



Neutral Citation Number: [2021] EWHC 384 (QB)

Case No: QB-2020-002233

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/02/2021

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

JOHN WARE
- and -
PADDY FRENCH

Claimant

Defendant

William Bennett QC (instructed by **Patron Law**) for the **Claimant**
Hugh Tomlinson QC and Darryl Hutcheon (instructed by **Bindmans LLP**) for the
Defendant

Hearing dates: 18 February 2021

Approved Judgment

.....
THE HONOURABLE MR JUSTICE SAINI

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down will be 10am on 24 February 2021

MR JUSTICE SAINI :

This judgment is in 4 main parts as follows:

- | | | |
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| I. | Overview: | paras. [1-6] |
| II. | Legal Principles: | paras. [7-13] |
| III. | Meaning: | paras. [14-25] |
| IV. | Fact/Opinion and defamatory tendency: | paras. [26-30] |

Appendix: the Article

I. Overview

1. This is a trial of preliminary issues in a libel claim brought by the Claimant (“Mr Ware”) against the Defendant (“Mr French”) in relation to an article (“the Article”) written and published by Mr French in or around December 2019. The Article concerned the BBC’s *Panorama* programme of 10 July 2019, entitled *Is Labour Anti-Semitic?* (“the Programme”). Mr Ware was the presenter of the Programme and responsible for its content.
2. The Article was headed *Political storm rages over BBC's "rogue" journalism*. It is reproduced in an Appendix to this judgment with the addition of paragraph numbers (which I will use below). I will not summarise the Article beyond stating that the broad thrust is a complaint about the accuracy of what was said in the Programme about anti-Semitism in the Labour Party and assertions of one-sidedness on the part of Mr Ware.
3. Mr Ware is a journalist and television producer. Mr French is a retired current affairs producer and editor of a blog *Press Gang* (www.press.ganguk.wordpress.com), which describes itself as being “an investigative website that exposes rogue journalists”.
4. There is no dispute that there was substantial publication of the Article in a number of ways, but the precise scale and nature of publication is for trial in due course. As I have said below, the Article also featured as part of the Pamphlet. In that form it was accompanied by another article entitled “*Is the BBC Anti-Labour?*”. I am satisfied that nothing in this additional text/article alters the meaning of the Article and say nothing further about it in this judgment.
5. On the material before me, there was publication of the Article in the following ways: (i) by inclusion of the Pamphlet in the free online magazine *ColdType*, which is published via the website coldtype.net; (ii) via the website press-gang.org (by way of a means of a hyperlink to the article on coldtype.net and by reproducing the article in full on press-gang.org itself); (iii) by sending the Pamphlet directly to a hundred or more senior managers and journalists at the BBC; (iv) by handing out copies of it to BBC staff as they entered and left Broadcasting House, the BBC’s headquarters, on or about 8 December 2019; (v) by sending copies of the Pamphlet to employees of Channel 4

News, Sky News, LBC, *The Guardian*, *The Times*, the *Sunday Times* and the *Sun on Sunday*.

6. There are three issues for determination:
 - i) the meaning of the Article;
 - ii) whether that meaning in whole or in part constitutes statements of fact and/or opinion; and
 - iii) whether the meaning as determined by the court defames Mr Ware at common law.

II. Legal Principles

7. Although there were natural differences of emphasis, I did not detect any dispute between the parties on the law. The principles governing the determination of meaning are well-established and were summarised in Koutsogiannis v Random House Group Ltd [2020] 4 WLR 25 at [11].
8. Leading Counsel for Mr Ware also placed particular reliance on Charleston v News Group Newspapers Ltd [1995] 2 AC 65 at p.72 (Lord Bridge) and p.74 (Lord Nicholls) in relation to the relationship in the potential reader's mind between a prominent headline and curative words later in the body of an article.
9. Leading Counsel for Mr French was right to submit that although political speech does not require special rules of interpretation, a political context nevertheless has an impact on the way in which the question of meaning must be approached. I accept that reasonable readers understand that political discourse is often passionate and is not as precise as, say, financial journalism. There is a particular need to avoid over-analysis when determining the meaning of political speech.
10. As to the distinction between fact and opinion, the relevant principles were again helpfully explained in Koutsogiannis at [16] to [17]. The ultimate question is how the words would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion. The general guidance in Greenstein v Campaign against Antisemitism [2019] EWHC 281 (QB) at [30]-[37] was also relied upon by Mr French.
11. In Triplark v Northwood Hall [2019] EWHC 3494 (QB), in discussing the statutory honest opinion defence, Warby J observed that "the more clearly a statement indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion" (at [16]).
12. I am also conscious of the risk of "stifling the answer" to the fact/opinion question by deciding the issue of meaning first: British Chiropractic Association v Singh [2011] 1 WLR 133 at [32]. I accept that the questions are inter-related and the proper approach, particularly in this case, is to consider the issues together.

13. As to what is defamatory at common law, there was no dispute that a statement will be defamatory if it is one that "substantially affects in an adverse manner the attitude of other people towards him, or has a tendency so to do": Lachaux v Independent Print Ltd [2019] UKSC 27 [2019] 3 WLR 18 at [9].

III. Meaning

14. I approached this issue without first considering the pleaded meanings. I formed my own provisional impression, bearing in mind the overriding context, namely that this was a serious piece of political journalism on a matter of intense recent controversy in current affairs.
15. Although I found the skeletons and oral submissions of real value, ultimately I was not moved from the provisional view I had formed in reading the Article itself. I will provide my meaning at the end of this section. It largely coincides with the position of the Claimant. Detailed written arguments were presented by way of analysis of the detail in the Article (and dissection by paragraph numbers) but I found that this exercise, to some extent, moved me away from the position of the ordinary reader. I have avoided such a surgical approach. I will however set out each party's case and the main points (but not all of them) that they made to me.
16. Mr Ware's case is that the Article bears the following natural and ordinary meaning:
- “...That [Mr Ware] is a rogue journalist who had engaged in dirty tricks by deliberately setting out to sabotage the Labour Party's chances of winning the General Election by producing an edition of Panorama in which he dishonestly presented a biased and false portrayal of the case against the Labour Party for anti-Semitism.”
17. I was taken sequentially through the text and stress was placed on the following main points by Leading Counsel for Mr Ware:
- i) The top of the first and every other page refers to "THE DIRTY TRICKS ELECTION".
 - ii) The strapline just above the main headline reports that the Labour Party ("LP") has stated that the edition of Panorama in issue "was a deliberate attempt to sabotage its electoral prospects" (§2). By these words the article summarises its message. Paraphrasing Lord Nicholls in Charleston, Mr French has "played with fire" and not included any curative words in the text of the article which detract from or qualify the message in the strapline.
 - iii) At §4 the BBC is said to have "crossed a line" with the broadcast of "*Is Labour Anti-Semitic?*" The producer/author is identified as Mr Ware i.e. he is said to have created the programme. The LP is reported to have said that the programme

was an "authored polemic" and "an overtly one-sided intervention in political controversy". The BBC is quoted as rejecting "any accusation of bias and dishonesty."

- iv) Having quoted the BBC's denial of bias and dishonesty, the Article sides with the BBC's accuser: "The evidence though strongly favours the Labour Party: this was a piece of rogue journalism that presented just one side of the argument, ignored basic facts and bent the truth to breaking point." The latter expression can only amount to an accusation of lying because of the implication that Mr Ware "broke" the truth.
 - v) Reliance is placed on the fact that in the bottom right of the page the following caption appears next to a cartoon of Jeremy Corbyn: "JEREMY CORBYN: Openly despised by Panorama reporter John Ware." Mr Ware's motive is thereby given; this reinforces the credibility of the accusations being made against him.
 - vi) The article then proceeds to set out how Mr Ware deliberately used the programme to sabotage the LP's election prospects. Instances are given where he included inculpatory evidence and knowingly/deliberately excluded exculpatory evidence concerning the charges against the LP. See §23 where he is said to have "purged his narrative" and "presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of anti-Semitism".
 - vii) At §36 the Article alleges that Mr Ware's "authored polemic" was so one-sided that it broke one of Ofcom's cardinal rules on programmes carrying an appropriately wide range of significant views and ensuring facts are not misrepresented. It was said this was in effect a serious allegation of wrongdoing for which Mr Ware was to be held responsible (wrongdoing which could have serious implications for the BBC: see §§37-38).
18. Mr French's pleaded case (as modified in a minor manner at the hearing before me) advanced the following competing meaning:
- “(1) That [Mr Ware] produced a television programme which was one-sided and strongly advocated the position that the Labour Party was anti-Semitic;
 - (2) That, as a result, [Mr Ware] had engaged in rogue journalism”.
19. Leading Counsel for Mr French emphasised that the Article was directed at the “quality” of the BBC’s journalism in the Programme and was a piece of serious political journalism on an issue of substantial public interest. He made the following main points in support of the case as to meaning:

- i) The BBC is criticised for allowing Mr Ware to present a one-sided programme. It is the BBC which is quoted as “standing by its journalism”. Mr French then goes on to state that “this was a piece of rogue journalism”.
 - ii) In the next 34 paragraphs, (excluding captions and quotations which repeat statements made in the body of the Article), Mr Ware is only mentioned by name 10 times, four of which are quotations or summaries of what he says in the programme.
 - iii) On the other occasions, Mr Ware is criticised for the way in which he deals with complaints statistics and for presenting one-sided accounts of alleged incidents of anti-Semitism.
 - iv) In the pre-penultimate paragraph it is said that Mr Ware’s “authored polemic” (in quotation marks) was so one-sided it broke one of Ofcom’s cardinal rules.
 - v) The allegation that Mr Ware had “engaged in dirty tricks by deliberately setting out to sabotage the Labour Party’s chances of winning the General Election” is not found in the Article at all whether expressly or by implication.
 - vi) As to reliance on the words “Dirty Tricks and the UK General Election” on the front page of the issue of *Cold Type* magazine in which the Article was published, it would be obvious to a reasonable reader that those words were not written by Mr French but had been placed on the front cover by the editors of the magazine, as a general description to cover all three articles mentioned. (Counsel did however accept that a reader would take into account the strapline in considering the Article as a whole and that there is no issue before me that Mr French is responsible in law for the entirety of the Article- both points which rather rob this submission and the next submission of any real force).
 - vii) Similarly, the words “The Dirty Tricks Election” across the top of each page were said not to have been placed there by Mr French but are an editorial contribution by the magazine. The claim is not against the editors or publishers of the magazine. The Article itself makes no reference to “dirty tricks”.
 - viii) The Article makes no allegation of “dishonesty” against either Mr Ware or the BBC. (I was referred to the fact that the only references to “dishonesty” in the Article are in a quote from a BBC statement rejecting “*any accusations of bias and dishonesty*”).
20. It was submitted on behalf of Mr French that, considering the Article as a whole, the essential message which a reasonable reader would take away is that (in Mr French’s opinion) the Programme – for which Mr Ware was in part responsible – was a one-sided piece of journalism.
21. In my judgment, the meaning of the Article was essentially as pleaded by the Claimant but my own meaning is slightly modified:

“...That [Mr Ware] is a rogue journalist who had engaged in dirty tricks aimed at harming the Labour Party’s chances of

winning the General Election by authoring and presenting an edition of *Panorama* in which he presented a biased and knowingly false presentation of the extent and nature of anti-Semitism within the party, deliberately ignoring contrary evidence.”

22. I consider the points made by Leading Counsel on behalf of Mr Ware (summarised above at [17]) support this meaning and fairly reflect the language used in the Article. I note, in particular, §23 of the Article, where Mr Ware is said to have "purged his narrative" and "presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of anti-Semitism".
23. I emphasise that this is the meaning I gather as a matter of overall impression. Also, as I said during oral argument, a reader would note in particular the focus in the Article on alleged misuse of statistics and testimony, and assertions of deliberate misrepresentation of such matters (“bending the truth to breaking point”). One cannot avoid the conclusion that the Article goes substantially beyond an accusation of general one-sidedness which one might encounter in political commentary of a journalist’s standpoint on an issue. The claimed knowing falsity of what Mr Ware has presented is a feature which stands out.
24. I also approach the Article on the basis that the reader will have read the strapline and heading as part of the overall reading experience and they are to be taken into account in determining meaning. The connection with “dirty tricks” and damaging election chances is clear.
25. I have not overlooked the fact that this was a work of political journalism on an important issue of public interest. However, Mr French went beyond merely expressing opinions and entered the territory of accusing Mr Ware of deliberate wrongdoing in selectively presenting one side of the story on the national broadcaster (a body with well-known duties of impartiality- which indeed are the subject of the references to Ofcom’s code in the Article).

IV. Fact/Opinion and defamation at common law

26. Leading Counsel for Mr French argued that the statements in the Article are recognisable as comment, as distinct from imputations of fact. He submitted that the text sets out inferences, criticisms and observations about the Programme rather than factual contentions.
27. I reject that submission. In my judgment, the allegations conveyed statements of fact and not opinion. Claimed misrepresentation by presenting one side of a story for a particular purpose, and deliberate suppression of an alternative narrative were, in the context of the Article, plainly imputations of fact.

28. I also consider that in the context of the Article as a whole the accusation of “rogue journalism” was an imputation of fact. I agree with the submission on behalf of Mr Ware that readers did not conclude that he was a rogue journalist because he produced a one-sided television programme, they concluded that he was a rogue journalist because that is what the Article told them he was, as well as setting out evidence in support of that conclusion.
29. Finally, to accuse a journalist of behaving in the manner alleged is clearly defamatory at common law. The specific allegations made in relation to a broadcast journalist such as the Claimant are serious matters going to his reputation. I note that the accusation of “rogue journalism” is in any event accepted by Mr French as being defamatory.
30. The preliminary issues are determined accordingly.

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APPENDIX TO JUDGMENT: THE ARTICLE

PUTTING THE BRAKES ON CORPORATE AMERICA | Sam Pizzigati
NUCLEAR LIES AND BROKEN PROMISES | Conn Hallinan
RECLAIMING YOUR INNER FASCIST | CJ Hopkins

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DIRTY TRICKS AND THE UK GENERAL ELECTION

STORM OVER BBC'S 'ROGUE' JOURNALISM

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CHIEF RABBI STOKES NEW RACE ROW

Jonathan Cook / Page 9

JOURNALISTS' LIES SUPPORT BORIS JOHNSON

Nicholas Jones / Page 12



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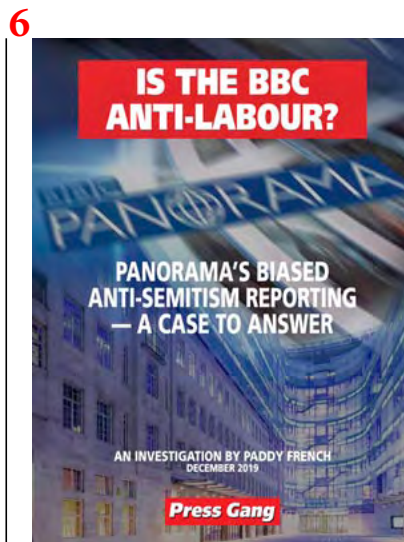
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2 **Paddy French** examines an extraordinary battle between the British Broadcasting Corporation and the Labour Party over a controversial programme about antisemitism, which Labour says was a deliberate attempt to sabotage its electoral prospects . . .

3 **Political storm rages over BBC's 'rogue' journalism**

4 **T**HE BBC has always been something of a political football in the UK – the left considers it too right wing, the right believes it's full of left-wingers. But on July 10 the corporation crossed a line when its flagship current affairs series *Panorama* broadcast a programme entitled *Is Labour Anti-Semitic?* Veteran reporter John Ware – a man who openly despises Labour leader Jeremy Corbyn – was allowed to produce a programme Labour branded an “authored polemic” that was “an overtly one-sided intervention in political controversy . . .” The BBC hit back saying it stood by its journalism – “we completely reject any accusation of bias and dishonesty.” The evidence, though, strongly favours the Labour Party: this was a piece of rogue journalism that presented just one side of the argument, ignored basic facts and bent the truth to breaking point.

5 Part of the BBC's defence of the programme was that “it



EXPOSED: Cover of the report into the *Panorama* programme.

explored a topic of undoubted public interest, broadcasting powerful and disturbing testimonies from party members who'd suffered anti-semitic abuse.” The programme begins with an unnamed young woman who tells viewers “I’ve been the victim of a lot of antisemitism within the Labour Party” and “I wouldn’t say to a friend go to a Labour Party meeting if you are Jewish. I couldn’t do that to

someone I cared about.”

After she speaks, award-winning reporter John Ware says “Labour says anti-racism is at its very core. Why then is there a constant stream of complaints by party members?”

The programme then presents the testimony of a further nine witnesses saying that antisemitism is a serious problem in the Labour Party. Since they are not identified by the programme – apparently to protect them from threats and harassment – viewers are inevitably led to believe they’re just ordinary members of the Labour Party. In fact, of the “anonymous ten,” most are high-profile Labour Jewish members – and all of them are opposed to Jeremy Corbyn’s leadership.

Take Ella Rose, the

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8

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JEREMY CORBYN: Openly despised by *Panorama* reporter John Ware.

9



young woman who opens the Panorama programme as an anguished victim of anti-semitism.

11 Eighteen months earlier she was playing – without being aware of it – an equally high profile role in the sensational Al Jazeera documentary *The Lobby* about Israel’s clandestine attempts to shape British politics. At the time she was Director of the Jewish Labour Movement, having moved into the job from her previous post as a public affairs officer at the Israeli Embassy. She was filmed discussing the case of the black Labour activist Jackie Walker who was under investigation for antisemitism. Rose was caught on camera saying she could “take” Walker using martial arts techniques developed by the Israeli military. The Jewish Labour Movement denied that it was close to the Israeli Embassy.

12 Another of the “anonymous ten” is Phil Rosenberg, Director of Public Affairs at the Board of Deputies of British Jews which is also opposed to Corbyn. I asked Rosenberg why *Panorama* thought

it necessary to anonymise him: after all his job, it would seem, is to represent the Board in public. He didn’t reply.

But there’s a more serious problem than just the identity and the affiliations of the ten. They all come from the right wing of Labour’s Jewish membership which supports Israel and opposes Corbyn. Eight of them are, or have been, officials of the Jewish Labour Movement (JLM) which insists that antisemitism is a serious problem in Labour and that the leadership isn’t doing enough to deal with it.

In November 2018 it asked the UK’s Equalities and Human Rights Commission (EHRC) to investigate the party’s “institutional antisemitism.” In April 2019 it passed a motion of no confidence in Jeremy Corbyn over his alleged failure to deal with the issue. JLM chairman Mike Katz has made it clear the group will not be campaigning in this month’s General Election for any Labour election candidate who supports Corbyn.

There is an alternative narrative coming from pro-Corbyn Jewish organisations which says that, while there is antisemitism in Labour, it’s not a widespread problem. And it would have been a simple matter to obtain the testimonies of ten Jewish members who have never experienced antisemitism in the party.

Moreover, anecdotal evidence suggests many of the complaints are made about Jewish members by other Jewish members – and that a large number of them relate

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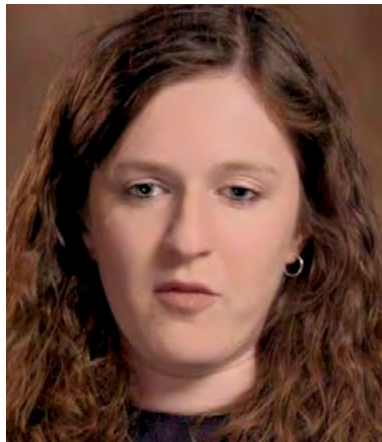
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16

to criticism of Israel's policies towards the Palestinians. But this side of the issue is unrepresented in the *Panorama* programme.

17

And then there's the scale of the problem. Ware asserts that before Corbyn complaints about antisemitism "were rare" but after he became leader there was a "constant stream of complaints." He states that many British Jews "once saw the Labour Party as their natural political home. No longer". As well as the "anonymous ten" who give personal experiences, a former Labour Party insider says "the problem was massive ..." Ware adds that by the spring of this year "there were still several hundred antisemitism cases waiting to be resolved". He says the Labour Party "won't give us precise figures ..."



19 VICTIM? Ella Rose was featured in the Al Jazeera film *The Lobby*.



20 BIASED? *Panorama* reporter John Ware was accused of producing an "authored polemic" by Labour.

these 249 cases amount to 0.05 percent – a tiny fraction. The problem is, then, statistically small.

21 Not only does *Panorama* fail to give viewers the only reliable statistics on the scale of the problem, John Ware then goes on to talk about "Mr Corbyn's failure to drive out antisemitism", as if this was an accepted fact. As proof of this, he seizes on the fact that "only around" 15 people have

been expelled from the party for antisemitism in a three year period. But Ware should have known this proves nothing – and to understand why he only had to look at the BBC's record when it comes to complaints. In its annual report for 2018-2019 the Corporation records more than 218,000 "editorial and general complaints" of which 58 were found to be in breach of BBC editorial guidelines – a fraction of one percent. In the antisemitism statistics for April 2018-January 2019, the number of people expelled from Labour is close to 2 percent.

22

This pattern is common in all regulatory regimes: the number of complaints upheld is usually a small percentage of the total. And Ware could have also looked at the issue of Labour's antisemitism in another way. In the ten months to January 2019, the party took action against 249 individual members out of a total number of 763 complaints. In other words, in more than a third of all cases Labour took some form of disciplinary action – an extraordinary figure in any regulatory regime. The evidence, then, suggests that the party is bending over backwards to address the concerns of Jewish members.

18

In fact, Ware did have access to figures which throw genuine light on the scale of the problem – statistics he chose to ignore. In February, Labour Party general secretary Jennie Formby released figures for a ten-month period from April 2018 to January 2019. There were 673 complaints of antisemitism against party members, of which 394 – more than half – were found not to involve a breach of party rules and were dismissed. Leaving aside 30 cases which were not completed, there were 249 cases where sanctions were imposed or where members resigned before their cases were determined. Given that the Labour Party has 500,000 members,

23
Having purged his narrative of any meaningful statistics and presented only those party members who conformed to his analysis of the problem, John Ware goes on to present highly one-sided accounts of alleged incidents of antisemitism. In

one case, he examined the experience of a Labour Party disputes official called Ben Westerman when he went to Liverpool to investigate problems in the city. There had been friction between supporters of the Riverside MP, Louise Ellman, and critics over the issue of Labour policy on the Israel-Palestinian question. Westerman is Jewish and among the people he interviewed was Helen Marks, a pensioner.

24 Of this interview, John Ware states: “While interviewing one member he was confronted with the very antisemitism he’d been investigating.”

25 Westerman says: “We finished the interview, the person got up to leave the room and then turned back to me and said where are you from? And I said what do you mean, where am I from? And she said I asked you where are you from? And I said I’m not prepared to discuss this. They said are you from Israel? What can you say to that? You’re assumed to be in cahoots with the Israeli government, it’s this obsession with that that just spills over all the time into antisemitism.”

26 Aside from the fact that it’s difficult to see how asking someone if they come from Israel can be, of itself, antisemitic, this account is disputed. Helen Marks says it never happened. She says that, during the interview, she was accompanied by a friend who asked Westerman what branch of the party he was in. A transcript of the interview confirms this – and the fact that Westerman’s response was “I

27 **John Ware states:
“While interviewing
one member he was
confronted with the very
antisemitism he’d been
investigating”**

don’t think that’s relevant.”

28 Neither Helen Marks nor her friend were contacted by *Panorama* to give their side of the story. Nor did the programme reveal the fact that they are both Jewish. When Helen Marks complained to the BBC, a Corporation executive said he was satisfied Westerman’s “account is his genuine memory of what he heard and we confirmed that it was as he reported it at the time.” Just what is meant by the words “we confirmed that it was as he reported it at the time” is not explained.

29 Having posed the question – is Labour antisemitic? – the BBC was duty-bound to give both sides of the argument. In fact, apart from an interview with Labour shadow communities secretary Andrew Gwynne and statements from the party, *Panorama* devotes the majority of the programme to voices claiming the problem was serious and critical of Labour’s handling of the problem. Of 22 people interviewed for the broadcast, 21 fell into this bracket.

30 **T**he BBC sets itself high standards. In June 2019, just a few weeks before the *Panorama* broadcast, it published a new

set of Editorial Guidelines. Chairman Sir David Clementi was emphatic: “... nothing is more important than the BBC’s reputation for independence, impartiality and editorial integrity ...” Director General Tony Hall was even more forthright: “It’s just a few short years since the terms ‘fake news’ entered our lexicon. It’s now a weapon of choice used worldwide. In a world of misinformation, our values have never been more important. That’s why accuracy, impartiality and fairness are given such prominence in these Guidelines.”

After the *Panorama* programme, the BBC recorded 1,593 complaints alleging “bias against the Labour Party.” The BBC’s initial response – it stood by its journalism and rejected “any accusations of bias or dishonesty” – was enough to dissuade most of these from proceeding any further. However, at least 49 appealed the decision. These were rejected by the Corporation’s Executive Complaints Unit. The Unit also dismissed a detailed complaint from the Labour Party itself.

Until recently, that would have been the end of the matter. For nearly a century the BBC has been judge and jury in its own case. In April 2017, however, this self-regulation came to an end and the statutory broadcasting regulator Ofcom took over the role. Ofcom is one of the UK’s most powerful watchdogs and its complaints system is rigorous. Ofcom has already received 25 appeals about the BBC’s rejection of their com-

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plaints. Given that the Labour Party – Her Majesty’s Loyal Opposition with more than 12 million votes in the 2017 election – will also join this list, it’s inevitable that Ofcom will open an investigation under its own Broadcasting Code.

33 This is what Ofcom did when there were complaints about the 2017 Al Jazeera series *The Lobby* about Israel’s clandestine attempts to influence political policy in the UK. The sensational four-part series, screened in January 2017, caught an Israeli Embassy employee trying to “take down” the then Conservative Foreign Office minister Sir Alan Duncan, an outspoken critic of Israel who said in 2014 of the settlements in the West Bank: “Occupation, annexation, illegality, negligence, complicity – this is a wicked cocktail which brings shame on Israel.” Israeli Ambassador Mark Regev was forced to apologise, insisting that taking down the minister was not official Israeli policy. The Israeli Embassy employee was sacked.

34 The Jewish Labour Movement complained about the programme on the grounds that it was not impartial. Ofcom rejected the complaint: it concluded the programme had “included a range of viewpoints on this matter of political controversy” and had, therefore “maintained due impartiality”. The Movement’s then Director Ella Rose also complained that Al Jazeera, in using undercover film of her, had treated her unfairly and had invaded her

35 The *Panorama* programme – still available on iPlayer – has done significant harm to Labour’s reputation on antisemitism

privacy. Again, Ofcom rejected the complaints. The BBC is disdainful of Al Jazeera: in a comment to one of the *Panorama* complainants, it noted that the channel: “... has very different editorial processes to the BBC”. Now it’s the turn of the BBC’s editorial processes to come under the Ofcom microscope.

36 Labour has not revealed the contents of its complaint but the general outlines are clear. The party says it was perfectly acceptable for *Panorama* to examine the issue of antisemitism among its membership – it’s a clear matter of public interest. However, John Ware’s “authored polemic” was so one-sided that it broke one of Ofcom’s cardinal rules. This is clause 5.12 of the watchdog’s broadcasting code: “In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme ... Views and facts must not be misrepresented.”

37 Moreover, the party is also likely to argue that the BBC, in first approving and then defend-

ing the *Panorama* programme, was partisan at a time when an election was likely to take place within a matter of months. And, given the slowness of the BBC’s complaints system (even after four months the process is still not complete) combined with the length of time Ofcom requires, the chances of Labour obtaining a correction before any election in 2019 were always remote. And this is what has happened. *Panorama*’s programme is still available on iPlayer and significant harm has been done to Labour’s reputation on the antisemitism issue.

Although any Ofcom ruling will not come until next year, the stakes are still high. If Ofcom finds against the BBC – it can also impose a fine of up to £250,000 – it will be a huge blow for the Corporation’s reputation for impartiality. The jobs of chairman Clementi and Director General Tony Hall could be on the line. For Ofcom to make such a sensational ruling against the UK’s state broadcaster may also have serious political repercussions for the watchdog itself, especially if the Conservatives, who are the main beneficiary of *Panorama*’s rogue journalism, are returned to power. But if Ofcom decides that the BBC has not broken its code, then it could face a challenge in the courts ... **CT**

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Paddy French is a retired television current affairs producer. He is editor of the investigative website *Press Gang* – www.pressganguk.wordpress.com.

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