Neutral Citation Number: [2017] EWHC 432 (QB)

Case No: HQ14D05164

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/03/2017

Before:

MR JUSTICE WARBY

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Between:

ISSAM SALAH HOURANI	**Claimant**
- and -	
(1) ALISTAIR THOMSON	
(2) BRYAN MCCARTHY	
(3) ALLISON BLAIR	
(4) PSYBERSOLUTIONS LLC	
(5) JOHN MICHAEL WALLER	**Defendants**

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Heather Rogers QC and Jonathan Price (instructed by **Payne Hicks Beach**) for the **Claimant**
Anthony Hudson QC and Ben Silverstone (instructed by **Mishcon de Reya**) for the **Defendants**

Hearing dates: 1-3, 6-10 & 13 February 2017

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Approved Judgment

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

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MR JUSTICE WARBY

Mr Justice Warby:

I. INTRODUCTION

1. This case arises from a campaign of street protest, online publication, and sticker distribution conducted in 2014. The campaign involved targeting three individuals and denouncing them as murderers, responsible for the torture, drugging, beating and sexual assault of a young woman, Anastasiya Novikova, and her subsequent death, in Beirut, in 2004. The claimant ("Mr Hourani") was one of the three targets of the campaign. The others were Mr Hourani's brother, Devincci Hourani, and Rakhat Aliyev, Mr Hourani's brother-in-law.

2. The fifth defendant ("Dr Waller") organised and directed the campaign. He did so for money, on the instructions of one or more third parties ("the Client(s)") whose identities have not yet been revealed. The Client(s) paid handsomely for the campaign. The agreed budget was just shy of US$500,000. The first and second defendants ("Mr Thomson" and "Mr McCarthy") were recruited and paid to help Dr Waller. The third defendant ("Ms Blair") is Dr Waller's fiancée. Her name was used by him, as was the fourth defendant ("Psybersolutions"), a company ostensibly controlled by Ms Blair but in reality under Dr Waller's control.

3. The campaign involved two street demonstrations in London. One was on 19 June 2014 outside Mr Hourani's home in Lowndes Square, SW1 ("the June Event"). The second was on 16 November 2014 outside Kensington Palace Gardens, and in those gardens or Hyde Park ("the November Event"). At these events individuals who were paid to attend held up banners and placards and shouted slogans. The campaign involved online publications via websites, on Facebook, YouTube, and Twitter, with many such publications carrying edited recordings of the June and November Events. Further, from about late October 2014 stickers were distributed in the London SW1 area, in the vicinity of Mr Hourani's home. This was all done anonymously or pseudonymously.

4. In December 2014 Mr Hourani started these proceedings complaining of libel and harassment contrary to the Protection from Harassment Act 1997 ("the 1997 Act"). Originally, the claims were brought against Persons Unknown. But armed with the registration number of a van belonging to one of the organisers, Mr Hourani was able to identify an organisation called "Media Gang", which had helped with the June Event. Through Media Gang, he discovered the roles of the first four defendants. He now sues all of them for libel, and for harassment. The latter claim covers very much the same ground as the libel claim; it is in the main a claim for harassment by means of the offending publications. Later, Mr Hourani found out about the role of Dr Waller, and in July 2016 he was able to join him as a defendant. The limitation period for libel had expired by then. The claim against Dr Waller is for harassment only.

5. The main issues as to liability are (1) whether and if so to what extent the acts complained of involved publication within this jurisdiction; (2) the existence and extent of each defendant's responsibility for those acts which did involve publication; (3) the defamatory meanings of the publications complained of; (4) whether those publications were harmful enough to Mr Hourani's reputation to be actionable in libel; (5) whether the roles of any, and if so which of the defendants, involved a course of conduct which amounted to harassment, and which that defendant knew or

ought to have known amounted to harassment, of Mr Hourani; and (6) the merits of the affirmative defences relied on by the defendants.

6. The affirmative defences relied on are: (a) the defence of publication on a matter of public interest, which is put forward by Mr Thomson and Mr McCarthy in answer to the libel claims against them; (b) defences relied on by all the defendants in answer to the harassment claim: that any course of conduct in which they did engage did not amount to harassment because it was (i) pursued for the purpose of preventing or detecting crime and/or (ii) in the particular circumstances, reasonable. The public interest defence to libel is provided for by s 4 of the Defamation Act 2013 ("the 2013 Act"). The twin defences relied on in answer to the harassment claim are provided for by s 1(3) of the 1997 Act. It is the examination of these defences that has taken up the majority of the time at this trial.

7. The defendants' case in support of their defences to harassment has three main aspects to it. First it is said that the campaign involved the exercise of rights of protest and freedom of expression. Secondly, it is said that Dr Waller reasonably believed certain things about what happened to Ms Novikova, and the role of Mr Hourani in those events, and that it was in the public interest and reasonable for those things to be brought to the attention of the public. Thirdly, in the course of the trial it has emerged that the defendants' intended case includes an assertion that the things Dr Waller believed, or most of them, were in fact true. Those things are that Ms Novikova was tortured, drugged, beaten and sexually assaulted by Rakhat Aliyev and others in a Beirut apartment; that Mr Hourani knew of and facilitated these acts; and that he was "thereby an accomplice to Ms Novikova's murder and/or would have been responsible for her murder under the US felony murder rule." Anastasiya Novikova died on 19 June 2004. She was found impaled on railings, having fallen five stories from the balcony of the Apartment. She died, say the defendants, from a head injury inflicted by someone prior to her fall.

8. When this third aspect of the defendants' case became clear, as a result of Mr Hudson's opening, concern was expressed that the defendants had not made it clear beforehand that this was their case, and that their factual case as opened went beyond what had been pleaded. It was pointed out that the first four defendants had previously made it clear that it was *not* their case that any such defamatory imputations against Mr Hourani were true. Mr Hudson then sought permission to re-re-amend the Defence, and he put forward a document entitled "Defendants' Further Information in relation to the Re-re-amended Defence" which summarised the intended case. Ms Rogers opposed several of the proposed amendments, and much of the Further Information document. After hearing argument on these applications I granted some amendments that were unopposed, and adjourned the rest of the application for determination as part of this final judgment on the merits. In the meantime I allowed evidence and cross-examination on the case as set out in the contested documents to proceed "*de bene esse*" - without prejudice to my eventual conclusions on the application for permission to amend and the Further Information document.

9. Mr Hourani denies any knowledge of or involvement in any of the alleged criminal activity. His case is that he is the victim of a malicious campaign of vilification and harassment, instigated and organised by the Kazakh authorities, of which the activities complained of are just a part.

10. The remedies claimed by Mr Hourani are damages for libel against the first four defendants, damages for harassment against all five of them and injunctions to restrain further libel and harassment. At the end of the trial Mr Hourani sought permission to amend his claim to seek, in addition, an order for the disclosure by Dr Waller of the identities of the Client(s). It is the Client(s) who have funded the defence of the claim. I had declined to make an interim order for disclosure of the identities of the Client(s) at the start of the trial, but I held over, until after judgment on the merits, a decision on whether such an order might be justified for the purpose of enabling Mr Hourani to seek, or consider seeking, remedies against the Client(s): [2017] EWHC 173 (QB).

11. The trial has consumed ten days of reading, oral evidence, and argument. I have heard oral evidence from all the individual parties: Mr Hourani, Dr Waller, Messrs Thomson & McCarthy and Ms Blair. I have also heard evidence from Mr Dietrich of Media Gang, and read witness statements from two others, served on behalf of Mr Hourani. Seventeen lever arch files of documents are in evidence, as well as video recorded material from the websites. Three files of legal materials have been relied on. After the hearing I have taken time to consider my judgment.

12. The main conclusions I have arrived at are as follows.

    (1) Dr Waller was responsible for all aspects of the campaign complained of, Mr Hourani has proved that Dr Waller's role in organising and directing the campaign amounted to a course of conduct involving publication within this jurisdiction which was oppressive, unreasonable, and harmful enough to amount to harassment contrary to the 1997 Act. Dr Waller should have been aware that his conduct amounted to harassment. The course of conduct was not pursued for the purpose of preventing or detecting crime. Nor was it reasonable in all the circumstances. The truth of the allegations against Mr Hourani has not been established. The allegations of murder are untenable, and I refuse permission to amend by adding those allegations. I accept that Dr Waller believed many of the things he says he believed. But making all due allowance for the importance of free speech the defence has not satisfied me he held those beliefs reasonably or, which is more important, that what was said and done by Dr Waller and at his instigation was reasonable in all the circumstances. On the contrary, I find that the campaign which Dr Waller directed was a highly unreasonable one, which requires a remedy. Dr Waller himself is therefore liable to Mr Hourani for harassment, the only tort for which he is sued. Mr Hourani is entitled as against him to damages for harassment, and to an injunction to restrain further harassment by publication of the same or similar allegations.

    (2) As for Mr Thomson, he is responsible for the June Event and the online publications that resulted from it. The defamatory publications that conduct involved caused serious harm to Mr Hourani's reputation. They are not defensible on the basis of the public interest defence to libel. This involved a course of conduct by him which amounted to harassment of Mr Hourani, as Mr Thomson should have known. Mr Thomson is therefore liable to Mr Hourani for damages for both libel and harassment. Mr Hourani is entitled to an injunction on both counts.

(3) Mr McCarthy is responsible for libels published at the June and November Events and online as a consequence of those Events. His defence of public interest fails. His role in these respects and in the distribution of the stickers involved a course of conduct which amounted to harassment of Mr Hourani, who is entitled as against Mr McCarthy also to damages for both libel and harassment, and to an injunction.

(4) Psybersolutions was Dr Waller's alter ego for the purposes of the campaign. It is responsible for the full range of activities complained of: all the conduct complained of as libel, and all the conduct said to amount to harassment. That conduct was libellous, and did amount to harassment, to the extent alleged. Psybersolutions has not relied on the public interest defence to libel. Its other defences to libel and harassment fail, for the same reasons as they fail in the case of the Messrs Thomson and McCarthy and Dr Waller. The company is therefore liable to Mr Hourani for damages for libel and harassment, and to an injunction.

(5) Ms Blair is not responsible in law for any of the conduct or publications complained of. She gave Dr Waller carte blanche to use Psybersolutions and her name as he thought fit, for the purposes of a campaign, but she knew virtually nothing about that campaign. She did not have sufficient knowledge to make her liable for the libels or the harassment of Mr Hourani that resulted from the way the campaign was run. Ms Blair has no liability to Mr Hourani. The claims against Ms Blair will be dismissed.

13. My conclusions on remedies are that the total sum that should be paid in compensation is £80,000. Mr Thomson must pay damages for libel of £30,000 and damages for harassment of £10,000, a total of £40,000. Mr McCarthy must pay a total sum of £65,000 being libel damages of £50,000 and £15,000 for harassment. Psybersolutions is liable in the full sum of £80,000. Mr Hourani is entitled, as against Dr Waller, to damages for harassment in the sum of £30,000. I will grant appropriate injunctions against all defendants. I have concluded, also, that Mr Hourani should be allowed to pursue a claim against Dr Waller for disclosure of the identities of the Client(s), and I grant permission to re-amend the Particulars of Claim for that purpose. I accept, however, that as Mr Hudson submits, it is appropriate to allow the argument on that issue to proceed in the knowledge of my conclusions on the other issues in the case.

14. The reasons for these conclusions are set out in the remainder of this judgment. For ease of reference the judgment is divided into a further nine sections as follows:

II. RELEVANT PRINCIPLES OF THE LAW OF EVIDENCE

15. The claimant bears the burden of proof in relation to all the matters in dispute, except when it comes to the affirmative defences relied on by the defendants. The burden of establishing those lies with the defendants. Although those defences include allegations of criminality, the standard of proof on that as on all the other issues in the case is the ordinary civil standard: the balance of probabilities. Gravity is reflected in a flexible approach to whether the civil standard is met: it will take into account, *to whatever extent is appropriate in the particular case,* that the more serious an allegation the less likely it is that it occurred and the stronger the evidence required to prove it: *Re H* [1996] AC 563. The emphasised words highlight that the approach is case-specific, as explained in *Re B (Children)* [2009] EWCA Civ 1048 [2009] AC 11.

16. Equally, the rules of evidence that apply are not the rules of criminal evidence, but the rather more relaxed rules of the civil law. There are nonetheless some principles of relevance, and of particular relevance to the resolution of the defendants' contention that Mr Hourani was guilty of the conduct alleged against him.

17. The evidence on which the defendants rely to show that they reasonably believed the allegations to be true is entirely documentary. Dr Waller identifies 20 key documents or classes of document on which he relied in forming his conclusions about the matter. These include depositions and statements of witnesses, reports of investigations by public authorities, and documentary evidence of convictions and other findings of courts or tribunals. Dr Waller does not suggest that he spoke to, or had any other dealings with, anybody who had been a witness to relevant events, or who had taken any of the depositions or statements relied on, or written any of the reports, or formed any of the judgments that are relied on. Mr Thomson did some research of his own, which again was based entirely on documents. The evidence relied on to prove the truth of the allegations of criminality that are made against Mr Hourani is also entirely documentary. It consists of (a) the key documents on which Dr Waller rested his conclusions at the time, (b) a few additional documents relied on by Mr Thomson at the time, and (c) some further material, most of it disclosed or discovered later on. No witnesses to any of the facts relied on have been called to give evidence on behalf of the defendants. For his part, Mr Hourani has given oral evidence that he was not involved in any of the criminality alleged. To answer and

rebut the case against him he too relies on third party documents, including determinations in his favour.

18. There is no doubt that the documentary material is admissible. The documents are before the court by agreement, and there is no dispute about their authenticity. They are admissible "as evidence of their contents": 32PD 27.2. There is no doubt, either, that to show what they believed, and that it was reasonable for them to believe it, the defendants can point without restriction to statements made in documents they had seen and on which they relied at the time of publication. The court's task will be to decide whether it was reasonable for them to rely on those statements as a basis for the beliefs that are asserted. For that purpose, regard can also be had to documents or passages in documents on which Mr Hourani relies, to the extent these were in existence and known to the defendants. But not all of the documentary material is admissible for all purposes.

19. Importantly, the opinions, findings, or conclusions of a court or other investigative body are, as a rule, inadmissible for the purpose of establishing the correctness of those opinions or conclusions: see *Hollington v F Hewthorn & Co Ltd* [1943] KB 587 and the majority in *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1 (see in particular [28]-[33], [79], [103], (Lord Hope), and [130]-[133] (Lord Hutton)). This rule, though long controversial, remains an established part of the common law. Its effects are not limited to criminal convictions (the subject matter of the decision in *Hollington v Hewthorn*). It extends to other findings of fact or evaluative assessments, including those contained in official reports, such as the Bingham Report on the BCCI scandal (the subject matter of the passages cited from *Three Rivers*.)

20. This common law rule operates in both directions. It rules out determinations of guilt and findings of innocence. One effect is that at common law convictions are not admissible as evidence that the convicted person was guilty. Exceptions to this rule have been made by statute. The exceptions include s 11 of the Civil Evidence Act 1968, which makes convictions admissible in evidence. If the claimant in a libel action has been convicted that conviction is conclusive against him: s 13 of the 1968 Act. But these provisions are confined to convictions by the Courts of the United Kingdom, and "service convictions" before military tribunals. There are other exceptions, but none that are relevant here. The convictions mainly relied on in this case are not convictions of the claimant. They are convictions of Rakhat Aliyev. And they are from Kazakhstan. I suspect the convictions might be inadmissible as evidence supportive of a finding of guilt for an additional reason: that reliance on them for that purpose would exceed the limits set by the common law on the admission of bad character evidence. But that point has not been argued. In any event *Hollington v Hewthorn* seems to me to rule them out as evidence of guilt. The decision in that case also appears to me to debar Mr Hourani from relying, in rebuttal of the defendants' case of truth, on conclusions in his favour arrived at by the Lebanese courts. The argument that those conclusions are, if not conclusive, highly persuasive, is not open to him.

21. The rule in *Hollington v Hewthorn* does not exclude reliance on hearsay statements of fact, of whatever degree, which are made or recorded in investigative reports, or in court judgments. So where a report or judgment records that a witness made a particular statement of fact to an investigator or to the court, that record can be relied on as evidence not only that the statement was made but also (if so desired) as

evidence that what the witness said was true. Both sides have sought to rely on statements of this kind in relation to the issue of truth. That is legitimate. But the court has to consider what weight to attribute to such material. And that process is governed by the Civil Evidence Act 1995 and the CPR.

22. Section 4 of the 1995 Act requires the court to have regard to the relevant circumstances, including a non-exhaustive list of factors that have an obvious bearing on the weight that hearsay evidence deserves. Section 4 provides as follows:

> **4. Considerations relevant to weighing of hearsay evidence.**
>
> (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.
>
> (2) Regard may be had, in particular, to the following—
>
> (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness;
>
> (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated;
>
> (c) whether the evidence involves multiple hearsay;
>
> (d) whether any person involved had any motive to conceal or misrepresent matters;
>
> (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose;
>
> (f) whether the circumstances in which the evidence is adduced as hearsay are such as to suggest an attempt to prevent proper evaluation of its weight."

23. Section 2 of the 1995 Act and CPR 33.2(3) require a party who intends to adduce hearsay evidence in a document to serve a notice of that intention (a "Hearsay Notice") identifying the evidence and giving the reason why the witness will not be called. CPR 33.4 allows the respondent to a Hearsay Notice to apply to the court to call the maker of the hearsay statement for cross-examination. Neither side has served any Hearsay Notice in this case. By s 2(4) of the 1995 Act, such a failure does not make the evidence inadmissible, but "may be taken into account by the court— (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4." I know from the evidence, or from admissions, that some of the individuals concerned could not have given oral evidence because they are dead. This includes Rakhat Aliyev. But some other

individuals on whose word the parties rely are not, or are not said to be, dead. Many, if not all, are abroad. But that does not necessarily prevent a person giving oral evidence, from the witness box or by live link. The reasons why these individuals have not been called as witnesses have not been stated in any notice, nor have they been given in evidence.

24. The death of Ms Novikova was investigated at the time by the Lebanese authorities. It was investigated later, by the authorities in Kazakhstan, Mr Aliyev's country of origin. The Kazakh authorities sought to extradite Mr Aliyev from Austria, which led to the taking of depositions in that jurisdiction. The Kazakh authorities, and the parents of Ms Novikova, pursued claims in the Lebanon against Mr Aliyev, the claimant and his brother, seeking their prosecution over the death. The case of the defendants, and in some respects the case for Mr Hourani, involves reliance on selected passages from a variety of documents generated in the course of those investigations and legal proceedings, which are not excluded from consideration by the rule in *Hollington v Hewthorn*.

25. In *Miller v Associated Newspapers Ltd* [2012] EWHC 3271 (QB) at [36] Sharp J referred to "the difficulties caused when hearsay evidence on important matters is deployed in this way." She went on to cite with approval a passage from Phipson on Evidence, 17th edition, paragraph 29-15:

> "the [Civil Evidence] Act is not intended to provide a substitute for oral evidence. The basic principle under which the courts operate is that evidence is given orally with cross-examination of witnesses, and the admission of hearsay evidence is, and should be the exception to the rule. Caution should be exercised before tendering important evidence through hearsay statements. Hearsay evidence is better used where the evidence is peripheral or relatively uncontroversial."

Sharp J concluded at [37] that what she called "selective snippets of hearsay from individuals who have not been called …" provided "an obviously unsatisfactory evidential basis upon which to invite a court to find facts and/or draw adverse inferences whether as to the conduct of those individuals or anyone else." This approach was upheld on appeal: [2014] EWCA Civ 39 [31-40]. The facts and circumstances of the *Miller* case were very different from those of the present case. In particular, the hearsay in that case came from witnesses all of whom were alive and in the jurisdiction. But it seems to me clearly correct, as a general proposition, that it is unsatisfactory to introduce important evidence by means of selective extracts from hearsay written statements.

26. That point is all the stronger in this case, as the allegations are far more serious than those in *Miller*. And in this case the court's ability to rely on the hearsay evidence is significantly affected by a number of factors that were not present in *Miller*. Those factors include, but are by no means limited to, the following. Much of the evidence originates from Kazkhstan, a country which, it is agreed, was at all material times governed by a corrupt regime which made use of torture and other inhuman methods. Most of the evidence of Kazakh origin dates from in or after May 2007. It therefore came into existence during a period in which, as is an agreed fact, the Kazakh regime had fallen out very seriously with Rakhat Aliyev and Mr Hourani. Key evidence for

the defence is contained in depositions made in 2009 by two individuals – Kurman Akimkulov and Leonid Fomaidi – who were formerly officers of the Kazhak secret service, the KNB. These depositions are the sole source of evidence that the claimant, Mr Hourani, had any involvement in the crimes of which Anastasiya Novikova is alleged to have been the victim. The depositions were made by convicted criminals some 5 years after the event at the instigation of the Kazakh authorities. For these and other reasons I shall elaborate later, these depositions are self-evidently unreliable documents. Some of the hearsay evidence comes from Austria, which is not criticised as a regime; but most of this evidence comes from a deposition of Rakhat Aliyev. He is someone on whose word the defendants seek to rely in some respects, but he is also a person whom the defendants portray as a mafia operative, guilty of multiple murders, and a variety of other grave crimes. The vast majority of the evidence is in translation, with all the difficulties that can involve. Much of the evidence has been multiply translated; more than one document is translated into English from a rough Arabic translation of a German translation of a Russian language original. The translations are not made for the purposes of these proceedings. They are not agreed. They are of uneven quality, and in one important respect proved to be mistaken. These many problems as to the reliability of the hearsay evidence weigh most against the defence, which makes the key allegations, bears the relevant burdens of proof, and relies most heavily and crucially on hearsay evidence.

27. Some of the hearsay evidence relied on is expert evidence. The most prominent instances are two forensic reports concerning the likely cause of Anastasiya Novikova's death. Mr Hourani relies on a contemporaneous report ("the Haidar Report") prepared by Dr Assem Hamad Haidar, the "forensic physician" called in on the direction of a Lebanese Judge to examine the corpse at the scene, and later in the hospital, on 19 June 2004. The defendants rely on a report created some 8 years later by the Charité hospital in Berlin. This report ("the Charité Report"), dated 24 February 2012, involved a paper-based assessment of the reliability of the conclusions in the Haidar Report, relying on (among other things) reports produced by the Kazakh authorities, apparently following the exhumation of Anastasiya Novikova's remains by or at the instigation of those authorities, in 2007. The reports contain some hearsay statements of fact, but also expert factual assessments and expert opinion.

28. Expert evidence is of course admissible in civil proceedings, and it may be admitted in hearsay form. Reports made for purposes other than the proceedings can be put in evidence and relied on to prove what they say. That is the effect of the Civil Evidence Acts 1972 and 1995. A failure to give notice of intention to rely on such evidence does not affect these points, any more than it does in the case of hearsay evidence of fact. So these reports are both admissible as evidence going to the question with which they mainly deal - the cause of Anastasiya Novikova's death – and other issues in the case on which they have a bearing.

29. But ordinarily in a case of this gravity such issues would be the subject of "expert evidence" within the meaning of CPR 35, set out in formal reports prepared for the purpose of the litigation in which the issue was to be decided, by individuals owing a duty to the court, who disclose their qualifications and experience, their instructions and the underlying materials relied on. Such expert evidence would normally be carefully scrutinised and tested through cross-examination of the expert. Nobody has

sought permission to adduce expert evidence of that kind in this case. Inevitably, the expert evidence is a good deal less satisfactory than it would have been if produced under those conditions. Again, the point weighs more heavily against the defendants. That is not least because they bear the relevant burden of proof, but it is not only for that reason. The factors listed in s 4 of the 1995 Act are relevant in this context also. A forensic opinion based upon a physical examination of the deceased on the day of her death is, other things being equal, inherently more satisfactory than one formed years later without any such examination. It is hard to attack that opinion in reliance on a rival report, when none of the authors of either report have been made available to give evidence. The Charité Report relies to a significant extent upon evidence produced by the Kazakh authorities following an exhumation which was not attended by the authors of the report. The Kazhak evidence relied on by Charité is not before the court. I do not know why that is. No explanation has been offered.

30. There is another kind of expert evidence that would normally have been expected in this case. Given the defendants' proposed case that Mr Hourani "would have been responsible for …murder under the US felony murder rule", one would expect to see expert evidence of US law. Foreign law is presumed to be the same as English law, unless there is evidence to the contrary. A party who makes an allegation that foreign law is different must prove it. Foreign law is treated as a question of fact, but its content can only properly be proved by the evidence of an expert in the foreign law. No expert witness has been called, nor have I been shown any hearsay expert evidence as to the US felony murder rule. The only evidence on the issue comes from Dr Waller, who has no legal training and has not sought any legal advice on the issue. I do know that the English law of felony murder was abolished 60 years ago by s 1 of the Homicide Act 1957. I can accept that US law is different from the English law of today, but I have been given no evidence on which I can rely as to exactly how it differs. This is one reason, though not the only reason, why I refuse permission to make this amendment. It is unreasonable to ask a court to make a finding that someone "would have been" convicted of murder under the laws of a country which appears to have nothing to do with the relevant facts, when the only evidence about that foreign law comes from a non-lawyer whose knowledge comes from "growing up in" the foreign country.

31. These factors, and a number of other factors to which I shall refer, have led me to the clear conclusion that the defendants' evidence falls a long way short of making good any of their allegations of criminality against Mr Hourani. Similar considerations play a significant part in my rejection of the public interest defence advanced by Messrs Thomson and McCarthy, and the reasonableness defence on which all the defendants rely in answer to the harassment claim. Section 4 of the 1995 Act is part of the law of evidence. It is obviously inapplicable to a person considering whether to publish allegations of criminality based on third party documents. But the section gives effect to principles of fairness and common sense. It lists a number of factors which any reasonable person in such a position would be bound to consider.

III. THE FACTS

Some Undisputed Background

32. The following core facts are either undisputed or not significantly disputed, and appear to me to be established on the basis of documentary or oral evidence which I

consider reliable. For the purposes of this outline I have relied on, among others, translations of official Lebanese documents disclosed and relied on by the defendants, which set out the movements into and out of Beirut of some key individuals at relevant times. The main documents in this regard are an Entry and Exit Movement Schedule, a letter from the Lebanese Ministry of the Interior dated 13 September 2011, and a 2016 decision of the Accusatory Board in Mount Lebanon to which I shall refer later ("the Accusatory Board Decision").

Rakhat Aliyev, Mr Hourani, and their families

33. Rakhat Aliyev was born in 1962. He has a sister, Gulshat. Their father was a surgeon of some distinction in Kazakh society, and later a senior official in the Ministry of Health. Their mother was one of six sisters. One of those sisters had a son called Daniyar Esten, who was therefore a first cousin of Aliyev and Gulshat. Aliyev himself was trained and practised as a surgeon. In the mid-1980s Aliyev married Dariga, the daughter of Nursultan Nazarbayev. At the time of Aliyev's wedding Mr Nazarbayev was already a powerful man. Not long afterwards he was to become President of Kazakhstan, which he remains, having been declared "leader of the nation" for life by the Kazakh parliament in 2010. The marriage of Aliyev and Dariga lasted for over 20 years, until 2007. While it lasted they had three children together, born in 1985, 1990 and 2000. The eldest of these had a child in 2003, making Aliyev a grandfather. From about the mid 1990s Aliyev occupied senior roles in the Kazhak public service: he was at different times First Deputy Minister of Foreign Affairs, and Deputy Chief of the KNB, the Kazakh security service.

34. Mr Hourani was born in the Lebanon in 1967, in relatively modest circumstances. He has two brothers, Devincci and Hussam (also sometimes spelled Houssam), and a sister named Hiam. Mr Hourani is the oldest of the four. He describes himself as a "self-made businessman who has successfully built a number of international enterprises". In the early 1990s, after the collapse of the Soviet Union, Hussam Hourani went to Kazakhstan to study for a Master's degree in petroleum engineering. Mr Hourani and Devincci visited him. Mr Hourani and his family embarked on business activities in Kazakhstan and other neighbouring former Soviet republics. At that time he had some US$200,000 in capital available to finance business projects. He met Aliyev in about 1993 or 1994. In 1996 he married Gulshat Aliyev. He thereby became a brother-in-law of Rakhat Aliyev. In 1998 Mr Hourani acquired Kazakh nationality. He held Palestinian and Kazakh passports.

35. By the early 2000s Mr Hourani had acquired very considerable wealth. He owned interests in media, oil and agricultural concerns in Kazakhstan worth billions of US$. He maintained a home in Kazakhstan but also maintained a home in the Lebanon at all times. His brother Devincci owned an apartment in the Khaldeh district of Beirut, in the Mahlab Building ("the Khaldeh Apartment").

36. In 2002 Aliyev was appointed Kazakh Ambassador to Austria. In that capacity he had a substantial entourage at all times, numbering up to 10. Individuals who were members of that entourage from time to time included Daniyar Esten, Kurman Akimkulov, Leonid Fomaidi and an individual named Vadim Koshlyak. Whilst he was Ambassador, Aliyev travelled to Lebanon a number of times. He went there on five occasions during 2002. In April 2003 he visited Lebanon again, flying into Beirut

Airport from the Czech Republic on 12 April and flying out from Beirut to France the following day.

Anastasiya Novikova in Beirut

37. On 17 July 2003 Aliyev flew into Beirut from Greece, accompanied by Daniyar Esten. On the same day, Anastasiya Novikova arrived in Beirut from the same country. Novikova was an ethnic Russian, born in Tashkent on 22 November 1980. So she was 22 at the time. She had worked in a media company in Kazakhstan. In July 2003 Anastasiya Novikova was in an advanced stage of pregnancy. Anastasiya Novikova and Daniyar Esten seem to have lived initially in a flat in the Consolidated Contractors Company Building ("CCC Building"), where the Kazakh consulate was situated. At some point between their arrival in July 2003 and about February 2004, Esten and Novikova moved into the Khaldeh Apartment. It was the claimant who made the arrangements that allowed the couple to occupy his brother's flat. He arranged for one of his staff members to provide the key to Daniyar Esten. The flat was on the fifth floor, or thereabouts.

38. On 25 August 2003 Anastasiya Novikova gave birth to a baby girl who was named Luiza. This was a healthy and happy child, according to a number of photographs taken of them together in Luiza's early months, by photographer(s) of unknown identity. In these photographs Anastasiya Novikova has the appearance of an attractive young woman, blonde, healthy and smiling. Esten was not present at the time of Luiza's birth, or for some time after that. He left Beirut for the Czech Republic on 23 August 2003. He returned on 17 October 2003, having flown in from Austria.

39. Aliyev made a number of further visits to Lebanon in 2003 and 2004. In September 2003, he arrived from Greece on 19th and left for Kazakhstan on 21st, accompanied by Koshlyak on both occasions. He visited again briefly in October 2003, arriving from Kazakhstan on 12 October and returning there the following day. In December 2003 Aliyev travelled from Kazakhstan to Vienna via Beirut with Akimkulov and Koshlyak. They arrived in Beirut on 11 December and left the following day. Daniyar Esten also left Beirut for Austria on 12 December 2003, seemingly on the same flight as the others.

40. Aliyev flew into Beirut again on 31 January 2004 arriving from the Ukraine, accompanied by Koshlyak. The two of them flew out, to Austria, two days later. Aliyev and Kosklyak flew in again on 20 February 2004, from Cyprus. On this occasion they stayed in Beirut for some 6 days. During that period, on 25 February, Esten arrived from Italy. Aliyev and Koshlyak left for Italy on 26 February 2004. On the same day, blood samples purporting to relate to Esten and an "unknown child" were provided to Analytical Testing Laboratories, Sassine Square, Beirut, for paternity testing. The Laboratories reported on 8 March 2004 that "the paternity probability of Mr Daniel Yestin with regards to the unknown child is estimated to be 99.998%". The Accusatory Board Decision records what it was told about Aliyev's movements in 2004 by the Lebanese Directorate General of Security General ("DGSG"). The DGSG's information was that "there was an entry and exit movement in the months of March and April", the latest events being an entry on 23 April and an exit the following day, 24 April 2004.

The death of Anastasiya Novikova, and the initial Lebanese investigations

41. On 19 June 2004 Anastasiya Novikova fell five stories from the Khaldeh Apartment. Her body, dressed in pyjamas, was impaled on railings below. Her hair had seemingly been cut short, and was brown in colour. Present in Beirut at the time of her death were Esten and Akimkulov. There is no record of Aliyev's presence, there being no record of his return to the country in 2004, following his exit on 24 April. Koshlyak was evidently outside the country when Anastasiya Novikova died. He entered on 21 June.

42. As for Mr Hourani, in 2003-2004 he and his wife were spending most of their time in Beirut. In the latter part of 2003 Gulshat was pregnant. There were complications, which meant she had to stay at home and rest. Gulshat eventually gave birth in March 2004 to a daughter, whom the parents named Ayaa. During this period, Mr Hourani spent much of his time in Beirut, but he was not there all of the time. The information about Mr Hourani's movements that the DGSG gave to the Accusatory Board is to the effect that Mr Hourani was in Lebanon for only 1 full day in April 2004 and only there on one day in May 2004. This is consistent with Mr Hourani's unchallenged evidence that he and the family, including Aliyev, left Lebanon for Kazakhstan shortly after Ayaa's birth. Mr Hourani, according to these records, was back in the Lebanon from 4 to 15 June 2004, but out of the country from 15 to 20 June. According to these records, therefore, Mr Hourani was not in the country when Anastasiya Novikova died, or on any of the three previous days. It is also Mr Hourani's evidence that he was not in the country on 19 June 2004. That is not accepted by the defendants, or at least not by Dr Waller, and I shall have to consider the issue later in this judgment.

43. The Lebanese authorities investigated Anastasiya Novikova's death. On 19 June, the Choueifat police squad, having been called at 4pm, took photographs of her body and the area in which it was found. Later that day they questioned Esten at a police station. An interpreter was present at Esten's interview. The defence case is that it was Mr Hourani, or alternatively his brother Hussam. The Kazakh Consul in Lebanon, Mr Yerbol Derbisaliyev, was also present. Esten told the police that he had been at the beach when Anastasiya Novikova fell from the Khaldeh Apartment. He said she had suffered from "psychic problems"[1] and that he did not wish to prosecute anyone. He said that he thought that Anastasiya Novikova had committed suicide. He also stated that she did not have any friends. He said that he wanted to receive Anastasiya Novikova's body for the purpose of sending it to Kazakhstan to be buried. Esten was told that he would remain under investigation for five days. On 20 and 21 June, the Beirut police interviewed a beach worker and employee at the Copacabana, Hatem Anise Chaaban ("the beach worker"), and the concierge of Mahlab Building, Mohamed Ahmad El Ghaeb Fadl El Mawla ("the concierge").

44. On 19 June Dr Haidar examined Anastasiya Novikova's body and drew up the Haidar Report. The Haidar Report recorded a number of severe injuries including a skull fracture, and fractures to the forearm, pelvis, left femur, and left leg, as well as puncture wounds. Dr Haidar observed that there were "no beating or abuse effects" such as bruises on the body. Dr Haidar's conclusions were that Anastasiya Novikova

[1] Clearly meaning "psychiatric". One of many examples of obviously unsatisfactory translation by someone whose native tongue is not English.

had sustained severe internal and external bleeding as a result of the fall and that this led to cardiac and brain suspension and then immediate death at about 2–3 pm on 19 June. A death certificate was issued later, on 21 June. This stated that Anastasiya Novikova had died at 2:30pm on 19 June. It identified the cause of death as "Cardiac arrest – many fractures – severe bleeding". Against the standard question "Accident or suicide?" the author wrote, "Maybe suicide – falling from a high place."

45. Anastasiya Novikova's body was released to Esten on 20 June. It was embalmed, and on 22 June 2004 a permit to repatriate coffins was issued by the Quarantine Service of the Ministry of Public Health, authorising repatriation to Uzbekistan. On 22 June Anastasiya Novikova's body was flown out of Lebanon, to Kazakhstan. Esten and Luiza accompanied it. Koshlyak and Akimkulov were on the same flight. Esten did not return to the Beirut police station.

The falling-out with the President

46. In 2007 the Kazakh Parliament passed a law amending the constitution to exempt Mr Nazarbayev from a limit on the number of times a President can be re-elected. Evidently, Aliyev considered that Mr Nazarbayev had procured the passing of this law. During 2007 there was a serious falling-out between the President and his son-in-law, Rakhat Aliyev. Aliyev and Dariga also split up, and divorced that same year. The reasons for this falling-out are a matter of some dispute, but it is common ground between the parties that a profound split occurred between Aliyev and the Nazarbayevs. This appears to have emerged most clearly in May 2007, when Aliyev was stripped of all government positions. On 28 May 2007, Kazakhstan issued a warrant for Aliyev's arrest for running an organised crime network, and dismissed him as ambassador to Austria. At some point not long after the split developed, Aliyev left Kazakhstan, never to return.

47. In 2008, in his absence, a court in Kazakhstan convicted and sentenced Aliyev for various crimes including kidnap, document forgery, seizure of power through violence, formulation and heading of an organised criminal group, the illegal acquisition and disclosure of state secrets, embezzlement of property, the illegal trafficking of arms, ammunition and explosives, the stealing of ammunition and explosives and abuse of power. Aliyev was sentenced to 40 years imprisonment. Whilst in exile, Aliyev wrote a book, published in 2009, called "The Godfather-in-law". The reference was of course to his father-in-law, President Nazarbayev. The book gave Aliyev's account of President Nazarbayev's regime, Aliyev's part in that regime, his alleged victimisation by the President and the reasons for it, and his ambition to reform and democratise a system which he described as corrupt and despotic.

48. At around the same time as the falling-out between Aliyev and the Nazarbayevs, Mr Hourani became a target of allegations, at least some of which originated with the Kazakh government. On 26 May 2007 the Government of Kazakhstan sent an Interpol notice to Luxembourg, Cyprus, Beirut, and Vienna labelled "VERY URGENT." The notice stated that Mr Hourani and another were suspected of kidnapping, creating a criminal organisation, extortion, theft and counterfeiting, and asked for checks to be made on the recipients' databases. By this time Mr Hourani had left Kazakhstan. He left in about April 2007, and has never returned. In 2007 or 2008 Kazakhstan stripped Mr Hourani of his Kazakh nationality. In 2008 he acquired

British citizenship. Later, in November 2009, he was issued by the Palestinian Authority with a diplomatic passport.

Further investigations and proceedings relating to Anastasiya Novikova's death

49. It was in July 2007 that the Kazakh Interpol office, Astana Interpol, started making enquiries of the Beirut authorities about the death of Anastasiya Novikova. A request dated 17 July 2007 stated that Anastasiya Novikova had lived in Lebanon between 2000 and 2004 but (as the translation has it) "she was a murder victim there". The Kazakh organisation asked for details, including "When was she murdered?". About a week later Astana made an urgent call pressing the Lebanese authorities for answers, describing the matter as important. Another chaser came on 2 August. The public prosecution Judge had directed the Judicial Police to carry out the requested investigations, and a variety of enquiries was undertaken. These included securing the police records of the police investigation. The investigation appears to have been concluded, and the file closed, on or about 27 August 2007. Not all the enquiries requested by Astana Interpol had been carried out, seemingly at the direction of the Lebanese Judge.

50. On 25 July 2009 a Lebanese attorney called Rabih Ramadan submitted a request to the Mount Lebanon public prosecutor on behalf of Anastasiya Novikova's mother, Tatiana Medvedeva for the "reopening of the case file of the murder of the plaintiff's daughter". The basis for doing so was said to be that Ms Medvedeva had submitted "medical reports issued by a committee formed on the basis of a Kazakhastani decree ordering to exhume, autopsy and draw a professional medical report clarifying the reasons of death." The medical report was said to show "that the deceased was subject to beating and violence and that she was murdered and lifeless before she was thrown from above. In other words, she was thrown dead from her Beirut apartment balcony, and suicide story was invented." Mr Ramadan also submitted a report "proving that the child Louisa is not the biological daughter of the previously mentioned Daniyar."

51. An investigation was undertaken by the DGSG, in the course of which Mr Ramadan gave a deposition, and residents of the Mahlab Building were interviewed. These included Vivianne Ali El Sabeh ("the neighbour"), who declined to make a deposition but gave an account of her observations of Anastasiya Novikova in 2004. Ms Medvedeva's application was refused by a decision of the investigation judge, Fawzi Khamis, dated 7 August 2010. The judge found that the investigations conducted by the Kazakhstani authorities "raised a claim about the presence of murder" but that the examination after exhumation showed that Anastasiya Novikova was not subject to sexual assault before death, no witness affirmed the existence of a crime, and "the assumption of her suicide is the nearest to fact and logic". He determined that the file should be closed. An appeal against Judge Fawzi Khamis's decision was dismissed on 5 October 2010.

52. A copy of the Kazhkh medical report was attached to Mr Ramadan's application, and considered by the Judge, but it is not in the evidence before me. The same is true of the report which is said to disprove Esten's paternity. The best evidence I have about that report is contained in a 2010 letter to President Nazarbayev from the Kazakhstan General Prosecutor's Office. This describes a "molecular genetic test" which is said to have been carried out on 29 August 2007, the results of which are said to show that

blood relationship between Esten's parents and Luiza is impossible. A test "to confirm the relation between Esten Luisa and Aliyev Rakhat was not possible due to the absence of samples from Aliyev."

53. Whilst the original 2009 application to reopen the Lebanese police investigation was still pending, the Kazhak authorities took statements from Akimkulov and Fomaidi. Two such statements are relied on by the defendants. The first is a deposition taken from Akimkulov on 15 October 2009 by Police Lieutenant Colonel Grigoriyev, Senior Investigator of the Internal Affairs Agencies of Operational-Investigations Group of Investigative Committee of the Department of Internal Affairs. The second key deposition is that of Fomaidi, taken on 7 November 2009 by the Chief Investigator of the Internal Affairs Agencies of Investigative Committee of the Ministry of Internal Affairs of the Republic of Kazakahstan, police colonel, A. Sh. Jaksybayev.

54. On 18 January 2010 Anastasiya Novikova's parents lodged a criminal complaint in Austria against Aliyev and Koshlyak, alleging "murder and/or instigation to commit murder and other crimes" against Anastasiya Novikova. The Vienna Public Prosecutor's Office began an investigation. It is clear from later documents that the prosecutor's suspicions rested principally on statements of Akimkulov and Fomaidi, which had been submitted to the prosecutor by Anastasiya Novikova's parents.

55. On 15 March 2010 the Kazakh General Prosecutor wrote a long letter to the President's Office, reporting on "the results of work of the Inter-Agency Investigation Operation Group" formed according to the President's directive. The report started with an account of investigations into the death of Novikova. It also covered "Investigation of the economic crimes committed by R Aliyev and his accomplices" who were alleged to include the Houranis. A further section concerned the arrest and confiscation of bank accounts and other assets of Issam and Devincci Hourani.

56. By this time Aliyev had moved to Malta, and was calling himself Rakhat Shoraz. Thus it was that on 22 December 2011 the Vienna Public Prosecutor filed a written request with the Maltese Attorney General's Office, asking that Rakhat Shoraz be "interrogated as an accused" about the allegations that it was investigating at the instigation of Anastasiya Novikova's parents. As a result of the Prosecutor's request Aliyev was deposed in Malta on 16 February 2012 by a Dr Bettina Wallner, in English. He was questioned at length about his relationship with Anastasiya Novikova, any role he had in her death, and a range of other matters. He denied that Anastasiya Novikova had been murdered, or that he had any part in any crimes against her, and he maintained that the Kazakh authorities had fabricated documents and pressurised witnesses (Akimkulov and Fomaidi) to give evidence against him. But as already noted, the defendants rely on parts of this deposition.

57. Meanwhile, on 18 January 2012 the Vienna law firm Lansky, Ganzger had instructed Charité to review the Haidar Report, in the light of certain other materials, notably a Kazakh forensic report dated 8 August 2007, and 57 photographs of the exhumed corpse. The forensic report seems to be the same one that had been submitted to the Lebanese authorities by Anastasiya Novikova's parents in 2009. The Charité Report concluded that the Kazakh report and Dr Haidar's findings could not be reconciled. In particular, skull fractures identified in the Kazakh report were not considered to be consistent with a simple fall. They were indicative of a violent event prior to her fall.

It was said that "the quality of the autopsy performed in Lebanon must be regarded as insufficient".

58. In or around January 2013 civil proceedings were brought before the First Investigating Magistrate in Mount Lebanon by the state of Kazakhstan and Anastasiya Novikova's mother against Aliyev and the three Hourani brothers, alleging "wilful murder". The statement of claim expressed the surprise of "the official authorities in Kazkhstan" at the "futile result" of the attempt to reopen the criminal investigation. It explained that the Kazakh authorities had therefore "decided to institute civil action". The statement of claim was critical of the previous investigations in Lebanon. It asserted that the death of Anastasiya Novikova "happened as a result of pre-plan by a terrorist gang specialized in murder and terrorism."

59. Mr Hourani and the other defendants filed a defence to what they called a "malicious lawsuit", and applied for the proceedings to be struck out on grounds of res judicata, abuse of process and manifest lack of merit. That application was refused by the Magistrate in March 2013. An appeal by the defendants succeeded, but a further appeal by the plaintiffs to the Court of Cassation resulted in the restoration of the Magistrate's decision. The proceedings continued.

60. It appears that a further attempt to reopen the Lebanese criminal investigation was made, but rejected by Judge Claude Karam by a decision of 17 July 2013.

61. In November 2013 Anastasiya Novikova's father Giorgi Novikov issued civil proceedings in the Lebanon complaining of the murder of Anastasiya Novikova and other criminal acts against her. He sued Aliyev and "anyone that the investigation reveals to have been a perpetrator, an accomplice, or an associate". Mr Novikov applied for his claim to be consolidated with the existing claims of Kazakhstan and Novikova's mother. An order to that effect was made on 9 April 2014. The Lebanese civil claims were awaiting final resolution on their merits at the time of the campaign complained of.

The House of Representatives

62. There is one other pre-publication matter that deserves mention here, because it is said to have been relied on by Dr Waller at the time and is relied on now. It takes the form of written evidence submitted to a sub-committee of the US House of Representatives Foreign Affairs Committee on 10 July 2012 by Dr Jonathan Schanzer, Vice-President of Research at the Foundation of Defense of Democracies. Dr Schanzer submitted to the Sub-Committee on the Middle East and South Asia a report entitled "Chronic Kleptocracy: Corruption within the Palestinian Political Establishment". In this evidence Dr Schanzer alleged that the Houranis had engaged in business with Yasser Abbas, the son of Mahmoud Abbas, President of the Palestinian Authority, by obtaining concessions for three oil blocks in Sudan for Caratube International Oil Company. This was said to be a violation of US sanctions, given that Devincci was a US Citizen and said to be the owner of Caratube. Dr Schanzer also alleged that the Houranis' diplomatic passports were used to give them diplomatic immunity, though neither was a diplomat.

The Campaign

63. Dr Waller was recruited by the Client(s) in January 2014 to work on an online campaign, the primary focus of which was to be Aliyev. Over a period of months Dr Waller was given the opportunity to review documents, though they were not given to him until he had been formally retained. The shape of the proposed campaign was worked out, through discussion. Eventually, the Client(s) accepted Dr Waller's proposal for a global social media campaign using websites and "viral social media networking" via Facebook, Twitter and other platforms. This was to be supported by visual arts, and events which Dr Waller would organise and create. In April 2014 there were budget discussions. Eventually, on about 22 April, a budget of just under US$500,000 was agreed upon. At around the same time agreement was reached that there would be a "Justice for Novikova" campaign. A formal engagement letter was signed on about 23 May 2014.

The websites & social media sites

64. Between about April and early June 2014 a number of public websites and social media sites and accounts were established: (1) http://www.justicefornovikova.com ("the JFN Website"); (2) http://rakhataliyev.com ("the RA Website"); (3) a page called "Justice-for-Novikova" on Facebook ("the JFN FB page"); (4) a Facebook page called "Prosecute Aliyev" ("the RA FB page"); (5) a YouTube channel devoted to the same topics ("the YouTube Channel"); (6) three Twitter accounts called (a) JusticeNovikova (b) ProsecuteAliyev and (c) IssamHourani. These websites and social media sites were subsequently operated as vehicles for messages hostile to Aliyev and the Houranis, by means that included videos of the Events, and written accounts of what had taken place, and why. Dr Waller accepts that he created all these sites, except for the RA Website.

Messrs Thomson & McCarthy

65. Dr Waller decided to organise a protest outside Mr Hourani's residence in London on the 10th anniversary of Ms Novikova's death, namely 19 June 2014. For that purpose he needed to get people on board whom he could trust, so in late May he called Mr McCarthy, an old friend and acquaintance of around 11 years. Mr McCarthy lived in the US but was Irish, which led Dr Waller to think he could help organise such an event. Mr McCarthy's role was to find the right people to arrange the protest, and to capture footage of the protests for Dr Waller to use. He was to be paid some $1,700 per month.

66. Mr McCarthy introduced Mr Thomson, an old friend of his who also lived in the US but was English and, as Dr Waller puts it, "knew London and may also be interested in helping out". Mr Thomson's task was to research how to assemble approximately 25-30 people in London and to bring them to a location outside the Lowndes Square apartment building for the protest, and to check if any permits were required. On the advert site "Craigslist" he found someone called Sandra who advertised herself as a PA with experience in event management. He was also asked to arrange someone to film and photograph the event, and he found a friend, Bill Mountain, to do that. Mr Thomson was to be reimbursed for his costs, and to receive a project management fee. The three men had email communication in which at least at the start, all

communications between Dr Waller and Mr Thomson were made via an email account Dr Waller had created in the alter ego of "Melissa Van Buren".

Kazakh bankers case

67. On 5 June 2014, as Dr Waller and his helpers were preparing for the June Event and associated online publication, Aliyev was arrested in Vienna, Austria on suspicion of the 2007 murder of two Kazakh bankers who were executives of Nurbank, named Zholda Temiraliev and Abyar Khasenov. He was remanded in custody, and remained in custody at the time of the June Event and throughout the period of the campaign. Koshlyak and Alnur Mussayev were accused of kidnapping, sexually assaulting and murdering the two bankers in collusion with Aliyev. Those charges also remained pending when the campaign began and throughout the period for which it ran.

Media Gang

68. Sandra dropped out of the demonstration project on 16 June 2014 as she had done some research on Aliyev and was extremely concerned for her own safety after "realising" that Aliyev had been convicted of a double murder. As a result, with little time left, Mr McCarthy searched online and found an organisation called Media Gang Ltd, a company which organised "guerrilla marketing". He emailed Mr Thomson with their details, telling him to give them a call "Tell 'em we need a bunch of people to make it look like a protest". Mr Thomson called and spoke to Richard Dietrich, one of the owners of the company. On 17 June it was agreed that Media Gang would supply 25 "protestors" for a fee of £3,775. In the end, they recruited resting dancers.

The June Event

69. This had two aspects to it: a demonstration and a candlelit "vigil". As will become clear, the videos that were later to be uploaded and published online were edited and presented by Dr Waller in such a way as to make it appear that these two aspects of the Event took place in that order, with a "solemn" vigil following the street demonstration, on the evening of the same day. In reality, the "vigil" was set up and staged on the evening of 18 June 2014, and was less than "solemn". Dr Waller gave instructions as to how it could be done. It was a "made for YouTube event" which "… doesn't even need to be a half hour. It just needs to be a few minutes long, but videoed and edited to give the appearance of a longer event." Only 5 or 10 people were needed. If desired they could swap clothes "to make it look like there are more people". Dr Waller provided an example of "a real vigil" to use as a model. He advised the use of a number of different candles, some burnt more than others. It could be done in an alleyway or parking lot. It seems to have been performed in Bill Mountain's back yard. As he reported the following day "we gave up singing as it made us laugh".

70. The demonstration took place from around 10am on 19 June. It can be seen most clearly in the online material, which shows about 30 "protesters" in the street, then standing outside the apartment building in 10 Lowndes Square where the claimant has his London home. The "protestors" are wearing Anastasiya Novikova masks. They hold a very large banner and large placards 2 feet by 4 feet reading "Justice for Novikova". They hold up other large placards bearing head and shoulders photographs of Aliyev, Mr Hourani and Devinncci Hourani, each bearing the hand-

written legend "Murderer". Mr Hourani is of distinctive appearance. His image on the placards is very clearly recognisable to anyone familiar with his appearance. The placards appear to be about 1 metre high by 80cm wide.

71. Again, this was all carefully stage-managed by Dr Waller. It was he who ordered the materials for use at the event. He gave detailed instructions by email to Mr Thomson, specifying the chants to be used, the wording to be written on the placards and much more. He explained that "the posters with the images of the three men should have handwritten along the tops of them, in bold, block letters: 'MURDERER' It's vital for these signs to be seen displayed in front of the actual address even for 5 or 10 seconds." The footage obtained was satisfactory to Mr Thomson because it "looked like" citizen journalism, and "looks real".

Online Publication

72. On and between 19 June 2014 and 7 July 2014 the following postings were made, in this order, or about this order:

(1) On the JFN website, from about 19 June, under the headline "**The Perpetrators**", accompanied by a photograph of the Claimant:

> "A Kazakhstan KGB general and two-time ambassador to Austria from Kazakhstan, Rakhat Aliyev seduced young Anastasiya Novikova and impregnated her, taking away Anastasiya's baby daughter before dying a violent death. …
>
> Aliyev's many accomplices include his brother-in-law, Issam Hourani, and Issam's brother, Devincci Saleh Hourani (also spelled Khorani). They are allegedly among the main perpetrators of the crimes against Anastasiya.
>
> Witnesses say the Hourani brothers helped keep the woman Aliyev had impregnated, Anastasiya Novikova, captive in Beirut. They own the Beirut apartment where Anastasiya was imprisoned, tortured, raped and murdered.
>
> They also own a £7.5 million flat at 10 Lowndes Square in London.
>
> Supporters of justice in the Novikova case overcame fears of retribution, and held a protest vigil at Lowndes Square on June 19, 2014 *[with a link to a post on the Justice for Novikova Facebook page containing photographs taken of the 19 June event including posters of the Claimant with the word* "MURDERER" *written above his head]*, to mark the 10th anniversary of Anastasiya's murder.
>
> Issam took Anastasiya's baby daughter away from her against her will, and gave it to his sister to raise.
>
> Both brothers helped remove Anastasiya's broken body from Lebanon for its secret burial in Kazakhstan."

(2) On the JFN FB page, under the heading "**Lowndes Square vigil in London**", from about 19 June:

> "The daytime protest continued into the night as the #JusticeForNovikova campaign held a candlelight vigil at London's Lowndes Square. They chose the square because two of Rakhat Aliyev's accomplices own flat [sic] there. Those same accomplices owned the Beirut apartment where Anastasiya Novikova was held captive and killed ten years ago, on June 19, 2004."
>
> [Under the heading] "**The movement spreads from London**" [a photograph of 'protesters' holding placards including one bearing the Claimant's image and the word] "MURDERER"
>
> [Next to a photograph of the Claimant's London home] ""There it is!" One of the group finds the address of the Lowndes Square flat belonging to the Hourani brothers – accomplices of Rakhat Aliyev and owners of the Beirut apartment where Anastasiya was imprisoned, brutalized, and murdered."
>
> [A further photograph of a 'protester' holding a placard bearing the Claimant's image with the word] "MURDERER".
>
> On the JFN Website, from about 20 June 2014, under the headline "Protesters rally at Aliyev accomplices' home in London":
>
> Protesters in solidarity with the #JusticeForNovikova campaign held a rally in front of the exclusive London apartment building where accomplices of Rakhat Aliyev own a luxury flat, to observe the 10th anniversary of Anastasiya Novikova's death.
>
> 'We are gathering on the steps of the London home of Issam and Devincci Hourani here at Lowndes Square, because they owned the apartment in Beirut where, ten years ago today, Anastasiya was hurled to her death,' said a campaign spokesperson.
>
> Anastasiya was killed on June 19, 2004. About thirty people participated in the protest, unfurling a #JusticeForNovikova banner *[as made available for download on the Justice for Novikova website]* on the front step of the building.
>
> They held posters of Aliyev and the Houranis as Aliyev accomplices. See the Justice for Novikova Facebook page *[a link to the Justice for Novikova Facebook page]* for pictures, and the #JusticeForNovikova YouTube channel for video *[a*

> *link to the video entitled "Why we protested Rakhat Aliyev in London!" published on the YouTube channel]*.
>
> To symbolize that they were speaking on behalf of a woman who could no longer speak because she is dead, the participants wore masks depicting Anastasiya's face."

These words were accompanied by photographs of the June Event including posters of Mr Hourani with the word "Murderer" written above.

(3) On the RA FB page, from about 20 June, the text and photographs set out and referred to at (2) above, and the following further words, *under the headline* "**London protest on 10th anniversary of death**":

> "British young people protest in front of the home of two of Rakhat Aliyev's alleged main accomplices in the abduction and death of Anastasiya Novikova. Owners of a flat in this building in London's exclusive Lowndes Square, the accomplices owned the Beirut apartment in which Anastasiya was held captive, brutalized and killed."

(4) On the YouTube Channel, from about 22 June 2014, three videos:

a. The first featured cartoon images, and accompanying text:

> "JusticeForNovikova.com was launched to mark the 10th anniversary of the death of Anastasiya Novikova, a young mother who was murdered after bearing the child of the man she loved."

The video contains the following images/text/speaking]:

[Drawings/cartoons of Rakhat Aliyev, the Claimant and Devincci Hourani with narration]:

> "The men responsible for my death haven't been brought to justice yet."

[Over drawings/cartoons of a woman being held captive, narration]:

> "For months Rakhat Aliyev and his henchmen kept me prisoner, beating me, drugging me, raping me…they ended my agony on June 19 2004."

[Drawings/cartoons of Rakhat Aliyev, the Claimant and Devincci Hourani with the narration]:

> "Like so many others who suffered at my murderers' hands I have been forgotten.

> For my child and my killers' many other victims bring them to justice."

b. The second video depicted the June Event, with photographs of Mr Hourani under a banner reading "Murderer" and the caption "bring her killers to justice"", accompanied by these words:

> "Exclusive: Anti-Aliyev protesters make video of London rally … Demonstrators who braved the police in the inner sanctum of London's super-rich explain in this video why they protested the 10th anniversary of the death of Anastasiya Novikova."

c. The third video explained "Why we protested Rakhat Aliyev in London …" (sic). It contained a picture of the "murderer" banner depicting Mr Hourani, and the following narration:

> *[Narrator:]* "We are here at Lowndes Square protesting because an accomplice to the murder of Anna lives right here. The Hourani brothers who own the flat in Beirut where Anastasia was captured and killed 10 years ago today. They are the accomplices of Rakhat Aliyev who is being held in Austria right now on murder charges".

(5) On the JFN FB page, from about 22 June 2014:

> "Protesters showed up at London's exclusive Lowndes Square, site of a residence to two close Aliyev associates who owned the Beirut flat where Anastasiya was killed."

(6) On the JFN Twitter account from 22 June 2014 (11:59pm), a link to a video on the YouTube channel entitled "**Why we protested Rakhat Aliyev in London**", and a photograph showing a 'protester' holding a placard bearing the Claimant's image and the word] "MURDERER"

(7) On the JFN Website from about 23 June 2014 under the headline "**Demonstrator explains the London anti-Aliyev protest**":

> "A participant in the June 19 protest against accused murderer Rakhat Aliyev explains in a video why the group chose Lowndes Square, the heart of London's super-rich, to hold the demonstration.
>
> "he video, posted on YouTube *[a link to the YouTube video of the 19 June event]*, shows the anti-Aliyev protest footage of their own event, held to mark the 10th anniversary of the murder of Anastasiya Novikova.

> "An accomplice to the murder of Anastasiya Novikova lives right here" in Lowndes Square, the unnamed protester says in the video."

(8) On the RA FB page from about 23 June, video of the June Event with the words: "Protester explains why his group converged on London's Lowndes Square on the 10th anniversary of Anastasiya's violent death."

(9) On the JFN FB page from about 27 June 2014:

> "This is the place where Issam khourani the brother in law of rahat aliyev lives in London, he is married to gulchat the youngest sister of rahat. him and other members of his family they are the owners of the apartment in Lebanon where the crime took place,100% Issam ,gulchat and his younger brother by the name housam they were in Lebanon at that time".

(10) On the JFN Twitter account from 27 June 2014 (5:00pm): A link to a video on the YouTube channel entitled "**Exclusive: Anti-Aliyev protesters make video of London rally**".

(11) On the JFN Website from about 6 July 2014 under the headline "**Police photos show where Anastasiya was killed**", and illustrated by a number of photographs and images of official-looking documents:

> "The police photos show where Anastasiya was killed: at the Beirut apartment owned by Rakhat Aliyev's brother-in-law, Issam Hourani, and Issam's brother, Devincci Hourani. Both Houranis have been close business partners of Aliyev and figure prominently in Anastasiya's captivity, abuse, and death, and the cover-up that followed."

73. Further online postings were made in and from about late October 2014, making reference to the posting of stickers in and around the area of Mr Hourani's home:

(1) On the JFN Website, from about 28 October 2014 under the headline "#JusticeNovikova stickers are still appearing around London":

> "JusticeForNovikova supporters remain active around the neighbourhood of Rakhat Aliyev's accomplices
>
> our #JusticeforNovikova stickers are still appearing around London.
>
> We get reports of sticker sightings occasionally. A supporter sent in this photo of our logo that someone had placed at the Knightsbridge underground station earlier this month.
>
> The location is noteworthy, because Knightsbridge is the closest tube stop to Lowndes Square, home of Rakhat Aliyev's accomplices Issam Hourani and Devincci Hourani.

> The Hourani brothers owned the flat where Anastasiya Novikova was held captive and killed in 2004."

(2) On the JFN FB page, from about 28 October 2014, accompanying a photograph of a sticker bearing the JusticeForNovikova logo posted on Knightsbridge Underground station:

> "Knightsbridge Station is right near Lowndes Square, where the two Aliyev associates live who owned the Beirut apartment where Anastasiya Novikova was held captured and was brutalized, and where she was killed."

(3) On the JFN Twitter account from 2 November 2014 (5:42pm): "Download free #JusticeNovikova images to make stickers and posters to bring #RakhatAliyev and his cronies to justice" *[link to the downloads page of the Justice for Novikova website]*

(4) On the RA FB page, from 2 and 3 November 2014 respectively, republications by 'sharing' of the posts on the JFN FB page set out at (1) and (2) above.

(5) On the JFN FB page, from about 3 November 2014 accompanying a photograph of Noura Restaurant, where a Sticker appears to have been posted on a window:

> "This is Noura Restaurant at Lowndes Square, just a few doors down from where two of Rakhat Aliyev's accomplices own a £7.5 million flat. Those accomplices are Issam Hourani and Devincci Hourani (Khorani), one of whom is married to Aliyev's sister. We protested there at 10 Lowndes Square last June. The Hourani brothers owned the flat in Beirut where Anastasiya Novikova was held captive, tortured and murdered."

The Stickers

74. Each of the postings referred to at 73 (1) and (2) above was accompanied by a photograph showing a sticker with the JusticeForNovikova logo posted at Knightsbridge Underground station. The logo was a stylised image in blood red and white showing a silhouetted female body falling head first, with the legend #JusticeForNovikova. Such stickers were posted on lampposts and other street furniture in the immediate vicinity of Mr Hourani's London home from late October 2014 onwards.

The November Event

75. On 16 November 2014 an event purporting to be a demonstration was conducted in Hyde Park in London and outside the Lebanese Embassy in London. The 'protesters' carried placards bearing the Claimant's image and the word "MURDERER", and placards and large banners reading "Justice for Novikova"; they chanted "justice for Novikova" and "get the murderers out of London"; and they read out statements including the following words:

> "We are here today to encourage the Lebanese Government to place Issam Hourani and Devincci Hourani on trial for their part in the murder of Anastasiya Novikova."
>
> "They're living right here in London, right at Lowndes Square, just around the corner from Harrods; murderers living amongst us. This must stop."

Further Online Publication

76. On and from 16 November 2014 the following further online posts were made:

(1) On the JFN FB page:

a. a photograph of two 'protesters' holding up a letter, accompanied by the words:

> "Supporters of Justice for Novikova attempt to deliver a letter to the Lebanese Ambassador in London, supporting a Lebanese judge who is considering filing murder charges against Issam and Devincci Hourani, two accomplices of Rakhat Aliyev, for Anastasiya's murder."

b. a photograph of a 'protester' holding a placard with an image of Mr Hourani above which is written "MURDERER".

c. a photograph of a 'protester' holding a placard with an image of Mr Hourani above which is written "PUT HIM ON TRIAL", accompanied by the words: "This says it all."

d. a photograph of 'protesters' holding banners and placards including a placard bearing Mr Hourani's image and the word "MURDERER", accompanied by the words "get the murderers out of London".

(2) On the RA Twitter account, retweeted on the Issam Hourani Twitter account: a photograph of 'protesters' holding banners and placards, including the "murderer" placards bearing Mr Hourani's image, accompanied by these words: "Another pic of Nov 16 London protest to try the murderers of Anastasiya Novikova. #RakhatAliyev #Kazakhstan #Hourani".

77. Further online postings followed:

(1) On the RA FB page, from about 20 November 2014, there were republications (by 'sharing') of images of the November Event first published on the JFN FB page. This included including images of 'protesters' holding the "murderer" placards, and the following text: "New protest in London against Rakhat Aliyev and his accomplices, Issam and Devincci Hourani, today near Kensington Palace."

(2) On the YouTube Channel from 20 November 2014, a video of the November Event with the following notable features:

a. The text: "'Get the murderers out of London!' … Protesting next to a restricted area in London, supporters of Anastasiya Novikova's case backed a Lebanese judge who is considering murder charges against two Lebanese-born associates of Rakhat Aliyev. The protest, led by a mother who lost her 21 year-old daughter, took place on November 16."

b. photographs of placards bearing Mr Hourani's image, and the words "get him out of London", "Put him on trial" and "Murderer";

c. under pictures of placards with Mr Hourani's photo on them, the caption "the killers remain at large";

d. a further caption, "we won't let Anastasia's killers get away with murder";

e. the spoken words

> "[Man:] We are here today to encourage the Lebanese government to place Issam Hourani and Devincci Hourani on trial for their part in the murder of Anastasiya Novikova"
>
> *[Repeated chanting over photographs of the claimant and Devincci Hourani]*: "Get the murderers out of London"
>
> *[Woman, speaking over images showing photographs of the claimant and Devincci Hourani]*: "Living right around the corner from Harrods are murderers living amongst us, this must stop"

(3) On the JFN Twitter account the following posts appeared from 20 November 2014:-

> (1:03pm): "London protest against #Rakhat Aliyev, demanding his Lebanese accomplices go on trial for @JusticeNovikova murder. #Kazakhstan #Hourani", accompanied by a photograph of 'protesters' holding banners and placards including a placard bearing the Claimant's image with the word] "MURDERER". There was a caption: "Photo of Nov 16 'Get the murderers out of London' protest. #RakhatAliyev #Kazakhstan #Hourani #murder"
>
> (11:41pm): "London protesters back Lebanese judge to try murder suspects": [link to the YouTube video]

(4) On the JFN Website, from about 21 November 2014, under the headline "CNN shows our London protest video on iReport":

> "For the second time since July, CNN has hosted a video of our protests to bring the murderers of Anastasiya Novikova to justice.

> The latest video is of our November 16 protest outside the Lebanese Embassy in London. #JusticeForNovikova activists attempted to deliver a letter to the Lebanese Ambassador, but were stopped by police and warned that they would be arrested.
>
> *[A photograph of 'protesters' holding banners and placards including with images of the Claimant]*
>
> London protesters carry banners in English and Arabic, calling for Lebanon to try Issam and Devincci Hourani for the murder of Anastasiya Novikova.
>
> The letter was an expression of support for the Lebanese judge who is reportedly considering Anastasiya Novikova's murder case. Two prime suspects are said to be named – both of whom are Lebanese co-conspirators of Rakhat Aliyev.
>
> The suspects are Issam Hourani and Devincci Hourani. the former Hourani is Aliyev's brother-in-law.
>
> "Get the murderers out of London!" the protesters chanted in the video.
>
> One of the participants, a mother who lost her 21 year-old daughter and identifies with Anastasiya's parents, saying that she and others would fight in Britain for their cause.
>
> The Houranis own a flat at London's exclusive Lowndes Square, which was the site of a #JusticeForNovikova protest last June [with a link to a video on the YouTube channel entitled "Exclusive: Anti-Aliyev protesters make video of London rally", on the 10th anniversary of Anastasiya's murder.
>
> Protesters chose Lowndes Square because the Houranis owned the Beirut flat where Anastasiya was held captive, turtured [sic], raped, drugged, and ultimately murdered in 2004. The protest took place on the 10th anniversary of her violent death."

(5) On the JFN Website, from about 24 November 2014, under the headline "More pictures from Nov 16 London protest":

> "We have received more photos of the #JusticeForNovikova protest in London that called for two associates of Rakhat Aliyev to be brought to trial for Anastasiya's murder.
>
> The protest took place near the Lebanese Embassy after police warned supporters that they risked arrest if they attempted to hand-deliver a letter to the Lebanese Ambassador.
>
> The letter supported a Lebanese judge who is considering a case against Aliyev's in-laws, Issam and Devincci Hourani, in connection with Anastasiya's murder in 2004.

> CNN iReport published a video online of the protest *[link to the video]*. A gallery of the photos appears below. See the related Twitter feeds with the hashtag #RakhatAliyev.
>
> *[Beneath a photograph of 'protesters' carrying banners bearing the Claimant's face and the slogan "#JusticeForNovikova" in both English and Arabic]* "London protesters carry banners in English and Arabic, calling for Lebanon to try Issam and Devincci Hourani for the murder of Anastasiya Novikova."
>
> *[As a caption to a photograph of placards including one bearing the Claimant's face]* "'Get the murderers out of London!""
>
> *[As a caption to a photograph of 'protesters' holding a placard with the image of Rakhat Aliyev above which was written]* "MURDERER" *[and a placard with the image of the Claimant above which was written]* "PUT HIM ON TRIAL": "Rakhat Aliyev and his brother-in-law, Issam Hourani."
>
> *[As a caption to a photograph of 'protesters' holding aloft placards including one bearing an image of the Claimant]* "Demand to put Issam Hourani on trial for murder."

(6) On the JFN Twitter account from about 28 November 2014 (8:55pm):

> "More than 1500 people have seen our Nov 16 #London protest on YouTube. #Rakhat Aliyev #IssamHourani #Kazakhstan *[link to a video on the YouTube channel entitled "Get the murderers out of London!"]*

(7) From about 12 December 2014:

a. On the JFN Website, "[The claimant and his brother] are suspected of being material participants in the murder of Anastasiya Novikova in 2004, where they owned the apartment where the young women [sic] was held captive, tortured and raped. She "fell" to her death form the apartment balcony."

b. On the JFN Twitter account: "Issam Hourani, in-law of #RakhatAliyev allegedly implicated in Anastasiya death, got CNN to pull London protest video"

c. On the RA Twitter account: "#RakhatAliyev in-law wants Facebook to #censor the @ProsecuteAliyev Twitter page. See image. #IssamHourani #Hourani"

(8) From about 16 December 2014, the words at (7)(c) above were retweeted on the Issam Hourani Twitter account.

78. There were further online postings, the dates of which are not entirely clear. From dates unknown in 2014, the sites contained the following content:

(1) The JFN website included posters including a logo and images of Rakhat Aliyev, the Claimant and the Claimant's brother, and invited readers to download those posters as well as a ten foot banner. Next to the poster of the Claimant was the following text:

> "The other Hourani (Khorani) brother, Issam, is Rakhat Aliyev's brother-in-law, and personally saw to Anastasiya's control while she was in Beirut. He co-owned the death apartment with Devincci."

(2) The RA website had a page entitled "The Mafia" which prominently displayed prominently an image of the Claimant along with his name, accompanied by the following text*:*

> "Rakhat Aliyev's brother-in-law, Issam Hourani serves as not only one of Aliyev's primary business partners, but also as one of his closest confidantes. As such, he has bloodied his hands cleaning up many of Aliyev's messes, most notably, that of Novikova's murder.
>
> The Hourani brothers own the apartment in which Novikova was imprisoned for several years, as well as many lavish properties across the world, financed from their work with Aliyev and other such deviant characters. Along with properties in Lebanon and the US, the Hourani brothers own a £7.5m apartment in one of London's most expensive areas, Belgravia's Lowndes Square."

(3) The RA Website had another page entitled "Issam Hourani", which prominently displayed images of the Claimant and contained the following text:

> "Name: Issam Hourani
>
> From: Lebanon
>
> Crime: Accomplice of Aliyev in money laundering schemes and murder of Novikova
>
> The Hourani brothers own the apartment in which Anastasiya Novikova was imprisoned and tortured during her last months of life, as well as many lavish properties across the world."

(4) On the JFN FB page, from a date which may be inferred to be around November or December 2014, there was a "Page Info" section containing these words:

> "This Christmas help us to bring Anastasiya's murderers to justice.
>
> "#JusticeForNovikova is devoted to seeking justice for the murder of a young mother, Anastasiya Novikova, in June 2004.

> "A decade after her death, Anastasiya's alleged killer – the father of her daughter – surrendered to the Austrian authorities in response to an international warrant in connection with two other murders. However, he has not been charged in Anastasiya's murder. Nor have his accomplices, who own a flat at the exclusive Lowndes Square in London."
>
> *[A link to the JFN Website]*

Subsequent events

79. A few post-publication events deserve mention. Some of them must be mentioned because they are relied on by way of defence. I also mention the outcome of the Lebanese civil claims. That is immaterial to the question of reasonable belief, which must be tested against what was known or knowable at the time of publication. For reasons given above, I find that the Lebanese findings are inadmissible on the issue of guilt or innocence. But the outcome and the reasoning behind it do have some materiality, and having set out what was alleged in the Lebanese proceedings it is also fair to record how those proceedings ended.

(1) On 24 February 2015 Aliyev died in an Austrian prison cell. It appears that the Viennese authorities attributed his death to suicide.

(2) On 10 July 2015 Koshlyak was acquitted of the murder charges against him. He was found guilty of the kidnap of the two Kazakh bankers and sentenced to two years in jail.

(3) Three days later, on 13 July 2015, the Lebanese investigation judge Rami Abdallah dismissed the civil claims against Aliyev and the Houranis. The Judge dismissed the claim against Aliyev on the grounds of his death. He dismissed the charges against the Houranis on the merits, "since no evidence is established". As to the claimant, Issam Hourani, the Judge explained:

> "Whereas concerning the defendant Issam Hourani, it appeared that on the date of death he was outside the Lebanese territories as verified through the attestation issued by the Directorate General of Security General under No. 20028 dated 21/10/2014…
>
> …the friendship and kinship between the defendant Issam Hourani and the late Rakhat Aliyev and the content of the depositions of the witnesses if we presume taking it into consideration, will not form a sufficient evidence to doubt the involvement[2] of the defendant Issam Hourani in the death of Anastasia Novikova, if we presume arguendo that a criminal act took place as stated, and so it is necessary to prevent trial against him for the crime stipulated in article/549/penal code since no evidence has been established."

[2] Again, the translation is poor. The sense clearly must be that such evidence is an insufficient basis to believe in Mr Hourani's involvement.

(4) The Republic of Kazakhstan and Mrs Medvedeva appealed to the Accusatory Board against the decision to dismiss the claims against the Houranis. In its Decision of 27 May 2016 the Board dismissed the appeal, reasoning as follows:

> "And whereas it appears from all the papers and investigations, that the defendant Issam Hourani is married to Rakhat Aliev's sister…
>
> … and according to the letter of the General Security, he was outside Lebanon on the day when Anastasia died, and no evidence was available for his role in the foregoing death accident.
>
> … Hourani had no role in the foregoing except that the first owns an apartment in Khaldeh and the second carried out the translation at Choueifat squad upon the request of the Kazakhstan consul while hearing the deposition of Daniyar Esten, and therefore the defendants **Issam Hourani, Devincci Hourani and Houssam Hourani** had no role…"

IV. PUBLICATION

80. The issue is not whether there was publication at all. Plainly, that was the aim of Dr Waller and the others involved, and it was certainly achieved. The issue is whether there was publication within the jurisdiction of this court (and if so, to what extent and with what consequences). The reason the issue is limited to publication within this jurisdiction is that the defendants are all foreigners, in the sense that all the individual defendants are domiciled or resident in the USA, and Psybersolutions is a US company. As such, they cannot be sued here as of right. The first four defendants have been served by permission of the court, which was granted on the basis that they can properly be sued here for remedies in respect of torts alleged to have been committed or threatened within the territorial jurisdiction of this court. Dr Waller agreed to submit to the court's jurisdiction, but the claims which he agreed to face here relate only to alleged harassment by publication in this jurisdiction. The defendants do not accept that there has been any, or any substantial publication here, and require that to be proved.

81. This is an unattractive stance, given the evidence as to the defendants' aims and intentions. The Events were held in London because of Mr Hourani; it was known to be Mr Hourani's home. For that reason the address of his London home was targeted for the June Event, and the November Event was held nearby. Much effort was devoted to making a "splash" of the Events themselves, which were acted out in the daytime, in public, in the English language. The online publications were in English. The UK was one of the principal target jurisdictions for those publications. As Dr Waller reported to his Client(s) in July 2014, "Our marketing campaign targeted Austria, France, Germany, Kazakhstan, Malta, the United Kingdom and the United States". There was a "campaign to keep the [claimant's] neighbourhood populated with stickers". There is more on this topic, as will become clear. I am reminded of the words of Lindley LJ in the passing-off case of *Slazenger v Feltham (No 2)* (1889)

RPC 531, 538: "Why should we be astute to say that he [the defendant] cannot succeed in doing that which he is straining every nerve to do?" But just as a claimant in passing off does not establish deception by proving an intention to deceive, the claimant in a publication case does not carry home his case by proving an intention to publish within this jurisdiction. It is doubly unattractive for Dr Waller to put this point in issue, given the content of his written reports to the Client(s), to which I will come. Again, however, the issue is not what Dr Waller said to his client about the location and extent of publication, but whether there was in fact any and if so what publication in this jurisdiction.

82. In defamation law the principles concerning publication are clear. Publication of written words or images takes place if, when, and where those words are read. If publication is by the display of an image or writing or both on a placard or banner in the street, there is publication to anyone who sees and reads that material, and understands the language of any written message. As for online material, there is no presumption that material posted on the internet has been read and thereby published. Whether that is so is a question of fact, and the onus of proof lies on the claimant. Online material is published if, when, and where it is accessed by users: see *King v Lewis* [2004] EWCA Civ 1329. In defamation law, publication is actionable only if it is made to someone other than the claimant. That limitation cannot apply in harassment, where the nature of the tort means that publication to the claimant himself must count. It has not been suggested that any other adaptation of the defamation principles is necessary or desirable in a case where publication is alleged to amount to harassment.

83. I find that Mr Hourani's case on publication is amply made out. I deal first with online publication. There is unchallenged evidence that Mr Hourani and his daughter saw some of the online material, which supports the claim in harassment. But it is clear that there was substantial publication of online statements to people other than Mr Hourani and his family members. That is made out on the defendants' own evidence. Dr Waller confirmed in cross-examination that his reports to the Client(s) could be taken as an accurate reflection of the true position. I accept that evidence. There was an initial report of 7 July 2014, called a "progress update" and six main reports thereafter, starting with one for "11-17 July 2014" and ending with one "as of 13 November 2014". The key points that emerge from these reports are helpfully summarised in a Schedule prepared on behalf of Mr Hourani and submitted as part of the closing argument for the claimant ("the Publication Schedule").

84. The Publication Schedule, which appears to me to be accurate and reliable, identifies, for the websites, the number of "sessions" and "new users" reported on each occasion. For the JFN Website the total number of sessions reported was 3,174 and the total number of new users was 2,949. For the RA Website the figures were 3,818 and 3,857. The figures for the Facebook pages are much higher. The Publication Schedule identifies the "worldwide reach" and the number of UK "likes" reported. The total figures for the JFN FB page are 812,609 and 276. For the RA FB page Dr Waller reported 711,106 worldwide reach and 486 UK likes. The Publication Schedule also deals with advertising on Facebook (UK), which is reported to have reached 161,686 worldwide, and with YouTube, said to have had 2,002 views.

85. The worldwide figures I have given need to be adjusted to arrive at an estimate for publication in this jurisdiction. That can be done in reliance on percentages given by

Dr Waller in his reports. The proportion of website and YouTube publications attributed to the UK in Dr Waller's reports varies from a low of 3% in the first report on the RA Website to a high of 31% for that same website, in the final report. It is necessary to bear in mind that the UK is more than just England and Wales. But it seems to me that the overall figure of 15% proposed on behalf of Dr Hourani is a conservative and reasonable one. The reports do not include figures for the FB pages, as those data were not available to Dr Waller. But I accept that it is reasonable to apply the 15% figure to the reported figures for FB reach worldwide. That yields a total reach in England and Wales of nearly 122,000 for the JFN FB page, and over 106,000 for the RA FB page. It is relevant to note that Dr Waller's reports to the Client(s) recorded the average times spent by visitors to the websites. These were significant. Dr Waller's second report said, by way of example, that "The average user spent 1:41 on the site, with 2.84 pages per session." Returning visitors represented only 10% of visits. At this stage, UK visitors represented 20% of the total.

86. In late February 2015, following the death of Rakhat Aliyev in Austria, some of the online material was picked up and recycled in an article published in the MailOnline, at www.dailymail.co.uk, on 26 February. This article alleged that Anastasiya Novikova had been "hurled to her death" from a ninth story apartment window in Lebanon, after she gave birth to "Aliyev's daughter Luiza". She was said to have been "murdered .. reportedly following Aliyev's discovery that she had become pregnant a second time". The article, a long one, featured a rogues' gallery with head and shoulders shots of Mr Hourani, his brother, and – between them – Rakhat Aliyev. Above these photographs was a heading "The Mafia", and the text:

> "Rakhat Aliyev's brother-in-law, Issam Hourani, serves as not only one of Aliyev's business partners, but also as one of his closest confidantes (sic). As such, he has bloodied his hands cleaning up many of Aliyev's messes, most notably, that of Novikova's murder."

These words, including the misuse of the feminine form of "confidant", are drawn word for word from the RA Website. The article went further, stating that "Novikova's family has demanded the arrest of Hourani and his brother… accusing them of her murder." The fact that, as I find, the online material was at least a main source of the MailOnline's assertions about Mr Hourani is further demonstrated by the picture credits, attributing the rogue's gallery pictures to the RA Website and a photo of Anastasiya Novikova and Luiza to the JFN Website. It is not only Mr Hourani's evidence but also a matter of common knowledge that the MailOnline is one of the most widely read websites in the world.

87. As for the complaint about the Events themselves, the defendants accept that these took place in this jurisdiction, but do not accept that the display of the banners and placards in the street involved any publication at all. This is belied by a considerable body of evidence. Manuel Bendon, a director of Media Gang, was there to organise and run the demonstration at the June Event. His agreed statement describes the dancers turning up from 10am on 19 June, which was a Thursday. It is the agreed evidence of the doorman at Lowndes Square, Thomas Kennedy, that the crowd was outside the address for 15-20 minutes, and that he saw the placard calling Mr Hourani a "murderer". The doorman approached Mr Bendon, said he was going to call the police, and the crowd dispersed. The video and audio recordings later shown, in

edited form, on the Websites show clearly that this was a substantial demonstration. The recordings show that, as the doorman told Mr Hourani on the day, the protesters obstructed the communal entrance to his property. Mr Hourani was not there but his evidence is that he heard the crowd in Lowndes Square, whilst out with Gulshat in the neighbourhood. Mr Hourani says that "many of my neighbours witnessed the demonstration directly" and, as a result of this and other publications, "shunned" him and his family. This evidence is consistent with the inference that would naturally be drawn from the other evidence, and it was not really challenged. It was put to Mr Hourani that none of his neighbours had given evidence for him. That is hardly surprising. It is a commonplace of defamation litigation that those in whose eyes a claimant is harmed are reluctant witnesses, if indeed the claimant thinks fit to approach them. I accept that there was publication to a substantial number of neighbours at and during the June Event itself.

88. The defendants' refusal to concede that the June Event involved any publication is particularly remarkable in the light of the evidence about the purchase of the Montfleury Hotel. In support of his claim for damages Mr Hourani alleges that in June 2014 he was in an advanced stage of negotiations to buy the hotel, having agreed a price. In July 2014 the seller pulled out, on the basis of the June Event and the wider campaign, it is alleged. This was pleaded in the original Particulars of Claim, to which the response was one of non-admission. The claimant's case relies on an email disclosed by Mr Hourani, sent on 4 July 2014 by one Bruce Carswell on behalf of the hotel seller ("the 4 July Email"). Mr Hourani dealt with the matter in his witness statement, relying on the 4 July Email as evidence that the seller had pulled out of negotiations "citing the … demonstrations … as reasons for aborting the transaction." This is an accurate account of the 4 July Email, in which Mr Carswell wrote to a representative of the Houranis:-

> "[Subject] Montfleury Hotel Cannes
>
> My understanding is that the principal shareholders will be the Houranis, principally Mr Devincci,who visited the hotel on two occasions, acting via Hussam Hourani.
>
> You have subsequently confirmed that these are the same Houranis who have a murder case pending against them and were subject the demonstrations that I in fact happen to have witnessed last week when visiting Sheikh Ahmed Farid whose flat is located at 1 Lowndes Square, 30 metres from the very site of these ugly demonstrations.
>
> In these circumstances, I am sure you will understand that we are not willing by any means to enter into any transaction with the Houranis (whether or not we retain some shares), notwithstanding any assurance that can be provided as to their morality or the frivolous nature of the allegations against them.
>
> In any event, there is the "comite d'enterprise" as you know in France (and perhaps banks) that will raise difficulty as the names of the Houranis and allegations against them pop up upon basic internet search.

> Please convey our refusal to accept the Houranis offer diplomatically but firmly."

There is no clear or satisfactory evidence that Mr Carswell was acting on the basis of any of the online publications and even if he was, the probability is that the publication to him took place in France or elsewhere outside this jurisdiction. But there has been no challenge to Mr Hourani's evidence, or to the content of the 4 July Email, which establish that an important business contact witnessed the "ugly" June Event, and acted on its central message, to the claimant's detriment. I am satisfied that there was publication to Mr Carswell.

89. It is also clear from the defendants' own evidence that there was substantial publication in and around London SW1 of the Stickers (though this was not - and is not alleged to have been - defamatory of Mr Hourani). Dr Waller's reports to the Client(s) make clear that the aim was to ensure wide distribution of these in prominent and well-known London locations. The main objective may have been to obtain images for online publication, but in order to do that the stickers had to be posted and they were. Dr Waller says in his statement:

> "In terms of the stickers, we made them available online for anyone to order and post, and distributed them by hand. I myself stuck about 10 of these, each about the size of a credit card, at various places such as Knightsbridge tube station."

The online publications boasted of the fact and the extent of the sticker distribution in London, and I am satisfied that in this respect they were portraying the substantial truth. Mr Hourani's evidence, which I accept, is that neighbours saw the Stickers also.

90. As to the November Event, there is no eye-witness evidence for the claimant. Mr Hourani learned of the Event from a friend who sent him a link to the JFN Website containing images of what had taken place. He relies on what was shown online, and on what the defendants themselves have had to say about the event, in contemporaneous correspondence, and in their evidence at this trial. Dr Waller was present, and filmed the event. His statement describes an attempt to deliver a letter to the policeman at the gate leading to the Embassy, followed by a visit to "the park next to Kensington Palace", where "we staged the protest behind a row of shrubs so as not to cause a commotion, in a place where the embassies could be seen in the background." Mr McCarthy was also present. His evidence tells of a plan to organise a further protest consisting of about 30 people, and he describes what took place. He brought a number of people to the Event. There was a fresh set of posters and banners. He says they met in Hyde Park and the protests took place there and outside the Lebanese Embassy. "The demonstrators held out banners, read out wording and chanted together as instructed by [Dr Waller]."

91. What I have found most helpful is the edited footage, and rushes, on the DVD supplied as part of the evidence. They do support Dr Waller's evidence that when the assembled "protestors" got together in the park they were in a corner. No bystanders are apparent. It may be that the Event did not go on for a long time. But the protests included an assembly in the street – seemingly on the north side of Bayswater Road, opposite the entrance to Kensington Palace Gardens. This is a major thoroughfare.

The video recordings make clear there was busy traffic. The banners and placards were large and bold, and the wording will have been visible from a distance. The chants were loud. The rushes show that there were several "takes" of the key scenes shown in the edited version. This all took place in well-known public places in Central London during the daytime on a Sunday. Although the evidence is less satisfactory than the evidence about the June Event, in my judgment the proper conclusion is that there was some publication to onlookers of the messages on the banners and placards, and of the chanting.

V. RESPONSIBILITY

92. A threshold issue in the libel claim and the harassment claim is the extent to which each defendant bears legal responsibility for individual elements of the campaign: the Events, the Online Publications, and the Stickers. This is analytically separate from the issue, considered below, of whether what any defendant did or caused or authorised to be done amounted to a "course of conduct" for the purposes of the 1997 Act.

93. The principles of responsibility for publication in defamation law are clear. The first four defendants are sued for harassment as well, and Dr Waller is only sued for harassment. But for the most part the conduct that is complained of is the same in each tort. It has not been suggested that any different legal principles should be applied when considering responsibility for a publication which is alleged to amount to harassment. I therefore approach this aspect of the case on the basis of the defamation principles.

94. Liability for publication arises from participation in, or authorisation of, the publication complained of: *Watts v Times Newspapers Ltd* [1997] QB 650, 670. Someone who is a joint author of an article is liable, as is a person who reads and edits text for publication. It may not be necessary for the defendant to know the specific words to be used, but it is necessary to show some knowing and active involvement in the process of publication of the words or message complained of; a "passive instrumental role" in that process is insufficient: *Bunt v Tilley* [2007] 1 WLR 1243 [23]. It is certainly not enough to be aware of a defamatory publication and to fail to take steps to prevent it: *Underhill v Corser* [2010] EWHC 1195 (QB).

95. Applying these principles to the facts, as disclosed by the evidence at this trial, my conclusions are these. First, Dr Waller bears responsibility for all the publications and other acts complained of and described above. He was the originator and organiser of the campaign as a whole. He wrote much of the text. He edited the videos. And he personally posted much of the online material. He does not seriously dispute his responsibility for the Events or the online publications, except when it comes to the RA Website. On that issue I find against him.

96. Dr Waller's evidence is that the RA Website was an idea of the Client(s), and that he was "not directly involved in running" the site. The contemporaneous correspondence supports the view that he did not build it. A note of 16 June 2014 refers to "the Rakhat website that someone else is building". But he set it up, under an alias. And the note 16 June shows not only that Dr Waller was aware of the site but also that he had a folder with files containing "mockups of the Rakhat website". As he accepts, he "helped write the content, either by editing what the Client had already written, or by

adding my own information or perspectives on the facts." He went over draft graphics and made suggested changes, and exchanged views on drafts. He questioned or removed text that made allegations which could not be documented, and restored that text when he saw the documentation. All these admitted activities place Dr Waller firmly in an authorial and/or editorial role, bearing legal responsibility for the site's content.

97. As to the other defendants, I find that Psybersolutions is also responsible in law for the entire campaign. None of the other defendants was responsible for the entire campaign. Ms Blair is not responsible in law for any of it. But Mr Thompson and Mr McCarthy were responsible for substantial parts of it: the Events, the publications at the Events, and the majority of the consequent online publications. Mr McCarthy bears responsibility for the distribution of the stickers in October/November 2014.

98. Psybersolutions was a corporate vehicle which Dr Waller used to operate the campaign. I accept his evidence that, however things may have appeared, he founded the company, created and maintained its website, and controlled it at all material times. He used an email account in the name of blair@psybersolutions.com. As he put it, Psybersolutions was "to all intents and purposes" his company. He chose to run the campaign through Psybersolutions. He used Psybersolutions to set up the JFN Website. Invoicing was done via the company. Incoming funds from the Client(s) were channelled into the company. Outgoing payments to Mr Thomson, McCarthy and others were made from the company's accounts. These payments were received and made through an intermediary, a lawyer named Campo, but that arrangement seems to have had no purpose other than to add a layer of disguise. It was the company, operating through Dr Waller, that ordered the printing of the banners and stickers used at the Events, and placed the advertising to promote the campaign on Facebook, Twitter and YouTube. The company acted exclusively at Dr Waller's instigation and it acted through him. His was the controlling mind of the company. Even if there were some aspects of the online and social media campaign that were not carried out exclusively or at all in the name of the company (and the RA Website may be one such aspect), the company was nonetheless responsible in fact and in law for bringing about publication by those means. The company was paid to conduct the campaign and, through Dr Waller, it did so.

99. As for Ms Blair, on the face of the company's website she was an officer or person in control of Psybersolutions. There was a company email account using her name. She was a signatory on the company's bank account. But in reality, to the extent she ever had any control over the company's affairs, she handed that power to Dr Waller. She knew that Dr Waller intended to use Psybersolutions for a campaign, but she herself did very little. And what she did cannot be said to amount to participation or authorisation or to have made any material contribution to any of the offending acts or publications. Moreover, what she did was done in ignorance of any detail about what Dr Waller planned to do, or was doing. She was told by Dr Waller that he was doing contract work, which he would like to do through "her" company. She agreed that he could use her email account. He did, without her involvement. At Dr Waller's request she, literally, signed him blank cheques on the company's account. She may have taken funds from the company account from time to time, with Dr Waller's agreement. But she was not involved in creating or furthering the campaign. She did not know the identity of the targets, or what was to be said or was being said about

them. Even if she could have taken steps to bring a close to the campaign, I am not persuaded that she had the knowledge that would be required to do so. In her closing submissions Ms Rogers did not press hard for a finding of liability against Ms Blair, and she was right not to do so.

100. Mr Thomson's case, as advanced in the defendants' skeleton argument for trial, is that he neither participated in nor authorised the publication of the Online Publications or the Events Statements. I accept that he was not involved at all in organising the November Event, or any consequent publication. By that stage he had dropped out of the team, the reasons being practical rather than principled. But his denial of any responsibility for earlier publications is wholly unrealistic, in the light of his own evidence and the contemporaneous documentation. So is the denial of Mr McCarthy, that he participated in or authorised publication at the June and November Events, or consequent online publication.

101. There are four aspects to this: what these defendants did, what they knew when they did it, what consequences followed, and how much of that was reasonably foreseeable by them. As to what they did, Mr Thompson and Mr McCarthy found and instructed Media Gang; they arranged for both aspects of the June Event; they ensured the placards and banners were carried; they arranged the filming; they ensured that the recorded material was sent to Dr Waller, or "Melissa van Buren", for editing and eventual uploading online. Mr Thompson, on his own admission, read the voiceover for one of the videos. There is no room for serious dispute that both he and Mr McCarthy were participants in causing the publications complained of at the June Event itself, and online publications which presented and gave accounts of that Event.

102. When it comes to the November Event, there can be no serious dispute that Mr McCarthy was a participant in causing the publications complained of at the Event itself, and the online publications that reported what took place. On his own account of things, Mr McCarthy's role included recruiting his aunt from Ireland, other family members and friends, and a woman named Miriam, to act as paid protestors at the November Event, offering them £50 a head. He flew to Cork to collect family members and friends and bring them to London. The recordings of the November Event make clear that he was not just present but also closely involved in orchestrating the Event on the day. He was not a participant in the "protest" but he assisted in the "production" side, as an editorial assistant to Dr Waller, who did the filming. He distributed cash payments to the protesters afterwards.

103. As to what these defendants knew, it is clear that Mr McCarthy knew in advance and in some detail what was due to happen at the November Event and that it was to be recorded and reported upon online. He knew what was to take place. His message to the paid protesters was that "the aim of the demonstration was to raise awareness in respect of a young woman who had been brutally murdered by rich men who had escaped justice." In his mind, the identities of those "rich men" was clear. They were the trio who had been targeted by the June Event, and subsequent online publication. Messrs Thomson and McCarthy both knew that the June Event would involve protests by individuals recruited and paid by Media Gang, displaying a banner and placards. They knew that recordings and accounts of the protests would be published online.

104. There are only three issues on which there is real room for equivocation or uncertainty, so far as these two defendants are concerned. The first concerns their

state of mind at the time they took the steps they did to bring about the June Event. Were they aware at that time that the Event would involve the offending statements about Mr Hourani, or any similar statements? They say not. They say they knew that Aliyev was a target, but were not aware that Mr Hourani was also being attacked until after the Event. The second issue concerns the precise extent of their responsibility for online publication. It is necessary to draw a line. The third issue concerns responsibility for the sticker campaign.

105. These defendants' case on the first issue is a surprising one, bearing in mind the nature of the overall campaign, and the nature and extent of their roles in organising the June Event. They were recruited by Dr Waller, and acting on Dr Waller's instructions. Dr Waller's witness statement describes in detail the development of his role in devising and implementing the campaign, and it is clear that the Hourani brothers featured in his thinking from an early stage. He was discussing what he calls the "Aliyev-Hourani project" soon after signing a non-disclosure agreement with the Client(s) on 20 January 2014. By the time the June Event took place Dr Waller had reviewed relevant materials, determined on the shape of the Justice for Novikova campaign, planned the June Event in detail, and ordered all the materials for delivery in time for the Event. The Client(s) had "asked me to include images of the Claimant and his brother, Devincci, in the banners and posters ... [and] obtained the photos..." And he did. Yet Mr Thomson says he did not become aware that Mr Hourani was a target until some time after 11.15am on 19 June, and Mr McCarthy says he did not realise until later still.

106. Mr Thompson's realisation came, he says, when he learned from Bill Mountain that security at Lowndes Square had just chased the protesters away. It then became apparent that, contrary to his previous understanding, there was no "sympathetic" resident at 10 Lowndes Square. It was then that he began to review emails received earlier on, and found a reference to the Hourani brothers' ownership of the flat in Lowndes Square "buried in a sentence in the middle of paragraph 8" of an email sent to him by Dr Waller at 17:05 the previous day, 18 June 2014. That was an email giving detailed instructions for the Event ("the Instruction Email"). It was at this point that he first realised that the three pictures contained in the previous day's email traffic were pictures of three different individuals. He had assumed they were three pictures of Aliyev. This is on its face an improbable account of things. There is no corroboration for it. It is very difficult to reconcile with the documents. And it is an account which, having seen and heard Mr Thomson cross-examined about it, I reject. His attempt to explain how he could have remained ignorant that there were triple targets was unconvincing in its substance and in its presentation.

107. There are two documents in particular with which Mr Thomson was quite unable to deal convincingly. The first is an email sent to Mr Dietrich of Media Gang from Mr Thomson's own email address at 17:27 on 18 June 2014. This forwarded to Mr Dietrich a substantially edited version of Dr Waller's Instruction Email of 17:05. At item 3 of the edited version was the wording I have already quoted: "The posters with *the images of the three men* should have handwritten along the tops of them, in bold black letters: "MURDERER". …" (emphasis added). Item 6 set out a script to be read out by "An unidentified 'spokesman' for the group". The script began: "We are here at Lowndes Square because *the accomplices* of Rakhat Aliyev have still not been brought to justice for the murder of Anastasiya Novikova ..." (emphasis added).

These instructions were forwarded under the wording: "Hi Richard, Further to before I've heard from our sponsor. On item 6, if we don't get good audio, no problem, we can voice over." If this email from Mr Thomson's address was sent by Mr Thomson, he must have read and edited the Instruction Email in the 22 minutes that passed between the arrival of that email in his inbox and his email out to Mr Dietrich. He would have seen the references to "three men" and the need to call each of them a "MURDERER". And he would have read the script.

108. Mr Thomson claimed to have no memory of doing any such thing. He suggested that Dr Waller might have taken remote control of his, Mr Thomson's, email and carried out the editing task. That is inconsistent with Dr Waller's evidence, and wholly incredible. Dr Waller's evidence is that "The [Client(s)] instructed me to tell the people in London to write the word 'Murderer' above the images of the Houranis ... Therefore, I gave these instructions to Alistair ... who, in turn, passed them to Media Gang". Mr Thomson's account, or theory, is incredible not least because the 17:27 email is one of a sequence to and from Mr Thomson's address, others of which he accepts were sent and received by him. Among those other emails was one from Mr Dietrich making clear that his people would not be willing to read the script. Mr Thomson replied that it could be voiced over. It is not credible that he had not read what they were talking about.

109. Another email, at 19:05, contained the three images that Mr Thomson says he thought were all of the same man. They are quite clearly different from one another, as Mr Thomson came to acknowledge. Moreover, the email from Jan at Media Gang to which these three pictures are attached contained these words: "Hi Richard and Alistair these are the posters of the killers and the victim ..." A reply came from Mr Thomson's email address, 6 minutes later: "...If we could add the word "Murderer" to the top of the *mens pictures*... that would be great" (emphasis added). I do not accept Mr Thomson's evidence that the pictures were so small he did not notice there were three men. He knew there were three separate male targets, all to be accused of murder. There is also considerable email traffic in the following days which shows that Mr Thomson was well aware then that Mr Hourani had been a target on 19 June. An instance is an email which Mr Thomson sent on 20 June referring to the images and saying "who is the guy walking past? Looks very similar to Mr Hourani??!!" This was sent at 1pm US time, hence in the early hours of the Sunday morning UK time, less than 24 hours after the June Event itself. There is nothing in the chain of emails to suggest that it had come as a revelation to Mr Thomson that there were three targets, including Mr Hourani.

110. An additional and important reason for rejecting Mr Thomson's evidence on this issue is that it is contradicted by evidence that I accept from Mr Dietrich, whom I found a compelling witness. His witness statement gives an account of telephone calls with Mr Thomson and Mr McCarthy when Media Gang was being introduced to the project, in which Mr Dietrich was "told that the purpose of the vigil was to put pressure to bring to trial three people for the murder of a young journalist." Mr Dietrich's evidence is that Mr Thomson described the circumstances surrounding the death of the young woman in graphic detail. In a meticulous cross-examination conducted by Mr Silverstone Mr Dietrich was firmly tested on this evidence, but his account withstood the challenge.

111. Mr McCarthy's statement said that it was only "When the photographs of the demonstration came in" that he realised the campaign was targeting someone other than Aliyev. There were pictures of "two further men". He says "I called Mike and asked who were "*the two bald guys*"". I do not accept this account. There are several particular difficulties with it, beyond its overall improbability given the background and context. I note that in a document that has been called the "FBI Email" Dr Waller wrote, in April 2014, that Mr MCarthy was fearful of a defamation lawsuit in London by Mr Hourani. On his own account Mr McCarthy was closely involved with the logistics relating to the banners and posters for the Event. He was copied in on Dr Waller's Instruction Email. His evidence when asked about the instruction in that email to put the legend "MURDERER" above the photos on the placards does not help him: "Q You saw that, didn't you, at the time? A Probably." He then floundered, falling back on an answer that "based on my witness statement of 'who are the bald guys?', it would indicate that I probably didn't read the entire email." He said he couldn't recall if this email was the first time he knew about the Houranis' alleged roles in relation to the flat in Beirut. His evidence was that his contact with Dr Waller was mainly by phone. The probability is that in phone conversations Dr Waller made known to Mr McCarthy what he and the Client(s) had in mind. That Mr McCarthy had knowledge of what was actually in train is amply supported by the evidence of Mr Dietrich, who says that Mr McCarthy was party to the telephone calls in which the fact that there were three targets was made clear to him.

112. On the second debatable issue concerning these two defendants my main conclusions are that both are responsible for what was said and done at the June Event, and for the online publications of June and July 2014, except for the posting on the JFN Website of 6 July 2014; Mr McCarthy is responsible for what was said and done at the November Event, and for the online publications of 16 November 2014 to 12 December 2014, except for the tweets about the claimant seeking to "pull" or "censor" reports on CNN and Facebook. Their responsibility arises because they played a substantial part in causing what took place at the relevant Event(s); the Event(s) unfolded in substantially the way that they knew and intended they would; they knew and intended that what took place at the scene would be reported online, this being a main purpose of the Events; and the nature extent and content of the online publication was substantially the same as, and not materially different from, that which was foreseen. The 6 July posting on the JFN Website was evidently based on other material. The JFN and RA Twitter publications of 12 December are not shown to be something to which these defendants were party.

113. The position so far as the stickers are concerned is a little odd. It is evident that sticker distribution was envisaged at and before the time of the June Event, and that stickers were ordered and supplied. Messrs Thomson and McCarthy were aware of that. But there is a dearth of evidence that any stickers were distributed at that time, and Mr Hourani's claim in respect of sticker distribution relates to the autumn only. It may be that there was no sticker distribution because of the abrupt end to the June Event, and Media Gang's subsequent withdrawal from the campaign. I do not know. At all events, it is only those who participated in the later phase of the campaign who could be held responsible for the stickers that undoubtedly were distributed in that phase. Mr Thomson is not one of those. Mr McCarthy was a participant in the November Event, and played an active role. But the evidence says nothing of any direct role he played in sticker distribution. My finding is however that he was involved, either

personally or as a participant in a joint enterprise with Dr Waller. The statement of Dr Waller (paragraphs 234-236) makes it appear that Mr McCarthy was personally involved. If he was not, then the evidence shows that this distribution was part of an overall plan of which he was aware, and with which he agreed, and he took an active part in implementing aspects of the plan.

114. For ease of reference I shall refer to the four defendants who were responsible for all or some of the acts and publications complained of as "the Participant Defendants".

VI. DEFAMATORY MEANING

115. The issue concerns the images and written words published at the Events by means of the placards and the banner, and in the Online Publications, as detailed above. It is these statements that Mr Hourani alleges are libellous of him. He also complains of the chants and announcements made orally at the Events, but any defamation claim in respect of those matters would have to be in slander, and he makes no slander claim. I therefore treat those complaints as aspects of the claim in harassment, and as context for the libel claim.

116. At common law a statement is defamatory of a person if it substantially affects in an adverse manner the attitude of other people towards him, or has a tendency to do so: *Thornton v Telegraph Media Group* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96]. That normally depends on the meaning of the statement. Formally, the defendants do not admit that the words complained of bore any meaning defamatory of Mr Hourani. But Mr Hudson has not advanced any argument as to why the offending words should not be considered to satisfy the common law test of what is defamatory. They plainly do, on any reasonable interpretation. The real issue is whether Mr Hourani has made out the particular defamatory meanings for which he contends.

117. The natural and ordinary meaning of a statement is the meaning which a reasonable viewer or reader would take from it. The classic statement of the principles is that of Sir Anthony Clarke MR in *Jeynes v News Magazines Ltd* [2008] EWCA Civ 130 [14]:

> "(1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any "bane and antidote" taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, "can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation … (8) It follows that "it is

> not enough to say that by some person or another the words might be understood in a defamatory sense."..."

These principles are of course to be applied impartially, and neutrally. It is certainly no part of the judge's task when ascertaining meaning to choose one putative meaning over another on the footing that one contains more of a defamatory sting than another: *Simpson v MGN Ltd* [2016] EWCA Civ 772 [2016] EMLR 26 [15].

118. It can be relevant to consider the characteristics of the audience or readership, though that must be done on the basis of evidence rather than surmise. In this case, nobody has suggested that there are any particular characteristics to be borne in mind. But I do need to consider two points. First, context. *Jeynes* principle (5) is expressed by reference to an "article" but it is broader than that. The principle is that when determining the meaning of any publication the whole publication must be considered. That means that I must consider the whole of any individual website or social media posting. I also need to consider what was chanted or read out at the Events, as part of the context in which those present at the Events will have read and understood the written words and images that are complained of as libels.

119. Secondly, I need to consider whether, and to what extent, I should treat any of the individual statements complained of as forming elements of a single publication. This is a case involving a number of publications via a number of different online sites. There are several posts or publications on each site. The publications continued and developed over a period of several months. *Jeynes* principle (5) does not tell us how to identify the "whole publication", where the same person(s) publish a variety of statements on the same topic in different places, at different times, via several different outlets. I accept Mr Hudson's submission that in this context, as with print publication, the test to be applied is whether the statements are "sufficiently closely connected as to be regarded as a single publication", and that this applies whether or not the items are on continuation pages, or different items of published material relating to the same subject matter: *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB) [29] (Sharp J).

120. There is no analytical evidence about the extent of any crossover between, for instance, the readership of the JFN Facebook page and the JFN Website. One can speculate that those who were interested in the topic may have visited more than one site. But there is no satisfactory evidential basis for a finding that there was any substantial cross-over, other than the links contained in some of the posts, taking the reader to posts or publications on other sites. It can reasonably be assumed or inferred that these links were followed. I believe the proper approach in this case is to take as my starting point the assumption that each Event and each individual online site will have had its own separate readership. The posts on each individual site relating to the June Event are, in my judgment, sufficiently closely connected with one another to form part of a single publication. The posts on each individual site relating to the November Event are also closely connected with one another. In addition, November/December posts on any given site are to be read in the context of earlier posts on the same site which remained online at that time. I will treat posts on other sites as forming part of the same publication if, but only if, there is a cross-reference by means of a link.

121. Applying these principles, my conclusions are that the natural and ordinary meanings of the words and images complained of, read in their proper context, were these:

June and July 2014

(1) The placards and banners at the June Event ([70] above): that Mr Hourani is guilty of the murder of a woman called Novikova.

(2) The JFN Website ([71](1), (7) and (11)]] above): that Mr Hourani (a) was among the main perpetrators of the murder of Anastasiya Novikova in Beirut in 2004 and the other crimes perpetrated against her, of false imprisonment, torture, and rape; he was one of Rakhat Aliyev's many accomplices in those crimes; (b) was guilty of kidnapping Ms Novikova's daughter; (c) sought to cover up Ms Novikova's murder by (among other things) helping to remove her body from Lebanon to Kazakhstan for burial in secret; and (d) was hiding in London to evade justice for these crimes.

(3) The JFN FB page, 19-27 June 2014 ([71](2), (5) and (9)] above): that Mr Hourani is a murderer, who was one of Rakhat Aliyev's accomplices in the false imprisonment, torture and murder of Anastasiya Novikova.

(4) The RA FB page, 20 and 23 June 2014 ([71](3) and (8)] above): that Mr Hourani is a murderer, being one of Rakhat Aliyev's main accomplices in imprisoning Anastasiya Novikova in a Beirut apartment, and in brutalizing her and killing her there.

(5) The three YouTube videos posted on 22 June 2014 ([71(4)] above): that Mr Hourani (a) was a henchman of Rakhat Aliyev in the imprisonment, beating, drugging, rape and murder of Anastasiya Novikova, and has done similar things to others; (b) is one of the murderers of Anastasiya Novikova, a killer who has yet to be brought to justice; (c) is a murderer, an accomplice to the murder of Anastasiya Novikova by Rakhat Aliyev.

(6) The JFN Twitter account, ([71(6) and (10)] above): the meanings at (5)(b) and (c) above.

28 October – 3 November 2014

(7) The JFN FB page, 28 October – 3 November 2014 ([71](1), (2) and (5)] above) and the RA Twitter account 2 November ([71](3)): that Mr Hourani was an accomplice of Rakhat Aliyev in the imprisonment, torture and murder of Anastasiya Novikova.

(8) The JFN Twitter account, 2 November ([72](3)] above): that Mr Hourani was a murderer, a crony of Rakhat Aliyev.

16 November 2014 onwards

(9) The placards and banners at the November Event ([74] above): that Mr Hourani is a murderer, who is guilty of the murder of Anastasiya Novikova but has escaped justice and is hiding in London.

(10) The JFN FB page, 16 November 2014 ([75](1)] above) and the RA FB page 20 November onwards ([76(1) above): that Mr Hourani is a murderer, an accomplice of Rakhat Aliyev in the murder of Anastasiya Novikova, who has escaped justice and is hiding in London.

(11) The RA Twitter Account and the Issam Hourani Twitter account, 16 November 2014 ([75(2)] above): that Mr Hourani is one of the murderers of Anastasiya Novikova.

(12) The YouTube video of 20 November 2014: ([76](2)] above): that Mr Hourani is a murderer, who was involved with Rakhat Aliyev in the murder of Anastasiya Novikova, who has escaped justice and remains at large, in hiding in London.

(13) The JFN Twitter account, 20-28 November ([76](3) and (6) above): that Mr Hourani is a murderer, one of Rakhat Aliyev's Lebanese accomplices to the murder of Anastasiya Novikova, for which crime he is evading justice by hiding in London.

(14) The JFN Website, 21– 28 November ([76(4) and (5)] above): that Mr Hourani is a murderer, one of Rakhat Aliyev's accomplices to the imprisonment, torture, rape, drugging and murder of Anastasiya Novikova, for which crimes he is evading justice by hiding in London. Because of this content, which formed part of its context, the posting at [77](1) bore the same meanings, with effect from 21 November.

(15) The 12 December posts on the JFN Website and the JFN and RA Twitter accounts, ([76](7) above): that Mr Hourani is a murderer, implicated in the death of Anastasiya Novikova, who had tried to cover up his guilt by censoring media coverage on CNN and Twitter.

(16) The RA Website ([77(2) and (3)] above): that Mr Hourani, one of Rakhat Aliyev's closest confidants, (a) was one of Aliyev's accomplices in the murder of Anastasiya Novikova, (b) was involved in her imprisonment and torture in the last months of her life, and (c) had bloodied his hands cleaning up that murder, as well as many other "messes" of Aliyev.

(17) The JFN FB page, November/December 2014 ("This Christmas …": [78(4) above): that Mr Hourani is murderer, an accomplice to the murder of Anastasiya Novikova in June 2004.

VII. SERIOUS HARM

122. The meanings I have found are seriously defamatory of Mr Hourani, in the sense that they have a tendency to cause serious harm to his reputation. The contrary is not arguable. But a statement is not defamatory just because it satisfies the common law test. Section 1(1) of the Defamation Act 2013 contains this provision ("the Serious Harm requirement"): "[a] statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

123. The word "serious" does not have, nor does it need, any definition. As Dingemans J observed In *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016]

EMLR 12 [46] it is an ordinary word in common usage. But the statutory test is clearly a more demanding test than that of the common law. Dingemans J identified a number of other points about the serious harm requirement that had become uncontroversial. The first is of particular importance:

> "46. …. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant's reputation. It should be noted that unless serious harm to reputation can be established an injury to feelings alone, however grave, will not be sufficient.

124. The issue in this case is whether Mr Hourani has proved that serious harm to reputation actually resulted, or was or is likely to result from the publication. Dingemans J went on to discuss the means by which a party can prove or disprove those propositions.

> "47. Secondly it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence. Mass media publications of very serious defamatory allegations are likely to render the need for evidence of serious harm unnecessary. This does not mean that the issue of serious harm is a "*numbers game*". Reported cases have shown that very serious harm to a reputation can be caused by the publication of a defamatory statement to one person.

125. On appropriate facts, therefore, a case on serious harm can be advanced and established on the basis of inference alone. The more serious the imputation and the more widespread its publication the easier that is likely to be, because the inference is likely to be the more obvious: see *Cooke v Midland Heart Ltd* [2015] 1 WLR 895 [43] (Bean J). As it happens, however, Mr Hourani does have affirmative evidence of serious harm. The evidence about the Montfleury Hotel is sufficient proof that the statements made at the June Event actually caused serious harm to his reputation, with serious consequences. But that evidence does not stand alone. The shunning by neighbours of which Mr Hourani has given unchallenged evidence can be reliably attributed to having read the publications complained of even if it is hard to identify the specific cause. No other reason has been suggested as to why the neighbours should react to Mr Hourani in that way, nor is any other reason apparent. The suggestion in cross-examination that Mr Hourani's case is somehow weakened by his failure to call neighbours as witnesses has no merit. There are difficulties in getting witnesses to say that they read the words and thought badly of the claimant: *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) [2015] EMLR 13 [55]. The difficulties are obvious, as Dingemans J explained in *Sobrinho* [48]:

> "the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and

> because persons who think badly of the claimant are not likely to co-operate in providing evidence."

A person whose reputation has been injured in the eyes of his neighbours to the extent that they turn their backs on him or walk away has suffered harm to reputation that is properly described as serious. If the reason for this behavior is that the neighbours have been told, and have given credence to allegations, that he is a murderer, and an accomplice to other grave crimes, the conclusion is all the more obvious. There is no reason to doubt that the neighbours believed, or at least gave some real credit to, the defamatory messages that were being conveyed to them.

126. There is a third category of evidence of actual reputational harm: Mr Hourani's evidence about his daughter Ayaa's response. Ayaa was ten years old when she became aware, in November 2014, of what was being said about Mr Hourani online at that time. She told him she was aware that "serious things" had happened. The evidence does not make clear exactly where she got this information from. It seems she did not specify this to her father. But the date of 20 November 2014 is given, and I conclude from Mr Hourani's account that Ayaa saw the November YouTube video and probably other online publications of about that date. Ayaa assured her father that she did not believe what had been alleged, but according to him there were times when she "seemed scared of me and would hide behind her bedroom door, not letting me in to see her." I read this as evidence that Ayaa had, at least, doubts or concerns about whether there might be some truth in what had been alleged. That, on any sensible view, amounts to serious harm to reputation.

127. These three strands of evidence are all reliable indicators of the likely reaction of others who saw the demonstrations or saw or read the online material accusing Mr Hourani of being a murderer, and an accomplice to other grave crimes. These strands of evidence serve to confirm the inference which the court would naturally draw, in the absence of evidence or good reason to the contrary. All of the meanings I have found are seriously defamatory in their tendency. Although the scale of publication varied, all the publications complained of were substantial in extent. In my judgment, absent any reason to reach another conclusion, the evidence calls for a finding that the Serious Harm requirement is satisfied in respect of each.

VIII. HARASSMENT?

128. Section 1 of the 1997 Act provides:

> "**Prohibition of harassment"**
>
> (1) A person must not pursue a course of conduct—
>
> (a) which amounts to harassment of another, and
>
> (b) which he knows or ought to know amounts to harassment of the other…"

129. There are three issues on which Mr Hourani bears the burden of proof. Each issue arises in relation to each of the Participant Defendants. They are: (1) did that defendant engage in a course of conduct? (2) did any such course of conduct amount to harassment; and (3) did the defendant know, or should he or it have known, that the conduct amounted to harassment? Even if Mr Hourani succeeds on each of these

issues, it will remain to consider whether the defences to or justifications for harassment that are provided for by s 1(3)(a) and/or (c) are made out.

A course of conduct?

130. Section 7(3)-(4) of the 1997 Act contain relevant interpretative provisions:

> "(3) A "course of conduct" must involve—
>
> (a) in the case of conduct in relation to a single person (see section 1(1)), conduct on at least two occasions in relation to that person…
>
> (3A) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
>
> (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is); …
>
> (4) "Conduct" includes speech."

131. Mr Hudson's submission is that Mr Thomson did not pursue a course of conduct but was involved on only one occasion, viz the June Event; the conduct of Dr Waller and Mr McCarthy "was, in reality, conduct on a single occasion which took place over a number of months"; and Psybersolutions was "not involved in the acts complained of and therefore did not pursue a course of conduct."

132. Mr Hudson points out that the mischief at which the 1997 Act is aimed is harassment by "repetitious behaviour", and that the requirement for conduct on at least two occasions is a threshold requirement; it is not to be assumed that two instances necessarily give rise to a cause of action in harassment: see *Pratt v DPP* [2001] EWHC 483 (Admin) [12] (Latham LJ), *Merelie v Newcastle PCT* [2004] EWHC 2554 (QB) [22] (Eady J). These submissions are correct, but tend to elide two separate questions. The way each of the Participant Defendants puts his or its case on this issue mean that my first task is not to ask whether there was harassment but to determine whether the conduct of that defendant amounts to a "course of conduct" within the meaning of the Act. That is largely a question of fact and degree. As Eady J observed in *Merelie* at [22], "Whether two or more instances can be classified as a 'course of action' will depend on such factors as how similar they are in character, the extent to which they are linked, how closely in time they may have occurred, and so on." Given that the conduct must be on at least two occasions "in relation to [the] person" who is said to have been harassed, it may be helpful to consider whether a reasonable individual in that person's position would regard what happened to them as involving a single event or occasion, or more than one.

133. It is also necessary to keep an eye on who it was that engaged in conduct on any particular "occasion". Each defendant must be considered separately, but I need to bear in mind that one effect of s 7(3A) is that someone who acts as a secondary participant in a joint enterprise, by helping or encouraging others, cannot escape liability for harassment just because some or all of the acts complained of were physically performed by the others. The conduct of any defendant on any given "occasion" must include any conduct of others that is to be attributed to that defendant by virtue of s7(3A)(a).

134. Adopting the approach that I have just outlined, it is my clear conclusion that Mr Hudson's submissions are ill-founded. I have described what happened as a "campaign". Mr Hudson expressly accepts that this is an apt description of what happened. Dr Waller's statement uses the word. Dr Waller was and is directly responsible for the whole campaign. So was and is Psybersolutions. If (which I would not accept) there would otherwise be any doubt about this, the conduct of Messrs Thomson and McCarthy was procured by Dr Waller and Psybersolutions, and is attributable to those two defendants by virtue of s 7(3A). The same applies to the conduct of the protesters. The campaign involved a series of acts and (in particular) publications of which Mr Hourani was a target, stretching over at least six months, in and between June and December 2014. It is wholly unreal to characterise the distinct Events, and the plethora of separate and distinct publications that formed part of that campaign, as conduct on a single occasion in relation to Mr Hourani. The Events were separate from one another and plainly involved conduct on separate occasions. The publications must, as a matter of reality, be treated as involving additional conduct on occasions separate from the occasions of the June and November Events themselves. The publications were edited versions, with additional material; they addressed different audiences; they were published at different times, and in a variety of different media. Some of them were not even about the Events. A reasonable person in Mr Hourani's position would not, indeed could not, regard the campaign as a single occasion.

135. It is unrealistic, also, to suggest that Mr McCarthy's role in events did not amount to a "course of conduct" by him within the meaning of the 1997 Act. He was personally, directly, and knowingly involved in the targeting of Mr Hourani that was a significant aspect of the June Event. He was intimately involved in the organisation and carrying out of the November Event. That plainly was a separate and distinct event, that took place on an occasion five months later, of which Mr Hourani was again one of the targets. Beyond this, Mr McCarthy was also involved in bringing about the various online publications reporting on the two Events, which also targeted Mr Hourani. Those publications were separate occasions. Mr McCarthy's conduct in that respect was additional to, separate and distinct from, his conduct in organising the Events themselves. But even if that were not so, the effect of s 7(3A) would be to attribute to Mr McCarthy some of the conduct of Dr Waller and Psybersolutions. He clearly aided and abetted their conduct in bringing about the online publications for which I have held him responsible.

136. Although Mr Thomson was only involved in the June Event, his arguments must fail on this issue for reasons similar to those I have given in respect of Mr McCarthy: the June Event and the online publications involved conduct on separate occasions; Mr Thomson's own role in bringing about the Event and the publications involved conduct on more than one occasion; and even if that were not so, it is plain that what Dr Waller and Psybersolutions did to bring about the online publications involved conduct on multiple occasions, which is attributable to Mr Thomson pursuant to s 7(3A), because he aided and abetted that conduct.

Amounting to harassment?

137. I am invited by Mr Hudson to consider this question separately from that of whether the defendants' conduct was justifiable under s 1(3)(a) and/or (c), and for that reason did not amount to harassment. This strand of the defendants' arguments therefore

needs to be considered without regard to whether the allegations themselves were true or false, or reasonable or unreasonable. The central argument for the defendants seems to be that the claimant has failed to prove that the case crosses the relevant threshold of gravity. In support of that argument reliance is placed on Mr Hourani's status as a public figure, his personality, the fact that the allegations against him had been published before, and in other publications online, the overall context, the brevity of the June and November Events, and the fact that Mr Hourani was not present when either took place. Mr Hudson submits "Of course, he did not like the message that was being communicated but the conduct complained of was neither likely nor intended to cause C alarm and/or distress." The intention is said to have been "to draw attention to very serious matters of profound public interest." These references to intention are rather problematic. I shall come back to that point. It is convenient first to review the principles as to what amounts to harassment.

Legal principles

138. The use of the words "alarm and/or distress" in Mr Hudson's submission is a reflection of s 7(2) of the 1997 Act, which provides that "references to harassing a person include alarming the person or causing the person distress". This is not a definition of the tort. It is merely guidance as to one element of it. Nor is it an exhaustive statement of the consequences that harassment may involve. The Supreme Court gave further guidance in *Hayes v Willoughby* [2013] UKSC 17 [2013] 1 WLR 935, where Lord Sumption SC said at [1] that harassment is "… an ordinary English word with a well understood meaning. Harassment is a persistent and deliberate course of unreasonable and oppressive conduct, targeted at another person, which is calculated to and does cause that person alarm, fear or distress."

139. As these words suggest, behaviour must reach a certain level of seriousness before it amounts to harassment within the scope of PHA s 1. That is not least because the 1997 Act creates both a tort and, by s 2, a crime of harassment. The authoritative exposition of this point is that of Lord Nicholls in *Majrowski v Guy's and St Thomas's NHS Trust* [2006] UKHL 34 [2007] 1 AC 224 [30]:

> "[Where] the quality of the conduct said to constitute harassment is being examined, courts will have in mind that irritations, annoyances, even a measure of upset, arise at times in everybody's day-to-day dealings with other people. Courts are well able to recognise the boundary between conduct which is unattractive, even unreasonable, and conduct which is oppressive and unacceptable. To cross the boundary from the regrettable to the unacceptable the gravity of the misconduct must be of an order which would sustain criminal liability under section 2."

140. There must, therefore, be conduct on at least two occasions which is, from an objective standpoint, calculated to cause alarm or distress and oppressive, and unacceptable to such a degree that it would sustain criminal liability: see *Dowson v Chief Constable of Northumbria Police* [2010] EWHC 2612 (QB) [142] (Simon J).

141. The reference to an "objective standpoint" is important, not least when it comes to cases such as the present, where the complaint is of harassment by publication. In any

such case the Court must be alive to the fact that the claim engages Article 10 of the Convention and, as a result, the Court's duties under ss 2, 3, 6 and 12 of the Human Rights Act 1998. The statute must be interpreted and applied compatibly with the right to freedom of expression, which must be given its due importance. As Tugendhat J observed in *Trimingham v Associated Newspapers Ltd* [2012] EWHC 1296 (QB) at [267] "[i]t would be a serious interference with freedom of expression if those wishing to express their own views could be silenced by, or threatened with, claims for harassment based on **subjective** claims by individuals that they feel offended or insulted" (emphasis added).

142. The Court's assessment of whether conduct crosses "the boundary from the regrettable to the unacceptable" needs to be conducted with care in cases such as this, for several well-established reasons. Among them are that freedom of expression

(1) "… is the lifeblood of democracy. The free flow of information and ideas informs political debate. It is a safety valve; people are more ready to accept decisions that go against them if they can in principle seek to influence them. It acts as a brake on the abuse of power by public officials. It facilitates the exposure of errors in the governance and administration of justice of the country."

R v Secretary of State for the Home Department, ex p Simms [2000] 2 AC 115, 126 (Lord Steyn)

(2) ".. is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also those that offend, shock or disturb" :

Nilsen and Johnsen v Norway (1999) 30 EHRR 878 [43].

(3) "… is subject to exceptions which must, however, be construed strictly, and the need for any restrictions must be established convincingly":

Nilsen and Johnsen (ibid).

143. In *Nilsen* the Court set out the well-known three part test for justification of an interference with a fundamental right. "The test of 'necessity in a democratic society' requires the Court to determine whether the 'interference' corresponded to a 'pressing social need', whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient."

144. A summary of the way in which these principles are to be applied where a series of press publications is alleged to amount to harassment is to be found in the judgment of Lord Phillips MR in *Thomas v News Group Newspapers Ltd* [2001] EWCA Civ 1233 [2002] EMLR 4:

> "30. "Harassment" is, however, a word which has a meaning which is generally understood. It describes conduct targeted at an individual which is calculated to produce the

> consequences described in section 7 and which is oppressive and unreasonable. …
>
> 31 The fact that conduct that is reasonable will not constitute harassment is clear from section 1(3)(c) of the Act. While that subsection places the burden of proof on the defendant, that does not absolve the claimant from pleading facts which are capable of amounting to harassment.
>
> …
>
> 32 Whether conduct is reasonable will depend upon the circumstances of the particular case. When considering whether the conduct of the press in publishing articles is reasonable for the purposes of the 1997 Act, the answer does not turn upon whether opinions expressed in the article are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and this country.
>
> …
>
> 34 In general, press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. …
>
> 35 … before press publications are capable of constituting harassment, they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. … such circumstances will be rare.
>
> …
>
> 50 … the test [of reasonableness] requires the publisher to consider whether a proposed series of articles, which is likely to cause distress to an individual, will constitute an abuse of the freedom of press which the pressing social needs of a democratic society require should be curbed. This is a familiar test and not one which offends against Strasbourg's requirement of certainty."

145. In the present case, although this is by no means at the forefront of Mr Hudson's argument, it is right to recall that the fact that the Events involved street demonstrations means that the right to freedom of assembly is also engaged. That right is protected by Article 11(1) of the Convention: "Everyone has the right to freedom of peaceful assembly and to freedom of association with others, …"

146. When applying these principles it is necessary to have in mind not only that the rights under Articles 10(1) and 11(1) are qualified rights but also that in this, as in many publication cases, the countervailing rights to be considered appear to include the fundamental right to respect for private and family life, under Article 8 of the Convention. The gravity of the imputations against Mr Hourani and their

consequences for him mean that this right is engaged. It is necessary to assess the gravity of any interference and whether such interference is justified under Article 8(2). That task itself involves the application of the three part test. The resolution of any conflict between Article 8 and Articles 10 and 11 is achieved through the "ultimate balancing test" referred to in *In re S (A Child)* [2004] UKHL 47 [2005] 1 AC 593.

The factors relevant to the defendants' submission

147. These are the general principles that apply to the question of whether there was actionable harassment here. But I am addressing a narrower question. In that context, as I have indicated, I find the defendants' reliance on intention problematic. That is not because I regard intention or state of mind as immaterial when assessing whether conduct amounts to harassment. Rather, it is because the argument that I am dealing with now seems to me, despite its ostensibly narrow focus, to introduce several factors only some of which can sensibly be addressed in isolation from the questions of purpose and reasonableness.

148. In general it may be better to evaluate a given factual scenario in its totality, before reaching a conclusion on whether it amounts to harassment. But in this case I have no difficulty dealing, in isolation, with the question of whether it has been proved that the defendants' conduct actually caused alarm or distress, or other emotions or impacts consistent with it amounting to harassment. To do so involves picking out for separate consideration the question of whether the claimant has proved the harm which is plainly an element of the tort. As Lord Phillips said in *Thomas* at [29], "It seems to me that section 7[(2)] is dealing with that element of the offence which is constituted by the effect of the conduct rather than with the types of conduct that produce that effect." On the facts of this case at least I see no great difficulty, either, in dealing in isolation with the objective aspect of the same question, namely whether the defendants' conduct was calculated or likely to produce alarm or distress. I can also reach a conclusion on whether the conduct reached the necessary level of gravity or, put another way, whether it was objectively oppressive, having regard to the subject-matter, the claimant's status, personality, and the other objective circumstances relied on.

149. But it seems to me that the question of subjective intention belongs in a different category, and is difficult to assess fairly other than in the context of the twin defences of legitimate purpose and reasonableness that are advanced in reliance on s 1(3). It seems reasonable to conclude that conduct which causes distress but might otherwise be fair and reasonable may in fact be unreasonable, if it is engaged in for an illegitimate purpose, or with malign intent. An example was given by Counsel in *Thomas*: "… the editor who uses his newspaper to conduct a campaign of vilification against a lover with whom he has broken off a relationship" (see [36]). This approach would seem consistent with the requirement of the Strasbourg jurisprudence that the right to freedom of expression should be exercised in good faith. Similar reasoning applies to the defendants' further contention that I should find against Mr Hourani on this issue because "For many years he benefitted to an extraordinary degree from his close connections to [Aliyev] and the elite of the Kazakh State. As a result he was able to accumulate vast wealth." These are disputed allegations, the truth or falsity of which cannot affect the question of whether the offending acts were likely to or did cause harm, or whether they were objectively oppressive.

Harm and oppression: findings of fact

150. The courses of conduct engaged in by the Participant Defendants in respect of Mr Hourani were objectively likely to cause him alarm and considerable distress. This seems to me to be close to self-evident. Public accusations of involvement in murder and in other vile crimes including rape are obviously inherently likely to cause any reasonable person considerable distress and upset. These allegations were made in the street, outside Mr Hourani's home, in the presence, sight, and hearing of at least one business counterparty and a number of his neighbours. The allegations were then published widely online over a period of months, on a variety of platforms. They were read or viewed by many thousands in this jurisdiction, including the claimant's 10 year old daughter. Stickers were circulated close to Mr Hourani's home, drawing attention to the campaign. All of this is conduct with a natural tendency to cause grave concern, serious distress, and great upset to a person at whom it is directed. The fact that there were other targets makes no difference to this conclusion. Mr Hourani was one of only three.

151. The personal characteristics of the target are of course relevant to this issue. Mr Hourani is a well-travelled man who has risen from relatively modest beginnings to a position of great wealth and some power. He has had a varied experience of life. He is not a public figure, but he is related to one in the form of Aliyev and he has known and had dealings with powerful people. Having seen him give evidence he is, I agree, a reasonably tough individual. He would not have acquired the wealth and position he has without being fairly robust and resilient in character. But he did not appear to me to be a man of stone, without emotion, to whom the publication of these allegations in these ways would be a matter of indifference. There is nothing about his character that makes it objectively unlikely that he would be caused, at least, significant distress by the conduct of which he complains. The fact that he did not have to confront the demonstrators does not justify any other conclusion. He was close by at the time of the June Event, heard it, and learned the details very soon. He felt its impacts very soon afterwards as well, as neighbours turned their backs on him. The fact that the allegations made by these defendants, or similar allegations, have been made against Mr Hourani before does not lead to or justify the conclusion that he is unlikely to be hurt and upset, or unlikely to be significantly hurt or upset, by their repetition in the ways chosen by these defendants. The defendants' conduct towards Mr Hourani was, objectively appraised, oppressive. By that I mean that, making all due allowances for the status and characteristics of Mr Hourani, the defendants' conduct had a tendency to impose harsh and crushing impacts on its target.

152. As a matter of fact, I am satisfied that the effects on Mr Hourani were harsh and crushing and he was in fact caused substantial distress. Tough though he is, I accept that he was deeply upset. His evidence, unchallenged, is that "My family and I have been both frightened and humiliated by these actions which have caused me a great deal of distress and anxiety. It was particularly distressing that those responsible managed to locate my family home in London to stage their protest." It is inevitably humiliating to be shunned by neighbours. Mr Hourani evidently found it embarrassing and upsetting to lose the business opportunity concerning the hotel because of the June Event. He told me that at the height of the campaign, "the existence of the websites and social media accounts together with the threat of future public demonstrations and the continued, unrestricted publication of the allegations on the

internet was extremely disturbing. Not only did it devastate my reputation, it also made me fear for my and my family's personal safety and caused us all manner of distress." This was not challenged. Nor was his evidence about his reaction to Ayaa's discovery of the campaign: "It was unbearable for me that my daughter was exposed to the campaign of harassment to which I was being subjected." Mr Hourani's evidence as to the impact of the Mail Online article of November 2015 was not challenged, either. He said "The publication of these allegations in one of the most widely read websites in the world was extremely distressing for me." I accept Mr Hourani's evidence that he and his family now spend most of their time in Lebanon, mainly because of the campaign they faced in London, which led to their isolation from those they knew and were friendly with here.

153. Effects such as these amply satisfy the seriousness requirements of this tort. I see no reason to draw a distinction in this respect between the conduct of individual defendants, and its impact. Although their roles differed, the conduct of the least involved, Mr Thomson, and the impact of that conduct both crossed the thresholds with which I am now concerned.

Which the defendants knew or ought to have known amounted to harassment?

154. To avoid confusion I make clear that I take the same approach to this issue as I have to the previous one: focussing attention on the effects of the campaign, and without prejudice to the issue of whether the conduct in question was "reasonable" within s 1(3)(c). The question, in relation to each of the Participant Defendants, is whether that defendant knew or ought to have known that the course of conduct in which he or it engaged, or for which he or it was responsible, would have a harassing *effect* on Mr Hourani.

155. I am satisfied that Dr Waller and, through him, Psybersolutions knew very well that this would be so. He intended it. There is ample evidence to support that conclusion. One piece of evidence is Ms Blair's account of the little that she was told by Dr Waller about his project. This included an account of its aims: to "put the light *and heat* of truth on some bad guys" (my emphasis). Putting it another way, Dr Waller aimed to "put the heat on" Mr Hourani, and the others. In his initial budget proposal Dr Waller himself described his mission as the conduct of a "targeted social media and strategic communications campaign … *to disable*" its three "targets" (again, the emphasis is mine). A report on the June Event stated that "The purpose was to get in the targets' faces …"

156. Further evidence is contained in the Phase II documentation. The campaign against Mr Hourani and the others was to have two phases. Dr Waller's role was in Phase I. The documentation evidencing Phase II shows the overall aims. This is not documentation created by Dr Waller, and it post-dates his campaign. But I accept the contention of Ms Rogers, that it serves as a reliable guide to the aims and intentions behind Phase I of the campaign, which Dr Waller ran. Dr Waller was well aware of the aims. The Phase II documents describe a strategy of delivering the "project goals" and creating "an impact" but "without causing legal consequences for the client…". The identity of those carrying out the campaign is to be shielded from view by using front organisations and individuals. The goals include keeping "T2 and T3 under extreme psychological pressure" in Ukraine, making it "as difficult as possible for them to function" by means of direct media campaigns there accusing them of

criminal behaviour including human trafficking. It is clear that the ciphers T2 and T3 refer to the Hourani brothers. The objectives of Phase II also include launching "direct action initiatives" in the UK, the objective being to "keep T2 and T3 under extreme psychological pressure" here. This was to be done by a variety of means. They included "on-the-ground activities" such as the recruitment of a female to walk around the neighbourhood of Mr Hourani's home, and areas of London frequented by him, wearing a Novikova mask, the aim being to garner attention by posting photographs on Instagram.

157. If I had not concluded that Dr Waller intended and knew that his conduct would have harassing effects on Mr Hourani I would have found that he should have known this. I am satisfied that Messrs Thomson and McCarthy both ought to have known it, also. The way the court is to determine whether a person "ought to have known" that a course of conduct amounted to harassment is specified in s 1(2) of the 1997 Act:

> "(2) For the purposes of this section…, the person whose course of conduct is in question ought to know that it amounts to or involves harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to or involved harassment of the other."

158. This is an objective test, therefore. The conduct to be considered includes conduct attributed to the defendant by virtue of s 7(3A)(a) (above). Section 7(3A)(b) contains these further provisions:

> "A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another—
> …
>
> (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring."

159. The effect of this somewhat convoluted wording is clarified by the explanatory notes to the legislation which brought this subsection into force (s 44, Criminal Justice and Police Act 2001): "Paragraph (b) provides that the knowledge and purpose of those who aid, abet, counsel or procure such conduct relate to what was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring. This enables knowledge and purpose to be viewed in relation to what was planned or should have been expected at the time of planning."

160. A reasonable person in Dr Waller's position would have thought, at all the relevant times, that the campaign which Dr Waller was conducting, directing and authorising against Mr Hourani was likely to upset its target a great deal, and to cause him real and substantial distress. Such a person would have realised that getting "in the face" of a person by staging a public demonstration in the street outside his home, denouncing him as a "murderer", would probably affect the target not only directly but also indirectly via his family, friends, neighbours and acquaintances. The person would have appreciated that a continuing social media campaign on similar lines was

likely to exacerbate the impact on the target. And a further public event months later, coupled with the sticker campaign, would be likely to make the impact more severe. A reasonable person would view this as oppressive behaviour, in the sense that it was likely to have harsh effects on its target.

161. The information that is relevant when assessing what a reasonable person would think of the conduct in question includes, of course, any characteristics of the claimant which are known to the defendant: *Trimingham* [88]-[89]. At this point it becomes particularly difficult to separate my consideration of this issue from the question of reasonableness. A reasonable person, considering what impact a campaign of vilification was likely to have on its target, would think it relevant to know whether the target was guilty as charged, and a hardened criminal. As will become clear, I accept that this was Dr Waller's view of Mr Hourani. But I do not believe that he had good reason to do so. Leaving that aside, Dr Waller had reason to believe that Mr Hourani was probably a fairly thick-skinned individual. But he had no reason to think that he so resembled a rhinoceros that he would be untroubled by, or able to shrug off, repeated and widespread public accusations of murder, in the street, and online.

162. Messrs Thomson and McCarthy both knew in advance all the key details of the June Event. They were briefed on how the demonstration should proceed, with the use of large placards, and a big banner, in the square where (as they were clearly told) Mr Hourani and his brother lived. They were specifically briefed to ensure that, in addition to the use of the word "murderer" on the placards, someone should shout "get the murderers out of London". They knew the event was to be videoed, with the aim of putting material online to place additional pressure on Mr Hourani. A reasonable person in their positions would have considered it likely that this course of conduct would have serious and harassing effects on Mr Hourani. It would have been all the more obvious to a reasonable person in Mr McCarthy's position, given his role in the November Event and its online reporting, that the conduct to which he was party was likely to cause serious distress to its target.

163. In my judgment Messrs Thomson and McCarthy not only ought to have known but did know, and intended, that the course of conduct for which they were responsible would have a harassing impact on Mr Hourani. Insight into their state of mind is gained from emails exchanged shortly after the June Event, in which they discussed other possible moves against the Houranis. On Sunday 22 June Mr Thomson emailed Dr Waller, copying in Mr McCarthy, with suggestions for future actions. One involved "An awkward weekend for the Houranis". He suggested that "If you want to up the nasty" the team could mount a "pseudo neighbourhood watch campaign" targeting neighbours and businesses by asking "Have you seen a murderer today? They're closer than you think." He proposed the use of bogus parking tickets in the area, warning against damage from young women falling off a balcony. On behalf of himself and Mr McCarthy he said "We can rain havoc if that's what's desired…" These are plans for the future, and discuss events which did not take place. But the correspondence evidences a desire to cause alarm and distress and a certain degree of satisfaction at the prospect.

IX. DEFENCES

Libel: Publication in the public interest

164. Two of the Participant Defendants, Mr Thomson and Mr McCarthy, rely on this defence. They plead that if and to the extent that they are responsible for the publication of the statements complained of in paragraph 8 of the Particulars of Claim those statements "were, or formed part of, a statement on a matter of public interest, namely, that those responsible for and/or involved in the death of Anastasiya Novikova should be tried and brought to justice"; and that they "reasonably believed that publishing the words and images complained of was in the public interest." The publications in question are the statements made at the June and November Events, on the placards and the banner. (Paragraph 8 of the Particulars of Claim complains also of statements that were read out, but as I have said, those are not actionable in libel). Messrs Thomson and McCarthy do not plead this defence in relation to any other publications for which I have held they are responsible. This defence is not relied on at all by Psybersolutions, which has rested its case on a denial of publication. Dr Waller has not needed to rely on this defence, because he has not been sued for libel. In the circumstances, this defence plays only a fairly small part in the case. But I must address it nonetheless.

165. This is a statutory defence, provided for by s 4 of the Defamation Act 2013. That section states, so far as relevant:

> **"4 Publication on a matter of public interest**
>
> (1) It is a defence to an action for defamation for the defendant to show that—
>
> (a) the statement complained of was, or formed part of, a ` statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) Subject to subsection… (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 judgement as it considers appropriate.
>
> …"

166. It is easy to accept that the question of whether an innocent young mother has been imprisoned, abused, and murdered is – speaking generally - a matter of public interest. It does not seem to me that the fact that such events are alleged to have taken place in a foreign country would of itself defeat that conclusion. Nor, I dare say, would the fact that the alleged victim and perpetrators were all foreigners, and that there was no United Kingdom aspect to the matter. If those factors would defeat such a conclusion,

then the fact that at the time of publication Mr Hourani was not only resident in London but also a British citizen means that the topic was clearly of legitimate interest and concern to the general public in England and Wales. But it is not by any means obvious that to parade in public holding a placard bearing a person's photograph under the single word "murderer" is, or forms part of, "a statement on a matter of public interest." It looks more like a bare accusation, unexplained by any context. It is easier to regard the written statements published at the November Event as part of a statement on a matter of public interest, because of what was read out to accompany those statements. Even so, I have my doubts about whether demonstrations created in the way that these were can properly be described as involving statements on any matter of public interest. But if driven to reach a conclusion I would say that the statements did qualify, as they had to do with a matter which was one of public interest. I reject this defence, however, because I do not accept that the other requirements of s 4 are satisfied.

167. It is obvious that not all statements that have to do with matters of public interest will be defensible under s 4. As the form of wording used in the Defence recognises, a defendant must also show that the requirements of s 4(1)(b) are met. In *Economou v de Freitas* [2016] EWHC 1853 (QB) [139] I identified some relevant over-arching principles:

> "(1) It is not enough for the statement complained of to be, or to be part of, a publication on a matter of public interest. It must also be shown that the defendant reasonably believed that publication of the particular statement was in the public interest.
>
> (2) To satisfy this second requirement, which I shall call "the Reasonable Belief requirement", the defendant must (a) prove as a fact that he believed that publishing the statement complained of was in the public interest, and (b) persuade the court that this was a reasonable belief.
>
> (3) The reasonable belief must be held at the time of publication.
>
> (4) The "circumstances" to be considered pursuant to s 4(2) are those that go to whether or not the belief was held, and whether or not it was reasonable.
>
> (5) The focus must therefore be on things the defendant said or knew or did, or failed to do, up to the time of publication. Events that happened later, or which were unknown to the defendant at the time he played his role in the publication, are unlikely to have any or any significant bearing on the key questions.
>
> (6) The truth or falsity of the allegation complained of is not one of the relevant circumstances.

> (7) It is not only those who edit media publications who are entitled to the benefit of the allowance for "editorial judgment" which s 4(4) requires (see paragraph 33 of the Explanatory Notes)."

168. Mr Hudson has not quarrelled with principles (5) or (6), nor has he sought to argue that the allegations of truth that are relied on in defence of the harassment claim can be put into the mix for the purposes of the s 4 defence. The statutory wording and context clearly show otherwise. The focus must be on the twin questions of whether the necessary belief was held, and whether any such belief was a reasonable one.

169. The first question is a subjective one, and a straightforward issue of fact on which the defendants bear the burden of proof. I start with the June Event. Neither Mr Thomson nor Mr McCarthy has persuaded me that he held any belief at that time that the publication of the word "murderer" on a placard with a picture of Mr Hourani was in the public interest. The case for both these defendants is that they thought at that time that it was all about Mr Aliyev, and did not believe that any statement at all was to be made about Mr Hourani. I have rejected their evidence to that effect. I find that they both knew before the June Event that Mr Hourani was to be one of the three targets. I accept that Mr Thomson may have done some research on Aliyev before the June Event, though I am left unconvinced that he did as much as he claims. But neither of these defendants claims to have carried out any research at all into the Houranis' alleged roles before the June Event, and I am satisfied that neither did so. My conclusion is that so far as the Houranis are concerned they did not care. They were carrying out a job for reward, without addressing their minds to whether or not it was in the public interest, or fair or reasonable to target the Houranis in addition to Aliyev.

170. I accept that after the June Event, Mr Thomson and Mr McCarthy discussed the Houranis with Dr Waller, and that he gave them both some information. I accept also that Mr Thomson did some research of his own, and discussed this with Mr McCarthy. The defendants' own accounts of the research and questioning undertaken are not impressive. Mr McCarthy's account is that Dr Waller told him that Novikova had been killed in the Houranis' apartment "and that they were also involved in her murder". Dr Waller told him, he says "that he had information showing that the circumstances surrounding her death were very suspicious" and that the Houranis were also "involved in certain corrupt and criminal activities with Aliyev". Mr McCarthy trusted Dr Waller and so **"**had no concerns at all", feeling "it was justified that the Hourani brothers were also identified on the posters together with Aliyev" and "in the public interest and reasonable for the posters to have been published relating to them". Mr McCarthy's account of what he was told by Mr Thomson is "he told me that he had done some online research into the Houranis and had confirmed some of what Mike had told me and that the Houranis were involved in further nefarious dealings" such as money laundering. This is the sum total of Mr McCarthy's investigations, on his own account. He accepted generalised statements such as these. He did not review any documents. He did not ask for any detail of the evidence base. He took no steps himself.

171. I do not accept that the research efforts that were in fact undertaken were even as extensive as the defendants have suggested. Nor do I accept that all or indeed any of this happened before the film footage was released to Dr Waller for online use. The documentary evidence does not support this part of the defendants' evidence, as one

would expect if it were true. Indeed, the email traffic of the days after the June Event indicates fairly clearly that there was no research effort under way at that time. The email traffic gives no indication of any research going on between then and November.

172. It is a striking feature of Mr McCarthy's witness statement that it does not say that he believed that the publications that took place at the November Event were in the public interest. But even if I adopt a benevolent interpretation, and treat his evidence about the statements made in June as applying equally to the similar statements made at the November Event, my conclusion is that he did not in fact hold such a belief. It was, as he accepted in cross-examination, a job for which he was being paid. It was put to him that "If somebody really believes in a cause, they don't need to be paid, do they?" He appeared rather taken aback by the suggestion. His reply was "If we all believed in a cause, and we didn't want to be paid, I mean, it's an added bonus that you believe in a cause as well." He referred to " Miriam, the lady who turned up" as someone who "said categorically that she did not have to be paid. She would have turned up anyway as she had lost a daughter". He did not maintain that he personally provided the added bonus of believing in the cause. My conclusion is that he did not, on this occasion either, direct his mind to the question of whether what was being said was in the public interest.

173. In the light of these findings it is unnecessary to make a finding on whether the second limb of s 4(1)(b) is satisfied. But I record that it seems to me to flow from what I have to say later about the harassment defences that these defendants had no reasonable basis for believing that the publication of the statements made at the June and November Events was in the public interest. As Mr Hudson has reminded me, in *Economou* I identified certain considerations relevant to the question of whether a belief is reasonable for the purposes of s 4. Among them are the following, dealt with at [241]: A belief will be reasonable for this purpose only if it is one arrived at after conducting such enquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case. Among the circumstances relevant to the question of what enquiries and checks are needed, the subject-matter needs consideration, as do the particular words used, the range of meanings the defendant ought reasonably to have considered they might convey, and the particular role of the defendant in question.

174. Here, there was no room for ambiguity about the central message that was being conveyed about Mr Hourani by the statements made at the June and November Events. It could hardly have been more serious. The nature of the allegation required a heightened level of care and attention to detail in the checks and enquiries carried out by those involved. The extent to which an individual defendant can reasonably be expected to carry out such checks depends of course on his or her role. These defendants were subordinates of Dr Waller in the organisational hierarchy that dealt with the June and November Events. But they were not mere foot-soldiers, as were (for instance) the "protestors". Mr Thomson and Mr McCarthy both played significant organisational roles, directing the efforts of others on the instructions of Dr Waller, and did so for financial reward. They took no steps at all to investigate for themselves before the June Event. It would not have been reasonable for either of them to form the view that it was in the public interest to carry out a public demonstration accusing Mr Hourani of murder, purely on the say-so of Dr Waller, without making any further

enquiry. Such limited and superficial enquiries as Mr McCarthy made after the June Event fell far short of what it was reasonable to expect of a person playing the significant role he did, when it came to the November Event.

Defences to harassment

175. Section 1(3) of the 1997 Act provides that s 1(1) "does not apply to a course of conduct if the person who pursued it shows— (a) that it was pursued for the purpose of preventing or detecting crime,… (c) that in the particular circumstances the pursuit of the course of conduct was reasonable." Analytically, therefore, it seems that it can be legitimate to treat a person in a way that would otherwise amount to harassment. If one or other of these provisions is shown to apply the conduct does not amount to harassment, even if it is so distressing to its target, or has other harsh and oppressive effects, as to take it across the relevant threshold of seriousness.

Preventing or detecting crime

176. I can deal relatively shortly with the "purpose" defence, which was not much pressed by Mr Hudson. Rightly so in my judgment as it seems to me to be clearly unfounded.

177. The sole requirement of this defence is to show that the otherwise harassing conduct was engaged in for one or other of the specified public interest purposes. The defence is available to a private person as well as to a police force or other public authority. It is not necessary to show that a crime has been committed or is imminent. There is no requirement of reasonableness. The test is subjective. All these points are established by *EDO MGM Technology v Axworthy* [2005] EWHC 2490 (QB) and *Hayes v Willoughby* [2013] UKSC 17 [2013] 1 WLR 937. But as Lord Sumption explained in *Hayes* at [15]:-

> "Before an alleged harasser can be said to have had the purpose of preventing or detecting crime, he must have sufficiently applied his mind to the matter. He must have thought rationally about the material suggesting the possibility of criminality and formed the view that the conduct said to constitute harassment was appropriate for the purpose of preventing or detecting it. If he has done these things, then he has the relevant purpose. The court will not test his conclusions by reference to the view which a hypothetical reasonable man in his position would have formed. If, on the other hand, he has not engaged in these minimum mental processes necessary to acquire the relevant state of mind, but proceeds anyway on the footing that he is acting to prevent or detect crime, then he acts irrationally... The effect of applying a test of rationality to the question of purpose is to enable the court to apply to private persons a test which would in any event apply to public authorities engaged in the prevention or detection of crime as a matter of public law. It is not a demanding test, and it is hard to imagine that Parliament can have intended anything less."

Moreover, this defence is available only if the purpose of prevention or detection of crime is the "dominant" purpose of the course of conduct: *Hayes* [17].

178. The evidence of the Participant Defendants does not satisfy me that either of the specified purposes was the dominant purpose for which any of them participated in the campaign. The June Event was clearly not about "detecting" crime, nor was the online campaign, and nor were the stickers or the November Event. The premise of all these elements of the campaign was that crime had already been detected. Mr Hourani and the others were being denounced as guilty of the murder of Anastasiya Novikova and other crimes against her. It is hard to see how any of the activities of these defendants could have served the purpose of "preventing" crime. It can be said that one prevents crime by bringing about a person's prosecution, conviction and imprisonment and thereby keeping him off the streets. Dr Waller has maintained that this was his purpose. That, however, is normally done by ensuring that the authorities are in possession of the necessary evidence and are doing their job. There may well be circumstances in which public protest serves the purpose of drawing attention to an issue, highlighting official failings, and galvanizing the competent authorities into taking appropriate action which they are failing to take, or being sluggish about. Protests and publicity may at least be intended to serve such a purpose. But that is not how these defendants' case is put, and it would not be rational to regard their activities as serving those purposes.

179. The Lebanese proceedings were ongoing at the relevant times. Dr Waller and Mr Thomson knew this. Mr McCarthy does not appear to have been aware of it until November, and his state of knowledge then is unclear. The defendants' evidence does not criticise the way the Lebanese authorities were handling the matter. The demonstration in Lowndes Square in June 2014 did not provide any relevant authority with any evidence of criminal activity. It was not aimed at any prosecuting authority in the UK or elsewhere, nor did those involved seek at the time to link it in any way with how the judicial authorities in the Lebanon dealt with the proceedings that were pending there. Online denunciations of Mr Hourani could not be expected to affect the outcome of those proceedings. The online explanations given for the activities undertaken did not, at any time before the November Event, pretend that the actions of the "protesters" were aimed at encouraging or influencing any investigation or prosecution. The fact that proceedings were pending before the Lebanese courts was not even mentioned in the campaign until November.

180. The contemporaneous documents lend no support to the contention that these defendants had the public interest purposes they claim. The documents tend rather to undermine the defence, by identifying other purposes. For instance, Dr Waller's weekly report to the Client(s) of July 11-17, 2014 contained a section headed "Reputation Analysis" stating "The object is to focus derogatory content on MARS and related targets". It is this report that described the JFN FB page as involving a "marketing campaign" ([80] above). The same report used the same term about Youtube. Even Dr Waller's witness statement contains passages that tend to undermine this defence. He says, for example, that it was "crucial" to organise the June Event on the 10th anniversary of Novikova's death "for *symbolic purposes*".

181. In November 2014 wording was used that did suggest that the protestors were there "to encourage the Lebanese government" to place the Houranis on trial: see the statements read out on 16 November. A letter was, allegedly, addressed to the

Lebanese Ambassador "supporting a Lebanese Judge" who was said to be considering "filing murder charges" against the Houranis. The YouTube videos also claimed that the protestors "backed" the Judge considering such a step. This would be a strange approach, if it were true. The Lebanese authorities were already seized of the matter. The usual way to secure a decision from a judge is to submit evidence and argument to the Judge. That had been done. The evidence provides no reason to suppose that the way to secure a favourable judicial decision in the Lebanon is to lobby its foreign emissaries by means of street protest and letters of "support" for the Judge, or that this is how these defendants saw the matter. This was not the dominant purpose for which Dr Waller and Mr McCarthy set up and carried out the November Event. It was not even one of the purposes of that event.

182. The November demonstration, like that of June, was fake. It was a set-up to give the appearance of a protest by young people outraged by injustice and demanding action. But the protestors, or most of them, were paid to act out parts. The event was organised for a Sunday, when the Embassy was closed, as must have been foreseen. It was another made-for-YouTube event, the purposes of which were those recorded in Dr Waller's literature, and in the Phase II documentation. The activities that Dr Waller and Mr McCarthy organised and orchestrated in November were targeted at the three individuals, not the Lebanese authorities, judicial or otherwise. The dominant purposes were to "disable" the targets and, in the case of Mr Hourani at this time, to put him under "extreme psychological pressure" and to damage his ability to carry out ordinary activities, by means of public denunciation. The notion of lobbying the Lebanese Ambassador was a cover story.

183. In these circumstances it is not necessary to address the further argument for Mr Hourani, that this defence is only available to those whose purpose is to detect or prevent a crime under domestic law, and cannot be relied on where the allegation is that the claimant "would have been" guilty of "felony murder" under US law.

Conduct reasonable in all the circumstances

184. In *Trimingham* at [53] Tugendhat J set out a useful distillation of the approach indicated by Lord Phillips MR in *Thomas* that I have set out above:

> "... for the court to comply with HRA s 3, it must hold that a course of conduct in the form of journalistic speech is reasonable under ... s 1(3)(c) [of the 1997 Act] unless, in the particular circumstances of the case, the course of conduct is so unreasonable that it is necessary (in the sense of a pressing social need) and proportionate to prohibit or sanction the speech in pursuit of one of the aims listed in Art 10(2), including, in particular, for the protection of the rights of others under Art 8. ..."

185. This passage helpfully emphasises the important point, that the exercise of the freedom of speech should only be found to involve unacceptable harassment if certain stringent conditions are clearly satisfied. But it should not be read as placing the onus entirely on the claimant. The burden of proof under s 1(3)(c) lies on the defendant. More importantly, a competing fundamental right is engaged and, as Tugendhat J noted in *Trimingham* at [55]:

> "... where the rights of a claimant under Art 8 and of a defendant under Art 10 are in issue. The court is required to follow the guidance of the House of Lords in *Re S (A child)(Identification: Restriction on Publication)* [2004] UKHL 47 at para [17], as follows: (i) neither Article as such has precedence over the other; (ii) where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary; (iii) the justifications for interfering with or restricting each right must be taken into account; (iv) finally, the proportionality test – or "ultimate balancing test" - must be applied to each. ... s 1(3)(c) [of the 1997 Act] requires the court apply that test to "the pursuit of the course of conduct"."

186. The same balancing process must apply where, and to the extent that, the course of conduct in question involves the exercise of the fundamental freedom of assembly protected by Article 11 of the Convention

187. In many cases of alleged harassment by publication the truth or falsity of what is said may not be of great consequence. It did not matter in *Thomas* that it was true to say of the claimant that she was black. Her complaint was of harassment by reference to her race. Nor did it matter in *Law Society v Kordowski* [2011] EWHC 3185 (QB) [2014] EMLR 2 where Tugendhat J was able to say, at [133], that "Even if there were evidence that the allegations were true, the conduct of the Defendant could still not even arguably be brought within any of the defences recognised by the [1997 Act]. No individual is entitled to impose on any other person an unlimited punishment by public humiliation such as the Defendant has done, and claims the right to do. His conduct is a gross interference with the rights of the individuals he names".

188. Truth is not a defence to harassment. But "the falsity or inaccuracy of the words (the course of conduct complained of) is not irrelevant...": *Kordowski* [164]. Mr Hudson is right to submit that in this case proof of truth would be relevant to a defence under s 1(3)(c), though it would not necessarily be sufficient to sustain such a defence. The question of whether, or to what extent, the allegations made are true is a factor going to the "comparative importance" of the specific rights being claimed by the defendants. It is capable of being a significant factor. I therefore start my consideration of this defence with that question.

Were the allegations true?

189. The defendants have presented an elaborate case theory. According to this theory, Aliyev was the father of Novikova's child; her marriage to Esten was a sham, designed to conceal this fact; she and Aliyev fell out because she was unfaithful to him; for that reason he had her tortured and assaulted in the Khaldeh Apartment; having done that she had to be killed, lest she bring down Aliyev by revealing the truth; Mr Hourani's wealth and position were so entwined with those of Aliyev that he stood to lose as well, so he was in on it; he knew about and lent some assistance to the criminal mistreatment to which Novikova was subjected in the Khaldeh Apartment; and he was in some way responsible for Novikova's murder.

190. The defendants have certainly identified a number of odd circumstances over the period before and after Ms Novikova's death. There may be some truth in some of their theory, so far as Aliyev and others are concerned. But the claim is brought by Mr Hourani, and it is his role that has to be examined. The defendants have attempted to prove him guilty of some form of participation in a murder, and complicity in other serious crimes, on the basis of documents alone. The attempt has, unsurprisingly, failed. But it has not failed only because it is based purely on documents. It fails for a number of other reasons also.

191. I start with the allegation of murder. The defendants' case on the truth of that allegation has not been clear, or consistent. Their case as to the manner of Ms Novikova's death has varied, and their case about the role played by the claimant remains unclear to me at the end of the trial.

(1) The Amended Defence pleaded that Dr Waller believed that "on the instructions of Rakhat Aliyev, Ms Novikova had either (a) been murdered in the Claimant's Apartment and then thrown off the balcony, (b) thrown off the balcony; or (c) caused such psychological and physical damage during her period of imprisonment that she had either committed suicide or had fallen to her death whilst trying to escape from the Claimant's Apartment." Who committed the murder, if it was done by method (a) or (b), was not specified. Evidently, it was not suggested that Aliyev had done it himself. Mr Hourani was not accused of being a perpetrator of such an act.

(2) When he opened the case for the defence, Mr Hudson said "The defendants believe that Anastasiya was pushed or thrown from the balcony of that apartment to the street below, her impact broken when she hit the steel rods." The theories of being driven to suicide, or falling while trying to escape, were not relied on. Mr Hudson said his clients believed Novikova was murdered "on the instructions of Rakhat Aliyev" but did not say by whom. He did not allege that Mr Hourani had done the pushing or throwing. He did say the defendants believed that Mr Hourani, "was complicit in and facilitated Anastasiya's captivity, torture, sexual assault and ultimate murder." He did not explain what was meant by "complicity" or how the "facilitation" of murder was supposed to have happened.

(3) The Further Information alleged that Mr Hourani was aware of and "facilitated" torture, drugging, beating and sexual assault of Ms Novikova in the Khaldeh Apartment. It went on to say that he was "thereby an accomplice" to her murder. The causal link referred to by the word "thereby" was unexplained. Mr Hudson did not explain it to me when I queried the point in the course of argument on the propriety of the Further Information. The Further Information put a further or alternative case, that Mr Hourani "would have been responsible for her murder under the US felony murder rule." This version of the case was also unexplained, and has never been elaborated by Mr Hudson. Neither the written nor the oral closing submissions for the defence referred to felony murder.

(4) Dr Waller dealt with the issue in his witness statement, at paragraph 100, where he said this:

> "My understanding of US law led me to conclude that the Claimant's facilitation of, and or participation in, the crimes

> that led to Ms Novikova's violent death constituted "felony murder." In the United States, felony murder is a crime in which a collaborator in a crime that results in murder is, in fact, guilty of murder even if he does not physically commit the act of murder himself. One can be convicted of felony murder even if the perpetrators do not commit murder, but whose own felony actions intentionally or unintentionally cause the death of a victim. Therefore, under the laws of my country in which I was working on the Justice for Novikova project, I believed it was reasonable to call someone a "murderer" if there is information which indicates that he engaged in "felony murder.""

This is not admissible evidence of US law, for reasons already given. But nor does it provide any satisfactory basis for supposing that US law is relevant. All that Dr Waller could do when I asked him why this might be so, in relation to protests in London, and online publications aimed primarily at non-US audiences, was to refer to his location at the time he organised the campaign. None of the publications complained of made any reference to US law, or to felony murder, of course. No reader could have deduced that this is what the anonymous author had in mind.

(5) Nor did any of the publications explain the grounds for the allegation of murder. The evidence does not explain clearly the basis on which Dr Waller considered, and the defendants now maintain, that Mr Hourani's conduct "would have" made him guilty of felony murder under US law. On his account of the felony murder rule, it would appear that the key issue would be whether Mr Hourani was a "collaborator" in a crime that "results in murder" or at least leads to a person's death. It is clear from Dr Waller's words in paragraph 100 that he is alleging Mr Hourani's facilitation of crimes. He goes beyond the pleaded case, and alleges "participation in" crimes. But it is unclear what he means by "the crimes that led to Ms Novikova's violent death".

(6) In his closing submissions Mr Hudson invited me to find that Ms Novikova's death resulted from a blow to the head causing a skull fracture, that was inflicted in the Khaldeh Apartment, before she fell or was thrown from the balcony. He based this submission on the Charite report, with its finding of more than one skull fracture. The argument is that the forensic findings are not consistent with death resulting from a fall. I shall come back to that issue. But some things are clear. It is not, and never has been, suggested that Mr Hourani inflicted a blow such as this, or was a participant in any conduct that involved the delivery of such a blow, or facilitated such conduct, or conspired to cause the infliction of such a blow.

192. At the end of the trial I am left with the conclusion that the defendants have failed to present the Court with any clear, consistent, or coherent case in support of the serious allegation that Mr Hourani is guilty of the murder of Anastasiya Novikova. They have put forward a case that he "facilitated" other crimes against her, to which I shall come. But they have not set out how he could "thereby" have been an accomplice to her murder. The causal link suggested by that word remains unexplained. Now that the defendants have dropped the theory that Novikova may have been driven to

suicide, or died escaping the brutality that is alleged to have been meted out to her, none is apparent. The case as to how she died that the defendants have put forward at the end of the trial is quite different. It is now suggested that she died by having her skull bashed in by someone. Otherwise, the defendants have put forward a case based on the hypothetical application of a US legal doctrine. They have failed to explain why US law should be considered relevant to the question of whether it is true that this British/Lebanese claimant murdered a Uzbekh national in Beirut in 2004. They have adduced no admissible evidence of the doctrine of law relied on. They have failed to explain how that doctrine would, on the facts as the defendants allege them to be, lead to the conclusion that Mr Hourani is guilty of murder.

193. For all these reasons, the defendants' case that the allegation of murder was true cannot be upheld. Indeed, my conclusion is that the application for permission to amend the defence by adding the Further Information to which I have referred must be dismissed. The case there set out is not adequately particularised, is in part irrelevant, and it never had any real prospect of success.

194. It goes further than that. First, because on the evidence Mr Hourani was not present in Beirut on the day of Ms Novikova's death, or for the four previous days. That was the evidence placed before the Lebanese court. It was based on the official records. There is no reason to doubt the records, which are from the same source as those relied on by the defendants. Dr Waller was challenged about this in cross-examination, and could offer no satisfactory answer. Confronted with the fact that records suggested Mr Hourani left Beirut on 15 June and did not return until 20 June, he responded that the records specified only British, Kazakh or Palestinian passports and not "passports of other nationalities which Mr Hourani might have had". He maintained that it was a "fair possibility" that Mr Hourani might have used another passport to re-enter the country in the days before Ms Novikova's death. There is nothing to support such a suggestion, other than circular reasoning which starts from the proposition that Mr Hourani was in the country and somehow involved in the murder, and looks for a way in which that might be made to fit with other evidence.

195. Mr Hourani's evidence is that he was not in Beirut at the time. The theory that he might have used some other passport to enter Beirut before 20 June 2004 was not put to him in cross-examination. It was put to him that he had acted as interpreter when Esten was interviewed by the Beirut police on 19 June 2004, but that proposition – which has long been a part of the case against Mr Hourani – fell apart when the interpreter assisting Mr Hourani told the Court that the written (and non-agreed) English translation of the interview record was wrong. I accept that the Arabic version identified the person who acted as translator as *Hussam* not Issam Hourani.

196. Further, I do not consider that I can safely accept the defendants' case that Anastasiya Novikova was murdered. The onus lies on them to prove that this is more likely than not. For that purpose they rely on the photographs of her body on the railings, and a body of circumstantial evidence. However, the main plank of this case is, as it has to be, forensic evidence. This takes the form of the Charité report. In closing Mr Hudson put it this way: "… it's right we say, to conclude that she was murdered and that her suicide was staged is because, amongst other things, the skull fracture she sustained simply cannot be explained by the fall." He went on to say that "the fact of the skull fracture was recorded by the doctor in Lebanon [Dr Haidar] when he examined the

body", and to criticise as unsustainable the conclusion that this fracture could have been caused by the fall.

197. Mr Hudson has acknowledged that I might conclude that the issue "simply can't be decided" by reference to the two competing hearsay medical reports. It goes a little further than that. In my judgment it would not be satisfactory to reach a conclusion in the defendants' favour on this issue. First, the assumption that the issue could be resolved by focusing on "the skull fracture" and preferring one expert opinion over another appears unsound. Examining Ms Novikova's body on the day of her death, when it was still warm, Dr Haidar found "multiple skull fracture" on the left side of the head. He made x-rays. He concluded that the fractures were caused by the fall. He detected no signs of aggression towards her. Eight years later, reviewing Kazakh records of the exhumation in 2007, Charité found that "the overwhelming majority" of the bone injuries found could be readily explained by a fall. The key passages in this report, as translated from the German, are these:

> "the two-sided skull fracture system cannot be reconciled with the documented discovery condition and a simple fall event..
>
> There are hints of a different type of force, contrary to the injuries that could have been caused by the assumed fall event, that point to a violent event against the body of NOVIKOVA, Anastasia Grigorjevna prior to her fall from above, which, based on the results of the Kazakh forensic pathologist only occurred post-mortem (in the sense of a throw out of the window of the already killed or dying NOVIKOVA, Anastasia Grigorjevna).
>
> …
>
> The conclusions in the report by Dr. Haydar… …must be rejected, since the photographs documenting the discovery condition cannot be reconciled with … the skull fractures observed by the Kazakh coroner…"

198. There are other features of the Charité Report to which the defendants point, and are entitled to point, as lending some support to the theory that Novikova's death was murder. But there are features of the Haidar Report that go the other way. As appears from the above-quoted extracts, the key factor is that the Kazakh "coroner" (assuming that to be a correct translation) made findings of fact about skull fractures that differed from those of Dr Haidar. Relying on those factual findings the Berlin experts concluded that Dr Haidar must have been wrong about the cause of death. But Dr Haidar was on the scene swiftly, and made his investigations without (on the evidence) any intervention from a third party. His integrity has not been attacked. Nor has there been any evidential or other exploration of what mistakes he might have made, or how. It is not explained, for instance, whether his own x-rays showed the multiple fractures referred to by the Charité report, so that his report was inconsistent with his own evidence. The court knows next to nothing about the professional qualifications of the authors of the Charité report. It has not even been shown the documentary materials supplied by the Kazakhs, on which Charité relied. On the basis of this evidence, whilst I cannot rule out the possibility of murder, the defendants have failed to establish that murder is a probability. The forensic evidence

is not good enough to do that, whether it is viewed in isolation from or in conjunction with the circumstantial evidence, to which I shall come.

199. I would have reached that conclusion even if I had disregarded the agreed fact that the Kazakh regime is corrupt, the evidence that tends to show that the President is overwhelmingly powerful within the borders of the Kazakh state, and the evidence that at all relevant times the regime has had hostile intent towards Aliyev and Mr Hourani. To my mind, these are all factors that lend support to my conclusion that the forensic evidence does not prove murder. I note that the authors of the Charité Report do not appear, on the face of the document, to have addressed – at least not in any ordered, sustained, or detailed way - the question of whether the source material provided to them might be unreliable for any of these reasons.

200. The defendants' Further Information, containing "a summary of the allegations they make against the Claimant in relation to his role in the murder of Anastasiya Novikova" runs to some 900 words over 15 paragraphs. The conclusions I have already set out mean that it may not be strictly necessary for me to make findings on all the factual allegations in this document. But all these points have been explored in the evidence, and I have reached conclusions. Those conclusions help explain why I have said that the forensic evidence would not pass muster, even having regard to the circumstantial evidence. They also have a bearing on the next main issue I have to deal with when assessing the reasonableness defence. So I shall record my findings about what has or has not been proved on the balance of probabilities. I do so using the paragraph numbers of the Further Information.

(1) I do not accept the defendants' case that Mr Hourani "offered to Rakhat Aliyev the use of an apartment of his in the CCC Building … as a place for Ms Novikova and Mr Esten to reside." I accept Mr Hourani's evidence that he had no such apartment. He had a flat some 2km away, and a house outside Beirut.

(2) I find that after their arrival in Beirut Ms Novikova and Esten lived in the Kazakhstan diplomatic residence in the CCC building. I do not accept the defendants' alternative case that the couple lived "in the same apartment as the Claimant and his wife, Gulshat" in the CCC Building. The Houranis had no such apartment.

(3) I accept that Gulshat Hourani was in Beirut when Luiza was born. But it has not been proved that Mr Hourani's sister Hiam "participated in the birth" of Luiza. I accept Mr Hourani's evidence that this is untrue. Hiam's main residence and her place of work were in Athens at that time. There is no sufficient evidence that she was present in Beirut at this time.

(4) It may be that Ms Novikova later developed an intimate relationship with an Arab man, but I do not consider that has been proved. I do not accept the defendants' case that Mr Hourani found out about such a relationship, and told Aliyev about it.

(5) – (7) I do not accept the defendants' case that in January or February 2004 Mr Hourani met Aliyev, Koshlyak and Fomaidi at Beirut Airport and, later at the Khaldeh Apartment. Nor do I accept that Mr Hourani returned to the Khaldeh Apartment later the same day with an electric drill and closed ring brackets; or that he brought Ms Novikova to the Apartment that evening, and took her and the

child to a room that had been prepared for the purpose of torturing Ms Novikova. It has not been proved that Mr Hourani "took care of" DNA tests of the child and Aliyev, as the defendants allege.

(6) – (9) I do not accept the defendants' case about what happened the following day: that Mr Hourani returned to the Khaldeh Apartment in the morning with food and an Asian woman who took Luiza away, and then came back with more food at lunchtime. I do not accept that Mr Hourani visited the Apartment at this time. It follows that I do not accept that Mr Hourani heard Aliyev tell Fomaidi that he intended to give Ms Novikova "methandrostenolone" so that she would gain weight and look ugly, or that he saw Ms Novikova in the Apartment that day.

(10) The defendants' case continues with an allegation that about 4 days later Esten arrived in Beirut and was taken by Mr Hourani to the Khaldeh Apartment where he was ordered by Aliyev to demean and punch Ms Novikova, and to "assault her through sexual intercourse and oral sex". It is said that "during this time the Claimant travelled back and forth to the Mahlab Building Apartment." I find that Esten was in Beirut from 25 February 2004. I do not accept that Mr Hourani went to the Khaldeh Apartment at this time, with or without Mr Esten. It has not been proved to my satisfaction that any of the alleged activities were going on in the Apartment or, if they were, that Mr Hourani was aware of it.

(11) The defendants have not proved their case that there was restricted access to the Khaldeh Apartment, with only Mr Hourani, Esten and Akimkulov having keys. Nor have they proved that only four people, one being Mr Hourani, could call the mobile phones used by Akimkulov and Esten whilst in Beirut.

(12) The allegation that Mr Hourani assisted Esten when, in March 2004, he was arrested for keeping the drug "anasha" would be insignificant in itself, but it has not been proved in any event.

(13) I find that Mr Hourani was in Beirut on 13 June 2004, which was his birthday. It is possible that Esten called him that day to wish him a happy birthday, as the defendants contend. I do not accept, however, the defendants' case that Mr Hourani "visited the [Khaldeh Apartment] around midday" or that when he was there "Akimkulov apologised to the Claimant for not being able to buy him a present" to which "the Claimant replied that that was not a problem and that his biggest problem was Ms Novikova."

(14) The Further Information alleges that "On 19 June 2004, following the murder of Ms Novikova and after her body had been found, Mr Esten told Mr Akimkulov not to worry and that the Claimant would handle everything." I do not accept this. I find that Mr Hourani was abroad at the time, and did not return until the following day. The defendants further allege that when Mr Esten was interrogated by Beirut police "the Claimant (or his brother) acted as translator". I have already made clear that it was Hussam Hourani who acted as translator, not this claimant. I am not persuaded that the evidence shows that Hussam Hourani "sought … to limit any police investigation of Ms Novikova's death", as the defendants maintain.

(15) I reject the defendants' contention that Mr Hourani "facilitated" the acts of torture, drugging, beating and sexual assault that are alleged to have been carried out against Ms Novikova in the Khaldeh Apartment. I am not persuaded that he was "aware that" those crimes were being carried out, if they were. I have already dealt fully with the allegation in this paragraph that Mr Hourani was "thereby" an accomplice to Novikova's murder "and/or would have been responsible" under US law.

Was the conduct of Messrs Thomson & McCarthy reasonable?

201. The matters pleaded in support of the defence of reasonableness have three main elements. The first is a substantial case about the relevant factual circumstances concerning Ms Novikova in and after 2004, set out in paragraphs 1 – 113 of the Re-Amended Defence. I have already dealt with the key aspects of that case, so far as they pertain to Mr Hourani. The second element is to point out that Messrs Thomson and McCarthy and Dr Waller were "exercising their rights to protect and freedom of expression". At this point the case for Messrs Thomson and McCarthy ends.

202. The Re-Amended Defence goes on to assert a third element, which is about belief. The beliefs asserted are (i) that Mr Hourani knew of and facilitated the imprisonment of Ms Novikova in the Khaldeh Apartment and her torture, drugging, beating and assault there; (ii) that on the instructions of Aliyev she had been murdered in the apartment or thrown off the balcony to her death, or caused to commit suicide, or to fall whilst escaping; (iii) that Mr Hourani was an accomplice to the murder and/or would have been responsible in US law; and (iv) that it was "very much in the public interest and reasonable for these matters to be brought to the attention of the public." But all these points about belief concern Dr Waller, and only Dr Waller. It is he who is said to have believed all these things. Neither Mr Thomson nor Mr McCarthy asserts that they held any such beliefs.

203. I have already found, when dealing with the public interest defence to libel, that Messrs Thomson and McCarthy lacked any belief that publication was in the public interest, and had no reasonable grounds for any such belief. I have also found that they did not act with the purpose of preventing or detecting crime but for other, illicit purposes. These conclusions are enough to lead to the rejection of their defence of reasonableness.

204. It is not reasonable for a person to accept substantial reward for playing a significant role in carrying out another's instructions to stage a fake, made-for-YouTube demonstration that targets a person with an accusation of murder, without turning their mind to whether this is in the public interest, or making any (or anything other than superficial) investigations into whether the accusation is true. Such a person takes the risk that the accusation turns out to be untrue, as I have found. Put another way, the course of conduct pursued in relation to Mr Hourani by these two defendants was, in the particular circumstances of the case, highly unreasonable. The topic was important, but the particular speech was not. I am not sure it is right to say that these defendants were exercising their Article 11 rights at the June Event. Neither was present, and neither was genuinely protesting about anything. But in any event, there is a pressing social need to interfere with the rights of these defendants under Articles 10 and 11 for the purposes of protecting the specific rights to respect for his private

life which Mr Hourani is asserting. There is no pressing need to prioritise these defendants' Convention rights over Mr Hourani's rights under Article 8(1).

205. In reaching these conclusions I have taken account of the principles identified above, and those considered in the next section of this judgment.

Was Dr Waller's conduct reasonable?

206. I have summarised Dr Waller's pleaded case, above. It relies on the factual circumstances and the Convention Rights under Articles 10 and 11 but otherwise focuses on the state of his knowledge and belief, at the time of the campaign, and the public interest in making those matters known. I would agree that those are important features of the factual matrix or, to put it another way, "particular circumstances" of some weight when considering whether a person's conduct "was reasonable". That is a sensible and logical approach to the statutory wording and the authorities. In this context, the "reasonableness" of a course of conduct to be assessed in the Convention-compliant way identified above. The court is not concerned with whether a publication was "reasonable" in any other sense. That is the point made by Lord Phillips MR in *Thomas* [32]. See also Tugendhat J in *Trimingham* [56].

207. The defendants' opening argument, and their initial skeleton argument, appeared to be in harmony with the pleaded case. Dr Waller's witness statement focused on what he knew and believed. I was therefore surprised to read and hear the closing submissions of the defendants. These pay relatively little attention to Dr Waller's state of mind, but focus on other matters. Indeed, it is submitted on behalf of the defendants that the question of whether their conduct "was reasonable" is not to be considered in the light of the facts as they stood, and the defendant's state of mind as it stood at the time of the allegedly harassing conduct, but rather as at the date of the Court's judgment on the basis of "particular circumstances" which include "any relevant circumstances which arose after the conduct complained of and what has taken place during the course of the trial." The area of enquiry is different, submits Mr Hudson, from that to which attention would be paid when considering the s 4 defence to defamation. The relevant circumstances encompass post-publication events including, it is said, the demeanour of the claimant under cross-examination.

208. I reject this argument as untenable. It is impossible to suppose that this is what Parliament meant by the words it used to enact the tort of harassment. The defence is available if the course of conduct "was reasonable". Those words direct attention to the time at which the conduct was engaged in. The "particular circumstances" referred to in s 1(3)(c) must be those prevailing at the time at which reasonableness is to be assessed. That is the ordinary and natural meaning of those words, in their context. This approach provides people with a clear standard by which they can guide their own conduct and assess the legitimacy of others' conduct towards them. It enables someone to determine, before, at or shortly after the time when a course of conduct is engaged in, whether or not it is lawful. These are important points, bearing in mind that harassment is both a tort and a crime. The interpretation advanced by the defendants would not reflect the wording used, would not serve these important purposes, and would be highly inconvenient in practice. Parliament should not be assumed to have legislated for a highly inconvenient approach, in the absence of clear words. Reliance on the words of Lord Phillips MR in *Thomas* [32] is misplaced.

209. Mr Hudson makes four further submissions about the right approach to this question that I do accept, with some minor reservations. First he submits that where a course of conduct involving speech is alleged to be harassment "the truth or otherwise of [an] allegation and the failure or success of a defendant in proving the truth of [an] allegation is a 'particular circumstance' to be taken into account in assessing whether any proven course of conduct was 'reasonable'". Truth will not always matter very much; it may be clear that proof of truth would be incapable of justifying what the defendant has done, as in *Kordowski* (above). But I would accept Mr Hudson's submission for the purposes of this case. I therefore address this issue in the light of my findings as to the truth or otherwise of (a) the allegation that Mr Hourani was guilty of of murder and other criminal offences, and (b) the key factual circumstances that have been alleged in support of those allegations. I am dealing with the publication of untrue allegations that the claimant was guilty of grave crimes, including murder, that has a harassing effect on its target.

210. That said, I readily accept Mr Hudson's second submission, that a failure to prove truth is not fatal to the defences available in a harassment claim. As Mr Hudson puts it, "it is not necessary for a defendant to prove that statements of fact which are made as part of a harassing course of conduct are true in order to establish a defence under" s 1(3)(c) of the 1997 Act. The question remains whether it was reasonable in all the circumstances to pursue the course of conduct which otherwise would amount to harassment. Just as it may be unreasonable to harass a person with true allegations, it can be reasonable to cause harassing effects by publishing allegations which you cannot prove to be true.

211. Thirdly, Mr Hudson submits that "circumstances" for the purposes of s 1(3)(c) "include the fact that an allegation has been made as well as whether or not that that allegation has been proved to be true". This is a very broad proposition, with which it is impossible to disagree in the abstract. But at the same time, this is putting the matter at such a level of generality that it has little meaningful content. Attempting to bring it to bear on the circumstances here, I would accept that I must bear in mind that Dr Waller is not the only or the first person to accuse Mr Hourani of murder, and other grave crimes. But that cannot of itself be a justification for what he did and said. I must make some assessment of the extent to which the fact that others have made such allegations makes it reasonable for Dr Waller to do so as well. That must depend to some extent on the sources, nature, and apparent reliability of the other allegations.

212. Fourthly, I accept that, as Mr Hudson argues, it is relevant to consider the topic of the speech that is alleged to amount to harassment; any attempt to interfere with political speech requires the most convincing justification, and the most anxious scrutiny from the Court.

213. In my judgment, contrary to Mr Hudson's submissions, the exercise of determining whether a course of conduct involving publication of a harassing nature is "reasonable" and hence not actionable under s 1 of the 1997 Act has some similarities with the evaluation of a public interest defence under s 4 of the Defamation Act 2013. I do not say that the exercises are the same, but they do involve overlapping considerations. The same outward behaviour by a defendant may, as here, give rise to claims in defamation and in harassment. The interests protected by the two torts are different, and that will affect the approach. But claims of both kinds are likely to engage the Convention right under Article 8, though they may not always do so. The

burden of proving each of these defences lies on the defendant. The defences will inevitably engage at least the Article 10 right, if not Article 11. The reasonableness defence to harassment must be interpreted and applied in such a way as to strike an appropriate balance, giving due weight to the competing Convention Rights. The public interest defence to defamation is designed to achieve that same aim.

214. The public interest defence to defamation extends protection to circumstances where the defendant has published defamatory imputations of fact which cannot be proved to be true. Defendants who have done that by making a statement on a matter of public interest, reasonably believing the publication of that statement to be in the public interest, are immune from liability. The question of whether a belief is reasonable for these purposes brings in considerations to which I have alluded already: bearing in mind the subject-matter, the words used, the nature of the allegations, and the role of the particular defendant, did the defendant conduct such enquiries as it is reasonable to expect of them, in all the circumstances?

215. Those considerations would seem to be relevant, albeit not necessarily conclusive, when assessing whether the same publication is actionable as harassment. A defendant who meets the requirements of the defamation defence might expect to be acquitted of harassment, unless there is something about the element of harassment that makes it necessary to interfere with the Article 10 right nonetheless. Defendants who do not believe that the publication of the offending statements was in the public interest, or had no reasonable belief that this was so, may well find those factors weigh against them in the overall assessment.

216. My view that the topic of how Ms Novikova met her death was one of public interest in a general sense has already been set out. Having seen Dr Waller deal with a prolonged, careful cross-examination I accept that by the time the campaign began in earnest – by the time of the first publications – he had formed a genuine belief that before her death Ms Novikova had been the victim of the criminal conduct that has been alleged in this action; that Mr Hourani was guilty of some kind of reprehensible role in relation to such crimes; that Ms Novikova had been killed or driven to her death; and that Mr Hourani had played some reprehensible role in that respect also. I accept also that he held the belief that, these matters being true, it was proper and in the public interest to publicise them. I do not accept, however, that the public interest in bringing these matters to the attention of the public at large was at the forefront of his thinking. It was not, as I have held, among his purposes to detect or prevent crime. His main purposes included doing the bidding of his Client(s) by "disabling" Aliyev and his associates and, along the way, imposing extreme psychological pressure on Mr Hourani. The fact that it was, in his mind, in the public interest to expose Mr Hourani as a murderer was not instrumental, but incidental to his thinking.

217. Nor do I accept Dr Waller's claim to have "carefully reviewed" the available documents "in order to satisfy myself of the veracity of the allegations made against the Claimant and to ensure that any campaign was undertaken with full knowledge of the facts and matters being referred to." He was to publish, or cause the publication, of very serious allegations. He was the main protagonist. Besides the Client(s) it was he who determined the message, and how it was delivered. He chose to deliver an unambiguous and unsubtle message, in a forceful way, over a period of time, to a large number of people. There was no reason for him to believe that the message was likely to have an impact on the authorities in the Lebanon. Its likely, as well as its

intended impacts were on the reputations and feelings of the targets, two of whom were targeted outside their home and in their neighbourhood. The likely impact on Mr Hourani was severe or harsh. It is important to note that the way Dr Waller chose to deliver his message was bluntly, in such a way that those who received it would be ignorant of the factual basis for the allegation, unaware of the evidence base, and hence unable to engage in any critical evaluation of its validity. Readers, or viewers of the online content, would thus have to place a great degree of trust and reliance on the the publisher. It would not be reasonable to engage in such conduct without taking great care in and about the verification of the factual position. All of this should have been clear to Dr Waller.

218. In fact, Dr Waller arrived at his beliefs much too easily and readily, without adopting anything like a sufficiently critical approach. He failed to undertake a reasonable or responsible review of the available material. He failed to look for other material, the existence of which was manifest on the face of the documents he did review.

219. The main basis on which Dr Waller formed his beliefs consists of some 20 key documents or groups of documents. It is unnecessary to pick over every point that can be made about the inadequacies of Dr Waller's approach. It is enough to make the following points.

220. First, and most prominently, there is the fact that even at the end of this trial Dr Waller has still failed to put forward any clear, cogent or coherent case as to how and why Mr Hourani should be considered guilty of the murder of Ms Novikova. I have already analysed many of the most obvious flaws in this aspect of the case for the defendants, and do not need to repeat that analysis. The reason why the defence case ended in such a muddle is that the matter was never properly thought through by Dr Waller. His belief in Mr Hourani's guilt was based in part, I accept, on his application of what he thought the US felony murder rule said. But he never took any advice upon it. He never seems to have asked himself why US law should be applicable. He seems never to have properly turned his mind to analysing how the US rule would apply to the facts. I find that he never got clear in his own mind the basis on which Mr Hourani should be considered guilty.

221. Dr Waller never had any evidential basis for supposing that Mr Hourani was involved in the acts that caused Ms Novikova's death if she was thrown off the balcony, or killed in the Apartment. There might perhaps have been a basis for linking Ms Novikova's death to Mr Hourani if the torture, assault and drugging which was allegedly facilitated by Mr Hourani could be said to have caused her to commit suicide or to fall whilst running away. But it swiftly became clear, as analytical effort was brought to bear on the evidence, that there was a gulf in time between the episodes in which it was possible to allege that Mr Hourani was (peripherally) involved and the death of Novikova. The analysis now leaves a gap of several months between the last date on which Mr Hourani is said to have been at the Apartment and the death of Novikova. The same analysis could quite easily have been performed by Dr Waller in 2014, before publication.

222. His thinking in fact was beyond sloppy. This emerged perhaps most clearly in cross-examination, when Dr Waller was asked about the factual basis on which he had thought fit to accuse Devincci Hourani of murder. His answer was:-

> "The factual basis for that was my understanding of the term 'murderer' *under American law*, which refers to felony murder, which is a crime in which *one can be a murderer under the law if one is in any way associated with* a crime that results in either murder or driving a victim to suicide or accidental death."

223. The emphasis is mine. Asked what association he believed there was between Devincci Hourani and Novikova's death he offered four points (the numbering is mine): "[1] Ownership of the unit in which she died and [2] no attempt to uncover who might have been behind the crime, [3] no interest in solving the murder, and [4] participation in other activities prior to that crime". Further questioning revealed that he could offer nothing to support [3] or [4]. That left the only pre-death behaviour relied on as ownership of the Khaldeh Apartment. Dr Waller offered the surprising proposition that in US law ownership of a property where a crime is committed is sufficient to render a person guilty of that crime. He then ran into the difficulty that he had thought at the time of publication that the apartment was owned by the claimant, Issam Hourani.

224. The second major point about Dr Waller's investigations and conclusions is that of the 20 key documents he relied on there are only two which directly implicate Mr Hourani in any criminal act or even any knowledge about any criminal act committed against Anastasiya Novikova, and those documents are manifestly not a satisfactory basis for convicting a man, in the public eye, of murder or the other crimes alleged. I refer to the two depositions obtained by the Kazakhstan regime in 2009 from Akimkulov and Fomaidi. It is these documents that form the evidential basis for the vast majority of the factual case set out in the Further Information, on which I have set out my findings of fact above.

225. These depositions were regarded by Dr Waller as "important" and "compelling". But they do not contain anything that could support an allegation of murder against Mr Hourani. They do contain a number of serious allegations against him, on the basis of which Mr Hourani has been accused by Dr Waller of other grave criminal conduct. But they are a thoroughly unsatisfactory basis for reaching any firm conclusion against Mr Hourani. That is plain and obvious now, and should have been obvious to Dr Waller at the time he was formulating and implementing the campaign against Mr Hourani.

226. The documents available to Dr Waller show that these depositions are not the only statements made by these two. Akimkulov had evidently been interrogated on a number of previous occasions, seemingly starting in July 2007. Dr Waller did not seek sight of the other statements made. The statements themselves are clearly unreliable in nature. They are taken by the Kazakh authorities, whom Dr Waller regarded as corrupt. There is good reason to believe that from mid 2007 those authorities had a strong antagonism to those whom Akimkulov and Fomaidi placed "in the frame". The depositions were made by two men who, according to Dr Waller, were KNB officers both of whom had been convicted and given long prison sentences for criminal offences. The men, on their own account, were accomplices to some of the crimes they described, and were seeking to place responsibility on others. They had a clear motive to falsify, even assuming they were speaking voluntarily. The statements were made long after the event. They contain no explanation of why they were made at that time and not earlier.

227. There was reason to suspect, and evidence was available to Dr Waller, that the makers of the statements had been pressurised to make them, or worse. Aliyev's answer in his own deposition, when asked about Akimkulov's deposition, was that the latter had been detained and tortured, to give statements "under physical and psychological pressure". In cross-examination Dr Waller accepted that this might have been so. The questioning on which the translated deposition that is before the court appears to have been video recorded, but the recording has not been disclosed. Dr Waller was prepared to concede in cross-examination that these depositions must be treated with a great deal of caution. That, to my mind, is a considerable understatement.

228. As Ms Rogers points out, the Akimkulov deposition contains some important allegations that are either clearly false, or at the very least inconsistent with other apparently reliable records.

(1) Akimkulov said that Aliyev and Koshlyak were both in Beirut on the day of Novikova's death. But the entry and exit records on which Dr Waller relies as accurately showing who came to and went from Beirut at the relevant times indicate that both were absent: see [41] above.

(2) Akimkulov also claimed that Mr Hourani was at the police station, and was seen by Akimkulov, on 19 June 2004 when Esten was questioned. But Mr Hourani was not there. Not only has that been clearly established now, it is also evident from the entry and exit records.

(3) Akimkulov also alleged that Koshlyak was present at the police station, which is inconsistent with the records and evidently untrue.

(4) There are other allegations in the Akimkulov deposition that are at odds with the case the defendants advance as to the facts. For example, Akimkulov stated that Ms Novikova was moved to the Khaldeh Apartment, and her child taken away, at the end of January 2004. The defendants now contend that she did not move to the flat until 21 February 2004.

229. There are also profound difficulties with the Fomaidi deposition. Most of these have already been identified. As Dr Walker accepted, Fomaidi may well have been tortured during his detention. In addition, the statement's contents are problematic. It is vague about the role of Mr Hourani. It is at odds with other evidence, and with parts of the defendants' own case.

(1) Fomaidi is vague about when Novikova moved into the Khaldeh Apartment, but estimates Luiza to have been 4 months old at the time. If so, the move would have been in late 2003 or early 2004, about a month before the date given by Akimkulov, and some two months before the date (21 February 2004) that is now suggested by the defendants.

(2) Fomaidi says he spent a day at the Apartment with Akimkulov. The latter states that when he arrived in the Apartment he saw nobody other than Novikova and Esten.

(3) Fomaidi's description of the rings said to have been used in the torture of Novikova is inconsistent with Akimkulov's description of "hooks" used for that

purpose. The two give different locations and different heights for different apparatus.

(4) Fomaidi's deposition records that he was working, at the time he made it, as a Deputy Director and delivery driver of a restaurant, but Aliyev said in his Malta deposition that Fomaidi was still a secret agent of the KNB who was guarding his wife and family.

230. There is no evidence that any effort was made by Dr Waller to contact these two key witnesses to test what they had to say. Neither of them appears to have attended in the Lebanon, a matter which could have been ascertained by Dr Waller. There has been no evidence, nor any explanation, of why neither of the deponents has been called to give evidence at this trial. There is no evidence that any effort has been made to secure their attendance, in person or by video link.

231. Having reached these conclusions, I need say little about the remainder of the documents on which reliance was and is placed by Dr Waller. It is better not to engage in unnecessary analysis. None of the documents relied on could go anywhere near establishing that Mr Hourani was guilty of any of the crimes alleged against him. My conclusions on remedies will not depend on any factual finding that could be affected by any of these documents. I do however make a few points by way of illustration of some of the shortcomings of the defendants' approach, at the time of publication and now.

232. Considerable weight has been placed on statements taken by the Lebanese authorities from the beach worker and the concierge in 2004, and the neighbour in 2009. But all of these represent little more than scraps of evidence. The evidence takes the form of English translations made by somebody unknown, of notes or records made in Arabic of things said by people whose reliability it is impossible to assess with any confidence. The way the neighbour's evidence has been treated by the defendants is particularly problematic. It has been put forward as evidence supportive of the picture painted by the depositions of Akimkulov and Fomaidi. But the neighbour did not want to make a deposition, for reasons which are not apparent. Reviewed in its totality, the record of what she said appears to lend support to the conclusion arrived at by Dr Haidar, that Novikova had committed suicide. The neighbour said she saw Novikova daily on the balcony in the daytime. She had thought she might be looking to escape, but then said Novikova could have asked for help. She said she thought Novikova had jumped.

233. The General Prosecutor's report of March 2010 is a document on which Dr Waller placed considerable reliance. It is however a manifestly questionable document, at best, and this should have been clear to him. It emanates from a regime Dr Waller considers to be corrupt. It is written to the President, reporting on investigations undertaken on the direction of the President. It is the kind of document of which a person might say "They would say that, wouldn't they?" There are also two internal features of the document that should have put a reasonable person in Dr Waller's position on the alert. The first is that the report refers to Akimkulov as a "convict" who "currently actively co-operates with the investigation". The second is a reference to an organisation called Tagdyr. This is ostensibly a widows' organisation. The Prosecutor's report describes it as having been founded "by the initiative of" the Ministry of Justice and "NSC", ie the KNB. The document thus contained clear

evidence of the use by the Kazakh regime of front organisations for propaganda purposes.

234. I should also record some more general points made by Ms Rogers which seem to me to be valid:

(1) As will be obvious already, the documents relied upon are only a selection of those that could have been available.

(2) The selection is one that has, in the main, been made by the Client(s).

(3) The basis of selection has not been explained.

(4) When considering a document, its provenance matters, but the provenance of the documents themselves is not in many cases known. Both sides caution against reliance upon documents originating in Kazakhstan, in particular from the Kazakh secret services or law enforcement agencies.

(5) Contemporaneous documents are generally to be preferred yet the defendants have placed greater reliance on later documents, even where the earlier document is from a primary source and the later one is hearsay.

(6) When considering any given document it is important to consider the whole. But when it came to Mr Hourani, Dr Waller relied on selective sections from documents, ignoring sections which undermined his case. This approach was reflected in the cross-examination of Mr Hourani, in the course of which (for instance) reliance was placed on some answers given by Rakhat Aliyev in his deposition but others were ignored. Aliyev's account of how Akimkulov had come to say what he did is one example (see above). Another is that when questioned about Fomaidi's allegation that Novikova was his girlfriend Aliyev's response was that was "not true".

235. In conclusion, Dr Waller's conduct in organising and directing a campaign in which Mr Hourani was publicly and repeatedly vilified as a murderer, and as guilty of other grave crimes, was unreasonable to a very high degree. His conduct clearly crosses the thresholds set by domestic law and the Convention. It was an irresponsible misuse of the right to freedom of expression. It is necessary to impose liability for harassment on Dr Waller and, through him, Psybersolutions, if due respect is to be paid to Mr Hourani's rights. The interference with free speech that is represented by the imposition of liability to pay reasonable compensation is necessary for, and proportionate to, the pursuit of that legitimate aim.

X. REMEDIES

Damages

236. My awards of damages are explained as follows. A successful libel claimant is entitled to recover, as general compensatory damages, such sum as will compensate him or her for the wrong he has suffered. The heads of compensation, and the key factors, were identified by Sir Thomas Bingham MR in *John v MGN Ltd* [1997] QB 586, 607-608:

> "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; …. **[b]** The extent of publication … **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation … [and] **[d]** compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men."

237. The key requirements of the Court's judgment are these:

(1) It must ensure that the claimant in a case such as this obtains vindication of the libellous allegations made, and appropriate compensation for the injury caused to his reputation and feelings by the libels, and by conduct after publication which aggravates the injury, including the way the case has been defended.

(2) Damages must be enough to provide reasonable compensation, but because the award represents an interference with Convention Rights it must be proportionate, and no more than necessary to give effect to the right that is being protected: *Rantzen v Mirror Group Newspapers (1986) Ltd* [1994] QB 670.

(3) 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: *Purnell v Business F1 Magazine Ltd* [2007] EWCA Civ 1382, [2008] 1 WLR 1; *Cairns v Modi* [2012] EWCA Civ 1382, [2013] 1 WLR 1015 [31]. This case is, in my judgment, however, one where the reasoned judgment can be taken to provide a significant measure of vindication.

(4) The judgment must also ensure a sufficient remedy for the impact of the harassment complained of. The two causes of action both protect aspects of private life, and compensation is payable for injury to feelings. The court must be alive to the risk of over-compensation by double-counting. In some cases, and in my judgment this is one of them, the reasoned judgment of the court provides a significant measure of vindication. That reduces what is required by way of compensation.

238. As between the defendants, Messrs Thomson, McCarthy and Psybersolutions are jointly and severally liable to compensate Mr Hourani for the libels involved in the June Event and the online publications consequential upon it. All the Participant Defendants are liable for the harassment involved. Mr Thomson is not liable for the November Event or any of the other matters complained of. But Mr McCarthy and Psybersolutions are liable to compensate Mr Hourani for the libel involved in the November Event and consequent publications. Those two and Dr Waller must also

compensate him for the harassment involved. For the additional harassment involved in the distribution of the stickers, and the relatively few online publications that were not caused and authorised by Mr Thomson or Mr McCarthy or both, it is Psybersolutions that must compensate for libel, and Psybersolutions and Dr Waller who must compensate for harassment.

239. In assessing damages for libel I bear in mind the specific evidence of hostile responses from people who read what was written but also that, although the extent of publication within this jurisdiction was substantial, it was not enormous. I find that Mr Hourani has suffered real and substantial distress as a result of the campaign, and in the course of this litigation. The fact that these allegations have been made before does not make the harm to feelings less. It exacerbates the harm, because it means that he has had to face these allegations time after time. His belief that he has been targeted by the Kazakh regime may or may not be correct. It does not matter for present purposes. The defendants cannot complain if he is compensated on the basis that this is the way he feels, given that it is reasonable in all the circumstances.

240. The lowest amount that would be proportionate to the overall injury caused by the campaign is £80,000. Psybersolutions is responsible for all the conduct complained of, so it is liable to pay damages in that sum. The sum breaks down into £50,000 for libel and £30,000 for harassment. Mr Thomson is liable for damages of £40,000, of which £30,000 represents damages for libel and £10,000 damages for harassment. Mr McCarthy, responsible for a large part of the publications complained of, is liable for damages of £65,000. This breaks down into £50,000 for libel and £15,000 for harassment. Dr Waller, though he was in charge of the operation as a whole, is sued only for harassment. The award against him must represent reasonable compensation for the totality of the harassment. It is not legitimate to include any element of compensation for harm to reputation. The award against him is therefore the same as the harassment element of the award against Psybersolutions, at £30,000.

Other matters

241. There is a clear basis for injunctions to restrain further libel and harassment of this claimant. The form of order can be discussed after this judgment has been delivered. In the light of my conclusions it is clearly fair and reasonable to allow the claimant to amend his claim to seek an order for the disclosure of the identity or identities of Dr Waller's Client(s). Whether such an order should now be made will have to be the subject of submissions in the light of this judgment.