Neutral Citation Number: [2015] EWHC 2053 (QB)

Case No: HQ12D04716

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2015

Before :

MR JUSTICE WARBY

- -

Between :

VLADIMIR SLOUTSKER	**Claimant**
- and -	
OLGA ROMANOVA	**Defendant**

- -
- -

Adrienne Page QC (instructed by **Hamlins LLP**) for the **Claimant**
The defendant, a litigant in person, did not appear and was not represented

Hearing date: 13 July 2015

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Judgment Approved by the court for handing down (subject to editorial corrections)

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Mr Justice Warby :

A. Introduction

1. This judgment deals with remedies in this libel action, following the entry of judgment in default of Defence. The judgment contains and explains my assessment of the damages to which the claimant is entitled for what I consider to be serious libels of him published by the defendant. I also give my reasons for granting the claimant's application for an injunction prohibiting the defendant from further publication of the libels in this jurisdiction. My conclusions on these issues are summarised in section F at [98] below. The reasons for reaching those conclusions are contained in sections D and E.

2. Before addressing those issues, however, I need to set out something of the procedural history of this action. It is necessary to make clear how the case has reached this remedies hearing. I then need to explain why I have proceeded to hear evidence and argument and reach a decision on remedies, despite assertions made recently in a letter written to the court by the defendant on 19 June 2015. In that letter she complains that she has been unable effectively to defend this action, and that the justice system has "let her down".

3. Having carefully considered what the defendant has said in support of those complaints, and heard Ms Page QC for the claimant in response, I have concluded, for the reasons given below, that the complaints are unfounded. In my judgment the defendant has had a full and fair opportunity to defend herself in these proceedings. She has not taken that opportunity, and this remedies judgment is the consequence. I summarise my reasons for that conclusion at [73] below.

B. The Procedural History

Events up to 5 March 2015

4. The following is a summary. A more detailed account can be found in my judgment of 5 March 2015, [2015] EWHC 545 (QB) ("my March judgment").

5. The claimant is a Russian citizen, a businessman, who was a Senator in the Senate of the Russian Federation from 2002 to 2010. In April 2011 he emigrated from Russia to Israel, where he has lived since. The defendant is a Russian journalist who writes for the Novaya Gazeta newspaper, and contributes to other publications. She is married to Alexei Kozlov, a businessman who was formerly an employee of a company owned by the claimant. Alexei Kozlov was prosecuted, convicted and imprisoned in Russia for stealing assets from a company owned by the claimant.

6. In April 2012 solicitors instructed by the claimant complained of a number of publications by the defendant, which they described as a "campaign" of "false and highly defamatory allegations" published in this jurisdiction as well as in Russia including, among other things, allegations of involvement in murder plots, corrupting judges, and perverting the course of justice. The defendant instructed iLaw solicitors, who responded stating among other things that they had no instructions to accept service. Proceedings were issued on 4 January 2013.

7. The claim form and Particulars of Claim complain of four publications: (1) A blog post written by the defendant on the website of the Moscow-based radio station Echo Moscow ("the Blogpost"); (2) & (3) two articles quoting the defendant published on the Russian website gazeta.ru ("the Second and Third Articles"); and (4) a programme broadcast on Radio Liberty ("the Programme").

8. The Blogpost and the Second and Third Articles were first published on 15 November 2011. The Programme was broadcast on 15 March 2012. All are said to have remained available online ever since. The statements of case complain in addition of the republication of the defamatory sting of the Blogpost and the Second Article on third party websites.

9. The defamatory meanings complained of are:

   i) "that the Claimant had put a contract out for the murder of Alexei Kozlov, which was to be carried out whilst Mr Kozlov was being transferred to prison" (the Blogpost).

   ii) "that the Claimant had ordered the fabrication of evidence in the criminal prosecution of Alexei Kozlov and had put a contract out for the murder of Mr Kozlov, which was to be carried out whilst Mr Kozlov was being transferred to prison" (the Second Article);

   iii) "that the Claimant had threatened to kill Alexei Kozlov and had put a contract out for his murder, which was to be carried out whilst Mr Kozlov was being transferred to prison" (the Third Article); and

   iv) "that the Claimant had by means of bribes corrupted the head of the Presnensky Court, Evgeny Mikhailovich Naidenov, the public prosecutor and Judge hearing the appeal in Alexei Kozlov's case, Judge Vasyuchenko, and had issued instructions to them that Mr Kozlov's sentence of imprisonment was to be increased at his appeal hearing (whereas otherwise he would have been released) and was thereby guilty of an horrific perversion of the course of justice." (The Programme).

10. Service of proceedings in Russia can be a slow process. These proceedings were however brought to the defendant's attention in October 2013 by a summons from a Moscow court. The documents reached her, or her husband, in Moscow in July 2014. An acknowledgment of service disputing jurisdiction was filed on the defendant's behalf by iLaw on 24 July 2014. In September 2014 the defendant applied to set aside service. She submitted that the court should decline jurisdiction and/or that she had not been validly served. In support of that application she made a witness statement dated 5 September 2014.

11. On 12 January 2015, the defendant parted company with her solicitors. They wrote a letter on her behalf dated 13 January 2015, setting out her position and inviting the court to set aside service. Although iLaw were no longer acting for the defendant her address for service remained that of the solicitors. She has confirmed in the letter of 19 June that, as one would expect, they passed on correspondence from the claimant's solicitors. The claimant's solicitors have confirmed service on her of their client's applications, evidence and submissions, and all orders that the court has made. But

between 13 January and 19 June 2015 there had been no response at all from the defendant, who had not engaged with the proceedings in any way.

12. The defendant did not attend or send anyone to represent her at the hearing of her application on 27 February 2015. At the conclusion of that hearing I reserved judgment. In my March judgment I ruled against the defendant. I summarised all my conclusions in paragraph [100] - [101] where I said this of the application to set aside.

> "I have concluded that the claim involves a real and substantial tort in this jurisdiction, and that England is clearly the appropriate place in which to try the claim. I have found that the steps taken by the claimant brought about service of the proceedings on the defendant in October 2013, which was valid and effective under Russian law and the CPR.
>
> **Next steps**
>
> The proceedings can now continue… "

13. As to conducting proceedings here I said this at paragraph [80]:

> "Conducting proceedings here will naturally pose challenges for the defendant, and for the court. The evidence in the claimant's exhibits suggests that there may be large disparities in resources. It is said that the defendant cannot afford representation. But that is not supported by evidence. In any event, I do not consider the difficulties to be insuperable. I consider on the evidence presently before me that the defendant can and will be given a fair opportunity to defend herself in this court and will not be prevented from putting forward any case that it is reasonably open to her to advance."

Events since 5 March 2015

14. I handed down my March judgment in the absence of the parties. By an order of 5 March 2015, made of my own initiative, I directed the claimant's solicitors to serve the defendant with a copy of my judgment and order. I gave the claimant a week to put in written submissions on what form of order was appropriate, and what directions should be given. I gave the defendant two weeks after that to respond in writing and, if so advised, to seek permission to appeal. I extended her time for seeking permission to appeal for over a week, until 27 March 2015. I extended time for service of a Defence until after this procedural timetable had been completed, and decisions reached on the appropriate form of order and directions. All of this was served on the Defendant. The order stated that she had the right to apply to set aside or vary the order by way of an application in writing within 7 days. The substance of all of these directions was repeated in the judgment at paragraph [101]. The defendant made no application.

15. On 12 March 2015, the claimant made written submissions as to the form of order and directions applying, among other things, for an order that the defendant serve a Defence by 17 April 2015. The defendant did not respond in any way. On 13

March 2015 I declined to order service of a Defence on the date requested. I said this in my written reasons:

> "I have not granted the order sought for service of a Defence by 17 April as I consider the defendant should have an opportunity to respond on that point, and on the issue of directions generally, as well as the other issues mentioned in the order.
>
> She will however need to address in her response the points made in paragraphs 14 and 15 of the claimant's submissions of 12 March 2015. She should recognise that the existing directions are relatively generous as to time, and should work on the basis that I may be persuaded to timetable the service of a Defence by 17 April or soon after."

16. The defendant did not make any submissions as to the form of order or appropriate directions, nor did she respond at all to these events, and her time for doing so expired on 27 March. On 31 March 2015 I therefore dealt with the form of order and directions on the papers. I formally dismissed the defendant's application to set aside service, and declared that service took place in October 2013. I ordered the defendant to serve her Defence by 4pm on 24 April 2015. I made a costs order in favour of the claimant, and ordered the defendant to make an interim payment of £10,000 on account of costs by 4pm on 30 April 2015. Again, the order stated that there was a right to apply to set aside or vary. It specified 10 April 2015 as the deadline for doing so.

17. The reasons for making these orders and directions were set out in the order. I said this:

> "2. The interim payment I am ordering in the sum of £10,000 represents a small proportion of the costs said to have been incurred on the Claimant's behalf. In the absence of evidence about the Defendant's means I cannot conclude that it is an inappropriate sum to order her to pay. My order gives her a month to do so. She has an opportunity to apply for and to file evidence in support of a reduction in the amount or an extension of the time to pay."
>
> 3. Within that time the Defendant should file and serve a Defence. I consider that in the light of my order and reasons of 13 March 2015 the time allowed is sufficient. If the Defendant needs more time she can apply, giving reasons. She should be aware that if she fails to file and serve a Defence the Claimant may apply for judgment in default of Defence."

18. The defendant made no application to vary or set aside that order, or to reduce the sum payable or to extend the time for payment. Nor did she seek to appeal, nor did she file or serve a Defence, or apply for an extension of time for doing either of those things. She did not communicate with the court or the claimant at all.

19. Accordingly, on 29 May 2015, on the claimant's application I entered judgment in default of Defence. That was over 8 weeks after my order for directions was made, and more than 4 weeks after the expiry of the time I set for service of a Defence. At the same time, I ordered that a hearing to assess damages and to determine the injunction claim and costs ("the remedies hearing") should take place on a date, to be fixed, between 10 and 31 July 2015. The order set a deadline for the defendant to serve evidence on the remedies issues.

20. Because this order was, again, made on the papers without a hearing it stated that the defendant could apply to set aside or vary the order by making an application in writing within 7 days. She had in any event a right to apply to set aside the default judgment pursuant to CPR 13. The order was served on the defendant by email to iLaw on 8 June 2015. She did not seek to set aside or vary any of the orders it contained, nor did she seek to challenge my orders or directions by way of an appeal. On 17 June the claimant's solicitor emailed iLaw and 18 June 2015 they wrote to iLaw seeking dates to avoid for the Remedies Hearing

The defendant's letter of 19 June 2015

21. It will not surprise the reader to learn that the defendant has not appeared at this Remedies Hearing. As I have indicated, however, she did break her silence by writing a letter to the court dated 19 June 2015. The letter was sent by the defendant to the Queen's Bench Action department, for my attention. It began by explaining that the defendant had been helped to write it by the Media Legal Defence Initiative, a London-based NGO that helps journalists defend legal cases. The defendant went on to say that she had been informed by Mr Hall at iLaw "that the case against me is going ahead and a hearing is to be held at some point in July 2015". She continued:

> "I have decided to write to you in order to fully explain my current circumstances, and specifically address why I am no longer able to engage with the court in relation to my case."

22. After setting out, over nearly 3 pages, reasons in support of that point, the letter ended in this way:

> "I have the utmost respect for English law and the English courts, but on this occasion I feel that the justice system has let me down. I am no longer able to take an active role in these proceedings going forward. I hope the English courts can understand my position, and I trust the Honourable Mr Justice Warby will take into account my current position when he reaches his final decision on the matter."

23. The letter made it tolerably clear, in the light of the history, that the defendant would not appear at the Remedies Hearing. It was plainly going to be necessary to consider the implications of the defendant's letter and to address as a preliminary point whether, in the light of the letter, the hearing should proceed in the defendant's absence. There was no indication on the face of the defendant's letter that it had been copied to the claimant's solicitors. I therefore made an order ensuring that it came to their attention, so that they could respond before the hearing which, by that stage, had been fixed for 13 July 2015.

24. It turned out that the claimant's side had not been sent a copy of the letter and knew nothing about it until receiving from the court my order and a copy of the letter. In the event, however, the claimant has been able to respond by serving evidence and argument before the hearing, and through the submissions of Ms Page QC and some limited oral evidence given by the claimant at the hearing.

C. Adjourn or Proceed in the Defendant's Absence?

25. I had to consider the approach to proceeding in the absence of a party in my March judgment, where I said this at [22]-[23]:

> "Where a party fails to appear at the hearing of an application the court may proceed in their absence: CPR 23.11. This is a power that must be exercised in accordance with the overriding objective. Ms Page properly referred me to authority making it clear that the court should be very careful before concluding that it is appropriate to proceed in the absence of a litigant in person who is seeking for the first time to adjourn a hearing: *Fox v Graham Group Ltd* (26 July 2001) (Neuberger J); *SmithKline Beecham Ltd v GSKline Ltd* [2011] EWHC 169 (Ch) (Arnold J), [6]. That is not the situation here, however. The defendant has not sought an adjournment. …
>
> Where a litigant fails to appear without giving a reason it is necessary to consider first whether they have had proper notice of the hearing date and the matters, including the evidence, to be considered at the hearing. If satisfied that such notice has been given, the court must examine the available evidence as to the reasons why the litigant has not appeared, to see if this provides a ground for adjourning the hearing."

26. I consider that the same approach is appropriate here, with three modifications. The first is that on this occasion the hearing is a trial of the issue of remedies. The applicable rule is therefore CPR 39.3(1), by which "The court may proceed with a trial in the absence of a party …". A judgment or order made in absence may be set aside on an application made for that purpose, but rule 39.3(5) lays down certain threshold requirements which do not apply in the case of a mere application. I do not consider that these differences affect the overall approach that I should take, however. The second modification is that here the defendant has given express reasons for her non-appearance. The third modification is that default judgment has been entered against the defendant. That means that I should consider whether to treat her letter as in substance an application to set aside judgment or for time to make such an application.

27. I am entirely satisfied that the defendant has had proper notice of the Remedies Hearing and the matters to be considered at it. The documentary evidence makes clear that iLaw have been given written notice by the claimant's solicitors of each step in this litigation. The opening paragraphs of the defendant's 19 June letter confirm what one would expect, by indicating that Mr Hall of iLaw had passed on the information given to his firm in the claimants' solicitors email and letter of 17 and 18 June 2015. The date fixed for the hearing was notified to iLaw by the claimant's

solicitors on 22 June 2015. Subsequently, the correspondence shows, the claimant's solicitors served on the defendant via iLaw the evidence to be relied on at the remedies hearing, the skeleton argument, chronologies, and list of authorities and the hearing bundles. The defendant's letter itself confirms that iLaw have passed on the claimant's solicitors' correspondence.

28. I therefore need to address whether there is anything in the available evidence that provides a ground for adjourning the hearing. First and foremost I must consider the defendant's letter.

29. The first observation that needs to be made about the letter is that it does not contain any application for an adjournment or the setting aside of any judgment or order. Indeed, it makes no application of any kind. Secondly, it is not a witness statement. I attach some real importance to each of these points. The defendant is not a lawyer, and those assisting her at the MLDI may or may not be lawyers. However, they must all know that to obtain any order from a court a litigant must make an application for that order. They must surely know, in addition, that evidence in support of an application or at a trial is given by means of a witness statement.

30. In saying this I am not attaching any weight to mere formalities. Part 23 does not require an application notice to be in any particular form. What it does require is that the notice "must state (a) what order the applicant is seeking; and (b) briefly, why the applicant is seeking the order": CPR 23.6. The defendant has not in any shape or form asked me to adjourn this hearing. The 19 June letter does not identify, clearly or at all, any order which the defendant seeks or any step which she wishes me to take. I am merely asked in some unspecified way to "take into account" what the defendant says is her position when I reach my "final decision." A witness statement can be non-compliant with some formalities, but it must contain a statement of truth. A statement of truth is not a mere formality. It makes a witness statement a distinctly different thing from a letter, falsehoods in witness statements carry particular consequences. The defendant's letter is not an adequate substitute for evidence confirmed by a statement of truth.

31. Despite these points, and although not asked by the defendant to adjourn the hearing, I heard argument from Ms Page QC, and considered whether an adjournment of the Remedies Hearing would be the just and appropriate response to the contents of the defendant's letter. I shall set out the majority of that letter later in this judgment. Put simply, however, she was clearly saying that she had not been afforded access to justice, and explaining why. She was also saying that she had a meritorious defence. If these were reasonable points then the overriding objective would seem to mandate an adjournment, to ensure fairness. My conclusion was however that the defendant's letter was not at all persuasive, and that the course of action most consistent with the overriding objective was not to keep the claimant from recovering the remedies the law provides, but rather to proceed to hear evidence and argument, and to reach decisions on remedies.

32. The defendant makes six main points in her letter, some of which are inter-related. They are (i) language difficulties, given that she is Russian, (ii) financial problems precluding her from paying for translation and representation; (iii) inability to obtain pro bono representation; (iv) inability to conduct the litigation in person; (v) the

gravity of the consequences for her of an adverse judgment; (vi) the merits of her case. I shall deal with each in turn.

(i) Language difficulties

33. The defendant's letter says this:

> "My native language is Russian, and I only have limited knowledge of English. I have found it very difficult to engage with the English courts in relation to my case because of my limited ability to speak, read and write in English. I have had to rely on my husband, Alexei Alexandrovich Koslov, to translate many of the email communications and documents I have received in relation to my case. My husband's knowledge of English, although slightly better than my own, is far from fluent. Furthermore, due to my financial position, I have also been unable to afford translators to work on my case. This has meant that I have been unable to read Russian translations of the court's documents. This includes the Honourable Justice Warby's written decision of 5 March 2015.
>
> … I am unable to ascertain my legal position from these documents [provided to her by iLaw] due to language issues, my lack of legal representation and my lack of translation resources"

34. I shall return to the defendant's alleged financial position and inability to fund representation. But I do not accept that this paragraph fairly represents the defendant's linguistic abilities, or those of her husband.

35. It would have been an easy matter for the defendant to raise a matter such as language difficulties at an earlier point in this case, whether at the time she was represented by iLaw, as well as by specialist junior Counsel, or afterwards. Yet not only has she not claimed that language was a barrier for her, she has positively asserted an ability to read and write the English language and to understand written English.

36. The defendant told the court this in paragraph 4 of her witness statement of 5 September 2014:

> "I am able to speak some English and can read and understand English. In order to make this witness statement, I communicated with my solicitors in English and through a Russian lawyer in Russian. The statement was then drafted in English and I have been able to read and understand it and confirm that it is accurate."

37. The defendant had no reason to overstate her ability to read and understand English at that time. The witness statement which she had been able to read and understand contained some complex material and some sophisticated English relating to, for instance, the Hague Service Convention and other procedural rules. The defendant's own witness statement therefore indicates a relatively high level of skill in English.

38. At paragraph 44 of the same statement the defendant disclosed that "I am able to read and write in English" (my emphasis). She said there that she is "not proficient in spoken English" and would need an interpreter, but that is a different matter. Many for whom English is not their first language need an interpreter when in court, but are well able to read and write the language, as the defendant said she could in September 2015.

39. The Wikipedia profile exhibited to the first witness statement of Mr Sloutsker records that the defendant was the Moscow correspondent for Institutional Investor Magazine from 1991-1994. The evidence of Mr Frost, the claimant's solicitor, is that this is a US based English language magazine. As for the English language abilities of Mr Kozlov, I allowed Ms Page to lead evidence from Mr Sloutsker on the topic, given the late emergence of an issue about it. He told me that Mr Kozlov "Was very much fluent in English. He was performing correspondence in English and in contact with my lawyer in Geneva, Jack Jones, who is of US origin. He was in contact with other foreign partners of mine who were English speakers only. He was in written correspondence with them and had verbal conversations. He was quite fluent for bus?? purposes. He never required any translation assistance or any support or help. His correspondence in English was complete, in grammar and sentences. It was comparable to my own at the time I was living in Moscow until 2007."

40. My judgment of 5 March 2015 was lengthy. However, it contained a paragraph which summarised in a few lines all of my main conclusions. The claimant's evidence shows that my decision was extensively reported at the time by the Russian media both in English and in Russian. The reports are short, but accurately summarise the gist of my decision to dismiss the defendant's application and accept jurisdiction over the claim. That is not hard to understand. The orders I have made have deliberately been expressed in straightforward language, and the correspondence from the claimant's solicitors has been simple not complex. The defendant is an educated woman, a Professor of Journalism. I cannot accept her claim that she has encountered language difficulties such as to disable her from following what is going on in the proceedings or from engaging with the court.

(ii) Financial position

41. Nor do I accept the defendant's claim that financial limitations have prevented her access to justice in this court. If finance were a real problem, the most natural thing would have been to say so in her witness statement of September 2014. This, however, said nothing at all about any financial constraints. The statement did refer to a number of steps that would have to be taken by the defendant if this action proceeded in this country, including obtaining translations. It said that the need for translation would needlessly increase the costs. But at no point did it indicate that the defendant would be unable to meet such increased costs, or that her defence of the claim would or might be stifled or hampered by expense if the claim proceeded here.

42. iLaw's letter to the court of 13 January 2015 was the first occasion on which it was suggested that the defendant had financial difficulties. The solicitors enclosed notice of change dated the previous day, stating that the defendant was now acting in person. They went on to refer to "queries" that had been posed by the claimant's solicitors about the intended case of truth that she had referred to in her September 2014 witness statement. They said that "The Defendant has not responded, and does not

intend to respond, to the Claimant's queries. The simple fact of the matter is that she cannot afford the costs of dealing with these queries or indeed of further representation in the matter." …

43. With due respect to the author of that letter, the suggestion that answering the questions posed by the claimant's solicitors would have involved substantial or, as it was put elsewhere in the letter "disproportionate" cost, is hard to accept. Some of the questions, for instance, related to the defendant's contention that she would prove the truth of an allegation that the claimant "or someone acting on his behalf, contacted an officer of the FSB seeking to arrange for the killing of Alexei Kozlov for payment of the sum of $300,000." The 31 October letter asked her to identify the FSB officer, and state when and how he was approached, and the evidence that the officer would give by which it would be proved that the approach was by the claimant or someone acting under his direction, and that its purpose was to arrange the killing of Mr Kozlov. In circumstances where her list of intended witnesses did not appear to include any FSB officer, she was asked to confirm that she did not intend to call that officer at trial. Ms Page was justified in submitting that these questions, and others contained in the letter of 31 October 2014, were straightforward and not costly to answer. To suggest that it was "disproportionate" to provide answers to such questions was remarkable and unconvincing.

44. It is a striking feature of iLaw's letter of 13 January 2015 that whilst asserting an inability to fund representation it gave no detail at all. Nor was there any evidence to confirm this – a point I made in my reasons for ordering a payment of £10,000 on account of costs (above). There is still no evidence, strictly so-called, as there is still no witness statement. The defendant has however gone into some detail in her letter. She says this:

> "On 1 April 2015, I received a court document from iLaw. It was my interpretation of this document that I had to pay 10,000 GBP to the English courts before I could proceed with defending my case. I viewed this as a completely unreasonable sum as I do not have the means to pay such a large sum of money."

45. This is clearly a reference to my order of 31 March 2015. I am unable to understand how the defendant could have interpreted that order as requiring her to pay £10,000 as a condition of proceeding with the case. It does not say that, or anything of the kind. It specifically provides a time for service of a Defence. Moreover, as I have noted, the order made quite clear that the defendant could apply to the court. That would have been a simple matter yet she did no such thing.

46. The defendant's letter went on to say that her net annual income "is" RUB 902,060.38, equivalent to about £10,662. She produced documents evidencing the three income streams that are said to contribute to this total. However, I believe I am justified in rejecting what she says in her letter about her finances. That is for four reasons.

47. The first is that this is only said in any detail at all at this late stage. Secondly, the statements are made in a letter and not in a witness statement. The only witness statement made by the defendant is that of 5 September 2014, which says nothing

about any financial constraints. The third reason is the narrow scope of what the defendant says. As the claimant's evidence points out, the figures and documents she has provided relate to 2013. Nothing is said about 2014 or 2015. The figures given do not address all the apparent sources of income that the claimant would seem to have. They say nothing whatever about her capital assets. And nothing is said about resources that may be available to the defendant from other sources, such as her husband. The fourth reason for rejecting the defendant's case on this issue is that the claimant's evidence suggests that the true picture is very different from the one presented by the defendant.

48. The evidence is that the defendant lives in a high value home in an expensive district of Moscow, where properties cost about US$6,500 per square metre. According to a translated article, the defendant has spoken in the past of her husband's wealth and their lifestyle in these terms: "By Moscow standards he was a completely average businessman. Yes [there was] Rublyoyka [a prestigious Moscow suburb], Nikolina Gora [the most expensive suburb of Moscow], a country house, holidays five times a year, a big fleet of cars. Well he was 'worth' a few million dollars, maybe up to $10m". There are media reports suggesting the sale of a property by her for between RUB 40m and RUB 100m (approximately £500,000 and £1.25m). Photos posted on Facebook by her husband suggest they enjoy expensive holidays. In addition, there is evidence that in 2011 the claimant received an award set at either RUB 500,000 or RUB 1,000,000 (between £12,500 and £25,000)

49. This evidence has been assembled at relatively short notice, from publicly available material, by translators acting for the claimant. It can therefore be said to have some shortcomings. It has been served on the defendant, but only relatively shortly before this hearing. The defendant cannot reasonably complain of the short notice, however, as it flows directly from her failure to copy the claimant's solicitors in on her letter to the court. I accept this evidence as a better guide to the true financial position of the defendant than her own letter and its supporting documentation.

(iii) Inability to obtain pro bono representation

50. If I am right in my conclusions on the defendant's financial position this issue and the next do not arise, but I shall deal with them nonetheless.

51. There is no suggestion by the defendant that she sought legal help from anyone between 13 January 2015 and April 2015. She gives this account of her efforts to obtain advice or representation without payment:

> "In April 2015, I reached out to Karinna Moskalenko, a Russian human rights lawyer, to see if she could help me with my case free of charge. I felt that I needed a lawyer's advice to see what I could do about my case, and Karinna Moskalenko is a personal friend. She consulted with a number of people to see if they could help me. On 20 April 2015, I also contacted Anna Stavinchkay, another Russian lawyer to see if she could advise me in relation to my case free of charge."

52. As noted at [16-17] above, the procedural position in April 2015 was that after giving the defendant time to make submissions about the timing of a Defence I had set her a deadline. Time was running, but the deadline was 24 April and the defendant had been told, in my reasons of 31 March 2015, that she could apply for an extension of time for that purpose. I cannot accept that she failed to understand the simple English in which that point was stated. Moreover, in the event, judgment in default was not entered until as late as 29 May 2015. The defendant therefore had more than a month more than the time I had allowed her in which to file a Defence.

53. The defendant does not give any account of what she did between 20 April and 29 May. Her letter goes on:

> "Anna and Karinna spoke with each other, and on 2 June 2015 Karinna spoke with Peter Noorlander who is the Chief Executive Officer of the Media Legal Defence Initiative. The Media Legal Defence Initiative … then reached out to its pro-bono network but was ultimately unable to find lawyers to take on my case due to its complexity at this stage. I have tried every effort to find free legal defence, but to no avail, and I now believe it is impossible for my position to be fairly represented before the British courts."

54. It was not until after default judgment had been entered against her, therefore, that the defendant, through her Moscow legal contacts, got in touch with the MLDI. Her contention is that the MLDI was then unable to find lawyers for her due to the "complexity" of her case, and that she has made "every effort."

55. It is in my judgment highly improbable that the claimant has been unable for financial reasons to secure the services of adequately skilled lawyers. She gives no detail of any attempts made by her, other than her contacts with the two named Moscow layers. The claimant's researches have however identified two Russian organisations that appear to provide legal assistance to journalists: one, advertising its services at www.mmdc.ru which offers a hotline for legal advice on issues affecting the professional activities of journalists and the other at www.freepress.ru providing 'help for journalists in critical situations.' More pertinently perhaps, since this is a case in England and Wales, Ms Page points out that 'old-style' conditional fee agreements are still permitted in this area of law, and that many of the cases heard in this court are pursued or defended on this basis, and, occasionally, both.

56. The additional point is well made by Ms Page, that the defendant's case is not 'complex' at this stage, or at all. She has had judgment in default entered against her, because she has failed to file a Defence. The rules permit her to make an application to set aside that judgment, provided she can show an arguable case on the merits. She has previously asserted that she can prove the truth of what she said. As will appear from my discussion of her case on the merits, she is presently saying either that, or that she can establish that she engaged in responsible journalism, or both. These are not inherently complex matters. Many more complex cases have been taken on CFAs in modern times, when as here there is reason to believe the opposing party would be able to meet a costs order. In the light of my assessment of the defendant's merits

arguments, below, I consider the likely reasons for her failure to secure fresh legal representation are a failure to make diligent efforts and/or a failure to persuade any candidate lawyers that her case is likely to succeed.

(iv) Inability to conduct the litigation in person

57. The defendant states in her letter that iLaw agreed to act for her for a fixed fee of £5,000, to cover "representation for the stage of the proceedings relating to whether the English courts could properly hear my case". For financial reasons she had to cease instruction of iLaw on 12 January 2015 which "has left me with no choice but to represent myself before the English Courts." I do not accept that, for reasons already given. The defendant then says that "under the circumstances, I am unable to properly do so." I am not persuaded that this last sentence is true.

58. The defendant says, for instance, that she "cannot afford to travel from Russia to England in order to file documents, and take part in meetings and hearings." This is the first time this point has been made. There have so far been only two hearings in this matter. All other issues have been dealt with on the papers, a process I have adopted specifically to assist the defendant. There is no difficulty in filing documents from a remote location, electronically or by post. I note, in this connection, that the defendant's letter of 19 June 2015 was received in the court office on the day it was sent. Financial difficulties cannot explain the defendant's failure to file documents.

59. As for hearings, it is simply not credible that the defendant cannot afford to travel to this country at all. The claimant's evidence shows that flights from Moscow to London and back on 13 July 2015 could have been obtained for RUB 10,970 each way, or about £250 in total. Even on her own account of her financial position this is plainly not beyond the defendant's means. The defendant's claim that "it would be hard for me even to obtain a visa" is mere assertion, unsupported by any evidence and lacking in detail. She does not say that she has tried to obtain a visa or, if not, explain why she would find it hard to obtain one.

(vi) Adverse impact of a judgment

60. The defendant says:

> "This case has now become like a runaway cart that I am unable to stop, and ultimately it is going to have an incredible financial and reputational impact on my life.
>
> ….
>
> I am a reputable journalist in Russia, and I rely heavily on my good name as a journalist. A judgment against me from an English court would seriously affect my status as a journalist in my own country."

61. I accept that a judgment of this court against the defendant is an important matter, that it is likely to have a financial and reputational impact on the defendant, and that it may very well affect her status as a journalist in Russia. The defendant's letter entirely overlooks, however, the fact of which she must be aware, that a judgment has

already been entered against her because of her failure to file a Defence. The letter also fails, in my judgment, to put forward any acceptable explanation for her complete failure to engage with the court or the claimant's solicitors at any time between 13 January and 19 June 2015.

62. When default judgment has been entered the court should not easily be diverted from granting the appropriate remedies by pleas for clemency that come at the last minute, without any adequate explanation for their lateness. The position might be different if such a plea was accompanied by an application to set aside the judgment, or at least – in the case of an unrepresented litigant such as this defendant - cogent material suggesting that despite her long silence she has an arguable case on the merits

(vi) Merits

63. The defendant says:

> "I wish I was in a position to defend my rights as a journalist and justify the blog, articles and radio interview that are the subject matter of this case. However, it is simply not possible for me to do so without some form of legal representation.
>
> I stand by my belief that Mr Sloutsker's claim is without merit, and that I practised responsible journalism in disclosing the information that I did."

64. Ms Page submits that this represents a stance inconsistent with the merits arguments advanced by the defendant in her September 2014 witness statement. At that stage she stated she would prove the truth of her allegations against the claimant. Now she suggests for the first time a defence of responsible journalism, instead. I think that may be too strict an interpretation of these parts of the defendant's letter. I would adopt a more generous interpretation, reading the word "justify" as suggesting that she could establish the truth of what she said. I suspect that the new reference to responsible journalism is prompted by an observation in my March judgment at [78].

65. What I would not accept, however, is that the defendant has yet put forward cogent material suggesting an arguable defence on the merits, such as might support an application to set aside the default judgment I have granted against her. She has not made any such application, so what I have to say should not be regarded as a determination of such an application. It is however relevant to my task to consider what the available material suggests as to the merits. My conclusion is that the material indicates that the merits are not strong.

66. So far as the defence of truth or, to give it its common law name, justification is concerned, the assessment I made at paragraphs [74] and [78] of my March judgment was that "the defendant's evidence as it stands is not satisfactory" and that "the information provided appears on the face of it an unpromising basis for a plea of justification." The reasons for these conclusions appear from paragraphs [74]-[78] of that judgment and do not require repetition. To those reasons I would add what I have said above about the defendant's failure to answer the claimant's solicitors' "queries" about her supposed defence of truth. Her refusal to answer any of those queries on

unconvincing grounds undermines her claim that it is "simply not possible" for her to defend herself without legal representation.

67. There is now further material that causes me to take a considerably more sceptical view of the merits of a defence of truth in respect of the allegation that the claimant plotted to murder Mr Kozlov. The researches prompted by receipt of the defendant's letter led the claimant's legal team to an interview given by the defendant in 2011 to Peter Oborne for a Channel 4 documentary "Russia: Vlad's Army", Unreported World Series broadcast. The programme was broadcast on 4 November 2011, a date worth noting, as it is the day before the publication of the Blogpost and the Second and Third Articles complained of by the claimant. I have been provided with a transcript of the relevant parts of the interview, which includes the following. 'PO' is Mr Oborne; PO/C is commentary by him; 'OR' is the defendant. The defendant spoke in Russian, with English subtitles.

> "PO/C: Every Wednesday evening, a group of wives meet in this Moscow restaurant. Many of them say Russia's security service, the FSB, have arranged for their husbands to be jailed on trumped up charges.
>
> Woman: [Speaking in Russian with sub-titles .....]
>
> PO/C: In some cases they say their husbands were jailed because they posed a political threat or just because the men who run Putin's Russia want a slice of their companies. The inspiration for these dinners was Olga Romanova, a financial journalist whose husband had been in prison for three years. I went back to Olga's to find out about her husband and her fight to free him. Until three years ago her husband Alexey ran a successful construction business. Then, Olga wrote an article about the business dealings of Mordashov, an ally of Vladimir Putin. She said that soon after an official close to Putin made a menacing call to Alexey's business partner who passed the message on.
>
> OR: He told my husband he had to choose. Either he had to leave his wife who he had allowed to write about Putin or to stop being his business partner.
>
> PO: So what happened next? What did your husband do when he was given this choice between divorcing you and getting out of the business?
>
> OR: I was amazed he didn't even want to discuss us getting divorced. I thought he was more rational.
> PO/C: Soon after, the FSB investigated him and he was sentenced to 8 years for fraud. In Russia, few people regard the courts as independent of the state.
>
> PO: So who is it who is bringing charges against your husband?
>
> OR: The K Department of the FSB. It's the same unit that has jailed people for political and commercial reasons before us and is still doing it now.
>
> PO/C: Olga believes Putin was guilty of allowing businesses to be unfairly seized to enrich his allies.

> OR: Putin's FSB cronies are ideologically loyal so they are allowed to earn infinite money."

68. This is an account of events given by the defendant herself that Ms Page submits is wholly inconsistent with the account involving the claimant, which the defendant claims she can defend as true, or as responsible journalism. I agree. In the Channel 4 interview, the defendant accused the Russian security service, the FSB, acting under the direction of President Putin, of being the originator of trumped up charges against her husband, and his consequent imprisonment, by way of reprisal for what the defendant had written about an ally of Mr Putin. The version of events given in the articles complained of and the defendant's witness statement was that it was the claimant who was responsible for fabricating the charges against her husband. No mention was made of Mr Mordashov or Mr Putin or the FSB in that connection. Her account was that the FSB, so far from organising the prosecution and incarceration of Mr Kozlov, had acted to foil an attempt by the claimant to have him murdered, by revealing that attempt to the media.

69. The position seems to me to be made worse rather than better for the defendant by her reference in the 19 June letter to the 'Magnitsky list'. She says that Alexei Kozlov "the threats to whom I reported on and which ultimately led to the present case, is mentioned in the 'Magnitsky Act' adopted by US Congress in December 2012."

70. The 'Magnitsky Act' is a reference to the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsy Rule of Law Accountability Act of 2012, passed by Congress on 7 December 2012 and enacted after being signed by the President on 14 December 2012. Sec. 404 imposes on the President an obligation to submit to the appropriate congressional committees a list ('the Magnitsky List') of persons whom the President determines, based on credible information, is (1) responsible for the detention, abuse or death of Sergei Magnitsky, or played certain other specified roles in respect of Mr Magnitsky or

> "(2) is responsible for extrajudicial killings torture, or other gross violations of internationally recognized human rights committed against individuals seeking "
>
> (A) to expose illegal activity carried out by officials of the Government of the Russian Federation; or
>
> (B) to obtain exercise, defend, or promote internationally recognised human rights and freedoms …."

71. Given these criteria, and the nature of the claimant's case of truth or responsible journalism as I understand it, it is unsurprising that she does not suggest that the claimant is on the Magnitsky List. I am told by Ms Page, and accept, that he is not. It is not easy to understand what significance the defendant does attribute to the Act, when one examines the context in which her husband is mentioned. His name appears in Sec. 402 which contains 15 "Findings". The last of these is as follows (the emphasis is mine):

> "The tragic and unresolved murders of Nustap Abdurakhmanov, Maksharip Aushev …. the death in custody

> of Vera Trifonova, the disappearances of Mokhmadsalakh Masaev… the torture of Ali Israilov… the near-fatal beatings of Mikhail Bekhetov … and **the harsh and ongoing imprisonment of** Michail Khodorkovsky, **Alexei Kozlov … further illustrate the grave danger of exposing the wrongdoing of officials of the Government of the Russian Federation … or of seeking to obtain, exercise, defend, or promote internationally recognized human rights and freedoms.**"

72. This finding is apparently consistent with the allegations made by the defendant in her Channel 4 interview, as it appears to depict Alexei Kozlov's imprisonment as a consequence of "exposing the wrongdoing" of Russian officials. The finding seems to me to be inconsistent with the articles complained of, and the case of truth put forward by the claimant in her September 2014 witness statement. The fact that shortly before she accused the claimant of the matters complained of she was advancing a different account to Mr Oborne, coupled with her failure to answer the legitimate questions posed in the claimant's solicitors' letter of 31 October 2014, also leaves me wondering how the defendant could hope to sustain a responsible journalism defence. I am certainly not persuaded that the material she puts forward should lead me to treat the defendant's letter as if it were an application to set aside default judgment, or to adjourn and extend her time for doing so.

Summary of conclusions

73. The defendant has not asked for an adjournment, nor has she applied for the default judgment against her to be set aside. I have nonetheless considered carefully whether her letter should lead me to adjourn, so that she can apply to set aside the default judgment or make representations as to remedies. Having examined each of the points made in her 19 June letter I am not persuaded that she is or has been deprived of a fair opportunity to contest this claim. I am not convinced that language difficulties have been a significant obstacle. I do not accept, either, that financial constraints have obliged her to dispense with paid legal representation. Even if that were the case I am not persuaded that pro bono or CFA advice and representation have been or are unavailable to her, or that in the absence of such representation she has been unable fairly to defend her position. The likely reasons for her lack of representation are lack of effort on her part, and/or a failure by her to convince a lawyer of the merits of her cause.

D. Damages

Legal principles

74. In cases such as this, where there is no claim for punitive or exemplary damages, the purpose of a damages award is compensatory. The aim as in all tort cases is to restore the claimant so far as money can do so, to the position he would have been in had the libels not been published. That requires compensation for the injury done by the libels to the claimant's reputation. Where the claimant is an individual it also requires compensation for the injury to his feelings.

75. In arriving at an appropriate figure for injury to reputation the court must take account of the gravity of the defamation, and the extent of its publication (*Gatley* on Libel and Slander 12th Ed para 9.4 p 333). Republication by third parties, where this is a likely result of the original publication, is included in this; in the modern era the court will take into account the tendency of damaging statements to percolate via the Internet: *Cairns v Modi* [2012] EWCA Civ 1382, [2013] 1 WLR 1015 [27].

76. Damages for injury to feelings may be significant. The court must take account of what the claimant "thinks other people are thinking of him": *Cassell & Co Ltd v Broome* [1972] AC 1027, 1125 (Lord Diplock). Damages for injury to feelings may be mitigated by a retraction or apology, or they may be aggravated by the way the defence of the action is conducted, subject to some qualifications mentioned below.

77. The sum awarded must also be enough to serve as an outward and visible sign of vindication. Vindication is sometimes identified as a purpose of damages separate and distinct from that of compensation. I prefer to see it as an intrinsic part of compensation for this tort, the gist of which is the effect on the claimant's reputation and standing in the eyes of others. Damages which serve to restore the claimant's reputation to what it was by vindicating his reputation serve a compensatory purpose. If the award fails to achieve vindication it fails properly to compensate. The correct analysis does not however impact on the approach in the present case. The approach is well summarised in the often-cited words of Cory J in the Supreme Court of Canada in *Hill v Church of Scientology* [1995] 2 SCR 1130 [166]:

> "Not merely can [the claimant] recover the estimated sum of his past and future losses, but, in case the libel, driven underground, emerges from its lurking place at some future date, he must be able to point to a sum awarded by a jury sufficient to convince a bystander of the baselessness of the charge."

78. In that case, a tweet published to 65 people resulted in a damages award of £75,000 before an uplift of a further £15,000 by way of aggravated damages for the way in which the proceedings were conducted on behalf of the defendant. In the case of *Times Newspapers Ltd v Flood* [[2013] EWHC 4075, internet publication to 550 people resulted in an award of £60,000. In neither case was the allegation complained of as high up the scale of gravity as in this case.

79. Having said this much, I need to bear in mind some restraints on damages awards in this area. First, in cases of international libel, the court must always be careful to ensure that it compensates only for the damage caused by the publications that are complained of in the action. In this case, the publications complained of are those that took place in this jurisdiction, and these represent only a part of the total publication. I therefore rule out any compensation for damage sustained by the claimant as a result of publication in Russia, or elsewhere outside this jurisdiction. It follows from this general point that vindication is only relevant in so far as it is required to clear the claimant's name in the eyes of readers or listeners in this jurisdiction.

80. Secondly, it is notable that in *Hill* Cory J referred to a sum awarded by a jury. Now that jury trial is very much the exception, in this jurisdiction the award will be made by a judge in the vast majority of cases. Depending on the circumstances, a claimant

may obtain some measure of vindication from the judge's reasoned judgment. This possibility should be taken account, whilst keeping in mind that the ordinary bystander is more likely to pay attention to the sum awarded than to the details of a reasoned judgment: *Purnell v Business F1 Magazine Ltd* [2007] EWCA Civ 1382, [2008] 1 WLR 1; *Cairns v Modi* [31]. As Eady J observed in *Cruddas v Adams* [2013] EWHC 145 (QB) [43], "What most interested observers will want to know is, quite simply, 'how much did he get'?"

81. Thirdly, it is necessary to be a little cautious about aggravated damages claims.

i) Ms Page relies on the suggestion in Gatley paragraph 9.4 (above) that in assessing damages for injury to reputation account should be taken of the extent to which the defamatory charge has been persisted in. That must be qualified, it seems to me. Compensatable damage 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. (See also *Oriental Daily Publisher Ltd v Ming Pao Holdings Ltd* [2012] HKCFA 59, [2013] EMLR 7 [132] (Ribeiro P)).

ii) Ms Page also relies on the fact that my March judgment was reported in the Russian media, in reports which included reference to the defendant's allegation that the claimant sought to have Mr Kozlovsky murdered. One of these is, by way of example, headed "London court to hear libel suit brought by ex-Russian senator Slutsker". The claimant's witness statement refers to this as a matter relevant to damages. In the course of argument however Ms Page has accepted that these reports are only relevant to the extent that their publication in this jurisdiction increased the injury to the claimant's feelings. Given my conclusions about the reach of the publications complained of, and the nature of the reports relied on, I accept that these reports will have been read by a substantial number of people in this jurisdiction. But I cannot attribute a significant element of any damages award to any hurt feelings suffered by the claimant on that account. The reports in evidence are fair and neutral accounts of the proceedings and my judgment. Whilst they will have brought the allegation to the attention of a reader who did not previously know of it, they will equally have informed such a reader that the claimant is suing the defendant for libel and that the case is going ahead.

82. Finally, the court's overall award must not be more than is required to achieve the legitimate aims of compensating the claimant and, if this is a separate requirement, vindicating his reputation; the court's approach is constrained by the Convention requirements of necessity and proportionality: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670 and *John v MGN Ltd* [1997] QB 586. The Judge will normally arrive at a global figure by way of award: *Cairns v Modi* [2013] 1 WLR 1015 [38]. It may be helpful to refer to personal injury awards to ensure damages will be, and be seen as, proportionate.

Gravity

83. I have set out the meanings complained of by the claimant at [9] above. As I said in my March judgment at [69],"It is beyond dispute that the imputations complained of are all extremely serious." At that stage all I had to assess was whether those meanings were arguable, which they plainly were and are. Ms Page now invites me to make findings of fact that the publications complained of bore those meanings.

84. I do not think that is either necessary or appropriate. There are cases in which the court has made an assessment of the merits of a publication claim, when deciding whether to grant default judgment (eg *Law Society v Kordowski* [2011] EWHC 3185 (QB), [2014] EMLR 2; *QRS v Beach* [2014] EWHC 3319 (QB)) or when assessing damages after default judgment has been entered (eg *Al-Amoudi v Kifle* [2011] EWHC 2037 (QB) [8]-[17]). However, CPR 12.11(1) provides that "Where a claimant makes an application for a default judgment, judgment shall be such judgment as it appears to the court that the claimant is entitled to on his statement of case." This rule enables the court to proceed on the basis of the claimant's unchallenged particulars of claim. There is no need to adduce evidence or for findings of fact to be made in cases where the defendant has not disputed the claimant's allegations. That in my judgment will normally be the right approach for the court to take. Examination of the merits will usually involve unnecessary expenditure of time and resources and hence contrary to the overriding objective. It also runs the risk of needlessly complicating matters if an application is later made to set aside the default judgment: see *QRS v Beach* [2014] EWHC 4189 (QB), [2015] 1 WLR 2701 esp at [53]-[56].

85. I note that HHJ Parkes QC appears to have taken a view similar to mine in *Reachlocal UK Ltd v Bennett* [2014] EWHC 3405 (QB), [2015] EMLR 7 [32], where he said:

> "I do not think that I am required, and Mr Singh does not ask me, to consider whether [the claimant's pleaded] meanings are apposite, in the sense of being the correct meanings of the words complained of. It seems to me that the claimants are entitled to rely on the judgment and on the terms of CPR 12.11. That may be just as well, because the task of assessing the meanings of a variety of different publications, some of which may have been read or heard by some publishees and others of which may have been read by other publishees, would be a protracted one.""

86. I shall therefore assess damages on the basis of the claimant's pleaded meanings. I add four points. The first is that not only has the defendant put in no defence, she has never specified the respects in which she disagrees with the claimant's case. The second is that I recognise that the general approach outlined above could need modification in an appropriate case, for instance if the court concluded that the claimant's interpretation of the words complained of was wildly extravagant and impossible, or that the words were clearly not defamatory in their tendency. That however leads to my third point: I remain quite satisfied that the claimant's meanings in this case represent, at the least, reasonable interpretations of the offending words. Finally, I note that Ms Page submitted that the approach I am taking would unreasonably curtail the vindication obtained by the claimant. I do not agree. He has

obtained judgment because the defendant has failed to put in a defence. He will be awarded damages on the footing that his case is correct. I do not consider that in the circumstances of this case justice requires more than that.

The extent of publication

87. It seems to me that an approach similar to the one I have outlined above should in principle apply in this respect also, though with some modification. A claimant should be able to rely at the default judgment stage of the proceedings on the allegations as to the extent of publication which are set out in his statement of case. Similarly, at the assessment of damages stage. At that stage, however, he may supplement those allegations with evidence, provided it does not go beyond the boundaries of pleaded case but fills in the detail.

88. Here, the Particulars of Claim pleaded the scale of publication alleged by the claimant, setting out visitor and viewer figures for each of the means of publication and republication. In addition, however, evidence was adduced by both parties in relation to the defendant's application to set aside service of the proceedings, and I assessed that evidence in ruling on that application. No additional evidence on the issue has since been adduced by either party, nor has the defendant said anything about the matter. I consider it appropriate to proceed on the basis of the findings in paragraph [69] of my March judgment:

> "Even on the defendant's figures, however, and allowing for the qualifications she puts forward, the sting of the allegations made on each of the Blogpost, the Second Article and the Third Article could easily have reached as many as 60,000 readers in this jurisdiction, and the Programme appears likely to have been heard or read here by several thousand at least."

Evidence of harm

89. I dealt with the extent of the claimant's reputation here in my March judgment at [59]-[69]. It is unnecessary to repeat in full what I then said. It is sufficient to say that the evidence was and is that the claimant was well-known as a Russian senator, and that in 2001 there were 248,000 people from countries where Russian is spoken living in the UK. He is well known in the Jewish community especially in London. And he is well known internationally as a successful business man. He has visited London frequently and owned a house there from 2000. His divorce was the subject of a highly publicised ruling by the Family Division in 2012. That, though after the initial publication, was during the period when it was continuing as it does to this day. I was and remain satisfied that the claimant had "a real and substantial reputation in this jurisdiction at the time of first publication, which is likely to have grown since."

90. Since my May judgment the claimant has made a further witness statement and gave oral evidence to me. In his statement he gave further evidence of his links with this jurisdiction, referring to several visits to London over the past few months. I established that these were not all in connection with this case, but included business visits relating to real estate investment. He also explained his intention to relocate to London with his family over the next 2 years. Family means his 16 year old son and

11 year old daughter and his parents, both in their 80s but in good health. These are matters of obvious relevance to the extent of any need for vindication.

91. As to his feelings, he said "The allegations are so serious and harmful that I continue to live in fear of the danger that at any time they will be brought up in the context of my business dealings or will surface so as to cast a shadow over me…" I note that these points are specifically tied by him, as is proper, to fear of the consequences for his reputation in this jurisdiction, including with the British Jewish Leadership Council and British politicians. The claimant expresses frustration at the defendant's conduct in claiming her allegations are true, "without producing any evidence that would allow me to refute her claims in detail". That in my view is a legitimate ground of complaint by way of aggravation of damage, given the defendant's response to the letter of 31 October 2014.

Assessment

92. These were serious libels. The allegation of conspiracy to murder is the most serious, but the addition of imputations of corruption makes the matter worse. The allegations were published to a relatively substantial audience in this jurisdiction, where the claimant has a substantial and valuable reputation. My assessment of him as a witness is that he is a robust character, and that whilst his evidence of distress is genuine he has not suffered lasting emotional injury. He is however entitled to a sum that will vindicate him in the eyes of interested third parties who are unlikely to read this judgment. Adopting the approach I have indicated above, and taking account of all the factual matters I have identified, I have reached the conclusion that the appropriate global award of damages to compensate for the injury to reputation, and to feelings, and to ensure adequate vindication in respect of these serious allegations is £110,000.

E. The Claim for an Injunction

93. I remind myself that the judgment to which a party is entitled when the defendant fails to serve a Defence is such judgment as he is entitled to on his statement of case. It has long been the position that the court will grant the injunction which appears to be merited on the face of the particulars of claim. An injunction is of course a discretionary remedy. An injunction to restrain publication is one which represents an interference with freedom of expression and must therefore be no more than is necessary or proportionate in pursuit of the legitimate aim pursued. In this case that aim is the protection and vindication of the claimant's reputation in this jurisdiction. I have no doubt that the gravity of the allegations in this case means that Article 8 is engaged.

94. In many publication cases there are strong countervailing considerations, which will usually include freedom of expression and may include other Convention rights. Decisions on whether to grant an injunction in publication cases can therefore often involve difficult balancing exercise. Where a default judgment has been entered, however, the position is simpler. As Ms Page points out, I should proceed on the basis that there is no defence and hence no justification for interfering with the claimant's right to a good reputation. There is no objection in principle to the grant of an injunction against a foreign defendant subject to the court's jurisdiction. In *Jameel v Dow Jones* [2005] QB 946, there was no suggestion that there was any bar in principle to the grant of an injunction against the defendant, the US company Dow

Jones & Co Inc. Indeed, Lord Phillips MR said at [74] that where there is a relevant threat x, there may well be justification for pursuing proceedings to obtain an injunction, even where the defamatory statement has received insignificant publication in the jurisdiction.

95. That said, there would be no justification for granting an injunction in the absence of any evidence that repetition was to be anticipated. Sometimes there is no such evidence. Here, though, publication has continued with no apparent attempt by the defendant to stop it, and an assertion by her that what she said is true. My attention has also been drawn to the Wikipedia profiles of the defendant and Mr Kozlovsky, which make similar allegations against the claimant, and to a book chapter written by the defendant and published in late 2013, in which she accuses the claimant of "throwing his partner [Kozlovsky] in prison" (I note that the allegation of conspiracy to murder does not appear to be repeated). I am satisfied there is a real prospect that the defendant will re-publish the allegations complained of, if an injunction is not granted.

96. Will she do so anyway, and if so should I hold back from granting an injunction on the grounds that it is pointless, or worse? It is well-established that the court will not grant an injunction that it would not take steps to enforce if it were broken. But the court does not approach the question of whether to grant of an injunction against a person over whom, necessarily, it has assumed jurisdiction, on the basis that the person is likely to disobey the order if made. More than this, as Lord Bingham said in *South Bucks DC v Porter* [2003] 2 AC 558 [32]: "When granting an injunction, the court does not contemplate the possibility that it will be disobeyed.... Apprehension that a party may disobey an order should not deter the court from making an order otherwise appropriate: there is not one law for the law-abiding and another for the lawless and truculent." It may also be appropriate to grant an injunction if it would have a real deterrent effect on the particular defendant: *Secretary of State for the Environment, Food and Rural Affairs v Meier* [2009] 1 WLR 2780.

97. In deciding to grant an order prohibiting this defendant from further publishing the imputations complained of or similar imputations in this jurisdiction I bear in mind the relatively limited impact that such an injunction would, in principle, have. It is an order directed at the defendant personally. In my judgment, the better view is that the so-called *Spycatcher* principle, that a person knowing of an injunction who does an act which defeats the court's purpose is in contempt of court, does not apply to injunctions restraining the publication of a libel. No third person would be in contempt unless they somehow assisted the defendant to publish in this jurisdiction in breach of my order. So far as foreign defendants are concerned the order will contain the usual *Babanaft* proviso, so that they are clearly not affected save to the extent that a foreign court so declares. Despite these limitations I consider it appropriate in my discretion to grant the injunction sought, against an individual who declares her utmost respect for the English court.

F. Overall Conclusions

98. I concluded that it was appropriate to hear evidence and argument at the Remedies Hearing, and to reach decisions on the appropriate remedies, despite the defendant's letter of 19 June 2015. I have set out my evaluation of that letter in detail above. After hearing evidence and argument I have concluded that the appropriate award of

damages is £110,000, and that I should grant an injunction restraining the defendant from republishing the allegations complained of in this jurisdiction.

99. The defendant has had the opportunity to participate in this case throughout, but has declined to do so between 13 January and 19 June 2015. She has not attended any hearings in the case. The only step she has taken since I decided the case could proceed in this jurisdiction is to write a letter to the court. She knew of her right to appear. She has been repeatedly informed by me in writing of her rights to apply to set aside orders and directions made by the court in her absence. She has also had the opportunity to seek permission to appeal. She has done none of these things. On this occasion I make clear in this judgment, without intending to encourage or discourage any such steps, that the defendant has a right under CPR 13 to apply to set aside the default judgment that I entered against her on 29 May 2015. Alternatively she may seek permission to appeal out of time against that judgment. She also has, as noted above, the right to apply under CPR 39.3(3) to set aside this decision. Alternatively she may apply to stay enforcement of my award of damages, or seek permission to appeal against it, or my grant of an injunction.