessed objectively, do these facts, individually, or collectively provide reasonable grounds to suspect that the Claimant chose to join the Community Section of Unite at a concessionary subscription rate knowing that the section was restricted to unwaged persons and that, by joining it, she submitted an application that she knew was false in this respect, and accordingly acted dishonestly in submitting it? In my judgment the plain answer is no.

133. A reasonable person, asked to make this assessment, would quickly alight on the question of importance: what evidence is there that provides reasonable grounds to suspect that the Claimant *did* know that membership of Unite Community was restricted to the unwaged and, against that, what evidence is there that suggests that she did not know.

134. As to stage one of this exercise, I accept Ms Wilson's submission that one of the fundamental problems with the Defendants' defence of truth is that it largely rests on an allegation that the Claimant *should have known* that she was not eligible for Unite Community membership. Negligence is very unlikely to provide an objective basis upon which reasonably to suspect dishonesty. The publicly available information alone would not satisfy the conduct rule and this is not a case where the wealth of publicly available information – making it obvious, beyond argument, that the Claimant was not eligible for Unite Community membership – leads to a conclusion that the Claimant must have known that she was not eligible and therefore that there are grounds to suspect that she *did* know that she was not eligible. But even if I were wrong in my assessment of whether it was clear in the material published by the First Defendant about eligibility for Unite Community membership, the material fact is the Claimant did not read or view this material before she joined. So, the Defendants' case would have to be not only that she should have read the material, but that also, having read it, she should have reached the conclusion that she was not eligible to join Unite Community.

135. At stage two in the reasonable person's assessment, there is, by comparison, an abundance of evidence providing objective grounds to suspect that the Claimant did *not* know that she was ineligible to join Unite Community: the suggestion to join Unite Community came from Ruth Smeeth (someone who clearly believed that the Claimant (and others in *The Birthday Club* WhatsApp Group)) were eligible to join Unite Community; the Claimant completed the application process within 10 minutes shortly thereafter; the Claimant had not read or viewed materials about Unite Community and was relying upon her own understanding of membership eligibility; the online joining process did not contain any indication of the restrictions on eligibility on joining Unite Community; the Claimant was not required to declare that she had read or met the eligibility criteria; nothing she was sent after joining warned her that she was ineligible; and, when it was finally pointed out to her on 1 March 2017 that "*as a paid worker*

[she needed] to switch [her] membership to industrial", her response was to apologise and immediately to agree to the transfer of her membership.

136. I am satisfied that a reasonable person would, without difficulty, conclude that there were no reasonable grounds upon which to suspect the Claimant of the wrongdoing identified in the meaning that the Defendants seek to defend as true. Specifically, there are in my judgment no reasonable grounds to suspect the Claimant of any form of dishonesty in relation to her joining Unite Community. I therefore reject the Defendants' defence of truth.

(B) Publication on a matter of public interest

(1) Law

137. Section 4 of the Defamation Act 2013 provides (as far as material):

> **4. Publication on matter of public interest**
>
> (1) It is a defence to an action for defamation for the defendant to show that—
>
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> (3) …
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.
>
> (5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.
>
> (6) The common law defence known as the Reynolds defence is abolished.

138. There have been relatively few cases in which the s.4 defence has been specifically considered. The principal ones are ***Economou -v- de Freitas*** **[2019] EMLR 7** and ***Serafin -v- Malkiewicz*** **[2019] EMLR 21**. I derive the following principles from the authorities:

i) As the old common law *Reynolds* defence (from ***Reynolds -v- Times Newspapers Ltd*** **[2001] 2 AC 127**) had done before, the new statutory defence strikes a balance between the rights of freedom of expression and reputation: ***Economou*** [78]-[79], [86], [109]-[110]; ***Serafin*** [39], [43]; it applies where the court is satisfied that the public interest justifies publication notwithstanding that

it leaves the defamed individual without a remedy for damage to reputation: ***Serafin*** [40] (relying upon ***Flood -v- Times Newspapers Ltd*** **[2012] 2 AC 273** [48] *per* Lord Phillips).

ii) When considering a defence under s.4, there are three questions to be addressed: ***Economou*** [87]:

(1) was the statement complained of, or did it form part of, a statement on a matter of public interest? If so,

(2) did the defendant believe that publishing the statement complained of was in the public interest? If so,

(3) was that belief reasonable?

iii) In s.4(1), "*the statement complained of*" means "*the words complained of*" not any defamatory imputation(s) that were conveyed: ***Economou*** [93].

iv) Although s.4(6) has abolished the old *Reynolds* defence, the rationale for the statutory defence was not materially different and the common law principles remained relevant to the interpretation of the statutory defence: ***Economou*** [76]; ***Serafin*** [41].

v) As had been the case with the *Reynolds* defence, the statutory defence requires consideration of some specific matters: flexibility in the requirement to have regard to the circumstances of the particular case (s.4(2)); and the requirement to make allowance for editorial judgement (s.4(4)). Finally, the overarching principle is that there is little scope under Article 10(2) of the Convention for restrictions on freedom of expression in relation to questions of public interest: ***Economou*** [105].

Stage 1: a statement on a matter of public interest

vi) Public interest is a broad concept. In ***Serafin*** the Court of Appeal gave the following guidance:

> [33] "Public interest" in publication cases (including defamation, confidence, privacy, DPA and copyright cases) is necessarily a broad concept. As Lord Bingham explained in ***Reynolds -v- Times Newspapers Ltd*** **[2001] 2 AC 127**, **176-177** (in a passage cited by Lord Phillips in ***Flood*** [33]):
>
> > "By ['public interest'] we mean matters relating to the public life of the community and those who take part in it, including within the expression public life activities such as the conduct of government and political life, elections … and public administration, but we use the expression more widely than that, to embrace matters such as (for instance) the governance of public bodies, institutions and companies which give rise to a public interest in disclosure, but excluding matters which are personal and private, such that there is no public interest in their disclosure."

[34] The CJEU most often define "public interest" material as that which contributes to a debate of general interest. In examining whether material contributes to such a debate, it is relevant to look, in particular, at the context of the publication (see e.g. ***Bladet Tromsø -v- Norway*** **(2000) 29 EHRR 125** [62]-[63] in which the context was an ongoing public debate in Norway about seal hunting).

[35] *Gatley on Libel and Slander* (12th edn., at §15.6) contains the following useful list of subject-matter which has previously been held to be in the public interest:

> "[T]he business of government and political conduct; the promotion of animal welfare, the protection of health and safety, the dealings of an MP with a foreign regime hostile to this country, the fair and proper administration of justice, the conduct of religious groups; discipline in schools; the conduct of the police; cheating, corruption and the pressure on elite athletes from an early age in sport; breach of charitable fiduciary rules; involvement in serious crimes, corporate malpractice; and the correction of prior misrepresentations by others".

Stage 2: did the defendant believe that publication was in the public interest

vii) A defendant wishing to rely upon the defence must have believed that what s/he published was *in* the public interest: ***Economou*** [139(2)] and [153] *per* Warby J (at first instance: **[2017] EMLR 4**). The defendant must have addressed his/her mind to the issue. This element of the defence is not established by showing that a notional reasonable person *could* have believed that the publication was in the public interest, but that the relevant defendant *did* believe that it was. In terms of evidence, if a defendant leaves this issue unaddressed in his/her witness evidence, the defence is likely to fail at this initial hurdle.

viii) The belief is to be assessed at the time of publication: ***Economou*** [139(3)] *per* Warby J.

Stage 3: was the belief reasonable

ix) Lord Nicholls' non-exhaustive list of ten factors remain relevant considerations: ***Economou*** [81]; ***Serafin*** [36], [48]; albeit that the standard of conduct required of the publisher must be applied in a "*practical and flexible manner, and must have regard to practical realities*": ***Economou*** [84]; ***Serafin*** [39];

x) Also, of continuing relevance is what Lord Nicholls said about hindsight and the importance of the role of the media (from ***Reynolds*** at p.205E-F): ***Economou*** [82]; ***Serafin*** [38]:

> "…it should always be remembered that journalists act without the benefit of the clear light of hindsight. Matters that are obvious in retrospect may have been far from clear in heat of the moment. Above all, the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a bloodhound as well as a watchdog. The court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know,

> especially when the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication."

xi) The defence is available to anyone who publishes material of public interest in any medium. The question in each case is whether the defendant behaved fairly and reasonably in gathering and publishing the information: ***Economou*** [80]; "*could whoever published the defamation, given what they knew (and did not know) and whatever they had done (and had not done) to guard as far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?*": ***Economou*** [100] (taken from ***Flood*** [113]);

xii) It would be hard to describe a belief as reasonable if it has been arrived at without care, without any examination of the relevant factors or without engaging in appropriate enquiries; a belief for the purposes of s.4(1)(b) would be reasonable, only if it is arrived at after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case: ***Economou*** [101];

xiii) A further relevant consideration will be the particular role played by the defendant. For example, was s/he a professional journalist or publisher, or a contributor/source? Whilst the matters identified in the non-exhaustive checklist will remain relevant, the weight to be given to them in any particular case may vary from case to case: ***Economou*** [110];

xiv) The meaning that the defendant intended to convey might be relevant to his subjective belief, and to the objective reasonableness of that belief, but there were limits to the latitude to be allowed for unintended or ambiguous meanings: ***Economou*** [85], [95]; ***Bonnick -v- Morris*** **[2003] 1 AC 300** [24]-[25];

xv) It is a basic requirement of fairness and responsible journalism that someone who is going to publish a defamatory allegation against a person without being required to show that it is true should give him/her a fair opportunity to put his/her side of the story; this is one of the 'core' *Reynolds* factors: ***Serafin*** [66], [73]-[74]. This is not only to be fair to the subject, it recognises that the subject may well have relevant factual information to provide that may affect the decision to publish or the terms in which the publication is presented: ***Reynolds*** p.205. The importance of making an attempt to present the subject of the publication's side of the story may require the publisher to consider whether others who could reasonably be expected to have relevant information about the allegations should be approached: ***Serafin*** [76].

xvi) Although as recognised in ***Reynolds*** (p.205) it will not always be necessary to approach the subject of a defamatory article for comment prior to publication, the circumstances in which a publisher will be able to satisfy the Court that it was reasonable not to have done so will necessarily be rare: ***Serafin*** [70].

139. In the present case, I have found that both Defendants are liable for publication of the Article. There was some discussion as to whether, if the Second Defendant successfully established a s.4 defence, the First Defendant needed separately to do so. The argument that the First Defendant does not need to do so is premised on a submission that the

defence is a form of qualified privilege. If the Second Defendant establishes that the occasion on which the Article was published was privileged, then – so it is argued – the First Defendant benefits from that protection too. I am very doubtful that this analysis – even if it applied to the common law *Reynolds* defence (a proposition I would also doubt) – still holds good after the public interest defence has been put on a statutory footing.

140. Given the decisions I have reached on the facts of this case, I have not needed to resolve the point whether, where two or more people are liable for the publication of a defamatory statement, each must independently establish his/her own s.4 defence. Given that a defendant relying upon the defence must prove that s/he "*reasonably believed that publishing the statement complained of was in the public interest*" (s.4(1)(b)), that would appear to require each defendant that relies upon the defence individually to satisfy the requirements. There may be interesting arguments where several people are liable for the publication of an article (e.g. contributor, journalist, editor, publisher). It is not hard to imagine circumstances where the nature of a person's participation or authorisation of publication renders him/her liable for publication of a statement but in circumstances in which that person may well not have given specific consideration to whether the publication of a particular statement was in the public interest (e.g. a commercial publisher or editor of a substantial publication who may not have specifically addressed his/her mind to particular articles). These issues would best be resolved in a case where the point arises for direct determination.

(2) Submissions

141. Mr Hudson QC submits:

(a) on a matter of public interest

i) The Article was clearly on a matter of public interest because:

(1) the Clamant was an MP with a well-publicised political position opposed to Jeremy Corbyn's leadership of the Labour party;

(2) the Article was published during the course of a contest for the position of General Secretary of the First Defendant, occupied at the material time by Mr McCluskey;

(3) the Claimant had, in her Tweet dated 12th July 2016 (see [7] of the Article), sought to encourage people to join the First Defendant in order to vote to remove Mr McCluskey;

(4) the Article related directly to both the Claimant's earlier tweet encouraging people to join the First Defendant, to facilitate the removal of Mr McCluskey, and the leadership contest; and

(5) the Article raised questions as to whether there were reasonable grounds to suspect that the Claimant had knowingly submitted a false application, and had thus acted dishonestly in doing so.

ii) The Article was about the conduct of an MP and the legitimacy of her actions in claiming a concessionary subscription rate to which she was not entitled as part of seeking to participate in the election of the General Secretary of Unite. The election of the General Secretary of Unite was of considerable public interest as it was likely to have a bearing on the future direction of the main Opposition party only a few months before the 2017 General Election.

(b) Reasonable belief of the Second Defendant

iii) The Second Defendant reasonably believed that publishing the Article was in the public interest for the reasons identified in [141(i)] above and also:

(1) the Second Defendant had verified the relevant information he received with a reliable source, namely Ms Doyle;

(2) the Second Defendant had taken steps to obtain the Claimant's comments on matters contained within the Article, through two emails, and one telephone call, on 7 April 2017, to which the Claimant had failed to provide any response; and

(3) the Article was from an avowedly political standpoint, where the subject matter of the article had been advocating entryism, in the context of a highly contested election. Accordingly, the high degree of protection afforded by Article 10 ECHR to political speech, should apply.

iv) The Second Defendant's belief was reasonable for the reasons he gave in evidence, in summary:

(1) The Article was drafted carefully so as not to make an allegation of guilt. The Second Defendant intended to suggest that the issue of whether the Claimant had joined Unite Community by making a false declaration needed to be investigated. Specifically, paragraph [17] of the Article urged the First Defendant to investigate all applications for Unite Community membership.

(2) The Article was published at a time when voting was underway in the election of the First Defendant's General Secretary. The First Defendant's influence of the Labour Party, meant that the General Secretary election was "*widely understood to be a proxy for the right-left battle in the Labour Party, given Len McCluskey's strong support for Jeremy Corbyn...*"

(3) The closing date for members of the First Defendant to submit votes in the General Secretary election was 18 April 2017. Those electors had a clear interest in "*what was happening out of sight and in particular whether the outcome of the election was being influenced by illegitimate means*" (i.e. people joining the First Defendant to vote in the election in categories of membership to which they were not eligible to join).

(4) The Claimant and others' public opposition to the leadership of Jeremy Corbyn.

(5) The Second Defendant was not motivated by any animus towards the Claimant. He had previously supported her by assisting with door-to-door campaigning when she first stood for election.

v) The Second Defendant conducted such checks and enquiries as were appropriate in all the circumstances. He gave the Claimant three opportunities to comment prior to publication. The primary allegation was that the Claimant had joined the section of Unite for unemployed people rather than paying more to join the main section of Unite. This was made clear in the email of 15:17. The Second Defendant clearly warned that the Article was going to be published that night. The Claimant chose not to respond. If she was unable to respond, one of her (at least 3) members of staff who were working that day could have done, providing either a response/comment and/or asking him to delay publication to give the Claimant further time to respond. The Second Defendant was entitled to proceed on the basis that the Claimant was not going to provide a comment for the Article. This was confirmed by the fact that the Claimant did not contact the Second Defendant after publication of the Article other than by sending the letter of claim.

(c) Reasonable belief of the First Defendant

vi) The First Defendant reasonably believed that publication of the Article was in the public interest on the basis of its reasonable belief that publication of the quote it provided to the Second Defendant was in the public interest. It was entirely reasonable for Ms Doyle to believe that providing the quote/comment to the Second Defendant in the terms she did was in the public interest. It was appropriate for the First Defendant to respond to the well-informed query from the Second Defendant about the actions of an MP. The quote provided was limited, factual and moderate. It simply confirmed what the Second Defendant already knew; that there had been a complaint about the Claimant's membership of Unite Community, and it was being investigated.

142. The Claimant's case on s.4(1)(a) – whether the statement was, or formed part of, a statement on a matter of public interest – is set out in her Amended Reply. She admits that the following parts of the Article were matters of public interest:

i) the Claimant was a Labour MP who had opposed Jeremy Corbyn's leadership;

ii) the election for the position of General Secretary of the First Defendant was imminent, and the incumbent was Mr McCluskey, a supporter of Mr Corbyn; and

iii) the Claimant had sent a Tweet on 12 July 2016 about joining the Labour Party by way of membership of the First Defendant and had referred to Mr McCluskey in pejorative terms in it.

143. The Claimant denied that her application and subsequent membership of Unite Community was a matter of public interest.

144. As to reasonable belief that it was in the public interest to publish the Article, Ms Wilson submits:

i) In respect of the Second Defendant, there is a complete absence of any documents demonstrating his investigation, or the gathering of information or verification by him. This is wholly contrary to any notion of responsible journalism or of the Second Defendant establishing any basis of the belief he claimed to have held, still less a reasonable one. The absence of documents is equally consistent with the Second Defendant merely getting his story from the First Defendant, typing it up and uploading it and publishing to the world at large.

ii) The Article stated, twice, that an applicant has to make a false declaration. This was a critical fact which could easily have been checked but which the Second Defendant had failed to check.

iii) The Second Defendant's efforts to contact the Claimant prior to publication were manifestly insufficient. The email at 15:17 on 7 April 2017 ([56] above) gives an inaccurate description of the allegations about the Claimant which, subject to her comments, the Second Defendant intended to publish. The subsequent email at 15.53 chasing a response ([60] above) did not remedy that deficiency.

iv) As to the First Defendant, there is no evidence before the Court that Ms Doyle or anyone at Unite had the relevant reasonable belief.

145. Ms Wilson has also advanced several submissions suggesting that the Second Defendant has tailored his evidence in light of the disclosure of *The Birthday Club* WhatsApp messages and that he has lied about the existence of the sources for the article, or at least what they had told him. She has also contended that the Court should find that the Second Defendant lied in his evidence about having spoken to someone at the Claimant's office prior to publication and that this lie undermines his credibility generally on other matters as to how he came to publish the Article. She advanced other matters which she said further damaged the Second Defendant's credibility.

146. Save in the limited respects set out in Section D above, this is not a case where the credibility of the Second Defendant ultimately has assisted me in determining the facts necessary to make a decision, so I have not needed to resolve these various points made by Ms Wilson.

(3) Decision on publication on a matter of public interest

(a) Statement on a matter of public interest

147. Applying the principles I have identified ([138(vi)] above), I am satisfied that the Article was on a matter of public interest. Broadly, I accept the Defendants' submissions (see [141(i)-(ii)] above). The Claimant was an elected member of Parliament. In her July 2016 Tweet, the Claimant had publicly suggested that people should join the First Defendant in order to vote out Mr McCluskey. Her opposition to Mr McCluskey was to his (and the First Defendant's) influence over the Labour Party, which the Claimant regarded as negative. The Claimant had publicly opposed the election of Mr Corbyn as leader of the Labour Party. Although, ordinarily a person's decision to join a union would be a personal and private matter, the Claimant's position as an MP; her prior encouragement of others to join the First Defendant to vote to

remove Mr McCluskey and her conduct in apparently joining Unite Community, a section of the First Defendant (at a discounted rate) to which she was not entitled to be a member, were matters of public interest.

(b) Belief that publication was in the public interest

(i) The First Defendant

148. The issue here relates to Ms Doyle's provision of the Press Statement for publication as part of the Article by the First Defendant.

149. I have set out Ms Doyle's evidence relating to her decision to provide the Press Statement (see [49]-[53] above). Contrary to Mr Hudson QC's submissions, she does not in fact address the issue of whether she believed, at the time, that publication of the Press Statement she gave to the Second Defendant, as part of the Article, was in the public interest. On the contrary, she stated that she did not address her mind at all to the issue of whether she ought to provide to the Second Defendant the information that the Claimant objected was a breach of the First Defendant's data protection obligations. In consequence, the First Defendant has not established that Ms Doyle believed that publication of the Press Statement she gave to the Second Defendant, as part of the Article, was in the public interest. I have no evidence that any other person at the First Defendant considered whether publication of the Press Statement in the Article to be published by the Second Defendant was in the public interest.

(ii) The Second Defendant

150. I accept the Second Defendant's evidence (see [77] above) that he believed that publication of the Article was in the public interest.

(b) Reasonableness of the belief that publication was in the public interest

(i) The First Defendant

151. The consequence of my finding that the First Defendant has failed to prove that Ms Doyle believed that publication was in the public interest (see [149] above) is that the First Defendant's reliance upon the s.4 defence fails and it is not necessary for me to consider whether, had she had such a belief, that belief was reasonable. In case I am wrong in my finding as to the existence of the belief, I will shortly state my conclusions on the issue of reasonableness.

152. On the evidence, I would not have been satisfied that a belief by Ms Doyle that publication was in the public interest was reasonable:

i) The inquiries that Ms Doyle had carried out had led her to establish that the only outstanding issue that required any "*investigation*" or further action by the First Defendant was to ensure that the Claimant's direct debit was amended to the correct level. It is not clear from Ms Doyle's evidence whether she *knew* from her discussions from Mr Coan that the Claimant had immediately agreed to be moved to the 'correct' category of membership as soon as it had been pointed out to her that she was not entitled to join Unite Community, but this information

was readily available to her. As Ms Doyle was inclined to accept in her evidence, it was misleading to describe the situation as the investigation of a complaint.

ii) Ms Doyle's use of the word "fraudulent" in the Press Statement was wholly unwarranted by the facts as Ms Doyle understood them and the investigations that she had carried out. Indeed, it was an astonishing word to use given what Ms Doyle knew of the matter. No one had suggested to Ms Doyle that the Claimant had acted in any way dishonestly. Indeed, the facts available to her suggested that the Claimant had simply made a mistake. Certainly, Mr Coan was only concerned about ensuring that the Claimant was paying the right level of subscriptions. On Ms Doyle's evidence, he had given her absolutely no reason to think that the Claimant had engaged in any sort of deception or dishonesty or that Mr Coan thought that she had.

(ii) The Second Defendant

153. Whatever information the Second Defendant had been provided by his sources, the single most important fact in the whole Article was the statement that the Claimant had made a "*false declaration*" that she was unwaged in order to join Unite Community (Article §§5 and 17). The Second Defendant had failed to establish whether, as part of the online joining process, an applicant was *required* to state that s/he was unwaged or otherwise declare that s/he was eligible for membership of Unite Community. Investigation of this point was both basic and straightforward; its importance was obvious. Appreciating the importance, the Second Defendant completed some of the stages of the online process in order to see what information applicants were asked to provide. Although I am not satisfied with the explanation he provided, the Second Defendant did not complete the online process. Even if he considered that he had a good reason for not completing it himself, the Second Defendant could easily and should have sought the answer from the First Defendant (a factor that would assume even greater importance if he failed to get a response from the Claimant). He did not do so. This is not the impermissible application of hindsight or an issue for editorial judgment; this was a basic avenue of factual investigation that the Second Defendant considered was important at the time, but failed to complete. Worse, he stated – as a fact – twice in the Article that the Claimant had made a false declaration to join Unite Community. The Second Defendant did not have any evidence to support that allegation and he had abandoned the investigation he had started which, if completed, would have established whether it was true. It can never be in the public interest for a journalist to misrepresent in an article the information or evidence that s/he has obtained.

154. In my judgment, the Second Defendant also failed to give the Claimant an adequate or fair opportunity to provide any comment or rebuttal of the allegations that the Second Defendant intended to publish. There are two main reasons why the Second Defendant failed to get a response from the Claimant prior to publication: (1) his failure fairly to put the allegations to her; and (2) a self-imposed and unreasonable publication deadline of the evening of 7 April 2017.

i) In his original email seeking a comment from the Claimant, the Second Defendant failed to set out a full, accurate and fair summary of the allegations that he intended to publish (see [56] above). This was a serious failure and one that was not remedied prior to publication. Beyond the fact that the Second Defendant was intending to publish an allegation that the Claimant had joined

Unite Community, in order to vote for Gerard Coyne, and had invited the Claimant's comment that she had saved £10 a week by not joining the main union, the Claimant and her staff knew nothing of the allegation of dishonesty that the Second Defendant intended to include in the Article. Prior to publication, the Second Defendant failed to tell the Claimant that the First Defendant had provided the Press Statement for publication which, as I have found (see [55(v)] and [96(ii)]), alleged (at least) that there were reasonable grounds to suspect that the Claimant had joined Unite Community on a fraudulent basis.

ii) I have acknowledged that there are circumstances in which a journalist may reasonably judge that it is necessary (or at least reasonable) to withhold information from the subject of an article when s/he is *initially* approached (see [58] above). This was not such a case and, beyond generalities, the Second Defendant has not made any real attempt to suggest that it was. I have rejected his evidence that he spoke to someone at the Claimant's constituency office on the telephone at 16.07 and provided him with details of the allegations that he intended to publish (see [61]-[66] above). The consequence of this decision not to include full, fair and accurate information about the allegations he was going to publish and what the First Defendant had said in the Press Statement that he had obtained was that these important details were not communicated to the Claimant prior to publication and she had no opportunity to comment on or to seek to rebut them.

iii) There may be cases where the evidence supports the conclusion that it was reasonable for the journalist to conclude that a subject, who was approached for comment, had no intention of providing one. This is not one of those cases. In most cases, it is not a reliable or fair assumption that an email is immediately read upon receipt in the ordinary course of events. In this case, the Second Defendant received an auto-response telling him, in terms, that a response to emails might take up to 4 weeks (see [59] above). The Second Defendant did not claim to have reached the conclusion that the Claimant had no intention of responding, and, objectively judged, the evidence cannot support such a conclusion. Instead he said:

> "I had not heard back from the Claimant or from her office staff by 6pm on the evening of 7 April 2017… Had I received any request to delay publication because a response was being considered, I would likely have agreed a reasonable request, say a matter of hours. However, no such request was received… I think three hours is reasonable during working hours and in the circumstances in which there was no request for more time…"

iv) There was no justification for the Second Defendant imposing a deadline on publication, the practical effect of which allowed the Claimant a period of just over 3 hours to respond. Such a timeframe within which to demand a response was arbitrary and unreasonable. Whilst there may be a case where the urgency is such that a timeframe of 3 hours will be found by the Court to be reasonable in the particular circumstances, I would expect such cases to be rare.

v) There was no particular urgency in publishing the Article that evening, and certainly none that justified publication without the Second Defendant either

giving the Claimant a fair opportunity to respond or reaching a reasonable conclusion that the Claimant had, with full knowledge of what was about to be published, declined to provide a comment. Neither has been established on the evidence.

vi) In his evidence, the Second Defendant stated that he regarded the closing date for postal ballot in the General Secretary election supplied the element of urgency that justified publication. As I understand his evidence, the suggestion is that those still to cast their vote were entitled to the information in the Article, urgently, as it might affect their voting decision. Necessarily, the argument must be that the information in the Article was of such importance that even waiting until the following day risked electors casting their ballots on some "false basis". I reject this explanation as unconvincing and fanciful, and one that has been contrived after the event. The General Secretary election was, of course, part of the background to the Article. The Claimant was not standing for election, but she was part of a group of "*Labour's right-wing faction*" who had joined the First Defendant to vote in the General Secretary election (clearly against Mr McCluskey). I can see how this information *might* possibly influence the voting of someone who was opposed to this form of 'entryism'. Equally it might spur on those who were apathetic supporters of Mr McCluskey actually to cast their vote. But what was not relevant, nor likely to have a real bearing on the General Secretary election, was the claim that the Claimant (and others) had falsely declared themselves unwaged in order to join Unite Community. This was the defamatory part of the Article. It was to this allegation that the Second Defendant needed to give the Claimant a fair opportunity to respond.

155. Stepping back, although bearing only a *Chase* level 2 meaning, the allegation made against the Claimant was serious; it touched upon her honesty and integrity. The Second Defendant's efforts to verify the information were seriously deficient. He tried, but failed, to establish that the First Defendant's online process for joining Unite Community did not require any declaration that the applicant was unwaged; yet the Article stated directly the contrary. This was a fundamental plank of the defamatory allegation made against the Claimant. The Second Defendant failed fairly to put the allegations that he included in the Article to the Claimant prior to publication. There was insufficient urgency to justify publication without giving her such an opportunity. In consequence, of both the failure fairly to put the allegations to the Claimant and the Second Defendant's failure to establish basic facts as to the online membership process, the Article did not contain either the Claimant's side of the story or facts that could fairly be presented in her defence. Against that, I am satisfied that the Article was published on a matter of significant public interest; it was not sensationalist and the Claimant was an elected MP.

156. My overall assessment of those factors is that the Second Defendant has not demonstrated that his belief that publication of the Article was in the public interest was reasonable. For the reasons I have given, the s.4 defence of the Second Defendant fails.

J. Abuse of Process

157. Although I have dismissed both substantive defences, the Defendants submit that the Claimant has made dishonest claims in pursuit of her claim, that this conduct amounts

to an abuse of process and, in consequence, she should be awarded only nominal damages.

158. The Defendants set out their case on abuse of process in Paragraphs 27-46 of the Re-Amended Defence dated 25 September 2019 (set out in Appendix 3). By comparison, the defences of both truth and public interest were pleaded in fewer paragraphs. The allegations are dealt with, at length, in paragraphs 90-223 in Mr Beckett's witness statement. Originally, the Defendants argued that the Claimant's alleged dishonesty justified striking out her claim. As I have noted, their position at the conclusion of the trial was that, if her claim succeeded on liability, she should be awarded only nominal damages.

(1) Law

159. I derive the following principles from the authorities:

i) Deliberately making false statements in support of a claim is an abuse of the Court's process. Where established, the Court has jurisdiction to strike out a claim for abuse of process even where to do so would defeat the substantive claim. The only limit on that jurisdiction is that the Court must determine cases justly: CPR 1.1 and 1.2. The test in every case must be what is just and proportionate: ***Summers -v- Fairclough Homes Ltd*** **[2012] 1 WLR 2004** [41] and [61].

ii) Where the alleged abuse of process issue involves conflicting evidence, it ought to be determined following oral evidence, which will usually mean at trial: ***Alpha Rocks Solicitors -v- Alade*** **[2015] 1 WLR 4534** [24] and [29]-[32].

iii) Striking out a claim as an abuse of process after trial would only be appropriate where the party's abuse was such that s/he had thereby forfeited the right to have the claim determined. Cases in which it would be right, after trial, to strike out for abuse rather than determine the claim on its merits would be very rare or "*very exceptional*": ***Summers*** [43] and [61] approving the decision of the Court of Appeal in ***Masood -v- Zahoor*** **[2010] 1 WLR 746** [72].

iv) It is likely that in many cases, sanctions short of striking out will be sufficient: e.g. adverse inferences being drawn against the relevant party; adverse costs orders and possible exposure to contempt proceedings: ***Summers*** [61].

160. In support of their submission that, if successful in her claim, the Claimant should be awarded nominal damages, the Defendants have relied principally on Tugendhat J's decision in ***Joseph -v- Spiller*** **[2012] EWHC 2958 (QB)**. In that claim for libel, the Judge found for the claimant – rejecting the defence of justification – but also held that the claimant had fabricated a claim for special damages. In consequence of what he found to be an abuse of process, and applying ***Summers***, the Judge dismissed the claim for special damages and made only a nominal award for general damages: [177]-[178].

161. In a subsequent judgment on costs - **[2012] EWHC 3278 (QB)** - Tugendhat J explained that his decision to award only nominal damages was because he had concluded "*it would be an affront to justice if [the claimant] were to be awarded more than a*

nominal sum for general damages". The Judge referred ([4]-[7]) to several cases showing that the conduct of the claimant in the case was a factor relevant to damages.

162. Mr Hudson QC has also relied upon ***FlyMeNow -v- Quick Air*** **[2016] EWHC 3197 (QB)**, in which Warby J awarded a claimant company general damages of £10 for a libel suggesting that it was insolvent. Whilst Mr Hudson is correct that Warby J did accept the principle from ***Joseph -v- Spiller*** that damages could be reduced to take account of dishonest statements made by the party in the litigation [128], that was not the only consideration that had a bearing on the ultimate award of damages. It is not right to say that the award of £10 was a "nominal award" following application of the ***Joseph -v- Spiller*** principle. The Judge found both that partial justification "*substantially reduc[ed] what would otherwise be the award*" [126] and that the defendant had also proved during the trial "*that the claimant behaved disgracefully in fobbing it off with a series of dishonest excuses*" [127], evidence that was admissible in mitigation of damages under the principle in ***Pamplin -v- Express Newspapers Ltd*** **[1988] 1 WLR 116**.

(2) Facts

163. To understand the Defendants' submissions that the Claimant has conducted her claim dishonestly and should therefore be awarded only nominal damages, it is necessary to set out some of the litigation history. I shall do this as briefly as I can.

i) In the Claimant's letters of claim, dated 18 April 2017, it was stated that the Claimant had joined Unite Community "*because she was aware of some of their work in her local constituency*" (see [81] above).

ii) The original Particulars of Claim, dated 26 January 2018 and verified with a statement of truth, contained the following paragraphs:

> 4. In the course of her activities in her constituency, the Claimant learned about the community section of the First Defendant and various campaigns it was running which affected issues of local concern.
>
> 5. In late December 2016, the Claimant applied for community membership via the First Defendant's website searched for "join Unite Community", or used similar search terms, on Google and the results included a link to the relevant page of the First Defendant's website, namely www.unitetheunion.org.growing-our-union/communitymembership/. She provided information about her residency in the jurisdiction, selected "Community membership" from the options listed and provided all the required information, namely her name, date of birth, gender, email address, address and bank details. For the avoidance of doubt, the membership application did not include any questions about the Claimant's employment status or similar matters.
>
> 6. The Claimant did not discuss her membership application or the fact that she had joined the First Defendant with any third party, other than her husband.

The Claimant was advancing, in addition to her clam for libel, claims for breach of confidence and misuse of private information. Paragraph 6 of the Particulars of Claim was an averment relevant to that claim.

iii) On 22 March 2018, the Defendants' solicitors sent a Part 18 Request for Further Information asking the Claimant to:

> "… specify for what period (both before and after the date on which she lodged her membership application) the Claimant denies discussing with anyone, other than her husband, her planned and then ongoing membership application…"

iv) In her evidence at trial, the Claimant stated that her original recollection had been that she had joined Unite Community in the circumstances set out in the original Particulars of Claim but that the Defendants' probing of her claim not to have discussed her Unite Community membership application with anyone other than her husband caused her to carry out a check to see whether she had discussed it with anyone else at the time. One of those checks was to search through her WhatsApp messages. She did this on 22 March 2018. As a result, the Claimant stated that she discovered *The Birthday Club* WhatsApp messages from 5 December 2016 (see [24]-[25] above). In her evidence she said that she could not believe what she had found as she had no recollection of the exchanges. She was worried – "*mortified*" – that facts that had been pleaded in the Particulars of Claim were incorrect. That the Clamant carried out such a search is corroborated by the copies of *The Birthday Club* WhatsApp messages that have been disclosed. In them, the word "Unite" is highlighted indicating that it was used as a search term. In her evidence, the Claimant stated, and I accept, she passed screenshots of *The Birthday Club* WhatsApp messages that she had found to her solicitors. That would have been on or shortly after 22 March 2018. The Claimant stated, and again I accept, that, at the time, she considered that the information contained in the WhatsApp messages was important and needed to be disclosed to the Defendants. When cross-examined, she agreed with Mr Hudson QC that it was "*imperative to correct the position*", but said that throughout the litigation she acted on the advice of her solicitors. The Claimant's solicitors did not act immediately to correct the position.

v) On 23 April 2018, a month since discovery of the WhatsApp messages, the Claimant's solicitors sent a response to the Defendants' Part 18 Request:

> "We have now had an opportunity to consider with our client the Part 18 Request contained in your … letter of 22 March 2018 relating to paragraph 6 of the Particulars of Claim.
>
> Our client now realises that paragraph 6 was factually incorrect. Whilst this error does not have any direct bearing on the remainder of the Particulars of Claim, our client intends to amend the Particulars of Claim to remove paragraph 6."

At that time, the parties were discussing having the meaning of the Article determined as a preliminary issue, so the Claimant's solicitors suggested that any amendments to the Particulars of Claim should await the resolution of that

issue as the ruling might necessitate further amendments to the Particulars of Claim. The Claimant's solicitors did not disclose the WhatsApp messages or even make clear the circumstances in which the Clamant had come to join Unite Community. As was later to be recognised, the account given in Paragraph 5 of the Particulars of Claim was also not accurate.

vi) Perhaps understandably, the Defendants' solicitors were not satisfied with that response. On 25 April 2018, they wrote making a further Part 18 request:

> "1. Please state how your client came to make this mistake, and when the mistake was identified.
>
> 2. Please particularise all persons that your client told about her membership application and/or the fact that she had joined the First Defendant, and the date on which she told each person, for the period up to 7 April 2017 [the date of publication of the Article].

vii) On 8 May 2018, the Claimant's solicitors responded, in a letter which the Claimant said in her evidence that she had seen and approved. In summary, the letter advanced an argument that the Defendants were not entitled to answers to their questions as they did not fall properly within the scope of Part 18:

> "Neither of your two Requests satisfies the Part 18 test. Your clients know the case which they have to meet and will be able to advance whatever defences they wish when the time comes for filing and service of the Defence
>
> Your request is a fishing expedition directed at (possibly) matters for evidence, rather than a request for information falling within the ambit of Part 18…"

viii) On the same day – 8 May 2018 – the Claimant's solicitors sent draft Amended Particulars of Claim to the Defendants. The accompanying letter said:

> "Our client was unaware of any error in the current pleading until she read your request for further information of 22 March 2018. This prompted her to reflect further on the circumstances of her membership application. Our client had become gravely ill soon after publication of the article complained of in April 2017 and spent several months in hospital and recuperating. Our client believes that episode affected her recollection."

The accompanying draft pleading made the following material amendments (showing the conventional underlining and striking out):

> 4. In the course of her activities in her constituency, the Claimant learned about the community section of the First Defendant and various campaigns it was running which affected issues of local concern.
>
> 5. In ~~late~~ December 2016, the Claimant applied for community membership via the First Defendant's website ~~searched for "join Unite Community", or used similar search terms, on Google and the results included a link to the relevant page of the First~~

~~Defendant's website, namely www.unitetheunion.org.growing-our-union/communitymembership/~~ at https://www.unitetheunion.org/join-unite. She provided information about her residency in the jurisdiction, selected "Community membership" from the options listed and provided all the required information, namely her name, date of birth, gender, email address, address and bank details. For the avoidance of doubt, the membership application did not include any questions about the Claimant's employment status or similar matters.

~~6. The Claimant did not discuss her membership application or the fact that she had joined the First Defendant with any third party, other than her husband.~~

ix) The Amended Particulars of Claim were formally served on 27 July 2018, with these amendments and verified with a statement of truth. It is quite clear that a conscious decision had been taken on the Claimant's side not to reveal – and certainly not to disclose – *The Birthday Club* WhatsApp group messages that had led to the Claimant joining Unite Community. The amendments to the Particulars of Claim – and the explanation provided for them – were the bare minimum needed to bring the pleading into line with the true facts without revealing those facts to the Defendants. Whatever might be said about this conduct, it was quite deliberate. The Claimant was visibly discomforted when cross-examined about this refusal to reveal to the Defendants the existence of *The Birthday Club* WhatsApp Group messages. Repeatedly, whilst accepting that the amendments did not reveal the true position, she stated that she took the advice of her solicitors.

x) The Defence was served on 12 October 2018 and on 15 January 2019, the Claimant filed her Reply, which included the following statement:

> "... The hyperlink to the relevant webpage for joining the First Defendant's Community section was provided to the Claimant by Ruth Smeeth MP"

xi) *The Birthday Club* WhatsApp messages were eventually provided to the Defendants by way of standard disclosure on 23 April 2019, albeit initially without giving the full names of the other members of the WhatsApp group. This disclosure was finally made 13 months after the messages had been discovered by the Claimant.

xii) Inevitably, the disclosure of the WhatsApp messages led to exchange of substantial correspondence. The Defendants attacked the Claimant's credibility in light of the disclosure and the Claimant's solicitors took the position – which they maintain even now – that the Claimant was not obliged to reveal the WhatsApp Group messages and the circumstances in which she joined Unite Community until standard disclosure.

xiii) On 9 May 2019, the Claimant's solicitors provided an explanation for the original error in the Particulars of Claim:

> "In June 2017, our client was rushed to hospital where she remained for six months [details of procedures given]. When our client authorised us to sign

> the Statement of Truth in January 2018, she mistakenly believed that she had only told her husband about her Unite membership application because he was the only individual with whom she had discussed it. She had completely forgotten about the brief WhatsApp exchanges over a year before which had prompted her application. She was only prompted to remember those exchanges by the request made in your letter of 22 March 2018 and the subsequent search which she undertook. No doubt you will be able to question our client at trial about this matter if you wish to persist in claiming that she has been lying. That is a matter which would plainly sound in damages."

xiv) Witness statements were exchanged on 20 June 2019. In her statement, the Claimant stated that, when she had originally approved the Particulars of Claim, she had forgotten about the WhatsApp messages in *The Birthday Club* group. She said that, following the request for further information on 22 March 2018, she had "*racked [her] brains*" and:

> "… searched my emails and phone records and, in doing so, came across the Birthday Club WhatsApp exchange… I realised that I had completely forgotten that was how I came to apply for membership…"

By way of further explanation for her mistake, she added:

> "So much was discussed in multiple WhatsApp groups with hundreds of messages daily in dozens of groups that I barely registered all the comments. Moreover, 9 days after the article complained of was published, a General Election was called by Theresa May and after that I was completely immersed in election matters until Election Day on 8 June 2017. Soon afterwards, on about 21 June 2017, I was rushed to hospital where I remained for six months undertaking [details of procedures given]. It was after I came out of hospital that the Particulars of Claim were being drafted, and with all that happened, I made the mistake…"

xv) Whilst it was true that the Claimant had been seriously ill, it was not accurate to say that she had been in hospital for 6 months. As the Claimant confirmed in evidence, over that period of 6 months she had been in and out of hospital receiving treatment and has spent some 39 days in hospital during that time.

(3) The allegations of lying/dishonesty made against the Claimant

164. By reference to the Re-Amended Defence ("RD"), the Defendants make the following allegations against the Claimant:

i) In order to conceal the true position – that she had joined Unite Community at the suggestion of Ruth Smeeth in a WhatsApp message in *The Birthday Club* – the Claimant made the following statements in §§4-6 of her Particulars of Claim that were known by her to be false and dishonest (RD §§33-34):

(1) that she had come to join Unite Community on her own initiative following a Google search; and

(2) that she had not discussed joining Unite Community with anyone other than her husband.

ii) The Claimant's statement that she had been in hospital for 6 months was untrue. It was advanced as a further dishonest statement designed to support her dishonest claim to have forgotten about *The Birthday Club* WhatsApp group discussion on 5 December 2016 (RD§§39-42).

(4) Submissions

165. Mr Hudson QC did not pull his punches in his opening submissions at the trial on behalf of the Defendants. He submitted that the evidence that the Court would hear during the trial would establish that the Claimant had acted dishonestly and deceitfully in her conduct of this litigation by lying about the circumstances in which she came to join Unite and then trying to cover up those lies. Mr Hudson said that the Claimant's dishonesty "*permeates through every part of the case*" and "*regrettably … she is not fit to be an MP*".

166. In his closing submissions, Mr Hudson QC has submitted that the evidence during the trial demonstrates that the Claimant has made "*untruthful and dishonest statements*" in (a) her letters of claim; (b) her statements of case; (c) her correspondence; and (d) in her witness statements. The Defendants contend that, if successful in her claim, the Claimant's dishonest conduct is such that it would be "*an affront to justice if [she] were awarded anything other than nominal damages*".

167. Ms Wilson, on behalf of the Claimant, submits that the disclosure of the WhatsApp messages was in accordance with Court-ordered directions, and steps taken in the litigation from April 2018 were consistent with the Claimant having found the messages when she said that she had, and taking steps accordingly. The evidence clearly demonstrates that the Claimant provided her legal team with the WhatsApp messages on 22 March 2018. From that time on, the notion of seeking to conceal them in the litigation makes no sense unless the Defendants were to go so far as to contend that the Claimant's legal team were not going to disclose them as part of standard disclosure. The fact that the date for standard disclosure was over a year later was not the Claimant's fault, it is argued.

168. Ms Wilson accepted that statements of case and witness statements should be absolutely accurate, but mistakes are made. She added:

> "The Court may consider that Ms Turley's lawyers should have taken different steps. But that is not probative of any dishonesty on her part."

(5) Decision on Abuse of Process

169. I can state my conclusions shortly:

i) I reject the Defendants' allegations that the Claimant has been dishonest. I accept the Claimant's evidence that she had forgotten the WhatsApp exchanges when she came to approve the original Particulars of Claim. The misstatement of the period the Claimant spent in hospital was an error. It was

sloppy, and it should have been picked up, at least before the Claimant's witness statement was served, but it was not dishonest or intended to mislead.

ii) I accept that the Claimant discovered the WhatsApp messages on 22 March 2018 and practically immediately provided them to her solicitors. The belated disclosure of the WhatsApp messages does not demonstrate (or support) the charges of dishonesty. On the contrary, it undermines the suggestion that the Claimant was intent on dishonestly hiding the existence of these messages. From the moment that she disclosed the WhatsApp messages to her solicitors, the Claimant believed and fully recognised that they would ultimately be provided to the Defendants and to the Court.

iii) Disclosure of the messages was quite likely to be politically embarrassing – to the Claimant and possibly other members of *The Birthday Club* – and it is likely that this informed the decisions that were taken not to be candid about their discovery and to delay provision of the messages to the Defendants. Nevertheless, the failure to answer straightforward questions in correspondence (seeking refuge in a denial of entitlement under procedural rules) and the failure to disclose the true position regarding the Claimant's joining Unite Community until the WhatsApp messages were provided on standard disclosure were serious misjudgments. Litigation is not a game. The submission made on behalf of the Claimant that the Civil Procedure Rules did not *require* disclosure of the WhatsApp messages at any point before standard disclosure on 23 April 2019 overlooks the fact that the parsimonious amendments made to the Particulars of Claim in light of the discovery of the WhatsApp messages, without disclosing the documents themselves, were apt to mislead by omission. The consequences of these decisions were painfully exposed in the cross-examination of the Claimant, who simply could not provide an explanation for the lack of candour in responses sent on her behalf. Privilege not having been waived, I cannot reach a conclusion as to whether pursuit of this ill-judged strategy was the idea of the Claimant or her lawyers, but ultimately a party must take responsibility for the actions of his/her legal representatives. In this case, the Claimant is fortunate that I am satisfied that the evidence refutes the charges of dishonesty made against her.

170. I therefore reject the Defendants' contention that the Claimant has made dishonest statements in pursuit of her claim or that she has been guilty of abuse of process.

K. Remedies

(A) Damages

(1) Law

171. The relevant principles were gathered 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: ***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."

172. Mr Hudson QC has also relied upon the following further principles:

i) Warby J's reminder in ***Barron -v- Vines*** [87] (which the Judge also cited in ***Barron -v- Collins*** **[2017] EWHC 162 (QB)** [27]) that:

> "… special caution is required when it comes to deciding what is justified and proportionate by way of compensation for libels such as those in issue here, which are published by one politician about another on a topic of public interest. Politicians may in general have thicker skins than the average. Whether or not that is so in the individual case, they are expected to tolerate more than would be expected of others."

ii) A defendant is entitled to rely in mitigation of damages on any other evidence which is properly before the court, including evidence that went to a (failed) plea of truth: ***Pamplin -v- Express Newspapers*** **[1988] 1 WLR 118, 120** *per* Neill LJ.

173. Ms Wilson relied upon the principle, from ***Cairns -v- Modi***, that following a trial where a defendant has advanced a justification defence which has failed, particularly where the allegations made against the claimant at trial has received widespread media coverage, there is a need for the damages to send a clear message that the allegations were without foundation. Lord Judge LCJ explained the principles as follows:

> [28] Libel damages are intended to compensate the victim rather than punish the perpetrator. Where the court wishes to take account of aggravation on the defendant's part in arriving at the appropriate sum, as in Cairns -v- Modi , it is compensating the claimant for additional hurt to his feelings, or in the context of vindication, injury to his reputation, brought about by the defendant's conduct over and above that caused by the publication itself. As Lord Reid explained in ***Broome -v- Cassell & Co Ltd*** **[1972] AC 1027**, **1085-1086**:
>
> > "Frequently in cases before ***Rookes -v- Barnard***, when damages were increased in that way but were still within the limit of what could properly be regarded as compensation to the plaintiff, it was said that punitive, vindictive or exemplary damages were being awarded. As a mere matter of language that was true enough. The defendant was being punished or an example was being made of him by making him pay more than he would have had to pay if his conduct had not been outrageous. But the damages though called punitive were still truly compensatory: the plaintiff was not being given more than his due."
>
> [29] Mr Caldecott drew attention to how much the conduct of the trial on Mr Modi's behalf will have impacted, not only on Mr Cairns's feelings, but also on the need for vindication. In essence he submitted that by the time the trial had concluded the coverage given to the trial throughout the world hugely increased the need for vindication. It would thus be wholly artificial

to proceed on the basis that Mr Cairns's reputation only needed to be restored among a limited number of readers. The serious allegations put in cross-examination and in the closing speech, on Mr Modi's behalf, make it necessary for him to be able to point, now and in the future, to an award of damages which carries conviction following such an onslaught. As Lord Hailsham explained in ***Broome -v- Cassell***, at p.1071B–C:

> "Such actions involve a money award which may put the plaintiff in a purely financial sense in a much stronger position than he was before the wrong. Not merely can he recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge."

[30] Mr Tomlinson, by contrast, suggested that there is a reduced need for an element of vindication in the award once a reasoned judgment has been promulgated at the conclusion of a trial. In effect, the judgment in favour of Mr Cairns contained its own vindication. In this context we understood him to be arguing for a principle that damages should always be less, following a trial by a judge alone, than after the verdict of the jury, on the basis that the judge will provide a reasoned judgment explaining his conclusions which will, if the result is favourable to the claimant, vindicate him. We are disinclined to accept any such general principle. (See, for example, ***Associated Newspapers Ltd -v- Dingle*** **[1964] AC 371**, **400–401**, **407**, **408–409**, **419**, and the discussion in ***Purnell -v- Business F1 Magazine Ltd*** **[2008] 1 WLR 1**, [27]-[30], [39].)

[31] It is hardly necessary to expand on the reasons given by their Lordships in the Dingle case, but it is perhaps worthy of note that most lay observers or "bystanders" would be unlikely to read a detailed judgment and would be rather more interested to find out what sum the court, whether judge or jury, had awarded the claimant. Given the wholesale attack on Mr Cairns's reputation in the course of the trial, as reproduced in the media around the world, it is safe to assume that such a person would only be convinced by an award of some magnitude. Without adding to the judicial observations on this topic, we reject the submission that the present award should be reduced merely because Bean J's judgment contained express elements of vindication of Mr Cairns's reputation.

[32] In any event it cannot be right in principle for a defendant to embark on a wholesale attack on the character of a claimant in a libel action heard by a judge without having to face the consequences of the actual and potential damage done to the victim both in the forensic process and as a result of further publicity. There will be occasions when the judgment will provide sufficient vindication, but whether it does so is always a fact-specific question. The judge will be well placed to assess whether the terms of the judgment do indeed provide sufficient vindication in the overall context of the case. In the present case, we think it unlikely that cricket fans will have downloaded the judgment of Bean J and read it with close attention. It is more likely, as in so many cases, that the general public (or rather, interested "bystanders" who need to be convinced) will be concerned to discover what might be called the "headline" result. What most people want to know, and

that includes those who read the judgment closely, as Mr Caldecott submitted, is simply "*how much did he get?*"

[33] The judge awarded £15,000 to take account of the conduct of the trial by the previous counsel instructed by Mr Modi. This represented an increase of 20% on the judge's starting figure of £75,000. This element of the award could have been addressed in the judgment as being as one of the factors taken into account in arriving at a global sum, but in the present case, because of the particular impact of the way in which the trial was conducted, presumably on the basis of Mr Modi's instructions, the judge decided to make specific and individual reference to this feature of the case. He was entitled to do so. Even allowing for the elements of vindication in the public judgment, this feature of the award was entirely proportionate.

174. Ms Wilson has relied upon awards made in three earlies cases as providing a general guide:

i) ***Cairns -v- Modi* [2012] EWHC 756 (QB)** (upheld on appeal): £75,000 general damages plus £15,000 aggravated damages in respect of tweet where the extent of original publication was agreed to be 65, with an estimated 1,000 readers of a republication. The imputation was a *Chase* level 1 meaning of corruption (match fixing) in the tweet and *Chase* 2 for the republication. The compensatory award took account of the likelihood of such a publication 'going viral'. The aggravated damages were in respect of one matter, namely the conduct of the trial ("*The words "liar", "lie" and "lies" were used in all 24 times*" [136] *per* Bean J).

ii) ***Fentiman -v- Marsh* [2019] EWHC 2099 (QB)**: £45,000 general damages and an additional £10,000 in aggravated damages in respect of three posts containing allegations of computer hacking or strong grounds to suspect such conduct in the third post, published to approximately 100, 230 and 188 persons respectively on blogs. The separate aggravated damages award took account of several matters including that the publications were made against a background of earlier proceedings and the Defence asserted that the claimant was a liar.

iii) ***Flood -v- Times Newspapers Limited* [2013] EWHC 4075 (QB)**: An allegation of grounds to suspect corruption, abuse of position and criminality by a police officer, in respect of estimated 549 hits on website (after the date when the defendant no longer had a *Reynolds* defence). Nicola Davies J awarded general damages of £45,000 and a further £15,000 in aggravation because of the conduct of the proceedings and failures after the claimant was exonerated.

175. To those comparators, Mr Hudson added:

i) ***Monir -v- Wood***: an online allegation of involvement in child sex abuse which was described as "*life changing*" and having transformed the life of the claimant and his family and left him a recluse [230]. Notwithstanding the "*fairly limited publication*" (although republishing took it into four figures) and an identification issue, there was "*evidence of serious and significant reputational harm*" [229] flowing from the publication coming to the attention of people in the local area including "*even his next-door neighbour*". Had the libel been

published in a national newspaper, £250,000 or more would have been easily justified, but the award had to be discounted to make it proportionate to the limited online publication. The award made was £40,000 [236].

ii) ***Burgon -v- News Group Newspapers Ltd*** **[2019] EWHC 195 (QB)**: £30,000 was awarded to an MP for an online article, published on a national newspaper website by a very prominent political correspondent, the Sun's political editor, that meant that he "*joined a band which as he knew took great pleasure in using Nazi symbols*". The imputation that he was prepared to associate himself with pleasure in Nazi symbols is again substantially more serious for an MP.

iii) ***Suttle -v- Walker*** **[2019] EWHC 396 (QB)**: a joint award of £40,000 was made for defamation and harassment in a case where the harassment alone justified an award at the upper end of the *Vento* scale [58], being a campaign in which the claimant was "*clearly and deliberately targeted*" to create a "*foreseeable response*" which was "*vicious and frightening*" and "*calculated to (and did) whip up hatred for the Claimant and put her in fear for her safety*". The "*real … reputational harm*" was adequately compensated within that award [59]. Mr Hudson submitted that this was far from the present case, in which there is no real evidence of actual harm to the Claimant's reputation, and the evidence – such as her re-election on an increased share of the vote – is, if anything, to the contrary.

176. It is common ground that I should make one award of damages against the Defendants. I am compensating the Claimant for the damage caused by the publication of the Article, for the publication of which I have held both Defendants liable.

(2) Evidence

177. Much of the evidence relevant to the assessment of damages is contained earlier in the judgment. In her witness statement, the Claimant described the effect on her of the publication of the Article:

> "For anyone these allegations would have been upsetting but as a Member of Parliament the Article's allegation is particularly serious and has the potential to cause a significant amount of damage to my reputation and my career. While I am quite robust, as you have to be as an MP, such an attack on my integrity was distressing… The members of my local branch were no doubt a key target audience and it is clear to me that this article was published as an attempt to have me de-selected as, had there not been a snap General Election, it is likely that my selection process would have been taking place in the near future. This was part of a wider attempt to destabilise and undermine MPs who had not supported Jeremy Corbyn by turning members against them… The Article made me feel bullied and undermined. They were trying to create a picture of me that was just not true. I was helpless and felt that if I attempted to respond by media statements I would have likely just fuelled the allegations and mad more people aware of them. It just felt as if *The Skwawkbox* blog had decided it could publish whatever it liked and no-one would be able to do anything about it. I feel angered and insulted and it adds to my sense of outrage that *Skwawkbox* could say whatever it liked on its blog with no sense of accountability. It is extremely frustrating that even after Mr Walker has seen all the documents in these proceedings, he has not amended or apologised for the Article and it remains on his website today… It has now been

> two years since the publication of the Article and the Article still remains on the internet and I had had no correction and no apology. For two years the article with the very serious allegations against me has been out there and it has not been withdrawn or corrected, it feels that some members of the public will believe the allegations are true…"

The Claimant was not challenged on any of this evidence when cross-examined at the trial. Although the Claimant was generally resilient when she was cross-examined, there were occasions when she was distressed.

178. The Defendants did not require the Claimant's husband, Jonathan Keenan, to be cross-examined. His evidence was:

> "Anna was incredibly upset and angry when *The Skwawkbox* article was published. She was clearly devastated about it. Anna was constantly worried about the article and had sleepless nights about it. She talked about the article constantly with me after its publication. It was like a body blow for her and she felt bullied by being targeted in the article. Anna was very worried that people were going to believe *Skwawkbox*'s lies. She became increasingly concerned about this as she got closer to the General Election. She was worried that people who read the article would believe it as it was still on *The Skwawkbox* website.
>
> Anna was completely wiped out, down and devastated… Without a doubt, the stress caused by the article contributed to Anna's anxiety and her distressed state at the time … Anna has been stressed about *The Skwawkbox* article ever since its publication. This is a source of constant anxiety for her and she talks about it to me frequently…"

(3) Submissions on damages

179. In his closing submissions, Mr Hudson QC contended that the Court should award no more than £10,000:

i) Whilst the Defendants accepted that the *Chase* level 2 meaning was seriously defamatory, the allegation is far from the gravest end of the scale; e.g. ***Monir -v- Wood***. The Court must not lose sight of the fact that the imputation is at *Chase* level 2. A "basic" level 2 meaning should result in a very substantially lower award than the one that would be appropriate for a level 1 meaning.

ii) *The Skwawkbox* was a left-wing blog which, at least at the time of publication, had a very limited traction, as demonstrated by the fact that the Article was read only 3,672 in the first year of publication (most of which were prior to receipt of the Claimant's letter of claim). That figure is half the 7,000 persons who had read the story in ***Burgon*** [108].

iii) In ***Barron -v- Collins***, as well as broadcast live on BBC Parliament channel, and tweeted to over 20,000 followers of prominent political journalists and websites, the libel was published on a PA wire service report which would have led to wide circulation to journalists and those involved in public policy: [45]-[46]. In ***Barron v Vines***, the libel was published on a *Sky News* lunchtime broadcast to conservatively tens of thousands up to at most hundreds of thousands watching at that moment: [39]-[41].

iv) The Second Defendant promptly offered a 1,000 word "*right of reply*" the day after the Claimant's the letter of claim which he offered to publish "*as is*".

v) The Claimant had accepted that she had acted "*sloppily*" in relation to the false statements in her statements of case for the litigation.

vi) The Claimant accepted in oral evidence that her own attack on Mr McCluskey had been derogatory, abusive, improper, and unacceptable. The Article was written in the context that it was raising concerns about someone who had shown herself to be both a vehement public opponent of Unite's General Secretary and someone prepared to use derogatory and abusive language about him in a Tweet for which she said she would be "*disingenuous*" to apologise. The Claimant's prior abusive comments aimed at a defendant are in principle relevant: ***Trumm -v- Norman*** **[2008] EWHC 116 (QB)**.

vii) Any damages awarded will be in the context of a reasoned judgment rejecting the truth defence.

viii) The pursuit of the abuse of process argument should not aggravate the damages. Warby J did not treat it as an aggravating factor in ***Barron -v- Vines*** [72].

180. In her closing submissions on behalf of the Claimant, Ms Wilson submitted that "*the aggravation from the conduct of the Defence is of the highest order of magnitude. It could hardly be greater.*" She referred to the following factors which she argued demonstrated that the Defendants had "*made a calculated decision to inflict maximum damage on the Claimant, come what may*":

i) In opening, the Defendants asserted that the Claimant was "*unfit to be an MP*" (see [165] above). That statement was made at a time when she was standing for election. It was not relevant to any matter in issue and was "*pulled out of the hat, presumably to attract the attention of the media who could report it under the protection of privilege (which they did)*".

ii) Despite the truth defence advanced by the Defendants in support of a *Chase* level 2 meaning that there were reasonable grounds to suspect the Claimant of dishonesty, the Defendants, in opening, contended that they were going to seek to "*climb the mountain*" and that the Defendants' evidence would prove that the Claimant was actually dishonest, principally in support of their abuse of process argument.

iii) The Defendants made allegations of dishonesty against the Claimant in her conduct of the litigation. Those allegations are of the utmost seriousness but relate to matters which the Defendants must have appreciated could also have been explicable as mistakes.

iv) While the allegation that the Claimant had lied about not receiving post from the First Defendant was withdrawn during trial (see [32] above), no apology was offered.

(4) Decision on damages

181. In my judgment, although a *Chase* level 2 imputation, this was a serious allegation, particularly to make against an MP. It called into question the Claimant's honesty and integrity. The scale of original publication, whilst not at the level of a national newspaper, was nevertheless substantial. There is clear evidence of serious harm to the Claimant's reputation and the grapevine effect in operation in this case. The Second Defendant has continued to publish the Article and there has been no retraction, amendment or apology to mitigate the damage to the Claimant's reputation or to provide any element of vindication. The award of damages (and this judgment) will have to provide that. The Claimant's evidence as to the distress caused by publication was not challenged by the Defendants. I have no doubt that she found the trial – particularly her own cross-examination – to be humiliating and, at points, distressing.

182. The Defendants' conduct during the trial has seriously aggravated the harm to the Claimant's reputation and her distress. Mr Hudson QC's claim, in opening, that the evidence would show that the Claimant was "*not fit to be an MP*" was a memorable phrase that was picked up in most media reports of the trial. Many reports have been published detailing the Defendants' claims that the Claimant was dishonest. In the event, I have dismissed the Defendants' defence of truth and their claim that the Claimant had conducted her claim dishonestly. The platform on which it was claimed that the Claimant was dishonest and not fit to be an MP has collapsed. Not only does this conduct aggravate the damages (for the reasons explained by Lord Judge LCJ, in ***Cairns -v- Modi***) it makes the vindicatory function of damages particularly important in this case. Although this judgment may serve to vindicate the Claimant, its effectiveness in doing so will depend on the number of people who read it, or read reports of it. In most cases, effective and lasting vindication is most likely to come, as Lord Judge recognised, from the size of the award.

183. I accept that the allegation was not one of guilt, but of reasonable grounds to suspect, but that really only goes to the first of the purposes of damages' awards: harm to reputation. I also accept that the Court must retain a sense of proportion when fixing the appropriate sum for damages. I also consider that I should make a small reduction for the way that the Claimant conducted the proceedings. Her prolonged failure to disclose the true circumstances in which she joined Unite Community and *The Birthday Club* WhatsApp messages was the main cause of the Defendants' suspicions and later allegations that she had been dishonest in the conduct of her claim. A prompt and candid disclosure of the messages when they had been discovered in March 2018 may well have avoided this becoming such an acrimonious side issue. Although I have dismissed the claims that the Claimant acted dishonestly in the conduct of her claim, she did bring suspicion on herself by the failures I have identified. I reject the Defendants' submissions that the Claimant's abuse of Mr McCluskey in her Tweet in 2016 has any mitigating effect on damages. Finally, although I have considered the comparator cases that were cited to me, they are really only helpful to the extent that they identify the application of the key principles. Every case is different. In ***Monir -v- Wood*** for example, there was no attempt by the defendant to defend the allegation as true.

184. Assessing these various factors and applying the legal principles I have identified, the sum in damages I award is £75,000. The figure includes all elements of aggravation. I do not fix a separate award for aggravated damages.

(B) Other remedies

185. In her Claim Form and Particulars of Claim, the Claimant seeks two further remedies if she is granted judgment on her claim:

i) an injunction to restrain further publication of the Article or similar statements defamatory of the Claimant; and

ii) an order pursuant to s.12 Defamation Act 2013 requiring the Defendants to publish a summary of the judgment.

186. Neither party has addressed submissions to me on whether, and if so in what terms, the Court should grant an injunction. I invite the parties' submissions on this point, if it is not dealt with by agreement between them.

187. 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).

188. An order under s.12 is discretionary. As to whether the Court should grant an order in this case, in their closing submissions, the Defendants simply said that submissions on this issue would be made following judgment. Subject to those submissions, my preliminary view is that this is a case where an order under s.12 is appropriate and that the order should require publication of the summary by the Second Defendant on *The Skwawkbox*. This is where the Article was (and has continued to be) published. Again, subject to further submissions, I do not consider that there should be an order requiring the First Defendant independently to publish a summary of the judgment. If the parties cannot reach agreement as to any order under s.12, I will consider further submissions on the points of dispute.

Appendix 1 – the Article

[paragraph numbers added; emphasis in the text is original]

EXCLUSIVE: PROGRESS MP 'JOINS UNITE'S UNWAGED SECTION' FOR GENSEC VOTE

[1] As regular readers of this blog will know, the contest for the position of General Secretary of *Unite* is underway at the moment and the campaign of challenger Gerard Coyne has been criticised for its smear-tactics and a breach of the Data Protection Act (DPA) that Coyne admitted on national radio but claimed 'was agreed' – which showed a poor understanding of the law, as only 'data subjects' can agree to data they provided to one organisation being used by someone else.

[2] Coyne also claimed that use of the data had 'concluded', but this was also untrue, as further emails and texts were sent to non-Unite members this week.

[3] It appears that these are not the limits of the lengths Labour's right-wing faction will go to in their efforts to lever in a candidate that they hope can undermine Labour leader Jeremy Corbyn.

[4] The SKWAWKBOX has learned that substantial numbers of right-wingers joined Unite's 'Community' section (UC) before the January deadline to be entitled to vote in the leadership ballot. Unite Community membership costs only 50p a week, as it is **exclusively** for the unwaged.

[5] However, many of those who joined UC to vote for Gerard Coyne are **not** unwaged – and therefore made a **false declaration** in order to do so.

[6] Not only that, but one of them – the visible tip of the iceberg, so to speak – is according to sources, a **prominent Progress MP** with a track record of contempt for Unite's incumbent General Secretary Len McCluskey.

[7] In July last year, Anna Turley – a spokesperson for Progress, an extreme anti-Corbyn faction at the heart of much of the agitation against him – perhaps frustrated by Len McCluskey's continued, steadfast support for the Labour leader, urged a Twitter contact to join Unite in what has become an infamous Tweet:

[8] It's safe to say she's extremely invested in McCluskey's removal. Enough, if reports are correct, to join in order to vote against him – as she appears to have done.

[9] However, she has been reported to the regional office for the **way** in which she did so.

[10] Joining Unite costs around £12 a month and it appears that Ms Turley was keen to do so as economically as possible and save £10 a month by joining **UC** instead of as a full union member – which means she would have had to **declare herself unwaged**.

[11] The SKWAWKBOX understands that an official complaint has been sent to Unite's Regional Secretary for the north-east, Karen Reay.

[12] Ms Turley's office was contacted this afternoon to see whether it wished to comment on the matter but has, so far, declined to make any comment. Ms Turley is also a full member of the separate union *Community*, but this is coincidental and is not at issue here.

[13] The McCluskey campaign was also contacted but did not wish to comment on what it said was a matter for the union.

[14] A Unite spokesperson today confirmed that there exists **no** exemption for an MP to join UC and issued the following statement:

> "Unite welcomes new members but anyone joining on a fraudulent basis will prompt an investigation. A complaint has been received and is being investigated."

[15] If the complaint is upheld and Ms Turley has, in plain words or by omission, declared herself unwaged in order to join a low-cost section of the union, it speaks volumes for the desperation of the Labour right to remove Len McCluskey as a route to toppling Labour leader Jeremy Corbyn – and of the principles they are prepared to forsake in order to achieve that end.

[16] Joining Unite in order to participate in the General Secretary ballot is legitimate and some are known to have done so to support McCluskey. However, making a false declaration in order to do so 'on the cheap' is certainly not legitimate and such applications need to be routed out and their votes invalidated.

[17] The SKWAWKBOX urges Unite to investigate **all** applications for Unite Community membership and to not only expel but also expose those who have done so fraudulently, as this is a matter of huge interest to the union's 1.4 million members, over 500,000 Labour Party members and the public at large.

[A photograph of the Claimant appeared between paragraphs [6] and [7] together with the caption "Labour/Co-op MP and *Progress* spokesperson Anna Turley"]

[The Article contained various hyperlinks to external materials, but no party has suggested that these have any relevance to the issues I have to determine.]

Appendix 2 – Extracts from the First Defendant's Rules:

At the relevant time, the Rules provided as follows:

RULE 3. MEMBERSHIP

3.1 The Executive Council shall define the categories of membership. Where the Union organises or represents persons engaged in an occupation or seeks to do so, any person engaged in that occupation shall be eligible for membership of the Union, subject to these rules.

3.2 There shall be other categories of membership as may from time to time be determined by the Executive Council. These categories shall include:

- Retired Members Plus
- Community/Associate Community/Student Member
- Back to Work Member
- Apprentice/Trainee Member

The Executive Council shall determine the qualifications for membership of these categories as well as the level of contribution and entitlement to benefit. Membership of Retired Members Plus and Community/Student Membership shall not accord an entitlement to vote in any ballot or election held by the Union other than:

I. An election to the office of General Secretary under Rule 15 and 16…

3.4 Any eligible person may apply for membership by completing the appropriate application form agreeing to be bound by the rules of the Union and submitting t to the Union office or by electronic means s may be provided for via the Union's website. An applicant shall become a member when his/her application has been approved and he/she has been entered into the register of members…

3.6 Each member must notify the Union's membership department of any subsequent change of workplace or contribution category status…

RULE 5. OBLIGATIONS OF MEMBERS

5.1 A member of the Union must comply with these rules and with any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or as a full time officer…

RULE 7. INDUSTRIAL/OCCUPATIONAL/PROFESSIONAL SECTORS

7.1 Members in employment shall be allocated to the Industrial Sector in which they are employed. The term 'Industrial Sector' is a generic term including occupational and professional sectors.

RULE 15. GENERAL SECRETARY

15.1 All elections for the General Secretary shall be on the basis of a ballot of the whole membership of the Union other than 'ordinary' retired members who shall not be eligible to vote. The fixed term of office for each General Secretary election will be set at 5 years. If the General Secretary position becomes vacant due to retirement, resignation or death within a fixed term of office a General Secretary election will be called.

RULE 27. MEMBERSHIP DISCIPLINE

27.1 A member may be charged with:

27.1.1 Acting in any way contrary to the rules or any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of lay office or a representative of the Union…

27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities…

27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard…

RULE 28. COMMUNITY/STUDENT MEMBERS

28.1 Unite Community Membership shall be open to all not in paid employment as well as those not seeking employment. The sections aims (sic) are to organise, campaign, protest and mobilise, both independently as well as alongside our industrial, young and retired members, in order to progress matters of interest and/or concern to our community and wider industrial membership, provided that such activities are not inconsistent with the general policy and objectives of the Union…

Appendix 3 – Extracts from the Re-Amended Defence

Abuse of process by making dishonest statements and misleading the Court

27. The Claimant has abused the Court's process by making untrue and dishonest statements, including statements verified by a statement of truth. The Defendants rely on the Claimant's dishonest and abusive conduct in diminution, or extinction, of any damages that the Court might otherwise award to the Claimant.

28. The Claimant has made false statements in support of her claim. She first did so in an attempt to conceal the true circumstances in which she came to apply to join the Community section of the 1st Defendant and so as to claim that she kept that application confidential to her husband. Her false statements included untrue and dishonest statements verified by statements of truth. Once the truthfulness of those statements was questioned by the Defendants, the Claimant made further untrue statements, including a statement verified by a statement of truth, in an attempt to persuade the Court, in the course of apologising to it, that her earlier untruthfulness was "entirely innocent". In so doing, the Claimant has abused the Court's process.

29. If, which is denied, the Claimant would otherwise be entitled to damages, such damages should be no more than nominal damages, or refused where damages are within the Court's discretion.

Particulars of dishonesty and misleading the court

30. On 18 April 2017, the Claimant sent separate letters of claim, through her solicitors, to the 1st and 2nd Defendants pursuant to the Pre-Action Protocol for Defamation. Each letter of claim incorporated the same statement:

> *[The Claimant] did not know when she made her application that the Community membership was reserved for the unwaged. She chose the Community membership because she was aware of some of their work in her local constituency.*

31. This statement was false, and the Claimant knew that it was false. The Claimant knew when she made her application that Unite Community membership was reserved for the unwaged. The Claimant knew that the reason that she chose Community membership was not because she was aware of some of their work in her local constituency.

32. On 26 January 2018, the Claimant issued a claim form, to which were attached Particulars of Claim verified by a statement of truth signed by her solicitor on (as her solicitor has confirmed) the Claimant's specific authority. At paragraphs 4-6, the Claimant pleaded her case as to the alleged circumstances in which she came to apply to join the Community section of the 1st Defendant:

> *4. In the course of her activities in her constituency, the Claimant learned about the community section of the First Defendant and various campaigns it was running which affected issues of local concern.*
>
> *5. In late December 2016, the Claimant applied for community membership via the First Defendant's website searched for "join Unite Community", or used similar search terms, on Google and the results included a link to the relevant page of the First Defendant's website, namely http://www.unitetheunion.org.growing-our-union/communitymembership/.*

6. The Claimant did not discuss her membership application or the fact that she had joined the First Defendant with any third party, other than her husband.

33. The following statements made by the Claimant, and verified by a statement of truth were knowingly false and dishonest: (i) that she came to join the Community section of the 1st Defendant on her own initiative by searching on Google for how to join it after she had learnt of its activities in her constituency; and (ii) that she not had discussed (a) her membership application to Unite; or (b) the fact that she had joined Unite, with anyone other than her husband (after she joined, as she has stated).

34. The Claimant made these false statements about the circumstances in which she came to join the Community section of the 1st Defendant in order to conceal the true position that her decision to apply to the Community section of the 1st Defendant was prompted by a discussion (to which the Claimant was a party) within a secretive WhatsApp group named the "Birthday Club" and that she had not wanted Unite to notice that she had tried to join/joined the 1st Defendant. The Birthday Club was made up of 51 (then) Labour Party MPs opposed to the direction of the Labour Party and its Leader (some of whom, including its administrator, subsequently left the Labour Party to oppose it).

<u>The discussions in the Birthday Club which led to the Claimant's application</u>

35. On or about 5 December 2016 members of the Birthday Club (including the Claimant) discussed a plan which amounted to a concerted and clandestine initiative by these Labour MPs to interfere with the internal affairs of an affiliated trade union, as an indirect route to a successful "coup" against the Leader of the Labour Party. The Claimant wanted to conceal the true circumstances in which she joined the 1st Defendant because they involved a covert plan by a number of Labour MPs (including the Claimant) to acquire votes in the newly announced internal election for Unite General Secretary by joining a section of the 1st Defendant that they believed they could join surreptitiously and without the usual scrutiny and requirement to identify their employment status and/or occupation which would lead to them being identified as Labour MPs. It is reasonable to infer that they did so as they wished to disguise the fact that their aim was not to address any issues internal to the affiliated union but for the sole purpose of preparing the ground for deposing the Leader of the Labour Party by seeking to oust the incumbent General Secretary, and obtain a replacement more compatible with their political agenda.

36. The Claimant no doubt appreciated that the exposure of such a plan to join the 1st Defendant risked adverse consequences within the Labour movement for herself and her like-minded colleagues within the Birthday Club.

37. Her conduct was rendered more serious by the slow and evasive manner in which her false and misleading statements came to be corrected.

    a. The Claimant claims that she identified the true position by "*rack[ing] her brains*" and checking her mobile phone records following a Part 18 request by the Defendants dated 22 March 2018 asking her to state, inter alia, for how long she denied discussing her application to the 1st Defendant with anyone except her husband. Yet she failed to take prompt steps to volunteer the true position.

    b. The Claimant made no admission and gave no warning that her statements were untrue or misleading until after the Defendants stated on 20 April 2018 that they would raise

her failure to respond to a Part 18 request at an imminent interim hearing. She then disclosed for the first time on 23 April 2018 that she "*now realises that paragraph 6 was factually incorrect*" yet assured the Defendants, misleadingly, that "*this error does not have any direct bearing on the remainder of the Particulars of Claim*".

c. Following a further Part 18 request on 25 April 2018 asking her to identify how she came to make the mistake and to particularise who she told about her application, the Claimant stated on 8 May 2018 that the original Part 18 Request "*prompted her to reflect further on the circumstances of her membership application [and that she] had become gravely ill soon after publication of the article complained of in April 2017 and spent several months in hospital and recuperating [and she] believes that episode affected her recollection*." She served a draft Amended Particulars of Claim from which she deleted paragraph 6, which she had admitted was "*factually incorrect*" and deleted (without explanation or acknowledgment in her accompanying letter) the following passage from paragraph 5: *"The Claimant searched for 'join Unite Community', or used similar search terms, on Google and the results included a link to the relevant page of the First Defendant's website, namely http//unitetheunion.org/growing-our-union/communitymembership".* She served another letter on the same date stating that she would not reply to the Part 18 response, contending that it was premature.

d. The Claimant served Amended Particulars of Claim on 27 July 2018 following determination of the preliminary issues, in which she made no material amendments other than those identified in her draft of 8 May 2018.

e. In her Reply served on 16 January 2019, she stated (misleadingly and without further explanation) that "*The hyperlink to the relevant webpage for joining the First Defendant's Community section was provided to the Claimant by Ruth Smeeth MP*" when it was actually published to the Claimant amongst 49 other MPs so that they could make a covert effort to join the 1st Defendant by applying to its Community section.

f. The true circumstances in which she chose to join the Community section prompted by discussions in the Birthday Club emerged for the first time from the Claimant's disclosure on 23 April 2019, precisely one year after she notified the Defendants on 23 April 2018 that her pleading was "*factually incorrect*" and over two years after she had falsely claimed to have "*chose[n] the Community membership because she was aware of some of their work in her local constituency"*. The scale of her disclosure to MPs remained undisclosed.

g. On 7 May 2018 the Claimant disclosed that her discussions about her reasons for joining the 1st Defendant and choosing to do so covertly through the Community section were published to a total of 50 other (then) Labour MPs

h. She ultimately identified all the Labour and (now) former Labour MPs who were party to the discussions which prompted her to join the Community section (together with supplying further disclosure about the nature of the Birthday Club) on 16 May 2019, after the Defendants stated they would otherwise refer the matter to the Court.

Dishonest and untrue statement in the Claimant's witness statement

38. Aware of the need to explain her false statements, and aware that her honesty was now in question with regard to her past statements, the Claimant resorted to making a further false statement in her witness statement, verified by false statements of truth dated 28 May 2019 and 19 June 2019 (referred to hereafter as her witness statement), in her effort to persuade the Court that her previous untruthfulness was "*entirely innocent*".

39. In her witness statement, the Claimant stated that:

> *9 days after the article complained of was published, a General Election was called by Theresa May and after that I was completely immersed in election matters until Election Day on 8 June 2017.* Soon afterwards, *on about 21 June 2017, I was rushed to hospital where I remained for six months. It was after I came out of hospital that the Particulars of Claim were being drafted, and with all that happened, I made the mistake*.

40. That statement is false. It is untrue that the Claimant remained in hospital for six months, and her explanation that "*with all that happened*" she made her mistake in the month following her discharge from a six-month hospital admission is false. She chose to conceal the true reason that she joined the Community section of the 1st Defendant by stating that "*She chose the Community membership because she was aware of some of their work in her local constituency*" in each of her letters of claim to the Defendants. They were dated and served on 18 April 2017, the date upon which the Prime Minister announced (without warning) that she was proposing a dissolution motion to the House of Commons (11 days after publication, not 9 days as indicated in her witness statement). Accordingly, neither her illness (whether or not she lied about the period that it resulted in her remaining in hospital following her urgent admission on 21 June 2017) nor her claim that she was "*completely immersed in election matters until Election Day on 8 June 2017*" were capable of explaining her original false statement about the reason that she joined the Community section. It is untrue that the Claimant made a mistake. The statements of truth verifying her witness statement, dated 28 May 2019 and 19 June 2019, were made dishonestly.

41. This further dishonesty is all the more grave because it was done with the aim of securing the Court's acceptance of the next paragraph of her witness statement, in which the Claimant "*apologise[d] to the Court for this error which was made entirely innocently*" and sought to admit and explain that she "*should have searched all of [her] social media at this point before confirming [her] statement, to ensure [she] was accurate in [her] recollection*".

42. That she gave false evidence to bolster her apology to the Court for making a false averment supported by a statement of truth, resulting, she said, from her failure to make the checks that she should have made, very seriously exacerbates her abuse of the Court's process.

43. The nature and extent of her political and parliamentary activity over the months during which her witness statement claimed that she remained in hospital following her rushed admission on about 21 June 2017 demonstrate that her claim to have remained in hospital for 6 months following her admission is untrue and dishonest. During those 6 months when she supposedly remained in hospital, the Claimant in reality conducted surgeries in her constituency office, made speeches in the Chamber of the House of Commons, participated in Parliamentary Select Committees, and voted on several Bills passing through the Commons.

44. Further, the said activities over the months immediately following her admission to hospital on 21 June 2017, and her further political and parliamentary activities over the month between her discharge and the Particulars of Claim being filed on 26 January 2018 were such as manifestly required attention to detail and good recollection. They make it unlikely that her illness and hospitalisation caused such a degree of mental impairment as to leave her, in the course of January 2018 during which she gave instructions on the Particulars of Claim and verified them by a statement of truth, with no memory of the true circumstances in which she joined the Community section of the 1st Defendant, *and* a false memory that her initiative to join the Community section of the 1st Defendant was made alone, without discussion, prompted by its work in her constituency, and that she shared the fact that she had joined with her husband alone (her having made a positive averment to the effect that she discussed it with nobody other than her husband, rather than stating that she only recollected telling her husband).

45. The Claimant refers to and relies upon the appended "*SCHEDULE: The Claimant's public activity from June 2017 to January 2018*" in this regard.

46. Further, the Claimant's assertion in her witness statement that after receipt of the first Part 18 request of 22 March 2018, she "*racked [her] brains*" and then searched her phone records, and it was only when she read the relevant WhatsApp messages that she "*realised that [she] had completely forgotten that [the Birthday Club discussion] was how I came to apply for membership of the Community section*" is untrue and dishonest.