Neutral Citation Number: [2023] EWHC 1462 (KB)

Case No: QB-2020-002306

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15 June 2023

Before :

THE HONOURABLE MRS JUSTICE HEATHER WILLIAMS DBE

- -

Between :

NASIR MEHMOOD	**Claimant**
- and -	
UP AND COMING TV LIMITED	**Defendant**

- -
- -

Mr David Lemer (instructed by **Stone White Solicitors**) for the **Claimant**
Mr Rashid Ahmed (instructed by **Direct Access**) for the **Defendant**

Hearing dates: 26-28 April 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MRS JUSTICE HEATHER WILLIAMS

MRS JUSTICE HEATHER WILLIAMS :

1. This is a claim for libel arising from a programme broadcast between 2.00 – 3.00pm on the Samaa News Channel on 12 July 2019 ("the Broadcast"). The claimant is a Pakistani national who currently lives in the United Kingdom. He is the Senior Vice President of the United Kingdom chapter of the Pakistani Muslim League-Nawaz political party ("PML-N"). At the material time, the defendant was the publisher of the Urdu language Samaa News Channel, which broadcast in the United Kingdom through the Sky satellite channel. It was primarily watched by members of the Pakistani community living in the United Kingdom.

2. By an Order dated 8 December 2021, Saini J determined that:

   i) The meaning of the words complained of was that the claimant threatened and tried to bribe a judge;

   ii) The words complained of were a statement of fact; and

   iii) The words complained of defamed the claimant at common law.

3. In brief summary, the background to the Broadcast was as follows. In the summer of 2018 Judge Muhammed Arshad Malik ("Judge Malik"), sitting in the Accountability Court of Pakistan, convicted Muhammad Nawaz Sharif of an offence of corruption and sentenced him to ten years imprisonment. Mr Sharif was the leader of PML-N and a former Prime Minister of Pakistan. On 6 July 2019 the PML-N held a press conference at which a video recording was played ("the Press Conference"). In the footage Judge Malik appeared to admit to the claimant that he had convicted Mr Sharif unjustly as a result of pressure placed upon him by the Pakistani authorities ("the Malik Video"). On 7 July 2019 Judge Malik issued a press release in which he claimed that the video had been distorted and that he had been offered bribes and threatened ("the Press Release"). On 11 July 2019 Judge Malik provided an affidavit giving a more detailed account. This included allegations that the claimant had been involved in threatening and trying to bribe him. The Broadcast arose from Judge Malik's affidavit.

4. The claimant contends that he suffered serious harm to his reputation as a result of the Broadcast. He seeks general damages, aggravated damages and injunctive relief. He says that he has suffered considerable hurt, distress and embarrassment. There is no claim for financial loss. A claim for relief under section 12 of the Defamation Act 2013 ("the 2013 Act") is not pursued.

5. The defendant disputes that the claimant suffered serious harm to his reputation and relies upon the defences of truth, pursuant to section 2 of the 2013 Act, and/or that publication was on a matter of public interest under section 4 of the 2013 Act. In relation to the latter, the claimant accepts that the words complained of were, or formed part of, a statement on a matter of public interest. However, the other elements of this defence are in issue.

6. The Particulars of Claim also include a claim for breach of Article 5 of the General Data Protection Regulation (EU) 2016/679 ("GDPR") and/or for breach of section 2(1) of the European Communities Act 1972. However, the claimant accepts that the court need only determine this claim if his cause of action in libel is unsuccessful.

7. The disputed issues for the court to resolve in relation to the libel claim are:

Defamatory statement:

i) Whether the publication of the words complained has caused or is likely to cause serious harm to the reputation of the claimant; and if so

Truth defence:

ii) Whether the defamatory sting of the words complained of, namely that the claimant had threatened and tried to bribe a judge, was substantially true; and/or

Publication in the public interest defence:

iii) Whether the defendant believed that publishing the words complained of was in the public interest; and

iv) If so, whether that belief was reasonable;

If liability is established:

v) What compensation should be awarded to the claimant by way of general and, if appropriate, aggravated damages; and

vi) Whether the court should grant an injunction to prevent the defendant from repeating the words complained of or similar statements.

8. The claimant gave evidence via an Urdu interpreter. He had provided a witness statement dated 19 March 2023. The defendant called two witnesses: Tahir Riaz Khan, who is the Managing Director of the defendant company; and Syed Kousar Abbas, a journalist who described his role at the material time as "the Bureau Chief London for Samaa UK". Both of these witnesses provided statements dated 26 March 2023. The parties had agreed a bundle of documents for the trial. An agreed supplementary bundle was provided shortly before the start of the hearing.

9. At the outset of the hearing I raised with counsel the fact that both Mr Mehmood's and Mr Khan's witness statements contained references to a number of other alleged acts of misconduct that went beyond the scope of the parties' pleaded cases and which appeared to be legally irrelevant to the issues before me, as they would not be admissible in relation to the question of whether the "serious harm" test was met nor in respect of the assessment of damages (see the caselaw cited at paras 14 and 26 below). Both counsel accepted that this was the position and indicated that they did not seek to rely on these matters. They also accepted that various newspaper articles that had been included in the documents bundle were not evidence of the truth of their contents.

10. The structure of this judgment is as follows:

- The legal framework: paras 11 – 29;
- The uncontentious facts: paras 30 – 52;
- The Broadcast: paras 53 – 64;

- Discussion and conclusions:
    - Serious harm: paras 65 – 76;
    - Defence of truth: paras 77 – 91;
    - Defence of publication on a matter of public interest: paras 92 – 107;
    - Damages: paras 108 – 116;
    - Injunctive relief: paras 117 – 118;
- Overall conclusions: paras 119 – 121.

The legal framework

11. The parties are agreed on the applicable legal principles.

12. As I have explained, it has already been established that the words complained of referred to the claimant and were defamatory at common law.

Serious harm

13. Section 1(1) of the 2013 Act provides that: "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant".

14. In *Riley v Sivier* [2022] EWHC 2891 (KB); [2023] EMLR 6 ("*Riley*") at para 103, Steyn J cited her earlier summary of the relevant principles at para 51 in *Banks v Cadwalladr* [2022] EWHC 1417 (QB); [2022] EMLR 21 ("*Banks*"). (The Court of Appeal subsequently allowed part of the appeal in *Banks*, [2023] EWCA Civ 219, but did not call into question the accuracy of this summary.) The summary refers to the following authorities: *Lachaux v Independent Print Ltd* [2019] UKSC 27; [2020] AC 612 ("*Lachaux*"); and *Turley v Unite the Union and Stephen Walker* [2019] EWHC 3547 (QB) ("*Turley*"). As relevant to the present case, Steyn J said:

> "i) The protection of reputation is the primary function of the law of defamation and section 1 is concerned with harm to the reputation of the claimant, being harm of the kind represented by general damage, rather than special damage: *Lachaux*, Lord Sumption JSC (with whom all members of the court agreed), [15] and [19].
>
> ii) Section 1 imposes a higher threshold of seriousness than the common law rules 'which were seen unduly to favour the protection of reputation at the expense of freedom of expression': *Lachaux*, Lord Sumption [1], [12]; *Turley*, Nicklin J, [107(i)]. The provision was intended to effect 'a substantial change to the law of defamation': *Lachaux*, Lord Sumption [16]. As Saini J emphasised in *George v Cannell* [2021] EWHC 2988 (QB); [2021] 4 WLR 145, [117], it is important not to lose sight of the statutory qualifier serious harm.

.....

iv) There is no presumption of serious harm. A claimant must demonstrate as a fact that the publication of the statement he complains of has caused or is likely to cause harm to his reputation that is 'serious': *Lachaux*, Lord Sumption, [12]-[16], [21]; *Turley*, Nicklin J, [107(iv)].

v) The propositions that (i) the publication 'has caused' serious harm to the claimant's reputation and that (ii) it 'is likely to' cause such harm are each propositions of fact which necessarily call for an investigation of the actual impact of the statement. When determining whether a statement 'has caused' serious harm, the focus is on historic harm. What were the consequences for the claimant's reputation, in terms of the actual impact on those to whom the statement was communicated? When determining whether a statement 'is likely to' cause serious harm, the focus is on the probable future harm. *Lachaux*, Lord Sumption, [14]-[15]; *Turley*, Nicklin J, [107(ii)-(iv)].

vi) Whether a publication causes serious harm depends on the reactions of others, rather than the perception of the claimant: *Economou v De Freitas* [2016] EWHC 1853 (QB); [2017] EMLR 4, Warby J, [131]. The assessment of harm to the claimant's reputation may take account of the impact of the publication on those who do not know the claimant, but might get to know him in the future*: Lachaux*, Lord Sumption, [25].

vii) A claimant who has the burden of proving that a statement caused, or is likely to cause, serious harm to his reputation may do so by evidence directly going to prove such harm, or by inference from other facts. A claimant may produce evidence from those who watched, heard or read the statement complained of about its impact on him, but his case will not necessarily fail for want of such evidence: *Lachaux*, Lord Sumption, [21]; *Turley*, Nicklin J, [107(vi)]. The difficulties of obtaining such evidence from those in whose eyes the claimant's reputation was damaged are obvious and well-recognised: *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB); [2016] EMLR 12, Dingemans J, [48]; *Economou v De Freitas* [2018] EWCA Civ 2591; [2019] EMLR 7, Sharp LJ (with whom all members of the court agreed), [28] and [31]; *Turley*, Nicklin J, [109(ii)] ...

viii) Sometimes inference may be enough, but it cannot always be so. The evidence may or may not justify an inference of serious harm. Inferences of fact as to the seriousness of harm done to a claimant's reputation may be drawn from the evidence as a whole, including the meaning of the words, the scale and circumstances of the publication, the claimant's situation and the

inherent probabilities: *Lachaux*, Lord Sumption, [21]; *Turley*, Nicklin J, [107(vi)-(vii)] and [108] ...

ix) If it is shown that the claimant already had a bad reputation in the relevant sector of his life, that will reduce the harm: see, albeit in the context of assessment of damages: *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB); [2022] EMLR 2, Nicklin J, [209]; and *Lachaux*, Lord Sumption, [16] (and see the recognition that assessment of whether the serious harm test is met and assessment of the measure of general damages 'raise a similar question of causation': *Lachaux*, Lord Sumption, [24]. The evidence that is admissible is limited to evidence of general bad reputation in the sector: *Gatley on Libel and Slander*, 13th ed., 34.081-34.091. Rumours are not admissible, *Umeyor v Innocent Ibe* [2016] EWHC 862 (QB), Warby J, [78].

x) Evidence of damage to the claimant's reputation done by earlier publications of the same matter is legally irrelevant to the question whether serious harm was caused, or is likely to be caused, by the publication complained of: *Lachaux*, Lord Sumption, [24] (accepting that Warby J was entitled to apply the *Dingl*e rule in applying s.1 of the 2013 Act). However, in circumstances where a claimant 'points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect', the *Dingle* rule has no bearing in determining causation: *Economou v De Freitas*, Warby J, [19].

xi) The court should not 'consider the issue of serious harm in blinkers'. Directly relevant background context (see *Burstein v Times Newspapers* [2001] 1 WLR 579, May LJ, [47]) may be relevant to the assessment of whether the serious harm test is met: *Umeyor v Innocent Ibe*, Warby J, [77]-[78].

xii) In general, a libel has greater potential to cause harm if it is published to the world at large and if it has been published repeatedly, than if it has been published to a single person on a single occasion: *Cairns v Modi* [2012] EWCA Civ 1382; [2013] 1 WLR 1015, Lord Judge CJ, [24]. But assessment of harm to reputation is not 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], Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Saddler* [2017] EWHC 3155 (QB) [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196]; *Turley*, Nicklin J, [109(iii)]. Moreover, 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*, Lord Judge CJ, [26] and *Slipper v British Broadcasting Corporation* [1991] 1 QB 283, Bingham LJ at 300': *Turley*, Nicklin J, [109(i)].
>
> ....."

Truth

15. The statutory defence of truth under section 2(1) of the 2013 Act is made out if the defendant can show that the imputation conveyed by the statement complained of is "substantially true". Whilst the common law defence of justification is abolished by section 2(4), the established common law principles continue to apply to the new statutory defence: *Bokova v Associated Newspapers Ltd* [2018] EWHC 2033 (QB); [2019] QB 861 ("*Bokova*"), Nicklin J, para 28, citing Jay J in *Serafin v Malkiewicz* [2017] EWHC 2992 (QB), para 103.

16. The pertinent principles are:

    i) In order to satisfy the statutory test of showing that the defamatory imputation is "substantially true", the defendant has to establish the "essential" or "substantial" truth of the sting of the libel. To prove the truth of some lesser defamatory meaning does not provide a complete defence: *Bokova* para 28, citing *Chase v News Group Newspapers Ltd* [2003] EMLR 11, para 34;

    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* para 28, citing *Rothschild v Associated Newspapers Ltd* [2013] EMLR 18, para 17 and *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB) ("*Turcu*"), para 105; and

    iii) The court will have well in mind the requirement to allow for exaggeration at the margins, and also will have regard to proportionality. The question is: "Having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration, has the substantial sting been proved?": *Riley v Murray* [2021] EWHC 3437 (QB); [2022] EMLR 267, para 51, citing *Turcu*, paras 105 and 111.

Publication on a matter of public interest

17. As material, section 4 of the 2013 Act provides:

> "(1) It is a defence to an action for defamation for a 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.
>
> .....
>
> (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 judgment 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."

18. Accordingly, as identified by Nicklin J in *Turley* at para 138(ii), when considering whether the defendant has established this defence, there are three questions to be addressed:

    i) Was the statement complained of, or did it form part of, a statement on a matter of public interest;

    ii) If so, did the defendant believe that publishing the statement complained of was in the public interest; and

    iii) Was that belief reasonable?

    I have indicated that the first question is not in issue in the present proceedings.

19. The second element of the defence concerns the defendant's subjective belief. It is to be assessed at the time when the statement was published: *Turley*, para 138(viii). Section 4(1)(b) requires a belief that publication of "the statement complained of" is in the public interest, which is to say the words complained of, rather than the defamatory imputation which those words convey: *Economou,* paras 92 – 93.

20. The defendant must have addressed their mind to the issue. This element is not established by showing that a notional reasonable person could have believed that the publication was in the public interest, but rather by establishing that the defendant *did believe* that it was: *Turley*, para 138(vii).

21. The principles relating to the third element of the defence were summarised by Steyn J at para 130 in *Riley*. The passage makes reference to: *Reynolds v Times Newspapers* [2001] 2 AC 127 ("*Reynolds*"); *Economou v De Freitas* [2016] EWHC 1853 (QB); [2017] EMLR 4 (Warby J, as he then was) and [2018] EWCA Civ 2591; [2019] EMLR 128 ("*Economou*"); *Serafin v Malkiewicz* [2020] UKSC 23; [2020] 1 WLR 2455

("*Serafin*") and to the decision of Nicklin J at first instance in *Lachaux* at [2021] EWHC 1797 (QB); [2022] EMLR 32. As relevant to the present case, Steyn J said:

> "iii) The court should take a fact-sensitive and flexible approach, having regard to practical realities. One or more of the ten illustrative factors identified by Lord Nicholls in *Reynolds*, 205A-D ('the *Reynolds* factors') may well be relevant, but those factors should not be used as a checklist.
>
> iv) The public interest defence reflects the appreciation that a journalist is not required to guarantee the accuracy of their facts. The truth or falsity of the defamatory statement is not one of the relevant circumstances to which the court should have regard in assessing whether s.4(1) is met; it is a neutral circumstance. On the other hand, whether the journalist *believed* a statement of fact they published to be true, at the time of publication, is relevant ... Indeed, a journalist who has published a statement of fact which they did not believe to be true is unlikely to be able to show that they reasonably believed publication was in the public interest.
>
> v) Efforts to verify the statement complained of '*will usually be regarded as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest. That is not to say that a failure to verify will necessarily lead to the s.4 defence being rejected; everything depends upon the particular circumstances of the case*': *Lachaux*, Nicklin J, [137. In *Economou*, in a statement approved by the Court of Appeal at [101] and by the Supreme Court in *Serafin*, [67], Warby J observed at [241]:
>
> > 'I would consider a belief to be reasonable for the purposes of section 4 only if it is one arrived at after conducting such inquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case.'
>
> vi) A failure to invite comment from the claimant prior to publication will '*no doubt always at least be the subject of consideration under subjection (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of that defence*'. But an invitation to comment cannot be described as a 'requirement' of the s.4 defence: *Serafin*, Lord Wilson, [76]." (Text italicised in the original.)

22. At para 131 Steyn J continued:

> "When addressing the third question, the court is required to make such allowance for editorial judgment as it considers appropriate (s.4(4) of the 2013 Act). The importance of giving respect, within reason, to editorial judgment is relevant when

> considering the tone and content of the material and the nature and degree of the steps taken by way of verification prior to publication. Even if the court considers that the journalist has fallen short in some respects, it is important to consider the process and the publication in the round, reaching an overall judgment as to the availability of the public interest deference. It is well established that the court must tolerate recourse to a degree of exaggeration or even provocation on the part of a journalist. See *Banks*, [112]-[114] and the authorities cited therein."

23. And at para 133 she observed:

> "Section 4 of the 2013 Act has to be interpreted and applied in conformity with the parties' respective rights under articles 8 and 10 of the European Convention on Human Rights, although those rights do not give rise to any separate and distinct issues to those which fall to be determined pursuant to s.4 of the 2013 Act. The special importance of expression in the political sphere, a freedom which is at the very core of the concept of a democratic society, is well recognised; and the concept of political expression is a broad one. The limits of acceptable criticism are wider in respect of political expression concerning politicians and other public figures ... On the other hand, as Lord Nicholls observed in *Reynolds* at 201A-C:
>
> > 'Reputation is an integral and important part of the dignity of the individual ... Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one's reputation. When this happens, society as well as the individual is the loser ... Protection of reputation is conducive to the public good. It is in the public interest that reputation of public figures should not be debased falsely.'"

24. The significance of non-compliance with relevant codes of conduct was addressed by Nicklin J in *Lachaux*. At para 154 he said:

> "... Ultimately, the decision on whether a defendant's belief that publishing the statement complained of was in the public interest was reasonable is an objective question for the court. However, a relevant code of conduct has a bearing in two key respects.
>
> > i) First, if a defendant has complied with the provisions of a relevant code, it seems to me that s/he is entitled to rely upon that fact as being a factor supporting the objective reasonableness of the belief that publication was in the public interest. Correspondingly, a failure to comply with a relevant code of conduct, depending on the seriousness of the breach, its consequences, and the explanation for it, may also be relevant to the assessment of the reasonableness of the belief. ... under s.4(2),

> the court must have regard to all the circumstances. Adherence to a regulatory code plainly may be a relevant factor.
>
> ii) Secondly, under s.4(4), the court must make such allowance for editorial judgment as it considers appropriate. For similar reasons, whilst remaining an objective assessment, the court is likely to afford greater allowance to editorial judgment if it is shown to have been exercised in a process in which there has been proven compliance with a relevant regulatory code."

Burden and standard of proof

25. The burden of proof lies on the claimant to establish serious harm. If he does so, then the burden of proof rests on the defendant in relation to the two defences that I have discussed. The applicable standard is the balance of probabilities.

Damages

26. The principles relating to general damages were set out by Warby J in *Barron v Vines* [2016] EWHC 1226 (QB) at paras 20 – 21. As relevant to the present case he said:

> "[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... "

[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 ... include the following:
>
> > a) Directly relevant background context within the meaning of *Burstein v Times Newspapers Ltd* [2001] 1 WLR 579 and subsequent authorities ...
> >
> > 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)…
> >
> > d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.
>
> (7) In arriving at a figure it is proper to have regard to (a) jury awards approved by the Court of Appeal: *Rantzen* 694, *John* , 612; (b) the scale of damages awarded in personal injury actions: *John* , 615; (c) previous awards by a judge sitting without a jury: see *John* 608.
>
> (8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers (1986) Ltd* ... This limit is nowadays statutory, via the Human Rights Act 1998."

27. Factors and circumstances that may be regarded as aggravating a claimant's damage were identified by Nourse LJ in *Sutcliffe v Pressdram Ltd* [1991] 1 QB 153 at para 184:

> "It is very well established that in cases where the damages are at large the jury (or the judge if the award is left to him) can take into account the motives and conduct of the defendant where they aggravate the injury done to the plaintiff. There may be malevolence or spite or the manner of committing the wrong may be such as to injure the plaintiff's proper feelings of dignity and pride. These are matters which the jury can take into account in assessing the appropriate compensation.
>
> The conduct of a defendant which may often be regarded as aggravating the injury to the plaintiff's feelings, so as to support a claim for 'aggravated' damages, includes a failure to make any or any sufficient apology or withdrawal; a repetition of the libel; conduct calculated to deter the claimant from proceeding; …the general conduct either of the preliminaries or of the trial itself in a manner calculated to attract wide publicity; and the persecution of the plaintiff by other means."

28. In *Sloutsker v Romanova* [2015] EWHC 2053 (QB); [2015] EMLR 27 ("*Sloutsker*") Warby J considered the extent to which reliance upon a truth defence which failed at trial could aggravate damages. At para 81(i) he said:

> "... Compensatable damages may continue because the defendant has not withdrawn or apologised for the defamation; but the court must be careful not to treat assertions that an allegation is true as conduct that in itself increases harm to reputation, or otherwise aggravates damages. Persistence in asserting the truth can aggravate injury to feelings, and is compensatable if the allegation is manifestly unsustainable. However, as pointed out by Lord Neuberger of Abbotsbury NPJ in *Blakeney-Williams v Cathay Pacific Airways Ltd* [2012] HKCFA 61, 62; [2013] EMLR 6 at [105], it is wrong in principle to award aggravated damages on account of a good faith defence of truth ..."

29. Aggravated damages are sometimes awarded as a separate sum. However, in *Lachaux* Nicklin J explained why he considered this practice to be unnecessary and unwise, given that the court's task is to assess the proper level of compensatory damages due to the claimant taking into account all of the relevant factors (para 227).

The uncontentious facts

30. Much of the background facts and the surrounding circumstances are not in dispute. I will set out these matters before turning to the Broadcast and then to the issues that I have to resolve.

The claimant

31. Mr Mehmood is a Pakistani national currently living in the United Kingdom with his wife and children. He is the Senior Vice President of the United Kingdom chapter of the current ruling party in government in Pakistan, the PML-N. He is a close acquaintance of the former Prime Minister of Pakistan, Muhammad Nawaz Sharif. The claimant describes himself as a "supporter and loyalist".

32. From about 1988 the claimant regularly visited the United Kingdom for vacations. In 1996 he applied for political asylum here, following the death of his brother in Pakistan. In due course he obtained indefinite leave to remain on the basis that he had lived in the United Kingdom for ten years. He periodically returns to Pakistan.

The defendant

33. The defendant was incorporated in June 2009. Mr Khan was the director from 2010 and the company secretary from 2011. He is the sole director and he holds over 75% of the shares in the defendant company. This was also the position at the time of the Broadcast. Mr Khan said his career in the print and electronic media in the United Kingdom began with Asian radio channels, including Sunrise Radio, based in Bradford and London, and Asian Sound Radio based in Manchester. He was the station manager in relation to

both of these channels and also a director of Sunrise Radio. Thereafter he set up the television stations Noor TV on Sky 819 (an Islamic religious channel broadcasting from the United Kingdom) and NDTV on Sky 831 (a channel broadcasting from India).

34. From October 2012 the defendant acquired the rights to broadcast the Pakistan based Samaa News Channel in the United Kingdom, Europe and the United States of America. The agreement was due to run until 2024. In the period that I am concerned with the defendant was not broadcasting in the United States; and whilst there was a signal obtainable in Europe, post-Brexit, the defendant was not licensed to broadcast there legally. Accordingly, the primary audience was members of the Pakistani community in the United Kingdom.

35. Samaa was a 24 hour news channel. The content came from Pakistan. Mr Khan said that approximately 4 – 5 hours of the daily programmes were pre-recorded and the remainder was a rolling news feed. He said that he would be in telephone contact with Samaa in Pakistan three or four times a day. The defendant also produced a limited amount of local content. Mr Khan indicated that this amounted to only about one programme a week. He agreed that at the material time the defendant was largely a conduit for the Samaa News Channel. He said that in 2019 he had a few freelance reporters and a few administrative staff, including a receptionist and a secretary; he was based in Bradford and the freelance reporters were in Birmingham, Manchester, Milton Keynes and London.

36. Mr Khan accepted that he had editorial responsibility for what was broadcast on the Samaa News Channel in the United Kingdom. He said that content-related decisions were made by him alone. He was the only person who monitored the feed from Pakistan. He also accepted that he was the compliance officer responsible for compliance with regulatory requirements.

37. During the course of cross-examination, Mr Khan said that there was a five second delay between the defendant's receipt of the rolling news content from Pakistan and it broadcasting the material. This was challenged as untrue by Mr Lemer, who questioned Mr Khan about the fact that this was not referred to in his witness statement. However, I do not find it necessary to decide whether there was this brief time delay or not, as it makes no difference to my conclusions for reasons that I will come on to identify.

38. The defendant's licence to broadcast the Samaa News Channel came to a premature end in May 2020 following an OFCOM complaint about a matter unrelated to this case. The parties did not agree about the circumstances giving rise to the complaint or the basis upon which the licence was terminated and Mr Khan faced some cross-examination on these topics. I do not find it necessary to reach a conclusion on these matters, as it makes no difference to my conclusions.

Mr Abbas

39. Whilst I do not need to resolve this dispute, I mention for completeness that there was a discrepancy between the descriptions given by Mr Khan and by Mr Abbas as to the latter's role in 2019. Mr Khan said that Mr Abbas worked for the Pakistan based Samaa News Channel. Mr Abbas said that he was working as a freelance contractor for Samaa UK, a company owned by Mr Khan, which provided UK-based content which Samaa

Pakistan would then decide whether to broadcast. Whilst this degree of variance between the two accounts was surprising, nothing turns on this for present purposes.

40. Both Mr Khan and Mr Abbas agreed that they had known each other for a long time. Mr Abbas thought it was from 2007.

Events in Pakistan

41. Mr Sharif served as the Prime Minister of Pakistan for three non-consecutive terms, namely from 1990 to 1993, 1997 to 1999 and 2013 to 2017.

42. In 2016 papers from Mossack Fonseca law firm were leaked to the global press (and were popularly referred to as the "Panama Papers"). The documents revealed that some of Mr Sharif's family members held millions of dollars-worth of property and companies in the United Kingdom and around the world.

43. In 2016 the Government of Pakistan launched an investigation. In 2017 the Supreme Court of Pakistan found Mr Sharif guilty of not disclosing income from his son Hussain Nawaz Sharif's company in Dubai. Mr Sharif disputed the allegations. The court disqualified him for life from holding office and in consequence Mr Sharif's period as Prime Minister of Pakistan came to an end.

44. In 2018, sitting in the Accountability Court of Pakistan, Judge Malik heard two cases in which Mr Sharif faced charges of corruption. He was found guilty on one of the charges (the *Al-Azizia* case) and acquitted of the other charge. Mr Sharif was sentenced to ten years imprisonment. He was initially released pending an appeal. Later in 2018 Mr Sharif began to serve his sentence.

45. Judge Malik and the claimant are long-term acquaintances. On about 6 April 2019 in circumstances that are disputed, the claimant travelled with Judge Malik to meet with Mr Sharif at Jati Umra, where he was detained.

46. A few days later the claimant covertly recorded a discussion he had with Judge Malik about Mr Sharif's case and his grounds of appeal. They were the only two people present at the time.

47. On 6 July 2019, the Vice President of PML-N, Maryam Nawaz, played the covert recording, or a version of it, at the Press Conference. I have referred to this as the Malik Video. It showed, or purported to show, Judge Malik admitting to the claimant that he had convicted Mr Sharif unjustly, as a result of pressure that was put on him. It is accepted that the claimant provided the Malik Video to Ms Nawaz. He left Pakistan and returned to London on 6 July 2019.

48. On 7 July 2019, Judge Malik issued the Press Release, in which he disputed the authenticity of the Malik Video. He claimed that it was not a true reflection of his meeting with the claimant and that the footage had been distorted. The document also referred to the Judge having been offered bribes by representatives of Mr Sharif during the court hearings and having been threatened with "dire consequences" if he did not cooperate. Judge Malik said that he had not succumbed to this and had determined the trial in accordance with the rules of justice and on the basis of the law and the evidence. The Press Release referred to the claimant as the other person in the video (using the

name Nasir Butt, by which he is also known) saying that he was an old acquaintance of the Judge. The claimant was not specifically named in relation to the allegations of bribery and threats that were made in this document.

Judge Malik's affidavit

49. Judge Malik provided a sworn affidavit dated 11 July 2019. In summary, the affidavit said that:

i) In or about February 2018, shortly after his appointment to the Accountability Court, the Judge was contacted by two acquaintances, Mahar Jilani and Nasir Janjua. Mr Janjua told him that the appointment had been made on his personnel recommendation;

ii) In August 2018 the two cases involving Mr Sharif were transferred to Judge Malik's court for trial. During the trials the Judge was approached by associates of Mr Sharif with "demands, inducements and threats" to acquit him. On one occasion Mr Janjua told him that it would be very damaging for him personally if Mr Sharif was not acquitted. On another occasion Mr Janjua offered to pay whatever the Judge demanded if there was an acquittal in both cases. He also made reference to a figure of Rs. 100 million (approximately £1.008 million in Euros);

iii) The offer of a bribe was followed shortly after by a "thinly veiled threat of physical harm and intimidation" by the claimant, who said to the Judge in an intimidating tone that he owed Mr Sharif a lot, as he had used his political influence to help him (the claimant) avoid punishment for four or five murders and he would go to any lengths to assist him;

iv) Judge Malik had declined the offer of the bribe and had decided the charges faced by Mr Sharif in accordance with the merits, based on the available evidence. He handed down judgment in December 2018;

v) In the middle of February 2019, when he had met with Khurram Yousaf and the claimant, the Judge was asked whether Mr Janjua had shown him the "Multan video" and the claimant said, "in a sinister manner, that you will be shown the video in a few days". Shortly after this he was visited by on old acquaintance, Mian Tariq, who he knew from when he was undertaking judicial work in Multan. Mr Tariq showed the Judge a "secretly recorded manipulated immoral video in a compromising position saying that is you doing this when you were serving in Multan";

vi) After he had been shown the Multan video, Mr Janjua and the claimant "started to pressurise and blackmail me to do something to help" Mr Sharif. Mr Janjua suggested that the Judge should record an audio message for Mr Sharif to listen to in which he said that he had convicted him as a result of pressure from influential quarters even though there was no evidence to prove the offence. Sometime after this the Judge was visited by the claimant who said that in spite of his non-cooperation, Mr Janjua had recorded the Judge's voice and this had been played to Mr Sharif who was not satisfied with the contents and had

demanded that Judge Malik accompany the claimant to visit him and repeat his statement in person. He again used the Multan video as a threat;

vii) Judge Malik accompanied the claimant to Jati Umra on or about 6 April 2019, where he met Mr Sharif. The claimant told Mr Sharif that the Judge had admitted to him that Mr Sharif's conviction was handed down under pressure from the judiciary and the army. However, when he spoke, the Judge tried to explain that he had convicted Mr Sharif on the merits. Mr Sharif was obviously displeased with this response. On the return journey, the claimant angrily accused him of failing to keep his word and said that to compensate him for this debacle he wanted the Judge's assistance with Mr Sharif's grounds of appeal against his conviction. He said the document had been prepared by a team of lawyers, but he wanted the Judge to review it and to provide his input. The Judge "agreed to this demand in the background of blackmailing to which I was being subjected";

viii) The claimant visited Judge Malik a few days later with a draft memorandum of appeal. He reluctantly reviewed this and gave some observations. The meeting was secretly recorded and "edited and manipulated excerpts of the conversation from that meeting" were played at the Press Conference;

ix) On 28 May 2019, the Judge went to Saudi Arabia with his family to perform Umra. On 1 June 2019 after Isha Prayers he met the claimant outside the Al-Masjid-an-Nabawi mosque. The claimant asked him to accompany him to meet Mr Sharif's son, Hussain Nawaz Sharif. When he resisted he was "again threatened with problems and embarrassment for me in Pakistan being at his one click command by a phone call". He met Hussain Nawaz Sharif, who was aggressive and intimidating. He offered him a cash bribe of Rs. 500 million and to relocate the Judge and his family to the country of his choice, with jobs for his children and a profitable business. He said that in return all that the Judge had to do was to "formally resign on the ground that I could no longer deal with the guilt of having convicted" Mr Sharif under duress and without evidence. He also said that he was the only one who could protect him. The Judge declined this offer and returned to Pakistan on 8 June 2019;

x) Thereafter the Judge received repeated telephone calls from the claimant urging him to reconsider the offer made by Hussain Nawaz Sharif and threatening him the with the consequences if he did not do so. The claimant also approached him with the same message through Mr Yousaf. Judge Malik responded in the negative and stopped taking phone calls from the claimant;

xi) The Press Conference was held in retaliation for the Judge's failure to succumb to these demands; false and malicious allegations were made about him and statements were falsely attributed to him.

Dismissal of Judge Malik from office

50. Judge Malik subsequently faced disciplinary proceedings in relation to the Press Release and the affidavit. In summary, the charges were that in breach of the applicable code of conduct: (i) while posted as a Judge of the Accountability Court-II he had publicised a press release "propagating your honesty and righteousness"; (ii) his affidavit disclosed that he had been involved in private communications about a case

he had tried with one of the parties (Mr Sharif); (iii) his affidavit also disclosed that he had reviewed Mr Sharif's memorandum of appeal against his own judgment; (iv) his affidavit showed that he had "a shady past" and had allowed himself to be "swayed and agreed to the demands of blackmailers and, thus, brought bad name to the prestigious judicial institution"; and (v) his frequent social contact and communications with sympathisers of the accused during and after his trial indicated he had fallen prey to extraneous considerations and had wanted to extend favour to the accused.

51. An Inquiry Report dated 9 May 2020, ordered by the Administration Committee, concluded that Judge Malik was guilty of "misconduct" as defined in Rule 3(b) of the Punjab Civil Servants (Efficiency & Discipline) Rules 1999. The report said that Judge Malik had denied the charges and submitted that the acts in question were the result of coercion / duress. The report proceeded on the basis of a definition of duress as being "where a person is threatened by another with serious violence or bodily harm if he does not undertake a criminal act". The report observed that Judge Malik "led no evidence in rebuttal that whatever done by him was a result of intimidation or duress". The report also said that although he relied upon the receipt of threats and blackmail, Judge Malik had "never communicated the authority for such blackmailing or intimidation either orally or in black and white". The Judge's account was considered to be inconsistent because he said he had been blackmailed, but at the same time said in his affidavit that he had given his judgment in Mr Sharif's cases without any pressure, fear or favour. The report concluded that Judge Malik had not "produced any witness or convincing material to establish that he was under threat or all his acts were [sic] result of duress or coercion".

52. The charges were found proven and on 6 August 2020 Judge Malik was dismissed from service with immediate effect by the Lahore High Court.

The Broadcast

53. I was provided with a translated transcript of the Samaa News Channel rolling news programme that was broadcast by the defendant between 2.00 and 3.00pm on 12 July 2019. The quotations that follow are taken from this transcript. Counsel were agreed that it was unnecessary for me to also watch the video of the programme (which was in Urdu). The time codes from that footage were set out in Mr Lemer's skeleton argument and have not been disputed. I have relied upon these timings in relation to the extracts that I set out below.

54. At the beginning of the broadcast a male reporter said:

> "Another stunning turn of events in the alleged video scandal. Sensational revelations regarding Judge Arshad Malik's sworn affidavit. He says, on April 2019 he met Nawaz Sharif in Jati Umra. Nasir Butt [the claimant] blackmailed and took him to Jati Umra. During the hearing Nasir Janjua and Mehar Jilani offered a bribe. They said, 'Whatever you ask for, and wherever you will ask for, Nawaz Sharif will give it to you'. Accordingly to Judge

> Arshad Malik, Nasir Butt said, 'Nawaz Sharif had saved me from five murder cases, I would go to any length for him'. [Arshad Malik said] But, my response to him was that I will never betray my oath."

55. The on-screen captions set out the following headlines: "Nasir Butt blackmailed and took him to Jati Umra" and "After rejecting the bribe offer, Nasir Butt threatened him".

56. The hosts of the programme, Faisal Kareem and Mehak Aslam then held a detailed discussion with various reporters on aspects of Judge Malik's affidavit. They initially focussed on Mr Janjua's alleged involvement in pressurising Judge Malik and in particular upon material that was said to show "infallible evidence of Nasir Janjua's ties with Nawaz Sharif", specifically a secret meeting that was said to have taken place between the two on 23 May 2019. Faisal Kareem then introduced a recorded statement from Shahid Khaqan Abbasi denying the contention that Mr Janjua met Mr Sharif in private. The presenters commented negatively on this denial.

57. At 6:57 minutes into the programme, Naeem Ashraf Butt (a journalist introduced as a "special representative") observed that "some viewers will have only joined us now". He then recapped the story about the secret meeting. Faisal Kareem complimented him on having presented "a very brilliant report" and observed that although Shahid Khaqan Abbasi had denied that the meeting took place "you have presented infallible evidence in the form of images and videos".

58. At 11:56 minutes, two further reporters were introduced, Khalid Azeem from Islamabad and Adnan Adil from Lahore. Khalid Azeem discussed some background information about Mr Janjua. Mehak Aslam then introduced the contribution of Adnan Adil, which began at 14:06 minutes into the programme.

59. Adnan Adil's contribution included the words complained of in the Particulars of Claim, as follows:

> "The video and visual evidence shows that Nasir Butt and Nasir Janjua were both involved in pressuring Judge Arshad Malik, as mentioned in his affidavit. They threatened him. They were trying to bribe him. They were conspiring to [release Nawaz Sharif] and this is what was being talked about in these clandestine meetings in prison. They were talking about conspiring to twist Judge Arshad Malik's various statements and edit the videos and audio of him – so that at a later stage they can be utilised to turn things in Nawaz Sharif's favour. It is very good that the Supreme Court has requested a hearing on this. This request has been approved. Now, it has been established that a hearing will take place. They should call Nasir Butt over from London. He should go to court for this. Same goes for Nasir Janjua. There are many other people – police officer Pervez Rathore will also be named. Many others will be named. If the Lieutenant General Nasir Janjua has also been holding long meetings with Nawaz Sharif the High Court should also summon and ask him what he was talking about for eight hours straight, with a convicted criminal. The people of Pakistan should know

> about this conspiracy. Has our court system and state apparatus sold itself out? Can anyone sabotage our systems through conspiracies? The public should know what conspiracy took place. They should know about how these characters were involved. [Crosstalk, Faisal and Adnan] They should receive exemplary punishment for this."

60. The discussion then reverted to Mr Janjua's alleged involvement and Mr Abbasi's denial.

61. At 21:58 minutes into the programme, Faisal Kareem introduced Uzma Bukhari, a representative of the PML-N. There was then a discussion about the allegations concerning Mr Janjua between Ms Bukhari, the host Mehak Aslam and the reporter Naeem Ashraf Butt. The claimant's name was not mentioned until time code 34:16 minutes. At this point, Uzma Bukhari said:

> "There is a lot that went out regarding Mr Nasir Butt as well. Reports saying, 'he is like this, he is like that'. This is when the video was released. The judge accepted this in the following press release. He said he had close ties to him. Listen to me. No one held the judge at gunpoint. He said that he met him in Jati Umra. Can anyone hold a judge at gunpoint? The judge sent his government-owned vehicle to deceive Nasir Butt. He calls him over to his house. After calling him over, he talks to him in a friendly manner. What are you guys talking about? I say that all cannot detract from this issue...
>
> Look. What he mentioned in his affidavit – compare the affidavit and the video, side by side. I say if more video evidence comes out, then the judge won't be able to tell any more lies. How can he keep on lying? I don't know, but when he keeps talking about being supposedly pressurised..."

62. At that point Faisal Kareem intervened with a question and the discussion moved away from the claimant. A little later Ms Bukhari said, "there are a lot of questions surrounding the judge. We will definitely contest the affidavit...".

63. At 38:12 minutes Faisal Kareem referred to Judge Malik having been removed from his position due to the scandal and then re-summarised the allegations made in his affidavit. The summary included that, "Nasir Butt blackmailed him and took him to Jati Umra" and that "Nasir Butt showed him the video and tried to blackmail him". No reference was made to Ms Bukhari's contribution in this context. The on-screen captions were: "Nasir Butt blackmailed me and took me to Jati Umra – Arshad Malik"; "Nasir Butt tried to blackmail me by showing me the video"; "Maryam Nawaz and Nasir Butt were made party to the request"; and above a picture of Judge Malik: "Nasir Butt blackmailed and took me to Jati Umra" and "Nasir said Nawaz Sharif is not satisfied, you will have to meet him".

64. In his witness statement Mr Khan said that the BARB (Broadcasters' Audience Research Board) rating for this broadcast was zero, meaning that the viewership was between 0 and 999 people. Mr Lemer tried to challenge this proposition in his closing

submissions. However, as he had not cross-examined Mr Khan upon this part of his statement, it did not appear to me fair or appropriate for him to seek to go behind this part of its contents. No application was made to recall Mr Khan in order to challenge him on this point. In any event, no persuasive basis for the belated challenge was identified. In so far as Mr Lemer placed reliance upon the document at pages 203 – 205 of the main bundle, where the figures for the Samaa News Channel for the week ending 21 July 2019 are 189,000 viewers, the number appears to be a cumulative total of viewers during that week. Accordingly, that material does not undermine Mr Khan's evidence. Further, the document at pages 2 – 10 of the Supplementary Bundle supports Mr Khan's evidence as to the viewer numbers at the time of the Broadcast on 19 July 2019.

Discussion and conclusions

Serious harm

65. The proposition that the claimant's reputation has been seriously harmed by the publication of the words complained of was dealt with relatively briefly in the Particulars of Claim at paras 8 – 11. The claimant relied on the following alleged features:

    i) The defamatory allegations were very serious and reported as matters of fact;

    ii) The Samaa News Channel is "widely viewed by members of the Pakistani community in the United Kingdom";

    iii) The harm was exacerbated by the claimant's public role in the Pakistani community in terms of his political position, which made him readily recognisable as the subject matter of the Broadcast and increased the extent of the damage to his reputation; and

    iv) Since the Broadcast he had been "regularly harassed by members of the Pakistani community in the United Kingdom in terms that repeat the defamatory imputations set out above".

66. The claimant provided further details at para 2 of his Reply, as follows:

    i) His children had been taunted by children at their school, which had resulted in them questioning the claimant about his conduct;

    ii) He was scared to put the television on. His wife and children were upset by the footage;

    iii) People would stop him in the street to challenge him in relation to the allegations. People taunted him and made remarks, leaving him feeling very vulnerable;

    iv) He became very depressed, such that he was hospitalised;

    v) Trade at his dry-cleaning business and at his furniture shop was affected. He saw a drop in customers and people spread rumours about him arising from the allegations made against him; and

vi) He became isolated and spent much time in the house.

67. In his witness statement the Claimant said:

i) He felt extremely vulnerable and feared for his own safety and the safety of his family (para 53);

ii) He and his family had been harassed. His children had been harassed at school and had been told that their father had threatened and tried to bribe a judge. His wife had been asked inappropriate questions by her friends (para 53);

iii) He had been targeted in that his vehicle had been stolen (para 53);

iv) He had been "approached in public, spat at, had abuse hurled at me including at events, weddings, shops, car parks and on the street. There are numerous videos on YouTube showing members of the public harassing me" (para 53);

v) As a result of the allegations his thriving construction business and his flour mill in Pakistan had shut and his bank accounts had been frozen (para 56);

vi) His businesses in the United Kingdom (the dry-cleaning business and the furniture shop) were affected as people refused to purchase from him due to the Broadcast. Further, people would "regularly pop into my business to abuse me. I was left with no choice but to close both businesses down as it was affecting my health and I was scared for my own safety as I felt like a sitting duck" (para 57);

vii) Following the Broadcast he was under immense stress and ended up in hospital (para 58);

viii) The Broadcast discouraged third parties from working with him or inviting him to social events (para 61);

ix) There was substantial "grapevine" dissemination of the words complained of, which spread through the Pakistani community. The statements published by the defendant "were shared all over the internet and picked up by other news media spreading them far and wide". The United Kingdom has a Pakistani diaspora of over one million people, many of whom follow developments in Pakistani politics and public life closely (paras 62 – 64);

x) He had been caused severe anxiety (para 67); and

xi) He was and continued to be stigmatised and shunned in the professional and social circles in which he used to move (para 68).

68. The claimant relies upon both direct evidence of particular harm and inference as to the adverse impact on his reputation of the words complained of. In assessing this issue I direct myself in accordance with the statutory test and the principles that I have set out at paras 13 and 14 above. I will begin with what can be inferred as to the damage to the claimant's reputation before setting out my findings in relation to more specific matters upon which the claimant gave evidence.

69. In terms of what can safely be inferred:

i) It is clear that the political background and the particular developments regarding Judge Malik's affidavit that were the subject of the Broadcast were of considerable interest to those who followed current affairs in Pakistan. During his evidence, Mr Khan described it as "a huge story in Pakistan";

ii) It is common ground that the claimant was and is an individual with a high profile in Pakistan and in the Pakistan diaspora community in England and Wales;

iii) The allegations were of an extremely serious nature, namely that the claimant had threatened and tried to bribe a judge. They were all the more serious because of the claimant's involvement in politics as a senior and well-known member of the PML-N; and

iv) Whilst the number of viewers who watched the Broadcast was less than 1,000 (para 64 above) and whilst no specific evidence of subsequent dissemination, for example via social media, has been provided to the court, I accept that given the nature of the imputations and the considerable interest in the story within the Pakistani community, that there would have been substantial percolation of the defamatory imputation.

70. In these circumstances I accept that, on a balance of probabilities, the words complained of occasioned substantial damage to the claimant's reputation. In closing submissions, Mr Ahmed was unable to identify any reason why I should not infer from these circumstances that serious harm was occasioned to the reputation of the claimant. I have borne in mind the high threshold involved, but I am satisfied that these matters in themselves form a sufficient basis for the court to infer that the reputation of the claimant was caused serious harm.

71. It is also convenient to deal at this stage with the evidence given by the claimant about alleged instances of the damage caused to his reputation and the impact upon him and his financial enterprises. Overall, the claimant's case was unsatisfactory in these respects. There was very little supporting evidence adduced beyond the claimant's own account. There were no statements from family members or from friends who had witnessed or experienced any of the alleged harassment. There was no documentary material in relation to the alleged loss of business, nor provision of specific YouTube videos (referenced only in very general terms in the claimant's statement). Limited documentary material was disclosed in relation to the claimant's hospital admission and in his closing submissions, Mr Lemer sensibly accepted that this did not support the alleged link with the Broadcast. He also conceded that the theft of the claimant's car could not be evidentially linked to the Broadcast. The instances of alleged harassment and the impact on the claimant and his family were only described in very general terms, as will be apparent from my earlier recital of the material aspects of the pleadings and Mr Mehmood's witness statement.

72. In closing, Mr Lemer submitted that beyond the hospitalisation, the stolen car and the impact on the claimant's United Kingdom businesses, Mr Ahmed had not challenged

Mr Mehmood's account of these matters when he was cross-examined. That did not accord with my understanding of the cross-examination. By way of example: (a) Mr Ahmed questioned Mr Mehmood on the fact that proceedings were only issued on 3 July 2020, nearly a year after the Broadcast, suggesting he would have acted more promptly if his reputation had been damaged as he alleged; (b) Mr Mehmood was asked about the specifics of the alleged harassment, in particular how frequently it had occurred and whether he had called the police, given he had said he felt threatened; (c) Mr Mehmood was asked about the impact in Pakistan and it was put to him that any effect on his businesses there was not related to the Broadcast; and (d) it was put to him globally that he had suffered no significant loss or damage as a result of the Broadcast. I also note that para 11.4 of the Defence puts the claimant to proof in relation to the alleged serious harm to his reputation and that the pleaded allegations of damage were denied at paras 14 and 15. Accordingly, I proceed on the basis that the claimant's case as to the serious harm element and as to consequential damage was put in issue and remained in issue, so that it is incumbent on the court to evaluate it.

73. Although more detail would have been desirable, having listened to his answers in cross-examination, I accept the claimant's explanation that he did not issue these proceedings more promptly, at least in part because he was pursuing a complaint via OFCOM in the first instance, which he subsequently abandoned in favour of issuing the claim when he became concerned about the limitation position. Accordingly, I approach Mr Ahmed's submission concerning the failure to issue proceedings at an earlier stage, with this in mind. Nonetheless, there remains some force in the point that if the situation was anything like as serious as Mr Mehmood has suggested in terms of threats and harassment, then it is likely that he would have embarked upon this litigation more swiftly.

74. In relation to the claimant's direct evidence I find as follows:

i) I accept that the claimant was very upset by the words complained of and that he was occasioned considerable worry over the impact it would have on his political career, his family, his businesses and his general reputation over an extended period;

ii) I accept that some remarks about him and the Broadcast were made to his children when they were at school, which were then relayed to the claimant. He spontaneously referred to this aspect when Mr Ahmed asked him about the alleged harassment. However, I am not satisfied that the comments made went as far as to amount to taunts or to harassment. I also accept that it is likely that some remarks were made to the claimant and to his wife;

iii) I do not accept that the claimant has proved that he or his family members were subject to threats, harassment or abuse as a result of the words complained of. No specific examples were given in the claimant's witness statement or in his evidence, as would be expected in such circumstances. If supporting evidence existed in the form of YouTube footage, it should have been disclosed and provided to the court. Mr Ahmed asked Mr Mehmood twice how many times he had been harassed and on both occasions the claimant failed to answer the question. The first time he answered by referring to remarks made to his children at school (sub-para 74(ii) above). The second time he answered by saying that he felt scared after the Broadcast. In evaluating his evidence on this and on other

matters, I have borne in mind that the claimant was giving his evidence in Urdu, via an interpreter, but there did not appear to be an issue with the interpretation and these were clear, straightforward questions. My impression was that the claimant did not wish to be drawn on the details. I infer that this was because he was aware that his witness statement had given an exaggerated account of these matters. I also note that he was unable to explain to Mr Ahmed why he had not called the police, given his account of feeling threatened for his own safety and that of his family. After initially not answering the question, the only explanation that Mr Mehmood gave was, "I did not feel it suitable to call the police". I have already referred to the period that elapsed before proceedings were issued;

iv) I accept that the claimant felt some wariness and anxiety in his contact with other people after the Broadcast. I also accept that this would have been significantly exacerbated by the public position that he occupied. I do not accept that he stayed in his house and did not go out for 10 – 15 days in the immediate aftermath of the Broadcast. He said this for the first time in his oral evidence; it does not appear in the pleadings or in his witness statement;

v) As has been conceded, the claimant has not shown that his hospitalisation was linked to the Broadcast, nor that his car was stolen as a result of it;

vi) I do not accept that the Claimant has proved that there was an adverse impact on business at his dry cleaning shop or his furniture shop as a result of the Broadcast. No detail was given as to the extent to which turnover or profits were reduced, no dates were given as to when the businesses allegedly closed; and, as I have already noted, no supporting documents have been provided; and

vii) I do not accept that he has proved that there was an adverse impact on his businesses in Pakistan as a result of the Broadcast. I also note that this allegation is not pleaded. The claimant's evidence in cross-examination was very vague in terms of when this had happened and why it had happened. He did acknowledge that there were other television programmes in Pakistan which had aired the contents of Judge Malik's affidavit, suggesting that he had been characterised as "a murderer and a drug dealer".

75. During cross-examination Mr Ahmed raised the point in general terms that other media, particularly in Pakistan, had carried the allegations made by Judge Malik. However, the court was not provided with any details in respect of this. As I have explained earlier, this may be relevant to the assessment of causation in respect of particular adverse events, such as remarks made or a business closing, but not to the general question of whether serious harm to reputation was caused by the words complained of: *Riley* at para 103(x) (para 14 above). In arriving at the findings I have set out above, I have had to do the best I can on the limited material available.

76. In summary, I accept that the publication of the words complained of has caused serious harm to the reputation of the claimant, largely, although not entirely, on the basis of the inferences that can be drawn in relation to this, as I have indicated. I have explained why I conclude that the claimant has failed to prove a number of the specific consequences and indicators of his damaged reputation that he relied upon.

Defence of truth

77. Paragraph 12 of the Defence says that the meaning which the defendant will prove the truth of is that "the Claimant had threatened and bribed the judge". The meaning of the words found by Saini J was that the claimant had threatened and *tried to* bribe a judge (para 2 above). However, no point was taken on this discrepancy and I will approach matters on the basis that the pleading (which post-dated Saini J's Order) intended to include the "tried to" qualification. In the event, nothing turns on this distinction in terms of my findings.

78. The pleaded Particulars of Truth that follow simply: (a) set out the events leading up to the affidavit sworn by Judge Malik on 11 July 2019 in fairly neutral terms, such that the majority of paras 12.1 – 12.9 are admitted in the Reply (and appear in my summary at paras 41 – 48 above); and (b) describe the contents of Judge Malik's affidavit at para 12.10.

79. When Mr Khan gave evidence it was apparent that he wanted to argue that the Broadcast did no more than relay allegations made by Judge Malik and did not state *as a fact* that Mr Mehmood had threatened and attempted to bribe a judge. As I pointed out to Mr Khan at the time, this course was precluded by Saini J's earlier ruling (para 2 above). However, it is somewhat telling that this was the position that Mr Khan wanted to defend, rather than a statement that the claimant *had* threatened and tried to bribe a judge.

80. The defence of truth is based on the twin propositions that the contents of Judge Malik's affidavit are true in so far as they relate to the claimant; and that his denials should be given little weight as his evidence was not credible.

81. The claimant's position as set out in the particulars at para 4 of the Reply is as follows:

    i) The description of his conduct contained in Judge Malik's affidavit was untrue;

    ii) After the Press Release, Judge Malik told the claimant by telephone that he had been forced to issue it by the Government of Pakistan, who had threatened to kill him and harm his family if he did not do so;

    iii) Judge Malik's affidavit was sworn as a result of the same threats and pressure;

    iv) Contact with the claimant had been initiated by Judge Malik (rather than it being the other way round). The Judge had told him that he wanted to convey his remorse for having unfairly convicted and jailed Mr Sharif;

    v) The claimant had no knowledge of the Multan video and only learnt of it when he read Judge Malik's affidavit;

    vi) He was not privy to any of the alleged conversations between Mr Janjua and Judge Malik;

    vii) It was Judge Malik who asked the claimant to accompany him to Jati Umra as he wanted to apologise to Mr Sharif. During the course of their meeting, Judge Malik said that he had been put under pressure to convict Mr Sharif;

viii) Judge Malik reviewed the draft memorandum and gave observations in relation to Mr Sharif's grounds of appeal, but this was not as a result of blackmail or other demand made by the claimant; and

ix) The Malik Video had not been manipulated and its release was motivated by a desire to highlight the unjust treatment that Mr Sharif had received and the improper pressures that were being put on judges.

82. I direct myself in accordance with the principles that I have summarised at paras 15 – 16 above.

83. I conclude that the defendant has not established that the defamatory imputation that the claimant had threatened and tried to bribe a judge is substantially true. I identify my reasons in the paragraphs that follow.

84. Judge Malik is now deceased and I heard no evidence from him. Nonetheless, the defendant submitted that particular weight should be accorded to an account given by a judge in a sworn affidavit. However, the appropriate degree of weight to be given to any document, including one provided by a judge, will depend upon its context.

85. Judge Malik was not a dispassionate observer giving a ruling on a dispute that had come before him in his judicial capacity. Rather, he was giving a personal account of events in which he had participated; and he was doing so in response to the controversy generated by the Malik Video played at the Press Conference. At the time he was open to significant criticism for convicting Mr Sharif when he apparently accepted in the video footage that there was insufficient evidence to warrant doing so and (from other quarters) for ostensibly taking the highly unusual step of meeting with a person he had convicted and assisting with the formulation of their grounds of appeal against his own decision to convict.

86. Furthermore as I have described at paras 50 – 52 above, Judge Malik's account was rejected in the subsequent disciplinary process that he faced. The reasoning in the Inquiry Report is not without its curiosities. I can see no inherent inconsistency in saying "X tried to blackmail me, but I did not succumb to the pressure". Furthermore, although the report rejected Judge Malik's account of blackmail / coercion, the fourth charge was expressly predicated on the basis that he had "agreed to the demands of blackmailers". Be that as it may, it is clear from the terms of the report that Judge Malik produced no supporting evidence for his account and that he was disbelieved. In addition there are features of Judge Malik's written account that on any view would require further probing before any real confidence could be placed in its credibility, including why he did not seek assistance from anyone in authority after the threats and attempted bribes commenced; and why it was only in the affidavit and not in the Press Release that he named the claimant as involved in the wrong doing he alleged.

87. In the circumstances I am only able to attach very limited weight to this heavily disputed written account provided by someone from whom I have not been able to hear give evidence and undergo cross-examination. As Mr Lemer submitted, the document is simply one side of a contentious story.

88. As I have already noted, the defendant adduced no other supporting evidence.

89. I turn then to the claimant's evidence. As I indicated when I considered the "serious harm" issue, I have borne in mind that the claimant gave his evidence via an interpreter and the potential difficulties that this can entail (para 74(iii) above). Nonetheless, I did not find him to be an entirely credible witness. I have already rejected aspects of his account of consequential damage as exaggerated and/or unconvincing (para 74 above). Furthermore, Mr Ahmed explored a number of points with him in cross-examination that Mr Mehmood did not adequately address, in particular:

    i) Why there was a gap of just under three months between the footage that formed the Malik Video being filmed and the Press Conference at which it was played; and

    ii) The apparent implausibility in Judge Malik begging to be taken to see Mr Sharif to apologise that he had wrongly convicted him.

90. However, the central foundations of the claimant's account and his firm denial of Judge Malik's allegations were not significantly shaken in cross-examination and his account remained generally consistent.

91. In the circumstances the defendant did not come close to showing that the claimant had threatened and tried to bribe a judge.

Defence of publication on a matter of public interest

92. Paragraph 13.1 of the Defence averred that the words complained of were a statement on a matter of public interest. As I indicated earlier, that is now accepted by the claimant (para 5 above). Paragraph 13.2 contended that the defendant reasonably believed that publishing the statement was in the public interest. The following factors were relied upon in that regard:

    i) On 12 July 2019 (the day of the Broadcast), the defendant had met the claimant in person and informed him of Judge Malik's affidavit. He declined to comment;

    ii) The claimant had thus been given an opportunity to comment before the words complained of were published;

    iii) The "many ways in which [the defendant] had substantiated the claim". The ways then identified were the Press Release and Judge Malik's affidavit;

    iv) The Broadcast had included "strong rebuttals" of Judge Malik's allegations by Uzma Bukhari, a Pakistani member of the PML-N; and

    v) The actions of the claimant provided important context to the primary subject of the news report, namely the meeting behind closed doors between Mr Sharif and Mr Janjua.

93. The Reply denied the applicability of the section 4 defence. In particular, the pleading stated that:

    i) The claimant was not aware of meeting anyone from the defendant on 12 July 2019 who had informed him of the contents of Judge Malik's affidavit prior to publication;

ii) The clamant had not, to his knowledge, been provided with an opportunity to comment on the affidavit;

iii) The defendant had taken no steps to verify the contents of the Press Release and Judge Malik's affidavit;

iv) It was not reasonable for the defendant to rely on those materials to publish statements that the claimant had threatened and attempted to bribe a judge (as opposed to there being allegations of the same);

v) The defendant's attempts to investigate and verify the assertions of guilt fell far below the standards expected of responsible journalism;

vi) Ms Bukhari's only reference to the claimant came approximately 18 minutes after the words complained of and did not constitute a strong rebuttal to the same; and

vii) The assertions that the claimant was guilty of threatening and trying to bribe Judge Malik did not reasonably provided important context to a story concerning a meeting between Mr Janjua and Mr Sharif.

94. In considering whether the defendant has established the publication on a matter of public interest defence I have directed myself in accordance with the principles that I have set out at paras 19 – 24 above.

The defendant's subjective belief

95. I do not consider that the defendant has established the second integral element of the defence. It has not been shown that Mr Khan (or anyone else employed by the defendant) subjectively believed at the time of the Broadcast that it was in the public interest to publish Mr Adil's statement that the evidence showed that the claimant was involved in pressuring, threatening and trying to bribe Judge Malik (para 59 above).

96. The Defence did not identify who was said to have had that belief at the material time. However, given the nature of the defendant's operations at the time (paras 33 and 35 - 36 above), it can only have been Mr Khan, if it was anyone. No other name has been suggested.

97. I accept that in general terms Mr Khan believed that a news story about Judge Malik's affidavit was in the public interest. He said as much in his evidence and this is an unsurprising proposition given the attention that the story had attracted in Pakistan. However, the focus in section 4 is upon the statement containing the words complained of. I conclude that the defendant has not shown that at the time of the Broadcast Mr Khan believed that it was in the public interest for one of the reporters (Mr Adil) to say that the evidence showed that the claimant was involved in pressuring, threatening and trying to bribe Judge Malik. I do not accept that Mr Khan addressed his mind to this issue at the time.

98. I arrive at this conclusion for the following reasons:

i) Mr Khan did not say this in his witness statement. I would have expected him to have addressed this key element of the defence in his statement, if that was his state of belief at the time;

ii) There is no contemporaneous evidence (for example, notes or emails) that might support the proposition that he considered this point and that this was what he believed at the time;

iii) As I have mentioned earlier, the underlying thrust of Mr Khan's evidence was that the position he wanted to defend was one where the defendant had done no more than relay the contents of Judge Malik's affidavit as allegations. Rather than spontaneously saying that he believed it was in the public interest to publish a statement that the claimant was involved in threatening and trying to bribe the Judge; he intimated on several occasions during his evidence, without any prompting, that he did not accept that the Broadcast had said this (but understood that he was bound by Saini J's ruling in this regard);

iv) Even when he was asked about this aspect directly by Mr Lemer he was somewhat equivocal:

> "Q. Did you believe that what Mr Adil said was in the public interest?
>
> A. That is what the judge said. If I don't believe what the judge said, who do I believe?
>
> Q. This case is not about what the judge said, it's about what Mr Adil said. Did you at the time think that Mr Adil's comments were in the public interest?
>
> A. Yes.
>
> Q. That he threatened and tried to bribe a judge?
>
> A. I let it go on air and I didn't try and interrupt it";

v) There would have been very little time for Mr Khan to form a belief that the words complained of were in the public interest. He did not know in advance of the Broadcast the specifics of what Mr Adil was going to say. Even if I assume in his favour that there was a five second delay before the feed from Pakistan was played (para 37 above), in the context of a rolling news programme that had already been broadcasting for 12 minutes, it is unrealistic to suppose that Mr Khan went through the process of positively considering this particular aspect at the time. Furthermore, he did not describe doing so in his evidence; and

vi) I approach Mr Khan's evidence with some caution given that I entirely reject the account of the claimant being approached for comment on the story prior to the Broadcast, as I explain below.

Reasonableness of the belief

99. In any event, even if (contrary to my primary conclusion) the defendant had shown that Mr Khan believed at the time of the Broadcast that publishing the statement complained of was in the public interest, I conclude that this would not have been a reasonable belief to hold for the reasons I will now identify.

100. Whilst it is not a precondition for making out the defence, a failure to invite comment from the claimant prior to publication is likely to be a highly significant factor where, as here, the defendant is a professional broadcaster: *Riley*, para 130(vi) (para 21 above). Moreover, during his cross-examination, Mr Khan accepted that para 7.11 of the OFCOM Broadcasting Code (2019) required the defendant to contact the claimant before the Broadcast in order to give him an opportunity to respond, as wrongdoing on his part was alleged. Mr Khan acknowledged that he was familiar with this requirement at the time. He also accepted that if no comment was sought from the claimant at that stage, then it "may be not reasonable" to broadcast the statement. Non-compliance with an applicable code may itself be relevant to the assessment of the reasonableness of the belief: *Lachaux*, para 154 (para 24 above).

101. As I have indicated, there was a factual dispute as to whether a representative of the defendant had spoken to the claimant before the Broadcast about the allegation that he had threatened and tried to bribe Judge Malik. At trial, the defendant's case, as set out in Mr Abbas' witness statement, was that he had spoken with the claimant in person and "immediately informed him about the broadcast publication and what [sic] would entail"; and had also informed him that this was his opportunity to provide his comments, but he had declined to do so. Mr Abbas said that he then immediately informed Mr Khan of this. Mr Mehmood denied that any such conversation had taken place.

102. I am quite satisfied that the defendant's case in this respect was untrue. I arrive at this conclusion for the following reasons:

i) The Broadcast contained no reference to the claimant having been approached and declining to comment. Paragraph 7.12 of the OFCOM Code (which Mr Khan was familiar with) provided that where a person who was approached to contribute to a programme chose to make no comment, the broadcast should make this clear;

ii) Mr Khan accepted that there was no documentary record made of the claimant having been approached for comment, despite the potential significance of this step;

iii) The Defence and the witness statements of Mr Khan and Mr Abbas addressed this important topic very briefly, consistent with a reluctance to provide details that could then be undermined by the claimant. Neither Mr Khan nor Mr Abbas were able to explain convincingly why the fuller accounts which they then gave in evidence and which they said they were able to recall, had not been included in their respective statements;

iv) The fuller accounts that were given in evidence by Mr Khan and by Mr Abbas were implausible. I will summarise these accounts and then identify some

specific unsatisfactory features. Mr Khan said that he contacted Mr Abbas in London and asked him to check the claimant's account with him. He said this occurred at around 10 – 11am on the day of the Broadcast. There was no written record as the request was conveyed by telephone. He said that he then received a call back from Mr Abbas just before the programme began telling him that the claimant did not want to be in the programme or give any comment. Mr Abbas said that he met the claimant sometime between 1.00 – 2.00pm on the day in question. He had not arranged to meet him, but the claimant came into a café on the Edgware Road where Mr Abbas was sitting with other journalists. He had tried to call him various times between 6 – 12 July 2019. He said that he asked the claimant for his comments and Mr Mehmood replied that his leadership had told him not to talk to anyone about this. He said that he had reported back to Mr Khan at 2.10 – 2.15pm "something like that"; he did not know if this was before, during or after the Broadcast;

v) Whilst Mr Abbas said that there were certain cafes on or in the Edgware Road area that both he and Mr Mehmood sometimes frequented, he did not suggest that they both went to the same café every lunchtime. On his account, Mr Abbas had been trying to contact the claimant since 6 July 2019. Accordingly, if Mr Abbas' account is correct, it was a striking and convenient coincidence that he happened to walk into the establishment where Mr Abbas was meeting with others and to do so at a time shortly before the programme was due to be broadcast;

vi) Despite what ought to have been the evident importance of the matter and the fact that it appears they were in the same locality, Mr Abbas did not describe having taken any particular steps to try to contact the claimant after receiving the request from Mr Khan that morning other than making an attempt to call him. Nor, on his own account, did he appear to accord any apparent priority or urgency to reporting back to Mr Khan on what the claimant had said to him;

vii) Mr Abbas declined to give the names of any of the journalists that he said he was in the café with on 12 July 2019. He said that this was because they were well-known and might object to him doing so. This was an unconvincing response;

viii) Mr Abbas made no note of his conversation with the claimant, despite its importance. He also claimed that he could recall what the claimant had said over three and a half years later when giving his evidence; and

ix) The defendant's response to the letter before claim asserted that the claimant had been asked for his comment on "numerous occasions" before the Broadcast. This does not accord with Mr Khan's or Mr Abbas' evidence; yet Mr Khan said he had read and checked the letter before it was sent.

103. Accordingly, on my findings, there was an unexplained failure to give the claimant an opportunity to comment before the defamatory statement was broadcast and, in addition, this amounted to a breach of the applicable OFCOM Code.

104. In addition, I do not consider that any reasonable steps were taken by the defendant to verify the proposition that the claimant had threatened and tried to bribe Judge Malik.

These were extremely serious imputations, but the reality was that Mr Khan simply relied upon the feed from Samaa in Pakistan and was prepared to run the risk as to its contents. He was not aware what, if any, investigatory steps had been undertaken by the Samaa News Channel to support the statement of one of their reporters that the evidence showed the claimant had threatened and attempted to bribe Judge Malik.

105. As I have indicated, the defendant relies upon the fact that the programme included a contribution from Ms Bukhari, denying the allegations made by Judge Malik (para 92 above). Whilst Ms Bukhari did dispute the Judge's account in strong terms, asserting that it was "lies", I do not consider that the inclusion of her contribution materially supports the proposition that it was reasonable to believe that publication of the words complained of was in the public interest. Her comments regarding the claimant were not broadcast until around 18 minutes after Mr Adil's defamatory statement, in the context of a rolling news channel where a significant number of the viewers would likely dip in and out of the programme. Further, the overall tone of the programme, including between these passages, was supportive of the accuracy of Judge Malik's affidavit; the summary that followed a few minutes after Ms Bukhari's contribution relayed the Judge's allegation that the claimant had tried to blackmail him as fact, with no reference made to Ms Bukhari's denial; and the impression was reinforced by the chyrons I have referred to (paras 55 and 61 – 63 above).

106. Whilst I have noted that some allowance may be made for editorial judgment (para 22 above); as I have explained, I do not consider that Mr Khan exercised any specific editorial judgment in relation to this matter (para 98(v) above). Furthermore, I do not accept that it was necessary to refer to Judge Malik's allegations concerning the claimant as established fact in order to broadcast the primary story concerning the association between Mr Janjua and Mr Sharif.

107. Accordingly, it follows that the claimant has established his claim in libel.

Damages

108. I have already set out the claimant's case in relation to the consequential damage that he suffered (paras 65 – 67 above). In finding that the "serious harm" threshold was met in terms of damage to the claimant's reputation, I made a number of findings about the impact upon the claimant (paras 69 – 71 and 74 - 76 above).

109. I direct myself in accordance with the legal principles that I identified at paras 26 – 28 above and I bear in mind the purposes of my award of compensatory damages. I will make a single award that combines general damages and a modest element for aggravating features (para 29 above).

110. I accept that the defamatory statement involved a very serious imputation of a kind that went to the heart of the claimant's integrity as a political figure. I also accept that the damage to his reputation was all the greater given he is a prominent figure in Pakistan and in the Pakistan diaspora community in the United Kingdom. I accept that the imputations were given prominence within the Broadcast, as I have already described. The award must be sufficient to vindicate the claimant's reputation in circumstances where the defendant persisted with a manifestly weak and unsustainable defence of truth. I also bear in mind that the Broadcast would have appeared credible to viewers at the time. I have already accepted that the claimant was occasioned consequential

distress and anxiety and that some adverse remarks were made to him and his family (para 74 above). I take into account that there has been no apology; that he was not approached at the time and given the opportunity to comment; and that there was no real attempt to verify the allegations before the Broadcast.

111. In terms of the circulation of the defamatory statement, the original number of viewers was under 999, but I have accepted that there would have been substantial percolation, albeit I have been shown no supporting documentary evidence and I am unable to put a figure on the number of times that this occurred (para 69(iv) above).

112. I have rejected a number of the consequential effects that the claimant relied upon (para 74 above). I take into account that this is not a case involving malice.

113. Mr Lemer relied upon two cases that he said involved some comparable features: (a) *Sloutsker*, where Warby J awarded £110,000 to the claimant in 2015 (now equivalent to £163,705, allowing for the 10% *Simmons v Castle* [2012] EWCA Civ 1288 uplift and for inflation); and (b) *Barron v Collins* [2017] EWHC 162 (QB), involving awards of £60,000 to each of the three claimants (now equivalent to £86,033), less 10% to reflect the defendant's offer of amends. However, Mr Lemer accepts that damages should be limited to the amount sought in the Claim Form, namely £50,000.

114. Every case involves an individualised fact-sensitive assessment. I do not consider that either of Mr Lemer's cases provided a pertinent comparison. In *Sloutsker*, the claimant, a former senator in the Senate of the Russian Foundation, was accused of the most serious of crimes, namely conspiracy to murder. No defence was filed and the defendant played no part in defending the claim. Damages were assessed on the basis that the defamatory allegations (contained in a number of online publications) could easily have reached as many as 60,000 people and accordingly, the extent of their circulation was much wider than has been proved in the present case. There was no suggestion that the claimant had put forward an exaggerated account of the consequential effects relied upon.

115. In *Barron* the claimants were Labour MPs who had been slandered in a speech made by an MEP and member of the UK Independence Party and libelled in subsequent reports of her speech (for which she was held responsible). She had said that the MPs had known the details of the child sexual exploitation that was taking place in Rotherham, involving an estimated 1,400 children having been raped, beaten and otherwise abused, but for years they had chosen to keep quiet about it and not to intervene. The defendant failed to attend the hearing at which damages were assessed, despite a court direction to do so, and the claimants were not cross-examined. There was no suggestion that aspects of their accounts were exaggerated. The broadcast of the speech had been viewed by over 13,000 people, in addition 2,140 people had watched it on YouTube and there had been extensive republication, thereafter, including on Twitter. £10,000 of the £60,000 total was awarded for the slander, as opposed to the libel.

116. Taking all relevant circumstances into account, I conclude that a figure of £35,000 affords appropriate vindication of the claimant's reputation and reflects the damage that he has suffered.

Injunctive relief

117. I appreciate that the defendant no longer broadcasts the Samaa News Channel in the United Kingdom. However, given the seriousness of the libel and the defendant's misconceived attempt to justify the same, I consider that it is appropriate to grant injunctive relief. Mr Ahmed did not advance any free-standing contention that such a remedy should not be granted if I upheld the claim.

118. Accordingly, I am satisfied that I should make an order in the standard terms restraining the defendant from publishing, or causing or permitting the publication, of the words complained or any similar words defamatory of the claimant.

Overall conclusions

119. For the reasons that I have explained above, I have concluded that:

i) The publication of the words complained of caused serious harm to the reputation of the claimant (paras 70, 74 and 76 above);

ii) The defence of truth fails as the defendant has not shown that the defamatory sting of the imputation, namely that the claimant had threatened and tried to bribe a judge, was substantially true (para 83 – 91 above);

iii) The defence of publication on a matter of public interest fails as the defendant has not shown that any relevant person believed at the time that publishing the words complained of was in the public interest (paras 95 – 98 above); and in any event if such a belief had been held, it was not a reasonable belief in all the circumstances (paras 99 – 106 above); and

iv) Accordingly, the claimant's claim for libel is established. I award him £35,000 by way of compensatory damages and I will grant an injunction restraining future repetition of the libel (paras 108 – 118 above).

120. In the circumstances it is unnecessary to determine the GDPR claim (para 6 above).

121. Counsel will have the opportunity to make written submissions on the appropriate terms of the consequential Order.