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Case No: QB-2021-004630

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 June 2023

**Before** :

**THE HONOURABLE MR JUSTICE NICKLIN**

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**Between :**

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| **Mohamed Amersi** | **Claimant** |
| **- and –** | |
| **(1) Charlotte Leslie**<br>**(2) CMEC UK & MENA Limited** | **Defendants** |

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**William McCormick KC** and **Jacob Dean** (instructed by **Carter-Ruck**) for the **Claimant**
**David Price KC** and **Jonathan Crystal** (instructed by **Rradar Limited**) for the **Defendants**

Hearing date: 10 January 2023

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# Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties and their representatives by email and by release to The National Archives. The date and time for hand-down is deemed to be 2:00pm on 7 June 2023.

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THE HONOURABLE MR JUSTICE NICKLIN

**The Honourable Mr Justice Nicklin :**

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2. In this libel action, the Claimant complains of the publication by the First Defendant to various individuals of several documents, between late December 2020 and early January 2021 ("the Memos") (details are given in [28] below). The defamatory meanings that the Claimant alleges were conveyed by the Memos are set out in [29] below.

3. This judgment resolves two Applications. The Claimant's application to amend his Particulars of Claim – to particularise and clarify his case on serious harm to reputation which he alleges was caused by publication of the Memos ("the Amendment Application") (see Section E: [70]-[98] below); and a related application by the Defendants to strike out the original claim for failing to plead a proper case on serious harm ("the Strike Out Application") (see Section F: [138]-[139] below).

4. Before turning to those Applications, I shall need to set out some of the history of the litigation between the parties (which includes an earlier data protection claim) as well as considering and analysing the extensive evidence that has been filed by the parties.

## A: Parties and Background

### (1) The parties

5. In the Particulars of Claim in this action, the Claimant describes himself as a "*businessman and philanthropist*". The Claimant is the founder of the Conservative Friends of the Middle East and North Africa Limited, a company limited by guarantee, incorporated on 21 January 2021, which aims to promote a better relationship between the Conservative Party, the UK Government and the Middle East and North Africa ("COMENA").

6. The First Defendant is a former member of Parliament and the managing director of the Second Defendant. The Second Defendant is a company limited by guarantee, incorporated in March 2019. According to evidence filed by the Defendants, however, the organisation, the Conservative Middle East Council ("CMEC"), has been in existence for over 40 years. It was established by the former Foreign Secretary,

Lord Carrington, on the instruction of the then Prime Minister, Margaret Thatcher. Its purpose was to forge and maintain relationships between the Conservative Party and the Middle East and North Africa region and included organising events, debates, facilitating interaction between Conservative MPs and Middle Eastern embassies in the United Kingdom and arranging fact-finding missions to the region for Conservative MPs. CMEC is associated with, but no longer formally affiliated to, the Conservative Party.

## (2) The Claimant's response to the Memos

7. The first complaint sent to the First Defendant regarding the Memos was a six-page letter, dated 7 January 2021, from the Claimant's former solicitors, Mishcon de Reya ("the MdR Letter"). The MdR Letter contained a point-by-point rebuttal of the "*scurrilous, misleading and untrue allegations*" and sought a retraction of what were said to be these defamatory and false allegations about the Claimant in the Memo "*together with a list of all of those to whom it had been circulated*".

8. From early January 2021, the Claimant made several people (including many in the Conservative Party) aware of the dispute, including, in many instances, sending some of them copies of the Memos and the MdR Letter (see [110] and [112] below).

9. The Claimant's current solicitors, Carter-Ruck, sent a further letter of complaint to the Defendants about the Memos, on 21 February 2021. It was clear from the letter that, although he was aware in general terms about circulation of the Memos, the Claimant did not know the identity of all the publishees. In this respect, the letter stated the following:

> "Our client is, at present at least, obviously unable to confirm with precision the number of people to whom the memorandum was circulated… Suffice it to say our client had become aware of the identity of a number of recipients to whom the memorandum was sent. The true extent of publication will, of course, be explored further in the event our client is forced to commence proceedings and he will employ all legal methods available to him, including by way of disclosure, in order to arrive at a complete list of those to whom the memorandum was initially circulated.
>
> What our client can confirm, however, is that the memorandum was sent to a number of Ambassadors, diplomats, Conservative Members of Parliament and other individuals in the Arab diplomatic corps in London. This group of people is, as your clients well know, extremely important to our client and to COMENA. Our client holds their opinion of him very dearly."

The letter sought a "*full list of all those to whom the memorandum has been circulated*", damages and costs. At that stage, the Claimant had identified Sir Nicholas Soames as a potential defendant to the threatened libel action. A response was sought by 26 February 2021, or the Defendants were advised "*they should be left in no doubt whatsoever that proceedings for libel against them will swiftly follow*".

10. The Defendants did not comply with the Claimant's demands. Nevertheless, proceedings for libel did not "*swiftly follow*". Instead, by letter dated 19 March 2021, the Claimant's solicitors threatened to bring an application, under CPR 31.16, for pre-action disclosure seeking all copies of the Memos that had been published and

the identities of all individuals and organisations to whom any version of the Memo had been sent. As well as maintaining the threat of a claim for defamation, the letter advised the Defendants that they "*should be aware that a subject access request is being prepared for service separately*".

11. On 1 April 2021, the Defendants' solicitors responded rejecting both the claim in defamation and the threatened application for pre-action disclosure. The letter admitted that the First Defendant had published a copy of the Memo to (1) Sir Nicholas Soames (who had then sent it to Ben Elliot, the Co-Chair of the Conservative Party); (2) "*an ambassador of a CMEC territory*" (who sent it on to two other such ambassadors); (3) "*a limited number of senior figures within the Conservative Party with a relevant interest*"; and (4) "*a limited number of relevant individuals connected formally to the security services*". Defences of privilege and truth were advanced. The response also expressly challenged any contention that the Claimant could demonstrate that the limited publication of the Memos could satisfy the requirements of s.1 Defamation Act 2013 (serious harm to reputation). Finally, the Defendants' solicitors advised that they intended to treat the Claimant's solicitors' letter of 19 March 2021 as a subject access request, made under s.45 Data Protection Act 2018, and informed the Claimant's solicitors that they would receive the relevant response within the month.

12. A demand that the Claimant be provided with the names of those to whom the Memos had been sent – made in Carter-Ruck's letter of 7 April 2021 – went unsatisfied. The threatened application for pre-action disclosure did not materialise.

**(3) The Defendants disclose copies of the Memos**

13. On 14 May 2021, the Defendants' solicitors provided copies of various documents to the Claimant ("the 14 May Documents"). As noted, they did so having treated the Claimant's solicitors' demands to be supplied with copies of the Memos (and any accompanying documents) as a subject access request under the relevant data protection legislation. The 14 May Documents included copies of the Memos that were sent to five named individuals (Sir Alan Duncan, Crispin Blunt, Sir David Lidington, Sir Julian Lewis and Sir Nicholas Soames) and eight individuals who were identified only by description (Persons A and H – each described as "*Former Conservative MP*"; Persons B, C, E and F – each described as "*National Security Individual*"; Person D – described as "*Ambassador*"; and Person G – described as "*Conservative MP*") (together "the Unidentified Publishees").

14. If the purpose of the threatened libel action, first intimated in the MdR Letter and repeated by Carter-Ruck, was vindication of his reputation, at the latest from receipt of the 14 May Documents (and probably in January 2021), the Claimant had sufficient information to commence a claim for defamation. He did not do so. He took a different approach.

**(4) The Data Protection Claim**

15. On 29 June 2021, the Claimant issued a Part 8 Claim against the Defendants seeking an order, pursuant to s.167 Data Protection Act 2018, requiring them to comply with their statutory data protection obligations ("the Data Protection Claim"). It is tolerably clear that the main purpose of the Data Protection Claim was to obtain the names of the

Unidentified Publishees (a fact the Claimant appears later to have confirmed in an interview with the *Financial Times* – see [19] below).

16. The Data Protection Claim was listed for trial on 23 November 2021. However, on the day of trial, Tipples J adjourned the proceedings because there were substantial disputes of fact that made the claim unsuitable for trial as a Part 8 claim. As a result, the Data Protection Claim was transferred to Part 7. Directions were given for the service of statements of case, disclosure, witness statements and a revised trial window between 25 March 2022 and 13 April 2022. The Judge ordered the Claimant to pay 65% of the costs of the Part 8 proceedings.

17. The Data Protection Claim was relisted for trial on 5 April 2022, but it did not reach a conclusion. It was formally discontinued by the Claimant on 28 March 2022. The Claimant and the Defendants agreed that there should be no order for costs. In an article published in the *Financial Times* on 27 March 2022, the Claimant was quoted as saying of his decision to discontinue the Data Protection Claim: "*I have achieved all that could realistically be achieved from that process and I am now in a position to seek vindication over the false and defamatory statements made about me.*"

## (5) Media coverage of the dispute

18. On 7 July 2021, an interview with the Claimant was published in the *Financial Times*, written by Tom Burgis, under the headline "*The donor, the Russian deals and the Conservative money machine*" ("the First FT Article"). The First FT Article, which is still available online, included reference to the litigation between the Claimant and the Defendants. As the article has been relied upon by the Defendants, and because it has a bearing on some of the issues I must decide, I have set it out in Annex 1 to this judgment.

19. A transcript of the interview between the Claimant and Mr Burgis, which led to the publication of the First FT Article, has been provided by the Claimant as part of the evidence. In the interview, the Claimant said this of his dispute with the First Defendant:

> "… she [the First Defendant] will be taken to the cleaners. Because we have started our DPA claim, and she'll be forced to disclose what damage she's done to me, and others, as well, and after that we'll take libel action…
>
> …
>
> So, I said, in good faith, because the party asked me to sort it out, I said in good faith, if she wants to settle on terms that have got five provisions, number one, I want an apology. Number two, I want a retraction. Number three, I want a cease and desist. Number four, I want to know who she sent this paperwork to. After six months, we don't know. Six months. Six months, she doesn't want to share who sent the stuff to. Is that behaviour that can be condoned here?... Number five, an admission that she wrote this… If she had done this in good faith, given me these five points in good faith, I would not want to have sued her for damages. Do you know what my costs are to date, £260,000. I could go there and give it to a COVID charity, which would help people. Instead, I'm wasting my time and wasting my money for absolute nonsense… [unclear] now will be incurred. £260,000 worth of costs, right? Nearly 300,000 now, after the DPA filings. £300,000 I would have wasted which I would have given to the party, to the poor, to other people. I have

> wasted this on this, so it is only fair now that I recoup as much of that, which I will donate to the party…"

20. On 31 July 2021, a further article, again based on an interview with the Claimant, was published in *The Sunday Times* under the headline: "*Access capitalism scandal: A dinner with Prince Charles, then the begging letter arrived*" ("the ST Article"). The ST Article is also still available online (albeit behind a paywall). As the headline suggests, one of the main themes of the ST Article is what was called "*access capitalism*". One paragraph recorded the Claimant's answer as to the benefits he received from his membership of the concierge service, Quintessentially, run by Mr Elliot:

> "Asked if Elliot was in effect operating a pay-to-play scheme, Amersi replied: 'You call it pay-to-play, I call it access capitalism. It's the same point. You get access, you get invitations, you get privileged relationships, if you are part of this set-up, and where you are financially making a contribution to be a part of that set up. Absolutely.'"

21. A follow-up article to the First FT Article was published by the *Financial Times*, on 2 August 2021 – "*New claims raise questions over Tory donor's Russian business links*" – again written by Mr Burgis ("the Second FT Article"). The full text is set out in Annex 1, but the opening paragraph gives a summary:

> "A major Conservative donor received $4m from a company he knew to be secretly owned by a powerful Russian who was at the time a senior member of Vladimir Putin's regime, according to three people with direct knowledge of his business dealings."

The dispute between the Claimant and the Defendants is referred to in paragraphs 18-25 of the Second FT Article.

22. On 4 August 2021, an article was published in *The Daily Mail* under the headline: "*Revenge of Mr Moneybags: To friends he's the tycoon who gives to good causes and bankrolls ministers but to enemies he's a shadowy figure with alleged Russian links. Now this feud over rival Tory factions has blown up*" ("the Mail Article"). The Mail Article is long, and covers much of the same ground as the FT and ST Articles. For the purposes of this judgment, I have set out parts of the Mail Article in Annex 1.

23. The Defendants have exhibited to their witness statements several further articles about the Claimant, published in the later months of 2021 and early 2022. I need not set them out, but they have been relied upon in relation to the issue of the cause of any harm to the Claimant's reputation. One article, however, published by *The Observer* on 5 February 2022 ("*Give me back my £200,000 major donor tells Tories*") ("the Observer Article"), is perhaps of some importance, not least in demonstrating the publicly deteriorating relationship between the Claimant and the Conservative Party. The sub-headline – "*Controversial telecoms mogul Mohamed Amersi takes on Conservative party over exclusion from elite gatherings and auction prizes never received*" – gives a flavour of the piece. The Observer Article included the following:

> "A legal letter seen by the Observer and sent to Ben Elliot, co-chair of the Conservative party and co-founder of the concierge company Quintessentially, is the latest sally in a year-long dispute involving Amersi and other party figures

> over a new Conservatives' friends of the Middle East group, which he chairs. Amersi's lawyers warn that unless the dispute is amicably settled, officials should set out proposals for reimbursing his donations and other costs.
>
> Amersi believes one of the reasons for his exclusion is that he exposed the 'access capitalism' he alleges Elliot presides over, in which he claims privileged relationships are extended to those who make hefty donations. His business dealing in Russia and an advisory role on a deal in Uzbekistan also faced scrutiny last year, but he denies any wrongdoing and a report on him by party officials did not flag any significant concerns."

24. The Claimant addressed these media reports, in general terms, in his second witness statement. He said that by the time of the publication of these articles, the damage to his reputation "*had already been done*". He suggested that the press "*served to amplify the damage which had already been done by the publication and percolation of the [Memos].*" Relying upon sources, that he refused to name, the Claimant alleged that the First Defendant had been responsible for orchestrating the media coverage.

### (6) The claim for defamation

25. Meanwhile, whilst the Data Protection Claim was pending trial, on 17 December 2021, the Claimant issued the Claim Form in the current defamation action. I infer that the Claim Form was issued then because of the impending 1-year limitation period. However, at that stage, the Claimant did not serve the Claim Form on the Defendants. He waited until 6 April 2022 (see [27] below).

26. On 21 March 2022, Carter-Ruck sent a letter to the Defendants' solicitors, headed "*Further Letter of Claim*". This letter identified "*the publications that our client presently intends to include within the Particulars of Claim*" which, it said, Leading and Junior Counsel had been retained to draft.

## B: Statements of Case

### (1) The original Particulars of Claim

27. The original Particulars of Claim were dated 6 April 2022, and were served on the Defendants on this date, together with the Claim Form. The period for serving the Claim Form would have expired on 17 April 2022. The Claimant therefore took full advantage of the maximum time that the law permits for bringing a defamation claim.

### (a) The publications and alleged defamatory meanings

28. In total, in his original Particulars of Claim, the Claimant complained of fifteen publications of sixteen Memos to thirteen publishees. Copies of each of the Memos relied upon were exhibited as an Appendix to the Particulars of Claim. It would be too cumbersome to set out all the publications complained of. Instead, I have set out one of the publications – Document 14 – in Annex 2 to this judgment. I have selected this publication because it captures many of the defamatory meanings which are common to several publications of which the Claimant complains. I have partially redacted Annex 2 to remove irrelevant references to third parties. Document 14 was also a document circulated by the Claimant himself (see [110] and [112] below). In Annex 3, I have summarised all fifteen publications relied upon by the Claimant in a Schedule.

The publications are shown in the order in which they appear in the Particulars of Claim, which is not chronological.

29. There is a substantial degree of repetition/overlap between the defamatory meanings the publications are alleged to bear. Largely this reflects the fact that some of the Memos were published to more than one person, and because several common themes are repeated in the different versions of the Memos even if the wording of some of the Memos varied. Overall, the Claimant complains of the publication of the following 22 distinct imputations that he contends are conveyed by one or more of the Memos and are defamatory of him:

(1) There are grounds to suspect that the Claimant, whether by himself or by reason of his associations with others involved in the setting up of COMENA, poses a risk to the national security of the United Kingdom (Publication 1).

(2) The Claimant had waged an oppressive campaign to take over the Second Defendant which had involved him (i) repeatedly pressurising the First Defendant to make him Chairman both through direct contact and using third parties; and (ii) trying to buy his way into that position (Publication 2).

(3) There are grounds to suspect that allowing the Claimant to set up a rival organisation to the Second Defendant would be damaging to (i) the security interests of the United Kingdom; (ii) the diplomatic interests of the United Kingdom; and (iii) the Conservative Party (Publication 2)

(4) The Claimant had previously been rejected twice by the Conservative Party as a suitable person to chair an affiliated organisation (Publication 2, and a similar meaning for Publications 9, 10, 11, 12, 13 and 14).

(5) The Claimant has profiteered out of the Covid-19 pandemic by making money as a broker out of a donation of PPE equipment or components which had been given as aid by the UAE to the UK (Publication 2).

(6) The Claimant had acted in bad faith by going back on assurances he had given to the First Defendant without notifying her first (Publications 2, 3, 5, 7, 8, 9, 10, 11, 12, 13 and 14).

(7) A senior executive at an organisation who was familiar with the Claimant regarded him as a person to be avoided (Publication 2).

(8) The Claimant's motivation, by his own account, in seeking to become involved with the Second Defendant or COMENA was to secure for himself the award of a knighthood or peerage rather than to further the interests of the Conservative Party or the UK (Publications 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14).

(9) The Claimant had made donations to the Conservative Party for the purpose of obtaining a knighthood or peerage and believed, and openly expressed the belief, that those donations entitled him to such an award (Publications 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14).

(10) The Claimant had dishonestly claimed that he had been asked by Conservative Party Campaign Headquarters to set up an organisation to be known as

Conservative Friends of the Middle East and North Africa or COMENA when in fact he had already approached the Conservative Party twice before doing so and had been turned down on both occasions (Publication 3).

(11) The Claimant had improperly sought to have the First Defendant agree to him being appointed Chairman of the Second Defendant in return for a payment of money to her or to the Second Defendant (Publications 3, 5, 7, 8, 9, 10, 11, 12, 13 and 14).

(12) The Claimant dishonestly claims to be of Iranian heritage and to hold networks of influence in Iran (Publications 4, 6, 10, 11, 12, 13 and 14).

(13) There are grounds to suspect that the Claimant was a director of the Russian company Megafon and as such complicit in its activities during a period when it (i) conducted illegal business operations; (ii) assisted Russia in the military and economic annexation of Georgia; and (iii) had connections with organised crime (Publications 4, 6, 10, 12 and 14).

(14) By reason of the matters set out in Document 5, there are grounds to suspect that the Claimant, whether by himself or by reason of his associations with others involved in the setting up of COMENA, poses a risk to (i) the interests of the United Kingdom, including its national security interests; (ii) the interests of the Royal Family; (iii) the interests of Parliament; and (iv) the reputations of prominent persons including former ministers (Publications 5, 6 and 7).

(15) The Claimant had made, or was responsible for others making, statements about COMENA which were misleading or untrue, including a false claim that Sir David Lidington had agreed to be on the board of COMENA when in fact he had not (Publication 5).

(16) The Claimant is responsible for a false claim by the Honorary Secretary of his new organisation that a number of people had agreed to be on the board when one of them had not (Publications 7, 8, 9, 10, 11, 12, 13 and 14).

(17) To allow the Claimant to set up and run COMENA as an alternative organisation to the Second Defendant would be materially detrimental to the reputation of the Conservative Party, the Government of the United Kingdom and their longstanding diplomatic relationships within the Middle East (Publication 7).

(18) The Claimant is or has been a representative of Alfa Bank which is run by a close ally of President Putin (Publications 10, 11, 12, 13 and 14).

(19) The Claimant is a director of Cojit Limited and/or Cojit (UK) Limited, both of which there are grounds to suspect are not legitimate companies (Publications 10 and 14).

(20) The Claimant maintained a friendship with Peter Virdee despite Mr Virdee being accused of a massive fraud (Publications 10 and 14).

(21) The Claimant was implicated in a large-scale tax fraud and money laundering case in Nepal and had advised and invested in a company that had indirectly supported dictatorships (Publications 10 and 14).

(22) There are grounds to investigate whether the duplicate counter-extremism companies of which the Claimant is director are legitimate (Publication 12).

30. At least one of the pleaded meanings breaches the repetition rule and others are in a form which leaves unclear what defamatory act or condition is being attributed to the Claimant (see [29(7)], [29(18)] and [29(19)]). There is a live issue as to whether some of these meanings are defamatory of the Claimant at all. Now is not the time to consider whether, in the context in which they appeared, these meanings (a) are defamatory of the Claimant at common law; and (b) would be understood to be statements of fact or expressions of opinion. I shall assume, for the purposes of this judgment that each publication does bear the meanings attributed to them by the Claimant and that they are defamatory of him. The Claimant is entitled to have his claim taken at its highest for the purposes of the present judgment.

31. A final alleged publication, to Person F, said to have occurred between December 2020 and January 2021, was also pleaded in the Particulars of Claim. However, the Claimant was unable to identify what document(s) had been published to Person F. In a claim for defamation, a failure to plead the words complained of (and with it the meaning the publication is said to bear) is a breach of CPR PD 53B §4.2(1) and (4). In consequence, as the relevant publication is fundamental to the cause of action, the Particulars of Claim failed to disclose a cause of action for defamation in relation to this alleged publication to Person F.

32. The Claimant has certainly adopted what might be called an all-embracing approach to the identification of the defamatory imputations that he says are conveyed by the Memos. He has not limited himself to what might be regarded as the most serious imputations. At the hearings, on 27 June 2022 and on 10 January 2023, I asked Mr McCormick KC to identify the defamatory imputation the publication of which the Claimant regarded to be the most damaging to his reputation. He declined to do so. That might be thought to be surprising. Most claimants can usually point, without difficulty, to what they regard as the most serious imputation(s) conveyed by a publication. It is usually the imputation that a claimant perceives as likely to do him/her the most reputational harm.

33. Nevertheless, I have not pressed the Claimant to provide an answer because, on the facts of this case, *his* interpretation of what is the most damaging imputation is of less relevance than what the publishees thought was most damaging. That is of potential importance to the issue of serious harm to reputation because it is the actual *impact* that these defamatory imputations had on the publishees that matters. Subject to the Claimant demonstrating that the imputation was defamatory at common law, it is possible, for example, that a particular publishee could be particularly sensitive to – and regard as damaging to the Claimant's reputation – an allegation that the Claimant had been motivated by a desire to secure an honour. By the same token, some publishees might regard such an allegation as trivial and incapable of damaging the Claimant's reputation in their eyes. As I shall explore in more detail later in this judgment, this point only serves to demonstrate that, in a defamation claim that is brought in respect of discrete publications to identified individuals, a case of serious harm to reputation that is based solely on inference may struggle to meet the statutory test. It is the actual impact of the relevant defamatory imputation(s) on the publishees that matters and must be proved.

## (b) The case on serious harm to reputation

34. Pursuant to s.1 Defamation Act 2013, a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant (see further Section G(2): [143]-[163] below). As such, a claimant in a defamation action must plead (and subsequently prove) his/her case that the publication of the relevant statement has caused or is likely to cause serious harm to his/her reputation.

35. Although fifteen separate publications were relied upon, in the Particulars of Claim the Claimant advanced a single paragraph containing a composite case on serious harm to reputation in the following terms:

> "64. The publication of each of the statements set out above has caused and/or is likely, if not corrected, to continue to cause serious harm to the reputation of the Claimant. In support of his case on serious harm the Claimant will rely on the following:
>
> (1) Each of the meanings pleaded above is defamatory of the Claimant at common law and seriously so;
>
> (2) The First Defendant's position as a former Member of Parliament lent significant authority and credibility to the allegations made by her;
>
> (3) The First Defendant's position as Managing Director of the Second Defendant, an organisation having a long history of involvement of Parliamentarians, Ambassadors and other senior figures and of engagement between the Conservative Party, Conservative Governments and the Middle East, further added to the authority and credibility of the allegations she made against the Claimant;
>
> (4) By including within various of the published documents numerous embedded hyperlinks the First Defendant gave the impression that the material published by her was carefully researched, documented and accurate. When composing Document 12 she expressly referred Sir Nicholas Soames (but intending her words to be read by Ben Elliot) to those links as being carefully researched evidence supporting what the documents sent to him alleged;
>
> (5) All of the individuals targeted by the First Defendant to receive the statements (insofar as those recipients have been partially identified of described by the Defendants) are persons of standing and importance, whose opinion of the reputation of the Claimant is important to him because:
>
> (a) of their common membership of the Conservative Party and/or because of the influence those persons have over decisions including whether or not COMENA should be affiliated to the Conservative Party, and/or
>
> (b) of their involvement in the diplomatic service and hence the influence they have over whether to facilitate or resist engagement with COMENA and/or the Claimant, and/or

(c) of their involvement in the assessment and tendering of advice on matters of National Security and hence the influence they have over the extent to which COMENA and/or the Claimant would be regarded by the Conservative Party or the Government of the UK as suitable to promote the interests of the UK or the Conservative Party.

(6) The nature of the allegations, and the method of publication by the First Defendant, is such that the allegations or their substance was intended to and was likely to be repeated and republished by the original publishees and/or to percolate further amongst the political, diplomatic and security community and become the subject of media speculation and repetition. The republication set out in paragraph 60 above is relied upon as an example of this effect. The Claimant will rely upon such further republications as become known to him."

36. The reference to paragraph 60 was to an allegation that, in early January 2021, Person D (now identified as His Excellency Sheikh Fawaz bin Mohamed bin Khalifa Al Khalifa, the Ambassador to the UK for Bahrain) had forwarded one or more of the documents sent to him by the First Defendant to four Ambassadors to the United Kingdom.

37. As is immediately apparent from the terms of the pleading, the Claimant's case of serious harm to reputation was entirely inferential.

38. CPR 53B PD §4.2(3) requires a claimant to set out in his/her Particulars of Claim: "*the facts and matters relied upon in order to satisfy the requirement of section 1 of the Defamation Act 2013 that the publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant*" (emphasis added). The Claimant's original Particulars of Claim did not comply with this Practice Direction.

**(2) Defence not yet filed**

39. On 19 April 2022, the Defendants filed an Acknowledgement of Service indicating that they intended to defend the claim. The Defendants did not file a Defence. Instead, on 10 May 2022, they issued an Application Notice seeking directions for the trial of various preliminary issues as to meaning ("the Preliminary Issues Application").

**C: Initial Applications**

**(1) The Order of 23 May 2023: Disclosure application and costs information**

40. It became apparent, when I reviewed the documentation in support of the Preliminary Issues Application, that the Claimant's principal objection to the proposed trial of preliminary issues was that: "*it is not possible for the Court to rule definitively and conclusively on meaning and the related issues before certain documentation and information has been provided by the Defendants*". The Defendants did not agree. They contended that the information and documents sought by the Claimant were not relevant to the natural and ordinary meaning of the publications.

41. Having considered the available documentation relating to the earlier Data Protection Claim, which had been discontinued, I made an Order, on 23 May 2023, which directed

that the Preliminary Issue Application would be listed for hearing in the week commencing 27 June 2022. I also directed that, by 13 June 2022, the Claimant must (a) issue any Application Notice seeking disclosure and/or further information from the Defendants; and (b) file and serve a witness statement setting out the Claimant's costs of the Data Protection Claim and the costs he had incurred in the subsequent defamation claim. I made a similar direction that the Defendants should also file a witness statement confirming the total of their costs of the Data Protection Claim and their incurred costs in the defamation action.

42. The Order contained the following explanation for the orders that I had made:

> "(A) This is not the first claim brought by the Claimant against these two Defendants. The Data Protection Claim was originally heard as a Part 8 Claim on 23 November 2021 but reallocated to Part 7 and given a new trial date in April 2022. A consent order of 25 March 2022 led to the filing of a Notice of Discontinuance by the Claimant on 28 March 2022. An Order reflecting the agreed no order for costs was made on 1 April 2022, and sent to the parties on 5 April 2022 ('the Discontinuance Order').
>
> (B) … [T]he Claimant issued this further claim – for libel – on 17 December 2021. On 21 March 2022, the Claimant's solicitors sent to the Defendants' solicitors a 'Further Letter of Claim' (an original letter of claim complaining of defamation having been sent on 12 February 2021). The letter said that it was sent '*in accordance with the Pre-Action Protocol for Defamation*', even though by that stage a Claim Form had already been issued. On 6 April 2022, i.e. the day after the Discontinuance Order was received by the parties, the Claimant served the Claim Form in the current action together with Particulars of Claim and Appendices that run to over 100 pages.
>
> (C) The principal objection raised by the Claimant to the proposed trial of preliminary issues is: '*it is not possible for the Court to rule definitively and conclusively on meaning and the related issues before certain documentation and information has been provided by the Defendants*' (Letter of 17 May 2022). A similar point had been made in the letter of 21 March 2022. However, this might be thought to be a surprising position, and one that calls into question whether the Particulars of Claim discharge their essential function of properly identifying the basis of the claims (in particular, the obligation to set out fully the words complained of in respect of each publication: CPR PD 53B §4.2(1)). The claim in respect of alleged publication to 'Person F' does not identify *any* words alleged to have been published by the Defendants. The repeated use of the phrase '*the Claimant reserves the right (sic) to amend his case on the meaning… following provision of further information and/or disclosure of [further communications]*' gives further cause for concern on this point.
>
> (D) I note that the Claimant's position is that he has been seeking further documents (a point made in §7 Particulars of Claim), but it is arguable that the Claimant should have made an application for those further documents *before* pleading substantial Particulars of Claim. An application for pre-action disclosure was threatened by the Claimant on 29 April 2021, but not pursued. An application for disclosure, whether made, pursuant to CPR 31.16 *prior* to issue of the Claim Form, or after issue of the Claim Form,

would have enabled a proper consideration of whether the Claimant had established a sufficient basis to justify a disclosure order prior to Particulars of Claim. The limits on 'fishing' for a claim for defamation are well established. One course that the Court could adopt is to strike out those parts of the Particulars of Claim that the Claimant contends are not amenable to a preliminary issue determination of meaning. To regularise this unsatisfactory situation, I have required the Claimant to make any application for the disclosure that he contends would enable him properly to plead his claim. I am unimpressed by the attempt, without a proper application being made or evidence in support, by the Claimant to seek a wide-ranging disclosure order. Nevertheless, the Defendants should consider any application carefully and respond constructively. Whilst there may be grounds upon which to resist some of the disclosure sought, an unreasonable refusal to provide disclosure may lead to sanctions in costs.

(E) Besides these issues, more generally I also have concerns about the following specific matters:

(a) First, the proportionality of a claim that advances (at least) 15 separate publications which are alleged to bear a several common defamatory meanings. If the Claimant's objective is vindication, then it is arguable that this would not be impaired if he were to be limited in the number of publications that he complains about. I recognise that limiting the claim in this way would potentially reduce his claim for damages (if the claim were successful), but the question would be whether the additional costs of obtaining that additional sum would be proportionate. The Claimant will need to demonstrate what, of real benefit, is achieved by his being permitted to pursue claims in respect of all 15 publications. I have required the parties to provide information about costs which will give the Court information about the costs' expenditure of the parties to date.

(b) Second, the Claimant has pleaded a general claim to serious harm to reputation caused by all the publications, without distinguishing between them (§64). The paragraph appears to rely solely upon an inferential case as to serious reputational harm. Ultimately, the issue is whether, in respect of each publication sued on, the Claimant has demonstrated that *this* publication has caused or is likely to cause serious harm to his reputation. In cases where the individual publishees are identified and identifiable, the actual impact of the publication on the Claimant's reputation is likely to be capable of proof.

43. As the Order of 23 May 2022 was made without a hearing, it contained the usual provision enabling a dissatisfied party to apply to vary or discharge the Order or any part of it. On 30 May 2022, the Claimant issued an Application Notice seeking to vary the Order ("the Variation Application"). By the Variation Application, the Claimant sought to remove the requirement that he should provide details of his incurred costs in both the Data Protection Claim and the defamation action. In support of the Variation Application, and relying upon several authorities, some dating back to 1852, the Claimant argued:

"6. Information as to solicitor and own client costs is privileged and confidential, unless and until the party asserts a specific entitlement to recover such costs,

whether through the costs management process, or by way of summary or detailed assessment. At that stage the Court's powers of case management and cost management engage, including the requirement to ensure that the parties are on an equal footing.

7. It is unclear on what basis an order that a party disclose solicitor and own client costs can be made, not least when it concerns previous claims which have been settled between the parties. If there is such a power for a court to make that order, it would seem to be an unnecessary and disproportionate interference with the rights of confidence and privacy of the parties (including legal professional and/or litigation privilege).

8. When verifying a Precedent H, for the purposes of a costs management order pursuant to CPR 3.15, and to assist the Court when making case management decisions pursuant to CPR 3.17, the party's solicitor must state that 'This budget is a fair and accurate statement of incurred and estimated costs which it would be reasonable and proportionate for my client to incur in this litigation.' The party is not required to state or disclose solicitor and own client costs.

9. Further information in relation to what the parties have spent on the Data Protection Claim beyond that set out above remains both privileged and confidential. Given the compromise on costs (the reasons for which are of course privileged) it is difficult to see how such information could assist the Court in managing this claim."

For their part, the Defendants confirmed that they had no objection to providing information about their incurred costs.

44. On 7 June 2022, I made a further Order directing that the Variation Application would be heard together with the Preliminary Issues Application on 27 June 2022. Pending that, I varied the 23 May 2022 Order to stay the requirement that the Claimant provide details of his incurred costs. In the "Reasons" accompanying the Order, I noted:

"(A) I am very far from convinced by the Claimant's arguments. Modern case management has moved on somewhat since the 1800s. The Court now takes a much more active interest in the cost of litigation, particularly when the litigation engages Article 10 rights. The days when the Court simply provided a playing field and an umpire/referee, and generally left the parties to play the game they chose are gone. The Court will want to look carefully at the history of this litigation, including the earlier (and connected) Data Protection Claim to see whether it is being conducted efficiently, for a legitimate purpose, and at proportionate cost. Ordinarily, the Court would expect litigants to assist it with this task, including the timely provision of relevant information about costs when required.

(B) Nevertheless, the Claimant has raised a point of principle as to whether the Court has jurisdiction to make the order requiring provision of information relating to the total costs expended on the Data Protection Claim. That point of principle will have to be resolved. Time may not allow for it to be dealt with at the hearing on 27 June 2022 (the time estimate of which cannot be expanded), so it may be adjourned to a later date. Pending resolution of

the point, and to protect the Claimant's position in the meantime, I have [stayed that part of the Order].

(C) I am even less convinced by the argument that the Court has no *jurisdiction* to order information about the costs of a party in current litigation beyond such costs as the party seeks to recover from the opponent(s). Subject to further argument, this appears to fall squarely within the ambit of the Court's case management power. As to whether the Court *should* make such an order, I will hear the Claimant's arguments at the hearing of the Application, and in the meantime I have effectively extended the stay by amending the relevant parts of the Order.

(D) Simply for parity of treatment, I have also stayed/amended those parts of the Order that also applied to the Defendants. I note from the Defendants' submissions that they do not oppose provision of this information. They remain free to do so, but will not be *required* to do so pending further order of the Court."

## (2) The Claimant's Disclosure Application

45. On 13 June 2022, the Claimant issued his Application Notice seeking specific disclosure from the Defendants pursuant to CPR 31.12 ("the Disclosure Application"). The disclosure sought was of the following:

(1) an unredacted electronic copy in native format of each of the Memos;

(2) unredacted electronic copies of any email, letter or other message attaching, enclosing, or accompanying each of the Memos on the occasions of publication complained of in the Particulars of Claim; and

(3) an unredacted electronic copy of the document or documents which were published to Person F in late December 2020 or early January 2021 and any documents attaching, enclosing or accompanying the publication of such document(s) to Person F.

### (a) The Claimant's evidence on the Disclosure Application

46. In support of the Disclosure Application, the Claimant filed witness statements from himself and his solicitor. In his witness statement, the Claimant's solicitor, Nigel Tait, explained why the disclosure was necessary for the fair disposal of the proceedings:

> "… [T]he Claimant is aware of individuals who had seen the publications, but understands from enquiries he has made with a number of individuals that not all of those individuals may be the original publishees. This demonstrates that the publications have been republished and percolated, and it is this that is causing the Claimant additional concern. Without the identities of the original publishees, the Claimant cannot determine conclusively to whom the publications (and each publication, bearing in mind they are all subtly different) were distributed)."

47. Mr Tait also exhibited a Precedent H form detailing the Claimant's incurred costs for this claim. As at 13 June 2022, the total figure in that schedule was £80,844. However, it is perhaps important to note what Mr Tait said about this figure in his witness statement:

> "I exhibit a Precedent H which details the Claimant's costs incurred in the Libel Claim at the date of this statement insofar as the Claimant will seek to recover such costs from the Defendants. I should make clear that the amount in Precedent H is my estimate of the likely costs that the Claimant could recover on the standard basis for this stage of the action…"

In light of what happened subsequently, and the fact that the point was not fully argued or resolved, it is neither necessary nor appropriate in this judgment to determine what this paragraph means. On one construction, the figure of £80,844 might, actually, not be the total of the Claimant's incurred costs, but a notional lower figure representing what the Claimant might seek to recover from the Defendants if he were successful in getting an order for costs against them. I express no concluded view, but my initial reaction is that a convincing justification would have to be shown for allowing a party to litigation to hide from his/her opponent(s) and the Court the total sum he is paying his own lawyers. My provisional view is that the Court, particularly in civil claims concerning freedom of expression, has a very real interest in receiving this information, for example to resolve whether a party is using his/her/its greater resources to intimidate or bully an opponent. The extent to which the party might ultimately recover those costs against an opponent is only a small part of the overall picture.

48. In his witness statement, the Claimant dealt with what he had said in the First FT Article in July 2021 (see [18] above). The interview had been, he said, conducted over Zoom. As to what he had said about the costs of the proceedings, the Claimant stated:

> "20. … [W]hat I said in [the] interview was that I had incurred £260,000 worth of costs. Mr Burgis appears to have taken this out of context to mean costs incurred for the legal action that I have taken against the Defendants. While I had, by that point, of course incurred legal costs in my legal action against the Defendants, I had also incurred the costs (both legal and out-of-pocket expenses) in setting up COMENA, at the request of and with the support of the Conservative Party, which was intended to promote a better relationship between the Conservative Party, the Government and the MENA region should COMENA be affiliated with the Conservative Party. That figure of £260,000 included those costs.
>
> 21. I further informed Mr Burgis in our Zoom interview on 1 July 2021 that, if the First Defendant wanted to settle this matter, I wanted an apology, a retraction of the allegations contained in the [Memos], for her to cease and desist from making the same and/or similar defamatory allegations, to be told to whom she had sent the [Memos] and an admission that she was the author of the [Memos]. I explained to Mr Burgis that I did not want to have to sue the Defendants for damages nor would I be seeking to recover my costs if a suitable settlement could be reached. Indeed, the 7 July 2021 article reports that 'I do not want to hurt the [Defendants] nor 'bankrupt' them."

49. It appears that the Claimant may not have had a copy of the transcript of his interview with Mr Burgis (see [19] above) when he wrote that section of his witness statement. It is tolerably clear, on reading the transcript, that the Claimant was indeed talking about his legal costs in the claim against the Defendants, not the costs of setting up COMENA. I can only assume that the Claimant must have misremembered what he had said in his interview with Mr Burgis on the issue of costs when he prepared his witness statement.

In the First FT Article, Mr Burgis had not taken out of context what the Claimant had said; he reported it accurately.

50. As to the discontinuance of the Data Protection Claim, the Claimant stated:

> "I maintain that I have achieved all that could realistically be achieved from [the Data Protection Claim] in obtaining the material that I did. It became clear that an overall settlement including the rectification and erasure of inaccurate personal data and an apology was not going to be possible. I am now therefore seeking vindication over the false and defamatory statements made about me by the Defendants. My position is that should this matter settle before significant further costs are incurred, I will not seek to recover all of my recoverable costs from the Defendants."

51. In the next section of his witness statement, the Claimant explained why, although he had originally threatened to do so, he had not taken proceedings against Sir Nicholas Soames for his role in publishing the Memos:

> "It appears to me that the Defendants are insinuating… that they are the defendants to these proceedings because they are an easier target. The reality, as became clear following receipt and review of the 14 May disclosure, is that Sir Nicholas Soames appears to have made no efforts to independently fact-check the publications complained of. It was my belief (and remains my belief) that Sir Nicholas was (mis)led by the First Defendant, and thus, although he should have conducted his own independent fact-checking, he is not the individual who should be held responsible for the publications complained of. Furthermore, by Sir Nicholas' own admission in his email dated 2 February 2021 to my solicitors, his position at President of the Conservative Middle East Council 'is entirely honorary and carries with it no executive position or authority'.
>
> While I did say that 'I have thus far spared Sir Nicholas the embarrassment of being sued based on his grandioseness (sic)', this quote has been reported in the [FT] Article without the full surrounding context. I had explained to Mr Burgis that part of my decision not to sue was because Sir Nicolas had continued to recommend me for a 'Trade envoy role' in the Middle East. Sir Nicholas' recommendation was prior to the appointment of Lord (Edward) Lister as the UK's special envoy for the Gulf in February 2021.
>
> Sheikh Fawaz drew my attention in the meeting, arranged by the Ambassador of Kuwait, on 11 May 2021 in the Bahraini embassy in London that if I should ever sue Sir Nicholas, his king would be 'very upset' because the King of Bahrain and Sir Nicholas attended the Royal Military Academy of Sandhurst together… It was made clear to me that if I sued Sir Nicholas it would make it difficult, if not impossible for the government of Bahrain to ever engage with COMENA.
>
> Finally, Sir Hugo Swire also discouraged me from commencing proceedings against Sir Nicholas due to the latter's close proximity to the Prince of Wales (whose many charitable initiatives I support)."

52. Finally, responding to a suggestion made by the Defendants that the Claimant's litigation was an example of a "*strategic lawsuit against public participation*" (a so-called "SLAPP"), the Claimant said:

> "… [N]othing could be further from the truth. The right to bring a legal claim is a fundamental right in a democracy, and it is my wish, as is well within my right, to challenge the defamatory allegations that have been made about me by the Defendants in a court of law in order to vindicate my reputation."

## (b) The Defendants' evidence on the Disclosure Application

53. The Defendants filed evidence in response to the Disclosure Application from the First Defendant and their solicitor, Tim Lawrence.

54. In his witness statement, Mr Lawrence stated that he had spoken to several publishees. He set out what each had said.

    (1) He spoke to Person A on 9 June 2022. Person A confirmed that, before reading the Memo, s/he had known "*next to nothing*" of the Claimant and therefore did not initially know who the Claimant was when reading the document. Person A thought that s/he may have met the Claimant once previously, but this was at a large event at which the Claimant may have been present, and Person A could not recall any conversation between them. Person A said that s/he had no knowledge of the Claimant's past or his business history and held no opinion of the Claimant. Person A said that the Memo had no effect on him/her. Person A confirmed that s/he did not send the Memo to any other person, did not disclose its contents to anyone else nor otherwise act upon it. Person A stated that s/he did not consent to being identified to the Claimant in these proceedings.

    (2) On 17 June 2022, Mr Lawrence spoke to His Excellency Sheikh Fawaz bin Mohamed bin Khalifa Al Khalifa, the Ambassador to the UK for Bahrain ("Sheikh Fawaz"), and he agreed to being identified as Person D.

    (3) Mr Lawrence spoke to Person E on 7 June 2022. Person E stated that s/he had been an advisor to senior figures in the Gulf region and had worked with the British Government. As such, Person E said s/he was aware of, and supported, the work of the Second Defendant. Person E told Mr Lawrence that s/he had no recollection of the Memo and had never heard of the Claimant and receipt of the Memo had had no effect on Person E's opinion of the Claimant. Person E confirmed that s/he had not passed the Memo to, or shared the contents with, any other person. Person E did not him/herself act on the Memo. Person E did not consent to being identified to the Claimant. Person E stated that s/he is a national security contact and there are restrictions on his/her identification because of links with the Secret Intelligence Service. Although Person E is not aware of any legal restriction preserving his/her anonymity, s/he is aware that persons in a similar occupation generally do not have their names revealed in court if they have to appear. Person E confirmed that s/he had been involved in previous Court cases, but in each case his/her name was never given or released in or by the Court.

    (4) Mr Lawrence also spoke to Person F on 7 June 2022. As to his/her previous knowledge of the Claimant, Person F confirmed that s/he had been aware of the Claimant as a public personality and was vaguely aware that he was a major donor to the Conservative Party. Person F confirmed that upon receipt of the Memo, s/he made a search for the Claimant on the Internet, but that was the limit

of his/her engagement. Person F subsequently saw an article in the *Financial Times*, and thought that the Claimant had been criticised more in the article than he had been in the Memo. Person F did not forward the Memo to anyone else or act upon it beyond conducting a web search. Person F thought that the Memo did not add anything new to the publicly available information about the Claimant. Person F did not consent to his/her identity being disclosed in the litigation. S/he told Mr Lawrence that s/he "*does not want to provide the Claimant with any reason whatsoever to pursue or to consider pursuing*" him/her.

(5) Person G refused to speak to Mr Lawrence.

(6) Mr Lawrence spoke to Person H on 7 June 2022. S/he had no recollection of the Memo and that it had no impact on his/her consciousness. The Memo was not received in any official capacity. Person H confirmed that his/her view of the Claimant's reputation was not altered in any way by receipt of the Memo. Person H did not share the contents or distribute it further. S/he stated that the communication with the First Defendant was confidential, and that the Claimant should not be entitled to discover his/her identity.

55. As to the Defendants' costs, for the Data Protection Claim (taking into account £16,500 received from the Claimant, but excluding former solicitors' costs), the Defendants' costs were £49,309.74 (excluding VAT). For the defamation claim (again excluding former solicitors' costs), the Defendants' costs were £64,455.50 (excluding VAT). The costs of the Defendants' former solicitors – which covered work for both the Data Protection Claim and the early part of the defamation claim – were £66,417.50 (excluding VAT).

56. In her witness statement of 21 June 2022, the First Defendant set out her objections to being required to identify Persons A, B, C, E, F, G and H (as already noted (see [54(2)] above), Person D has been confirmed to be Sheikh Fawaz). The First Defendant contended that identity of these individuals was confidential. In her statement she explained:

> "Sharing information about a person or an organisation, which is not immediately apparent from the public profile, with other interested parties is not uncommon in the sector in which I operate. It goes without saying that such communications are understood to be confidential by the sender and recipient and any further dissemination would be mutually agreed or obvious under the arrangements in which the information was passed on. It is integral to the political and diplomatic ecosystems to manage sensitive information carefully. That obviously require me to respect the confidentiality of the Unidentified Publishees, all of whom are experienced professionals. I would never have built a relationship with any of them if they did not trust me to be discreet and respectful…"

57. In respect of those who were identified as National Security Individuals (B, C, E and F), specific concerns had been raised as to the potential damage that would be caused if the identity of each person were to be revealed. In her witness statement, the First Defendant provided the following information:

(1) She had contacted Person B to advise him/her that the Claimant was seeking his/her identity. Person B was, she said, "*horrified and said that their identity*

*could not be disclosed as it could potentially compromise the safety of agents in the field. [Person B was] also concerned that the Claimant seemed so adamant to get these 'national security' names*". The First Defendant stated that disclosing Person B's identity would be a breach of what she regarded as her duty of confidentiality to B on national security grounds.

(2) As to Person C, the First Defendant stated that she had not known him/her before being referred to him/her by Person B, but that, given his/her role, "*there is no question of Person C disclosing any of the information communicated by me outside of the security services*". As to the disclosure of his/her identity, Person C confirmed to the First Defendant that the same restrictions would apply as had been described by Person B. The First Defendant confirmed that she has not disclosed the identity of Person B or Person C to her own legal representatives.

(3) The First Defendant said that she had known Person E for 8 years. She said that Person E confirmed to her that his/her name has been withheld in earlier court proceedings and the First Defendant considered that disclosure of his/her identity would breach a duty of confidentiality on national security grounds.

(4) Person F the First Defendant had known for 3 years. She had communicated with Person F using Signal (with settings configured to delete messages). The First Defendant could not remember what she had sent Person F, but it was one of the Memos. She stated that disclosing Person F's identity would damage the trust between them.

58. The First Defendant also stated, in her statement, that, following receipt of the MdR Letter, she had not sent out any further copies of the Memos to any other person. On 10 January 2021, Sheikh Fawaz told the First Defendant that he had seen the MdR Letter and gave the impression that it was being circulated more widely. In her statement, the First Defendant commented: "*the fact that the Claimant was threatening to sue me, CMEC and Sir Nicholas Soames would have been an extremely unusual event and of enormous interest in the MENA diplomatic world*".

59. The First Defendant disputed that the evidence of "*percolation*" was necessarily attributable to publication of the Memos. She has pointed to the substantial media coverage – largely provoked by the Claimant's own activities – including the FT, ST and Mail Articles (see [18]-[23] above) – as having been more likely to have caused any harm to the Claimant's reputation. Yet, as the First Defendant noted, the Claimant had not made any claim against the publishers of these articles, a point that has not been disputed by the Claimant. The First Defendant stated: "*a number of ambassadors recorded to me their shock and confusion following the Claimant's allegations about The Prince of Wales and his household [a reference to the ST Article]. Respect of a kingdom's Royal Family is regarded as essential diplomacy*". Swiftly following the publication of the ST Article, the First Defendant noted what she described as "*backtracking*" by several people who it was said had agreed to hold senior roles in COMENA.

## D: The hearing on 27 June 2022

60. The Preliminary Issues Application and the Disclosure Application were both listed for hearing on 27 June 2022.

61. In their skeleton argument for the hearing, the Defendants contended that the Disclosure Application should be refused.

    (1) First, the Defendants contended that the evidence, both from Mr Lawrence's inquiries with the Unidentified Publishees – A, E, F and H – and the First Defendant's discussion with C (see [57(2)] above), showed that the Claimant had no real prospect of showing that publication of the Memo(s) to them had caused serious harm to his reputation, whether directly or by way of any percolation effect arising from republication.

    (2) Second, the Defendants' evidence demonstrated that communications between the First Defendant and the publishees were confidential and each recipient had a reasonable expectation of privacy in not having the fact of the communications disclosed to the Claimant.

    (3) Finally, insofar as the evidence raised national security concerns, and assuming that the Court decided that the Defendants should be required to disclose the identity of the publishees in the litigation, the extent of that disclosure (to which people and on what terms) should be determined only after giving the publishees and any other interested parties an opportunity to make representations.

62. The Defendants submitted that:

> "On the evidence before the Court, there are legitimate concerns that the Claimant's dominant motive in seeking this disclosure through the [Data Protection Claim] and not in this application is collateral. If prompt vindication was his dominant motive he could have achieved such vindication as was due simply by proceeding with a defamation claim in relation to the publishees identified by [the 14 May Documents]… Although it is accepted that the Court cannot conclusively make a determination as to the Claimant's motive at this stage, the legitimate concerns arising from his conduct are a further factor that should be taken into account in the proportionality evaluation."

63. On behalf of the Claimant, it was submitted that the disclosure sought from the Defendants was necessary for several reasons. First, any covering documents that accompanied publication of the relevant Memo to each publishee would be relevant and admissible as context to the publication. In his written submissions, the Claimant recognised that if further documents were provided relevant to the context of any publication, then he might need to amend his Particulars of Claim to set out a revised case both on (a) what words were published on each occasion; and (b) the natural and ordinary meaning he contended the publication bore. Second, it was argued that, in determining the natural ordinary meaning of a publication, the Court was required to attribute characteristics of the specific publishee to the notional ordinary reasonable reader. That task could not be carried out unless the identities – and therefore the characteristics – of the publishees were disclosed to the Claimant.

64. Before the hearing, I had already expressed concerns about the proportionality of the litigation being embarked upon by the Claimant. If there was ever a case in need of early and robust case management, this was it.

65. It emerged clearly from the Claimant's evidence (see [49] and [52] above) – and confirmed by Mr McCormick KC at the hearing on 27 June 2022 – that the

Claimant's objective in these defamation proceedings was vindication, with any award of damages being very much a secondary consideration. As I had noted in the Order of 23 May 2022, if the priority was vindication, then, in the interests of proportionality, the Court could explore limiting the number of publications complained of (see paragraph (E)(a) in [42] above).

66. The very substantial overlap of the defamatory meanings of the publications complained of meant that the Claimant would not be prejudiced in the scope of any vindication he might obtain if he were limited to the publications to the known individuals. I therefore proposed a potential solution that might resolve both the Disclosure Application and deal with my concerns as to the proportionality of the proceedings: a stay of the claims in relation to publications to Unidentified Publishees, pursuant to CPR 3.1(1)(f).

67. The other issue that I decided needed to be addressed was the Claimant's pleaded case on the alleged serious harm to his reputation arising from the publications, which failed to comply with CPR 53B PD §4.2(3) (see [38] above). I had raised this issue in the Order of 23 May 2022 (see paragraph (E)(b) quoted in [42] above) and, at the hearing, addressing Mr McCormick KC, I reiterated the point:

> "[The Claimant] complains of the publications to individuals; that is why I was surprised to see that you have a single serious harm paragraph. Each of [the] publications is a separate cause of action, and it must be supported in its own way by … proof of serious harm caused by that publication. As Mr Lawrence has done in his second witness statement, he has contacted several of the unidentified publishees, and they have given… evidence as to the effect of the publication on [them]. You could – and arguably should – had done that in relation to the named publishees, but you have not."

Later in the hearing, I set out that I would require the Claimant:

> "… to set out his proper particulars of serious harm to reputation that was occasioned by each publication. And because he would have to do that by amendment, he would have to apply to amend to add those particulars and then the Court would consider whether the particulars that were being advanced have a real prospect of success."

68. The Claimant did not oppose the proposed stay or his being required to provide better particulars in respect of his case on serious harm to reputation. As a result, I made an Order on 27 June 2022 which:

(1) stayed the claims in relation to the Unidentified Publishees; and

(2) required the Claimant to issue and serve an Application Notice with evidence in support seeking permission to amend the Particulars of Claim to particularise fully his case on the serious reputational harm caused to him or likely to be caused to him by the publications of the statements complained of to the named publishees. ("the Amendment Application").

The Order provided a timetable for the service of evidence in answer and in reply on the Amendment Application and adjourned generally the Disclosure, Preliminary Issues and Variation Applications.

## E: The Amendment Application

69. The Amendment Application was made by the Claimant by Application Notice dated 29 July 2022. The Claimant provided a draft Amended Particulars of Claim. The relevant parts of the draft Amended Particulars of Claim are set out in Annex 4 to this judgment.

### (1) The draft Amended Particulars of Claim

70. Although I had made clear, at the hearing on 27 June 2022, that the Claimant should, in the amendments, plead his case on serious harm to reputation for each publication relied upon (see [67] above), the draft Amended Particulars of Claim did not do so. Instead, the Claimant has largely retained the approach of pleading a 'composite' case of alleged serious harm to reputation (now significantly expanded in §§65-128). However, he also sought to introduce several paragraphs relating to serious harm to reputation in earlier sections of the pleading (see §§21, 28A, 41.1 to 41.4, 45, 47A, 49 and 60 to 60C). This approach has substantially complicated the process. To understand the Claimant's full case on serious harm to reputation, it is necessary to carry out an extensive cross-referencing exercise, publication by publication. This has tended to obfuscate rather than clarify.

71. In a case involving individual and discrete publications, this method of pleading is to be deprecated and should not be adopted. It fails to set out a clear and concise statement of the facts upon which the claimant relies and fails to comply with CPR 53B PD §4.2(3), which requires a claimant to set out *separate* particulars of serious harm for each publication relied upon. That is necessary because each publication is a separate cause of action (see [147]-[149] below).

72. Following receipt of the draft Amended Particulars of Claim, on 9 September 2022, the Defendants complained that the amendments failed to comply with the Court's requirements. The Claimant's solicitors rejected this. In a letter, dated 7 October 2002, they argued:

> "Insofar as it is possible to do so in the circumstances of this case, the pleading and our client's evidence identifies the nature and extent of the reputational harm which has been caused and the likely source of that harm. The proposition that more is required of him is not correct as a matter of law or practice, and would impose an unnecessary and unrealistic threshold on an individual seeking vindication in circumstances similar to this case."

73. As part of their Strike Out Application, the Defendants have argued that the failure by the Claimant to set out clear particulars of serious harm to reputation, publication by publication, was in defiance of what I had required the Claimant to do (see [67]-[68] above). Being charitable to the Claimant, the structure of the Amended Particulars of Claim reflects a fundamental legal point upon which he has relied: that, even in a case of separate publication to identified individuals, a claimant is nevertheless entitled to rely on a composite case of serious harm. As I explain later in this judgment, I have rejected that argument (see [160]-[163] below).

## (2) The evidence relevant to the Amendment Application

74. Before the hearing on 10 January 2023, the Claimant filed several witness statements containing his evidence in support of the Amendment Application: his Second, Fourth and Fifth Witness Statements, dated, respectively, 29 July 2022, 7 October 2022 and 3 November 2022.

75. It is notable that the Claimant has not filed witness statements from any of the individuals to whom he alleges the various Memos were published so as to provide evidence of whether publication caused any harm to his reputation. Following the hearing on 27 June 2022, in early July 2022, the Claimant's solicitors did send out letters to people who had received the Memos asking them to provide information ("the July Letters"). Whilst some responses were received, none of the identified publishees has been prepared to give a witness statement to the Claimant. Largely, the exercise of obtaining evidence from the publishees has been done by the Defendants.

76. The purpose of filing evidence in support of the Amendment Application was for the Claimant to demonstrate to the Court that the amendments, for which he sought permission, had a real prospect of success (see Section G(1): [140]-[142] below). In other words, that he had a real prospect of showing that the publications of the relevant version of the Memo to each identified publishee had caused serious harm to his reputation (or was likely to do so). That was a question of the Claimant identifying and presenting his evidence of the real (or likely) impact on each of the publishees. That should have been largely a straightforward exercise.

77. The Claimant's second witness statement – the principal evidence in support of the Amendment Application – did not approach the task in this way. Instead, it presented a mixture of evidence. Some of the evidence does go to the question of the reputational harm alleged to have been caused by publication of the Memos to the identified publishees, but much of the Claimant's evidence relates to reputational harm that he attributes to the publication of the Memos generally. The statement is short on the former and long on the latter. It contains no evidence as to any reputational harm caused by publication of the Memos to Crispin Blunt, Sir Julian Lewis or Sir Alan Duncan.

78. The witness statement also contains much irrelevant material. In the first section of his second witness statement (running to almost 40 paragraphs), the Claimant set out details of his background, his history of donations to the Conservative Party, CMEC (and its perceived problems) and his foundation of COMENA. He also included paragraphs criticising the First Defendant. Much of this evidence has little or no relevance to the Amendment Application. To pick one example, the following paragraph, ostensibly about CMEC, provides no evidence of serious harm to the Claimant's reputation caused by any of the publications:

> "I went back to CCHQ in March 2020 to ask more question about CMEC. I suggested to CCHQ that, instead of starting a new organisation, we should try to bring CMEC back under the auspices of the Party, so as not to lose its rich legacy. I was provided by CCHQ with a letter from Ms Leslie to Brandon Lewis, then Chairman of the Party with regard to CMEC's change in status to not being affiliated to the Party and the consequences flowing therefrom… It was explained to me that one of the reasons why CMEC had in fact disaffiliated was because of the Conservative Party Constitution requirements to submit annual statements of

> accounts and therefore disclose sources of funding. There were suggestions (made directly to me by the CCHQ Outreach team and in publicly available articles) that CMEC had been taking money to provide access…"

Other than, perhaps, as an effort to embarrass the Conservative Party, I fail to understand why the Claimant has included this evidence in his witness statement. It does, however, have echoes of some of the Claimant's media statements (see [18]-[23] above). Witness statements in litigation are not to be used for settling scores or advancing some wider agenda.

79. Similarly of concern are parts of the Claimant's fourth witness statement, dated 7 October 2022. The purpose of this witness statement was to respond to the evidence of the Defendants. Whilst in part it did so, the Claimant also used it as a platform to attack those who the Claimant believed had been guilty of "*appalling abuses of parliamentary and diplomatic privilege*", including those alleged to have made "*unsubstantiated accusations*" against him in parliamentary debates on 20 January 2022 and 17 March 2022. Those complaints were wholly irrelevant to the Amendment Application. Worse, the attacks appear to have been an attempt by the Claimant to use the privilege attaching to reports of Court proceedings to facilitate an act of retaliation, ironically, for what the Claimant characterised as misuse of privilege.

80. The balance of the Claimant's second witness statement is devoted to (a) other instances where the Claimant has evidence of circulation of the Memos (or discussion of their contents) and (b) what I will call the general case of reputational harm, which the Claimant ascribes to the "*percolation effect*". In an appropriate case, such evidence may provide a basis on which the Court can be asked to infer that further reputational harm has been caused by the relevant publication. Whether the Court will draw that inference will depend upon the cogency of the evidence and an assessment of the evidence as a whole. Ultimately, whether reputational harm has been caused is a matter of fact, drawing appropriate inferences based on evidence; it is not a matter of guesswork or speculation.

81. In contrast to the Claimant's efforts, the Defendants have adopted a much more straightforward approach. Their evidence has focused on what, if any, reputational harm has been caused to the Claimant in the eyes of the named publishees identified in the Particulars of Claim. The Defendants have filed the following witness statements in answer to the Amendment Application: (1) the third witness Statement of the Defendants' solicitor, Tim Lawrence, dated 9 September 2022; (2) the second witness statement of the First Defendant, dated 9 September 2022; (3) a witness statement from Sir Nicholas Soames, dated 8 September 2022; (4) a witness statement from Crispin Blunt MP, dated 7 September 2022; (5) a witness statement from Sir Alan Duncan, dated 6 September 2022; and (6) a witness statement from Sheikh Fawaz, dated 8 September 2022.

82. In his fourth witness statement, responding to the evidence of the publishees that had been provided by the Defendants, the Claimant summarised his position as follows:

> "To my mind, the cleanest and simplest way to resolve the disputed facts I discuss below is for the witnesses in the Defendants' evidence to take the stand, and have their evidence properly tested. I invite them to do so, as I intend to, and to waive

> privilege from which they might otherwise benefit. This will give me a chance of a fair trial in this case.
>
> … I wish to be clear that the individual response of a small handful of recipients of the memorandum are in any case not my sole concern in this claim. My concern is the cumulative impact which publication of the memoranda by the Defendants had (and continues to have) on my reputation among broad political and diplomatic circles within which it was the intention of the Defendants and/or correctly foreseen by them that the allegations made against me would spread… I have received a considerable amount of information about the circulation of the memoranda within the diplomatic community and the impact thereof on my reputation and on the relationships between members of that community. I do not feel that it would be right to identify the specific persons who have provided me with this information given the damage that it might do to the wider diplomatic interests of the countries involved and to the UK's relationship with those countries."

83. In the following sections of the judgment, I will identify the evidence relevant to each of the publications to identified individuals sued upon by the Claimant in his claim against the Defendants, before turning to the Claimant's case of general damage to his reputation which he says has been caused by publication of the Memos.

## (a) Sir David Lidington

84. In relation to Sir David Lidington, the Claimant relies principally upon the emails that Sir David sent to the Conservative Party after receiving the Memo.

85. On 9 January 2021, Sir David Lidington sent an email to Mr Elliot, with the subject "COMENA and CMEC".

> "I should be grateful if we could have a word about this issue?
>
> Mohamed Amersi called me shortly before Christmas to say that he had been asked by [name redacted] and the Party board to establish a new affiliated group covering the Middle East and North Africa. I have met Mohamed at Party fundraisers and at interfaith meetings sponsored by his foundation. I do not know him well but I have always found him friendly and know that there has been very generous in his support for the Conservative Party. He asked me if I would agree to be an honorary officer of COMENA.
>
> I replied that I would consider this but needed to think about the time commitment and satisfy myself that there was no conflict of interest with my other activities. (Mohamed has somewhat jumped the gun in apparently saying that I have definitely agreed to serve). I also asked him why he was not working with CMEC. He responded that CEMC had told him that they did not want to formally affiliate to the Party and added that COMENA would cover Israel and Iran as well as the Arab world, bypassing both CMEC and CFI.
>
> Subsequently, [Charlotte Leslie] whom I obviously know as a [redacted], called me. She made a number of allegations about Mr Amersi's background and conduct which, if true, would cause considerable concern. [Charlotte] also said that [her] understanding was that the Board had not invited Mohamed to establish COMENA and that this was very much his personal initiative.

> I now also understand that solicitors letters are being exchanged.
>
> It would be helpful to understand exactly what the Party's position is on what seems to be developing into a nasty spat between different Conservatives…"

86. Mr Elliot responded to Sir David by email, at 08.51 on 10 January 2021:

> "Thank you for this.
>
> I have had more incoming from both sides on this than everything else put together this week. I have a meeting set on this tomorrow and it is nonsensical that the Party has been put in this position. I am happy to speak before or call you afterwards…"

87. Sir David replied to Mr Elliot at 09.11 on 10 January 2021:

> "I have seen details of the questions that [Leslie] is posing about Mohamed – the sources for which seem to be press articles (esp Forbes). But I assume that [name redacted] or others have supplied you with that material anyway.

The *Forbes* article to which Sir David was referring has been provided in the evidence. It was published, on 10 October 2006, under the headline, "*The Incredible Shrinking Metromedia*". So far as concerns this litigation, the article mentions the Claimant in the context of his connection with Megafon.

88. In addition, the Claimant states that Sir David chairs the Royal United Services Institute ("RUSI"). The Claimant had expressed an interest in providing some financial support for RUSI. The Claimant's evidence is that, immediately following publication of the Memos, Sir David decided that RUSI was not able to accept the Claimant's offer of financial support and that he would have to think about his further involvement in COMENA. In relation to the latter, the Claimant states that Sir David asked him to put his name in square brackets in documents relating to COMENA.

89. For the Defendants, Mr Lawrence spoke to Sir David Lidington, on 2 July 2022, sending a follow-up email of 4 August 2022, to which Sir David responded on 8 August 2022.

90. In the call on 2 July 2022, Sir David told Mr Lawrence (as recorded in the latter's notes of their conversation) that he had not circulated the Memo he received to anyone else and he "*could not now distinguish between the effects of the [Memo] and the effects of the press and media coverage when it comes to attributing what he now thinks of [the Claimant]*". In his follow-up email, Mr Lawrence asked Sir David to clarify what he "*now thinks*" of the Claimant "*and how this contrasts with what you may have previously thought of him*".

91. In his email of 8 August 2022, Sir David provided the following "*sequence of events*", to the best of his recollection:

    (1) The Claimant had called him to tell him about COMENA and to invite him to serve as an honorary vice-president. Sir David told him that, while he would in principle, be willing to serve, he first needed to check whether there might be any conflict of interest with other organisations to which he was already committed. He also wanted to satisfy himself that the Conservative Party Chairman and Board were, as the Claimant had told him, in support of the

creation of COMENA. During the conversation, Sir David asked the Claimant why he believed that a new organisation was necessary given the existence of both CMEC and another body.

(2) The First Defendant called Sir David to tell him about the Claimant's move to set up COMENA. She explained why she objected strongly to it and said that she had evidence about the Claimant's business history that made him unsuitable to head an organisation like COMENA. She then sent Sir David the Memo. Sir David considered that the information in the Memo came from open-source material, either websites or newspapers.

(3) Sir David emailed Mr Elliot and explained that he had received conflicting accounts from the Claimant and the First Defendant as to whether the Conservative Party supported the creation of COMENA and asked Mr Elliot for an authoritative view. He also told Mr Elliot that he had received a briefing note (the Memo) from Ms Leslie and that "*its contents, if true, were troubling*". He expressed sadness that this seemed to be "*blowing up into a bitter argument between two people who both had contributed a lot, in their respective ways, to the Conservative Party*".

(4) Sir David then spoke to Sir Nicholas Soames who "*made a case*" to Sir David that was very similar to the First Defendant's.

92. Sir David has not provided a witness statement and it is clear, from Mr Lawrence's evidence, that, as matters stand, Sir David is not prepared to become further involved in the litigation.

93. In his fourth witness statement, the Claimant did not respond to the Defendants' evidence concerning any damage to his reputation caused by publication of the Memos in the eyes of Sir David Lidington.

94. At the hearing of the Amendment Application, the Defendants submitted that the alleged harm to the Claimant's reputation, pleaded in Paragraph 106 of the Amended Particulars of Claim, was not attributed to any of the publications complained of. Further, and in any event, the Defendants argued that an organisation such as RUSI would have its own due diligence process.

95. Following the hearing, on 12 January 2023, Mr Lawrence received a letter from Dr Karin von Hippel, the Director General of RUSI. The following evidence is taken from the Fifth Witness statement of Mr Lawrence, dated 17 January 2023. Dr Von Hippel's letter was a response to an inquiry made by Mr Lawrence on 8 December 2022. In her letter, Dr von Hippel said this about RUSI's policy on accepting or refusing donations:

> "3. Each potential donation or contribution is subjected to a rigorous internal process of evaluation and due diligence, which involves an assessment of both the suitability and integrity of the donor as well as the question of whether a contemplated donation fits into our mission and can be completed by our staff. We have, therefore, declined to accept donations that, while coming from impeccable sources, required us to engage in work we could not be sure to accomplish to the high standard expected of us; or, the reverse, with donors we do not see as suitable.

4. In assessing the suitability of each donation, we rely on information available in the public domain, on active searches through databases, direct inquiries with regulatory and statutory bodies as well as, occasionally, investigators commissioned for this purpose.

5. It is in the nature of this process that it remains confidential. However, what I can say is that:

   (a) A decision on whether to proceed with a donation or donor is always taken based on information from multiple sources.

   (b) Such a decision is very rarely unanimous, with an element of institutional judgment being an essential ingredient in the process

   (c) A determination ***not to*** proceed with a particular donation or donor cannot necessarily be interpreted as in any way expressing any doubt about the integrity of the potential donor or partner institution. As already mentioned, the decision could result from other factors, including limitations in our capacity to deliver, or changes in the priority of our activities, or the nature of the industry from which the donation comes.

We would never discuss our detailed deliberations or considerations in respect of any particular decision relating to a donor with unconnected third parties. We are not therefore prepared to discuss them with you or your client, but would stress again my point 5(c) above that any decision in relation to Mr Mohamed Amersi was taken purely based on the Institute's own internal process of deliberations, and not on the basis or under the influence of information which may have been either supplied to us directly or released in the public domain by your clients."

96. Mr Lawrence has also set out in his fifth witness statement his further efforts to contact Sir David Lidington. Consistent with the indication he had given (see [92] above), Sir David has refused to engage with further inquiries raised with him. Following receipt of the letter from Dr von Hippel, Mr Lawrence emailed Sir David, on 13 January 2023, to seek any comments/observations on its contents. He did not receive a response.

97. In response, the Claimant provided a further witness statement, his sixth, dated 27 January 2023. In this statement, the Claimant advanced a further paragraph for which he sought permission to amend (§106A Amended Particulars of Claim). The Claimant stated that he disagrees with what Dr von Hippel has said in her letter. He claims that Sir David Lidington was "*the key decision-maker when it came to assessing whether to accept or reject donations from me*". He added:

> "When RUSI agreed in principle on 1 July 2021 to accept a donation from my foundation [Sir David] endorsed that agreement on 2 July 2021, but then suspended that endorsement by 7 July 2021 meaning that I was asked not to disburse funds. On 1 August 2021 I was informed that Sir David had again given the donation the 'green light' only to be told some hours later by a member of the RUSI fundraising team that he had changed his position and that the donation was again suspended, to be revisited by the year end. RUSI ultimately did not follow up on this."

98. The Claimant also stated that, on 7 July 2021, he sent a copy of the First FT Article to RUSI, although he is unaware whether Sir David had seen it. He went on:

> "No explanation was provided to me for Sir David's decision. Nonetheless, RUSI continued to engage with me and I was again requested to disburse funds on 1 August 2021 (supported, I was told at the time by a member of the RUSI fundraising team, by Sir David) in accordance with the Invoice only for it to be again suspended that same day at the instigation of Sir David (as I was informed by the RUSI fundraising team), possibly because (it was suggested to me by the same member of the RUSI fundraising team) of the publication of the [ST Article]. But again no formal explanation was provided to me… All this start/stop demonstrated unequivocally to me that Sir David had an effective veto over any donation I might make and that although not the sole cause of his decisions, those decisions were, I believe, contributed to by the damage done to my reputation in his eyes by the [Memos] published to him by the Defendants."

The failure/refusal to identify the "*member of the RUSI fundraising team*" in these paragraphs was a breach of CPR PD 32 §18.2 (see [121] below) and affects the weight to be attached to this (hearsay) evidence (see [190] below).

**(b) Sir Julian Lewis**

99. The Defendants rely upon a witness statement from Sir Julian Lewis that had been agreed by him, but is unsigned. As at the date of Mr Lawrence's third witness statement, Sir Julian had felt unable to sign the statement. As Chairman of the Intelligence and Security Committee of the House of Commons, he wanted to get approval from the Committee's legal advisor before doing so. The draft statement was subsequently exhibited – still unsigned – to Mr Lawrence's fourth witness statement, dated 7 November 2022. Mr Lawrence had sent emails to Committee's legal advisor seeking a response, but, on 27 October 2022, he received a message that she was on maternity leave. In light of that, Mr Lawrence then provided the draft approved statement. I am satisfied that the draft statement represents Sir Julian's evidence, albeit he has not yet felt able formally to sign the statement.

100. Sir Julian exhibited to his draft statement various messages and emails that had passed between him and the First Defendant and stated the following:

> "My recollection of our conversation on 24 December 2020 is that Ms Leslie gave me a summary of what has [happened] and her concerns about COMENA as subsequently set out in the memoranda and said that she thought that they should be put before the proper security channels. I agreed to do so and said that she would probably not receive a response. I told her that I had never previously heard of the Claimant.
>
> My duty was simply to pass on the information to the appropriate body. It was not necessary for me to form a view about the Claimant and I do not remember doing so. I did not distribute the memoranda elsewhere or discuss their contents. I am not involved with the Arab Diplomatic Corps or the possible affiliation of organisations such as COMENA.
>
> I have formed a negative view of the Claimant as a result of matters arising subsequently which have been the subject of widespread media coverage and I contributed to the 'Lawfare' Parliamentary debate on 20 January 2022 where I referred to this case."

101. In his fourth witness statement, the Claimant did not respond to the Defendants' evidence concerning any damage to his reputation caused by publication of the Memos in the eyes of Sir Julian Lewis.

### (c) Crispin Blunt

102. Crispin Blunt MP has provided a witness statement to the Defendants. The material parts of his evidence are as follows:

> "3. On 18 December 2020, I had a conversation with Charlotte Leslie in person at her home. In that conversation I informed her that I had heard that Sir Hugo Swire MP and the Conservative Party were in the process of setting up another organisation similar to CMEC. Ms Leslie was understandably perturbed by this.
>
> 4. I had never heard of the Claimant until alerted by Sir Hugo of his organisation. I recall that Sir Hugo mentioned the source of funding and may also have referred to the Claimant's motivation to be rewarded with an honour.
>
> 5. On 30 December 2020, Ms Leslie then sent to me by email a copy of the memorandum which has now been controversial in this case. Ms Leslie's email to me was timed at 1.52pm and at 11.56pm I responded to her with an email containing the words 'plainly a total bounder! With some very odd fish for company. More than enough to kill it off I think.'
>
> 6. A further email exchange took place the following day, 31 December 2020. At 9.31am, Charlotte responded to me saying, 'thanks Crispin. Good to know I am not alone in feeling uneasy about this. Apparently Johnnie Astor & Trish are supportive.' At 10.46am I responded, 'supportive of you or this Melmotte figure'. Then at 11.06am Charlotte responded 'sorry not clear. Of Mr Amersi'.
>
> 7. As far as my view of the memo is concerned, it contains first-hand evidence that a Conservative Party organisation focusing on the Middle East was proposed on the basis of being funded by the Claimant. The purpose of this organisation appeared to be both [to] supplant CMEC and by extension its founding purpose that was to support the 1980 EU Venice Declaration in support of Palestinian statehood, instead replacing it with support for the highly controversial Abraham Accords which are properly seen as a betrayal of aspirations for Palestinian statehood by some of the leading Gulf Arab monarchies.
>
> 8. That the Claimant's money and business appeared to have its roots in the UAE, a leading promoter of the Accords, only reinforced my concerns over what was going on. The Claimant seemed to be overtly seeking UK status through the honours system in reward for his political donations to the Conservative Party and in my estimation, this raised further doubts over his motives.
>
> 9. I did not circulate the memo further nor did I share my view of the Claimant's headline traits beyond my conversation with Charlotte.

> 10. I consider it a touching thought that my private view of the Claimant's merits, confirmed and/or reinforced by this memo, could have such a devastating impact upon his reputation so as to justify Court action.
>
> 11. The reporting of his affairs since, the reported conduct of his business in Uzbekistan, his relations with the Prince of Wales' charities, his disgraceful and indefensible use of a rich man's tool, 'lawfare' against Charlotte Leslie, just served to confirm my conclusion from the memo. The Claimant's case is that the memo was sent to persons of standing and importance whose opinion of the Claimant's reputation was important to his aspirations. However, affiliation decisions would not be taken by or involve me in any event. It is certainly true that I would have argued against affiliation of COMENA had I offered my view or if it had been sought, but that was due to the reasons explained above in this statement and not a result of the memo written by Charlotte…"

103. In his fourth witness statement, the Claimant suggested that Mr Blunt's evidence was helpful in establishing harm to his reputation by publication of the Memos. He pointed to the email from Mr Blunt, on 30 December 2020, as demonstrating that he understood the Memos were designed to "*kill off*" COMENA and Mr Blunt's reference to the Claimant as a "*total bounder*". In his further email of 31 December 2020, Mr Blunt also compared the Claimant to the character of Augustus Melmotte in Anthony Trollope's novel, "*The Way We Live Now*": "*a dishonest and corrupt financier with a mysterious past*". The Claimant states that, as he has not previously met Mr Blunt, his impression of the Claimant must have been formed exclusively on what was said about him in the Memos.

104. In response to Mr Blunt's evidence as to the impact of the Memo on his view of the Claimant's reputation, the Claimant stated:

> "Even had Mr Blunt not been personally affected by the memoranda at all (which his evidence strongly contradicts), this would not detract from my claim that my reputation was harmed by the dissemination of the Defendants' memoranda in political and diplomatic circles; in the event it is perfectly clear that the memoranda seriously harmed my reputation in Mr Blunt's mind."

105. The Claimant disputes several other aspects of Mr Blunt's evidence, including what Mr Blunt said about Sir Hugo Swire's suggestion that the Claimant may have been motivated by the prospect of an honour: "*I do not believe that he [said this] because there was no basis for him to hold such a view. Never have Sir Hugo and I ever discussed this.*" These further factual disputes are not material, save perhaps on the issue of Mr Blunt's credibility (see [201] below).

### (d) Sir Alan Duncan

106. Sir Alan Duncan has provided a witness statement to the Defendants. The material parts of his evidence are as follows:

> "3. My involvement in this matter began when the Claimant telephoned me, and that was before any material from Ms Leslie was received. I cannot be sure when that call took place but it came to me completely out of the blue, although I was aware of the Claimant before he called me. The Claimant said

> that he was establishing a new organisation to represent the Conservative Party in the Middle East region. He said that the organisation was to be funded by him. I told the Claimant that his approach was ill-conceived and unacceptable. I asked him what he was trying to achieve, and he replied that he thought that CMEC was no longer a suitable organisation to represent the Conservative Party in the Middle East, and that he wanted to set up COMENA which would have a wider geographical remit. I said to the Claimant that his idea would not work and that, in my view, he was trying to destroy CMEC which was a long-standing established organisation. I said that I felt that it was inappropriate for the Claimant to parachute himself into the situation and for him to go around the Gulf region with what would effectively be a Conservative Party calling card.
>
> 4. I was immediately of the view that the structure of the new organisation was completely improper because an MP's liaison group should be run by an MP and not run by a donor. An organisation led by a donor would look too much like an attempt to buy influence. I believed CMEC, or anything like it, should be about parliamentary liaison, not Party influence.
>
> 5. The memorandums written by Ms Leslie which are a basis for the Claimant's claim were sent to me on 3 January 2021 by email.
>
> 6. When I received and skim-read them – which is all I ever did – I could see that they concerned the Claimant and his intention to establish a group to represent the Conservative Party in the Middle East region. I had already spoken to the Claimant about what I thought.
>
> 7. I did not need to read a memorandum from Ms Leslie to form a negative view of the Claimant. My view of him was not created by the memorandum but rather because I did not believe that a donor should lead as Chairman or promote an organisation such as the one suggested by the Claimant.
>
> 8. I was subsequently aware of negative press coverage of the Claimant demonstrating his self-discrediting conduct and it is that which has most influenced my current view of him.
>
> 9. I did not discuss the memorandums with anybody else and did not copy them on to any other recipients…"

107. In his fourth witness statement, the Claimant disputes Sir Alan's recollection of their introduction, about the funding of COMENA, and what was said about CMEC during their conversation, and suggests that Sir Alan had been "*unfriendly*" to him when they spoke on 4 January 2021. The Claimant infers "*that this hostility must have arisen from reports of me which Ms Leslie gave to him, most likely via the memoranda which Ms Leslie sent Sir Alan on 3 January 2021, the day before our conversation*". The Claimant challenges as "*somewhat inconceivable*" Sir Alan's evidence that he had only "*skim-read*" the Memos.

### (e) Ben Elliot

108. Mr Elliot did not respond to the July Letter sent by the Claimant's solicitors. In his evidence, the Claimant stated that he was not surprised by Mr Elliot's lack of response because he was aware that "*CCHQ and members of the Party more generally simply do*

*not want to be drawn into this dispute*". Mr Lawrence also tried to contact Mr Elliot, without success. In the absence of engagement from Mr Elliot, the parties have relied, principally, upon the available contemporaneous documents on the issue of serious harm to the Claimant's reputation caused by publication of the Memos.

109. The Claimant has obtained various emails as a result of a data protection subject access request he made to the Conservative Party. The Claimant has generally relied upon some of these documents as demonstrating the harm he alleges has been caused to his reputation in the eyes of Mr Elliot.

(1) On 7 January 2021 there was an email (in context, probably from Mr Elliot) in which he stated:

> "I have had 20 calls on this week – pro and against
>
> I would like a proper report on Amersi himself as a due and proper person – we might have to speak to number ten to ask their friends for some info."

In his evidence, the Claimant has suggested that the reference to "*number ten's… friends*" is to the security services. I cannot assess whether this is correct.

(2) Later, on 7 January 2021, Mr Elliot sent a further email asking an unidentified recipient to "*get call sorted on this*", adding: "*they are both as bad as each other. Keen to have neither.*" The Claimant suggests that this sentiment is at odds with the enthusiasm Mr Elliot demonstrated for COMENA in December. This change of heart he attributes to Mr Elliot's receipt of the Memos.

(3) On 10 January 2021, Mr Elliot forwarded Sir David Lidington's email of 9 January 2021 (which formed part of their exchange of emails on the subject (see [85]-[87] above)). The recipient has been redacted, but the Claimant contends, and I infer, it was sent to someone in the Conservative Party. The accompanying message was:

> "We have to close this down.
>
> We need a proper report on Amersi and [Leslie] and I think we should kick both into the very long grass and also instruct them both to down tools as the only loser in this is the party through no fault of its own. Agree?"

(4) On 11 January 2021, there was an exchange of emails between unidentified people at the Conservative Party with the subject "*Mohamed Amersi*":

> 16:02 Hi team, Have CRD ever done a check on him and if so (sic) can we do one please. [Redacted] has asked for quite a deep dive.
>
> 16:03 No problem. When does he need it by?
>
> 16:03 End of week would be cool.
>
> 16:07 We checked him for leaders group renewal in August, (attached). I can get [redacted] to see if it need and (sic) update.

(5) On 12 January 2021, apparently in response to the request for an updated report on the Claimant, an unidentified person sent a further email attaching an updated report ("the Report"). It stated: "*CRD Recommendation: Minor Concerns. Fine to proceed with minor concerns.*" The Report covered many areas of the Claimant's work and interests. It did not include any material apparently drawn from the Memos.

(6) Also on 12 January 2021, at 17.18, there is an email from an unidentified person (possibly Mr Elliot) forwarding a letter from a supporter of the Claimant to the Chair of the Conservative Party (which has not been provided): "*Where are you on Mohamed as these kind of letters do not help. Everyone has to down tools on both sides-NOW.*" At 17.25 the Report was forwarded to an unidentified person (again possibly to Mr Elliot) with the message: "*CRD check attached. Nothing too bad*".

(7) On 15 January 2021, there is a further email from an unidentified person (again, I would infer, Mr Elliot), which appears to refer to the dispute between the Claimant and the First Defendant:

> "We have asked both to calm down – as I told you – to stop legal letters, lobbying from their friends, politicians, ambassadors with a view after the next board meeting to seek a path to peace and reconciliation. All what you would do if you were us. Everyone should down tools and keep quiet. Thanks…"

(8) On 25 April 2021, someone in the Conservative Party sent an email to Tom Skinner, the Conservative Party's Head of Operations, Visits and Events, and another undisclosed person with a no10.gov.uk email address regarding "*Mohamed Amersi Breakfast*":

> "Can we get CRD to do some really thorough checks before we go any further, just check there's nothing that's going to surprise us eg any controversial PPE contracts, no links to any potential bailouts, no close links to shady characters etc etc."

Mr Skinner appears to have responded on 13 May 2021:

> "Nothing bad came back from CRD on this."

110. The issue of what harm (if any) was caused by publication of the Memos is, in Mr Elliot's case, complicated by the Claimant having sent him a copy of the Memo. The Claimant's claim against the Defendants relates to the publication of Documents 12 and 13 to Mr Elliot on 4 January 2021. However, before that, on 2 January 2021, the Claimant had himself sent Document 14 to Mr Elliot, unheralded, by WhatsApp message at 15.01. At 15.03, the Claimant sent a further message to Mr Elliot:

> "Happy New Year my friend. I know you said I shouldn't disturb you before the 4th but this is out there. Not causing any damage but obviously a little awkward. Let me [know] if and when you want to chat about it; otherwise we now have 130 supporters [for COMENA], 100 needed and going very strong!!!"

The reference to "*this is out there*" is a reference to Document 14 sent in the preceding message (the document is set out in Annex 2).

111. Between 4-9 January 2021, the Claimant and Mr Elliot exchanged the following messages (with ellipses in the original text):

4 January 2021

| | | |
|---|---|---|
| 16.16 | Claimant: | Call when you can! 5 mins only! Want to make your life easy for you…🙏😄 |
| 20:59 | Claimant: | I am sure you have more important things on your mind but just to let you know I have instructed reputation/litigation counsel to write as appropriate to charlotte (sic) Leslie but keeping the party and comena out of it. |
| 21:00 | Claimant: | She has sent that memo to at least 4 ambassadors who have been paying her significant fees for services |
| 21:02 | Claimant: | She is probably breaking the law as CMEC is now her company registered at companies house with the object of doing lobbying and using the party's name and logo to make people believe that she is part of the party. The company CMEC is prohibited from having members from only one party. |
| 21:03 | Claimant: | Neither she nor CMEC are registered as lobbyists so they could be breaking the law if they are proven to have engaged in lobbying |
| 21:04 | Claimant: | I am not after her or CMEC. I just want to start with comena. We now have an impressive front line and 130 members signed up to support including 10 new members. We have thus met the requirements… |
| 21:04 | Elliot: | I would Speak to her chairman and sort it. I am busy on other stuff. Can speak later in the week. |
| 21:05 | Claimant: | She doesn't have a chair. The party wanted me to be the chair if she chose to reaffiliate. |
| 21:06 | Claimant: | She has Nic Soames as Hon president |
| 21:07 | Claimant: | I don't care about her or CMEC. I just want us to be affiliated and get going. Can you accelerate our affiliation approval! 🙏🙏🙏🙏🙏 |
| | | We have satisfied all requirements |
| | | And she and CMEC and the party can do what they all want |
| 21.08 | Claimant: | Sorry to bother you with this! 🙏 |
| | | PLEASE |

| | | |
|---|---|---|
| 21:10 | Claimant: | This is good for HMG, the Party and of course me… |
| 21:11 | Claimant: | And I know with all on your plate your bandwidth and concentration on this will not exceed 30 secs |
| | Elliot: | Will be discussed as agreed in next board meeting |
| | | Pls leave it with me till then |
| 21:12 | Claimant: | 🙏🙏🙏 |
| | | Good luck with all else |
| 21:13 | Claimant: | When is the board? |
| 21:14 | Claimant: | I have taken a huge reputation hit just for helping the party and HMG |
| | | And spending money! |
| 21:15 | Claimant: | Not important but understand how I feel |
| 21:28 | Claimant: | See Kushner negotiated raprochement (sic) betwee (sic) Qatar, Saudi, UAE, Bahrain & Egypt. This is what we as comena could help with fcdo and no 10 as opposed to allowing the us to take the lead… |

6 January 2021

| | | |
|---|---|---|
| 19.34 | Claimant: | Would you like to see in confidence what my lawyers have drafted as a response they will send out to charlotte tomorrow? Clearly I have kept the Party and comena out of it… |
| 19:53 | Elliot: | No |
| 20:22 | Claimant: | Ok |
| | | So you and Amanda will receive it officially tomorrow by way of bcc |
| 20:23 | Claimant: | And when can we speak? |
| | | Do I still have backing for this or not? |
| 20:26 | Claimant: | Not getting any reply from Stott. |
| | | And don't know what we need to comply with |
| | | Why can't you just call me? |
| 20:27 | Elliot: | I am called every day by Hugo Swire Nicholas Soames etc. This has turned into an unnecessary spat before even launch. |
| | | I have no clue if Stott is in this week. |

I am not calling you as I have many other things which are currently more of a priority and I will when I get to it.

20:28 Claimant: Really! Hugo called you!! He is with me every day on calls and never mentioned anything!

We sit on 2 boards together!

20:29 Claimant: He wanted my letter to go to you snd (sic) Amanda officially

I said no as I didn't want to draw the party in

20:30 Claimant: The spat was not my fault. I did not wring!!! (sic)

She attacked me

20:32 Claimant: Nothing wrong!!

20:33 Elliot: Am sure

20:35 Claimant: Ok

8 January 2021

17:45 Claimant: Shall we have a quick chat or is that pushing you… if you want me to drop this, please say so to me! I am least owed that! Friendships usually outlast positions in my humble experience…

17:49 Claimant: I know you hate confrontation. I hate it too! I didn't start this mess. Charlotte Leslie did!

17:51 Claimant: Anyway if you don't wish to talk it's also fine… ask James or Michael or Jascha to speak to me… 🤷

18:20 Elliot: I do not mind confrontation. Have a meeting with the team next week on all this.

18:31 Claimant: On this stuff or other stuff? Hear me out mate. You will benefit and be better informed. I will be objective. I now know about everything on everyone and it will benefit you! But up to you! 🤷

19:06 Claimant: You take everyone's call but mine! Somebody who by Charlotte's own admission has given the party £750k 🤷

19:53 Elliot: I know what to do. Do not need to be instructed

20:00 Claimant: Ok buddy

…

21:49 Claimant: David Burnside wants me to pay him £20k for potential media management if charlotte goes to the press! I have already

> incurred £25k of legal costs. Money that could have gone to the party instead of this BS!! Waste of time and money because of… indecision!
>
> 9 Jan 2021
>
> 08:15 Elliot: It will not go to the press. And nothing to do with indecision. There has been no board meetings Mohammed (sic). Pls!
>
> 08:36 Claimant: Ok thank god!!!

112. It is convenient to note here that, in addition to sending Document 14 to Mr Elliot, the Claimant also sent it to several other people, in many instances, accompanied by the MdR Letter (see [7] above). The distribution was as follows:

(1) on 2 January 2021, to Baroness Morris, Mark Garnier MP, Sir Hugo Swire, Lord Astor and Rupert Goodman (members of COMENA's Founding Group);

(2) on 10 January 2021, to Ronel Lehmann, together with a copy of the MdR Letter;

(3) on 21 January 2021, to Sir David Lidington, together with a copy of the MdR Letter;

(4) on 28 January 2021, to Ilma Bogdan, together with a copy of the MdR Letter;

(5) on 26 February 2021, to Rida Said, Chief of Staff of the Saudi Ambassador to the UK; and

(6) on 20 March 2021, to Jamie Bowden and Clovis Meath Baker, together with a copy of the MdR Letter.

113. The Claimant also sent the MdR Letter to several other people: Baroness Morris, Mr Garnier MP, Sir Hugo Swire, Lord Astor, Mr Goodman, Mr Elliot, Mr Walloopillai, Ms Milling MP and the UAE Ambassador to the UK. By 12 January 2021, Sheikh Fawaz had seen the MdR letter which had "*come into circulation*" (see [58] above and [118] below).

114. The Claimant has explained his reason for distributing the MdR Letter was:

> "… in order to make sure that my rebuttal of the allegations made in the [Memos] was provided to a select group of important individuals. It was important for me that I try to mitigate the damage caused to my reputation, and also that key stakeholders in COMENA were aware that I was taking steps to deal with Ms Leslie's allegations head on and that I would settle the matter with, *inter alia*, an apology and a retraction. In particular, a number of these individuals (including the UAE Ambassador) had asked for a copy of [the MdR Letter]… By the time I shared the [MdR Letter], all of the known republications of the [Memos] had already taken place and I shared it with the recipients who had specifically informed me of their receipt of the [Memos] and/or awareness of their contents and (as I have set out…) those that I had a duty to inform."

## (f) Sheikh Fawaz

115. In relation to Sheikh Fawaz, the Claimant's case is that the Sheikh received Document 14 on 1 January 2021 and Document 16 on 2 January 2021. The First Defendant authorised Sheikh Fawaz to forward Document 14, and he did forward it, to four other Ambassadors to the UK: those of Saudi Arabia, Egypt, the United Arab Emirates and Kuwait. In her evidence, the First Defendant stated that Sheikh Fawaz asked to be permitted to forward the Memo because "*he thought they needed to see it*". The Claimant alleges that, at a meeting on 11 May 2021, Sheikh Fawaz referred to having seen "*several writings*" from the First Defendant, which the Claimant infers was a reference to the Memos.

116. The Claimant also states he had spoken to a Kuwaiti statesman, His Excellency Abdullah Bishara, about his vision for COMENA. The Claimant states: "*He confirmed to me that my 'problem' was Sheikh Fawaz as he was obstructing the progress of COMENA.*"

117. Sheikh Fawaz has provided a witness statement to the Defendants. The material parts of his evidence are as follows:

> "3. The concerns that I had in relation to COMENA were set out in my letter to Ben Elliot of 12 January 2021 (exhibited… with his response). These related to the longstanding relationship between CMEC and the Arab Diplomatic Corps, the varied and conflicting accounts, raised my concerns and I requested that these concerns were addressed for the sake of Diplomatic confidence in the Party and its affiliated groups.
>
> 4. A meeting between me and the Claimant took place in May 2021 which was organised through the Kuwaiti Ambassador. At the meeting, the Claimant spoke about his charities and his background.
>
> 5. The Claimant opened the meeting by talking about his charitable activities and donations to Bahrain charities, which were not correct, and made me immediately suspicious of him from the outset. The Claimant said that he had accompanied HRH Prince Charles during a visit to Bahrain and that he (the Claimant) had made donations to charities during that visit. In fact, I was in Bahrain at that time, and I was accompanying HRH Prince Charles as I do on every visit by the Prince. I attended every meeting and never saw the Claimant during that visit. The Claimant was not part of the delegation and I have subsequently checked that fact with the Ministry of Foreign Affairs in Bahrain. Rupert Goodman was also present on that visit and he told me that the Claimant was not there. So I have been able to check with two sources the falsity of what the Claimant had said to me.
>
> 6. The Claimant made that claim at the start of the meeting and so I was put on notice straight away that the Claimant's claims were verifiably untrustworthy.
>
> 7. I shared my account of this concerning episode with another ambassador. That other Ambassador told me that the Claimant had also made untrue claims about him about a different matter.
>
> 8. I formed a view of the Claimant's character as a result of my interaction with him at the time rather than anything in the memorandum."

118. The letter to Mr Elliot (copied to Sir Nicholas Soames), dated 12 January 2021, to which Sheikh Fawaz referred, was in the following terms:

> "I write as Ambassador of the Kingdom of Bahrain and on behalf of the Embassy of the Kingdom of Bahrain and my colleagues and members of the Arab Diplomatic Corps in the UK to express my concern regarding reports that a party donor, Mohammed (sic) Amersi, is setting up an alternative Conservative Middle East Council by the name of 'The Conservative Friends of the Middle East and North Africa', called COMENA. As a member of the Arab diplomatic corps and the wider diplomatic community in London, I share the sentiment of many colleagues when I say that I have some concerns regarding the formation of such a group.
>
> For over forty years, the Conservative Middle East Council (CMEC) has occupied a special place in politics between the Middle East and United Kingdom. CMEC has long performed an important role in facilitating dialogue between our respective regions, one built on forty years of trust and hard work. I also note that the Arab diplomatic corps are fully engaged with CMEC today and that the quality and significance of what CMEC does since their de-affiliation from the Conservative Party has not subsided in any way. In fact, I can speak on behalf of all my Arab League colleagues when I say that we have seen more and not less engagement with the Conservative Party since CMEC's status changed as an affiliated group.
>
> Thus, naturally the Arab diplomatic community in London have found it disturbing to see varied and conflicting accounts of the Conservative party's backing of 'COMENA' and have found ourselves on the receiving end of a restricted and confidential legal letter, addressed to CMEC's director, Charlotte Leslie, which has come into circulation.
>
> I would be very grateful to you for some clarity on this matter, and I hope these concerns will be addressed for the sake of diplomatic confidence in the party and its affiliated groups, which are stronger and more important to us than ever."

119. In his response, dated 14 January 2021, Mr Elliot wrote:

> "Thank you very much for your letter dated 12 January.
>
> The Party's relationship with Bahrain and the Middle East is, as ever, crucially important to us, as is your own friendship and support. I myself have a personal love of your wonderful Country and visit each year as a guest of His Royal Highness the Crown Prince to the Grand Prix.
>
> I am indeed aware of the creation of this new group and am very sorry it has caused some confusion. I am in touch with both groups (the Conservative Middle East Council and The Conservative Friends of the Middle East and North Africa) and will write again in due course to clarify any issues."

120. In his fourth witness statement, the Claimant described the witness statement of Sheikh Fawaz as a "*disingenuous and misleading version of events*", in other words that it is untrue, and encourages Sheikh Fawaz to "*submit to cross-examination*" on it. Specifically, the Claimant takes issue with three matters in Sheikh Fawaz's statement.

(1) The Claimant denies that he ever said that he had attended the political visit to Bahrain. Further, although the Claimant's foundation has "*never directly*

*supported funded any Bahrani charities*", the Claimant states that he did discuss his support for other charities that may have indirectly supported initiatives in Bahrain. The Claimant is "*unwilling to speak at length*" about this charitable work "*given the tendency of the Defendants and the press to mischaracterise [his] work with charities*". The Claimant concluded: "*I thus had absolutely no need to invent a spurious visit to Bahrain which I had not attended to fabricate a connection to that country, and I did not do so. My CV is well-furnished with experiences in Bahrain on which I could draw.*"

(2) Second, the Claimant states that, during their meeting, he and Sheikh Fawaz had discussed COMENA's potential board, and that the Claimant had told him that the allegation that he had been making false claims about the people who had signed up to be on the board was untrue. The Claimant claims that Sheikh Fawaz had told him that his country's main concerns about him, and COMENA, were his links to Russia and that he had told the Sheikh:

> "… that he should have no concerns whatsoever about my very historic dealings in Russia which were no different to global law firms and M&A advisors, engaging in the Russian markets. But it fell on deaf ears as he preferred to believe the version set out in the Defendants' memoranda."

(3) Finally, in relation to the letter to Mr Elliot that Sheikh Fawaz exhibited to his witness statement (see [118] above), the Claimant says:

> "… this has been described to me by my contacts in Arab diplomatic circles as a shocking overreach (not least given that His Excellency was not the Dean of the Arab Diplomatic Corps) and an unauthorised representation of the position of the Corps. I was recently informed by a contact in the Arab diplomatic sphere that the Arab Diplomatic Corps found the favour shown to the Defendants by His Excellency and his team at the Bahrain Embassy in the United Kingdom over COMENA both improperly partisan, and at odds with the suspicion with which they treated CMEC after its decision to disaffiliate without informing them."

121. CPR PD 32 §18.2 provides that: "*A witness statement must indicate: (1) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and (2) the source for any matters of information or belief.*" In his witness statement, the Claimant confirmed, only, that "*where I have obtained information from other sources, such information is true to the best of my knowledge, information and belief.*" That ignored the requirement to indicate the source of information that is not within the deponent's own knowledge. The failure by the Claimant to identify the source of the information (recounted in the paragraph quoted in [120(3)] above) beyond an unidentified "*contact*" is, I am satisfied, deliberate. That would have affected the weight I would have attached to the evidence, had it been material. As it has no relevance to the issues I have to decide, the point does not arise.

**(g) Sir Nicholas Soames**

122. The Claimant does not complain, directly, of the publication of the Memos to Sir Nicholas. Nevertheless, it is part of the Claimant's case he was sent a copy with the intention that it should be provided to Mr Elliot and the publication to Mr Elliot is one of those complained of by the Claimant.

123. Sir Nicholas has provided a witness statement to the Defendants. The material parts of his evidence are as follows:

> "3. My involvement in this matter began when the Claimant wrote to me asking for a meeting. I had never met the Claimant, and did not reply to him.
>
> 4. Then, Ms Leslie called me by telephone just before the Christmas holidays in 2020. She told me that the Claimant was planning to set up a new organisation to rival the Second Defendant, a plan about which I had previously heard only as vague gossip.
>
> 5. During that telephone conversation, Ms Leslie said that she had prepared a memorandum upon the subject and I asked her to let me see a copy of it. In the light of that conversation, I agreed with Ms Leslie that in his role as Co-Chairman of the Conservative Party, Mr Elliott (sic) needed to see the memorandum.
>
> 6. Ms Leslie sent a copy of the memorandum to me by email and I sent it on to Ben Elliott. The letter under which I sent the memorandum was dated 4 January 2021. I thought that Mr Elliott should know about the contents of the memorandum and I only sent it to him because I felt that its whole purpose dictated that he should see it. I did not send it to anyone else.
>
> 7. I recall speaking on the telephone to Mr Elliott on the day I sent the memorandum and him informing me that he knew what the problem was and that the Board of the Conservative Party also were already aware of the matter.
>
> 8. I do not know what Mr Elliott did with the memorandum once he had received it from me.
>
> 9. At the time, I became aware that the Claimant had been naming people who supported his intention to set up his new organisation, to be known as COMENA. Amongst those was Sir David Liddington (sic), another former Conservative Member of Parliament.
>
> 10. I spoke to Sir David Liddington and told him that the Claimant was using his name and that of Theresa May as people who had accepted positions in COMENA, and Sir David told me that he had done no such thing. Sir David expressed displeasure that the Claimant was using his name."

124. In his fourth witness statement, the Claimant states that Sir Nicholas Soames' witness statement "*appears to do little to contradict the serious harm to my reputation*". He deals with the following three matters:

(1) First, the Claimant says that Sir Nicholas is mistaken about when they first met.

(2) Second, the Claimant accepts that the Conservative Party was aware of some of the issues concerning CMEC and COMENA before the Memos were circulated, but the Claimant states that CMEC and COMENA were never supposed to be rivals. Specifically, the Claimant suggests that the fact that, in the covering note sent to Mr Elliot with the Memo, Sir Nicholas had recommended the Claimant for a trade envoy role, contradicts Sir Nicholas' claim that he was acting in a sense of duty by sending Mr Elliot the Memo:

> "It shows instead a patent attempt to protect CMEC by suggesting an alternative illustrious role for me to fulfil, despite his apparent concerns about me (as outlined in in his email to Mr Elliot, in which he states that the allegations contained in the memoranda are 'serious enough to warrant the urgent attention at the highest levels of the party organisation')."

(3) Finally, the Claimant disputes Sir Nicholas' evidence suggesting that Sir David Lidington was already irritated with the Claimant's use of his name in connection with COMENA before he had received the Memo. Based on several WhatsApp messages exchanged between the Claimant and Sir David, the Claimant suggests that Sir David had demonstrated a "*continued willingness to engage with me and COMENA*".

**(h) General reputational harm caused by publication of the Memos**

125. A large part of the Claimant's case on serious harm to reputation has been devoted to general evidence of reputational harm which the Claimant alleges has been caused by publication of the Memos (see §§69-128 Amended Particulars of Claim and evidence in support).

126. The Claimant stated that he was first alerted to the existence and circulation of the Memos on 2 January 2021, after being contacted by Mohamed Mansour who had received a copy from "*one of the MENA Ambassadors*" (see also §86 Amended Particulars of Claim). The Claimant said that he was "*shocked*" by what he read. He does not, however, provide any evidence of what Mr Mansour thought about the document.

127. On 2 January 2021, Mark Garnier MP sent an email to Amanda Milling, Co-Chair of the Conservative Party, attaching Document 14:

> "I did want to bring to your attention some negative reactions from CMEC. I have attached a copy of a note being circulated by Charlotte Leslie that has been passed to us at COMENA. As you can see it is libellous to COMENA and Mohamed, and has implications for the Conservative Party, and ministers too. Its unpleasant, as you can see, and inaccurate. This will be dealt with in the appropriate fashion, the intention being to stop this action by Charlotte in as sensible manner as possible…
>
> I can't see any reason why you need to be drawn into this, but I didn't want you to be blindsided by it."

Mr Garnier has not provided any evidence. He is not complained of as a publishee of any of the Memos. The Claimant also alleges that Mr Garnier provided a further copy of Document 14 by email on 4 January 2021 and that this was further circulated within the Conservative Party (see §§93-96 Amended Particulars of Claim).

128. The Claimant states that he contacted his solicitors, Mishcon de Reya, on 4 January 2021, because he "*considered the memorandum to be very likely to cause serious damage to [his] reputation*". At that stage, the Claimant said that he did not know the full extent of the distribution of the Memos. If the Claimant was concerned about the potential damage to his reputation caused by publication of the Memos, and any onward publication of their contents, it is perhaps surprising that correspondence, like the July

Letters, were not sent on the Claimant's behalf much sooner, particularly in view of the fact that, in May 2021, he had received the 14 May Documents (see [13] above).

129. Beyond the publishees identified in the Particulars of Claim, the Claimant believes, as a result of his own inquiries, that copies of one or more of the Memos were also published to (1) Amanda Milling, then Co-Chair of the Conservative Party; (2) Gaj Wallooppillai, Chief of Staff to Mr Elliot and Ms Milling; (3) James Kerby at CCHQ; (4) Jascha Widecki at CCHQ; (5) Myles Stacey at CCHQ; (5) the Kuwaiti Ambassador to the UK; (6) the Saudi Ambassador to the UK; (7) the (then) Egyptian Ambassador to the UK; (8) the Ambassador of the United Arab Emirates; (9) the (then) Jordanian Ambassador to the UK; (10) the Lebanese Ambassador to the UK; and (11) the Head of the Palestinian Mission to the UK. In his statement, the Claimant does not state when the relevant Memos were received by the identified individuals, from whom, or what (if any) impact the relevant publication had on the Claimant's reputation.

130. A substantial part of the Claimant's case on 'percolation'/republication is alleged further dissemination of the Memos within the diplomatic community by Sheikh Fawaz. The Claimant relies upon the following:

(1) Allegations in the Memos were discussed during meetings of the 22-member Council of Arab Ambassadors, including discussion of whether the Claimant was suitable to lead COMENA and a suggestion that their concerns should be relayed to the Conservative Party (§§69-70 and 72 Amended Particulars of Claim).

(2) During a meeting with the Ambassadors to the UK of Jordan, Saudi Arabia and Oman, on 28 January 2021, each told the Claimant that he had seen documentation containing allegations about him. The Head of the Palestinian Mission to the UK told the Claimant in a telephone call in early January, and subsequently at a meeting on 28 January 2021, that he had seen or received a document, which the Claimant infers was one of the Memos (§72 Amended Particulars of Claim).

(3) The Claimant was told by the (then) Egyptian Ambassador during a meeting between them on 29 April 2021 that he had received documentation containing allegations about the Claimant, which the Claimant infers was one of the Memos (§74 Amended Particulars of Claim).

(4) On 5 May 2021, the Claimant was told by the Kuwaiti Ambassador that he had received "*writings*" about the Claimant, which the Claimant infers was one of the Memos (§75 Amended Particulars of Claim).

131. The Lebanese Ambassador, who is not a publishee relied upon in the claim, sent an email, dated 11 July 2022 in response to the July Letter ("the Lebanese Ambassador's Email"), indicating that he did not want to get involved "*in what is a UK domestic matter nor in an internal Conservative party spat*" and that his email should be considered his "*last involvement in this matter*". His substantive response was:

> "Throughout successive meetings of the Council of Arab Ambassadors, concerns were raised in connection with the suitability of Mr Amersi to lead the COMENA initiative. These concerns came in the context of a report prepared by CMEC

> questioning Mr Amersi's background for COMENA leadership and highlighting questions about his motives and alleged proximity to some foreign actors. Subsequently, these concerns were further amplified when some Amersi-related reports started to appear in the press.
>
> Notwithstanding concerns about Mr Amersi's motives and connections, there was general agreement in the Council of Arab Ambassadors that we should not involve ourselves in an internal Conservative Party matter and that we should deal with any entity that the Party might wish to affiliate to and appoint as an interface with MENA States. In contrast, a few colleagues suggested that we should relay our concerns about Mr Amersi's background to the party…"

132. More generally, on the issue of reputational harm, the Claimant stated that, after publication of the Memos, at meetings at some embassies (the Claimant has not given the details or dates), the relevant Ambassador would be accompanied by 'political directors' or the Claimant was subjected to a pre-meeting 'interview' where questions were asked about his activities in Russia and visits to Iran. The Claimant states:

> "While these were conducted in a friendly manner, they were as a result of enquiries being made about me following the publication of the [Memos]. This was highly embarrassing. I had previously had the ability to meet Ambassadors one-on-one at short notice, and had never encountered any such pre-meeting before and I was taken unawares by these intrusive interviews".

133. The Claimant also relies on alleged harm to his reputation in the eyes of the Kuwaiti Ambassador, which he attributes to the Memos. The Kuwaiti Ambassador is not one of the publishees relied upon in the claim, so this evidence is part of the generic case of reputational harm. A good friend of the Claimant, Safa Al Hashem, the first female member of the Kuwaiti parliament, spoke to the Kuwaiti Ambassador between 22 April 2021 and 1 June 2021. She said that he was "*embarrassed*" to be introduced to the Claimant as "*he had a bad reputation and was not as clean as [he] seemed to be*" and he was "*apparently close to the Russian regime and an Iranian stooge*". Despite this, the Claimant's evidence suggests that the Kuwaiti Ambassador had not reached a settled conclusion about him. In his statement, the Claimant added:

> "… the Kuwaiti Ambassador, after hearing representations from some of the Arab Ambassadors who were voicing their support for COMENA, decided to approach Lord Astor in order for him to provide a balanced account of CMEC and COMENA and my suitability to lead COMENA. On 23 April 2021, Lord Astor confirmed in writing to the Kuwaiti Ambassador that 'COMENA is therefore well placed to maximise the relationship between the MENA region and the UK government. COMENA's ties to the Gulf countries via the senior leadership assembled within COMENA will be much strengthened, not weakened. COMENA has the full support of over 100 Conservative MPs'. Unfortunately Lord Astor's letter did not yield any result as the [Memos] (and the intense lobbying of Sheikh Fawaz and Sir Nicholas Soames) had done significant damage already".

134. The Claimant also relies upon the email traffic around the Conservative Party headquarters in early January 2021 (see [85]-[87] above and §§21, 96-98, 99-102 Amended Particulars of Claim) as demonstrating reputational harm caused by publication of the Memos. In his statement he said that these emails demonstrated:

> "(1) Very promptly after the [Memos] began circulating, fears began to mount about my credibility and background (matters which had been extensively referred to in the [Memos]). Further due diligence checks were undertaken and pre-existing due diligence updated. The outcome of these checks, eventually, was that there were no issues, but it is clear that for some time those concerns were very present.
>
> (2) The concerns raised by [the First Defendant] in the [Memos] – the ones which made her 'uncomfortable about what [her] research had revealed' and left her feeling 'exposed because of what [she] had discovered about [me]', the same revelations which she felt it necessary to relay to active members of the National Security service and senior members of the Party, were matters which had not been raised in repeated Governmental (sic) due diligence checks."

(I assume that the reference to "*Governmental*" due diligence checks is a reference to the due diligence check carried out by the Conservative Party, not the Government.)

135. In a response to the July Letters, Ronel Lehmann, one of the Treasurers of the Conservative Party who had supported the efforts to set up COMENA, stated, in a letter dated 21 July 2022:

> "Imagine my dismay in early January 2021 when I learned that Charlotte Leslie had issued memoranda that called into question Mr Amersi's bona fides and suitability to lead. I was shocked and contacted Mr Amersi. To his credit, he furnished me with the details, including a reply from Mishcon de Reya.
>
> I understood from the outreach team that this did major damage to his initiative. This was not the man that I had come to respect and admire. To the best of my knowledge, I have never met Ms Leslie. Although I am a member of many Party affiliated organisations and attend a multitude of Friends of groups, I have never been introduced or attended any Conservative Middle East Council events.
>
> Sadly for me, given the memoranda, the lobbying by a Party stalwart and grandee and other former Parliamentarians associated with CMEC, the impact on Mr Amersi was negative and I had to respond to queries from the many associates that I had introduced to Mr Amersi. Unfortunately, given that it was a blue on blue spat the Party did not act as I was hoping or expecting to resolve the issue and was horrified that someone who had done so much for the Party was being trashed very publicly and left hanging out to dry.
>
> Over the past year, it is well documented that I have tried to resolve the dispute, but unfortunately, my efforts have been severely rebuffed. I have always believed that your client has had his character unfairly besmirched and had no choice but to resort to legal action to vindicate his reputation."

Mr Lehmann then gave an example of a post – Chairman of an Advisory Board – that he was hoping to offer to the Claimant, but which had not been possible and explained:

> "[The Claimant] does not know that I have been forced to seek alternative arrangements due to the impact such an appointment would have on our business reputation. Likewise, his own initiative that would have been a major asset for the

> Party, our country and the MENA region is stalled because of the memoranda, the lobbying against it and the paralysis of the Party structures in resolving it."

136. The Claimant states that, in May and June 2021, he had planned, with Lord Astor, to host three dinners at Hever Castle (see §113 Amended Particulars of Claim). It was intended that the guests should include "*the Arab Ambassadors, various Foreign Office Diplomats, and other persons in British society who had links to the Gulf*". Invitations were ready to be sent out, but in May 2021, Lord Astor told the Claimant that the plans for the dinners would have to be halted given the contents of the Memos.

137. In June 2021, the Claimant attended a launch event of the Conservative Networking group (see §116 Amended Particulars of Claim). The Claimant states:

> "I was directly asked about issues with the formation of COMENA and why it had not yet got off the ground. I did not want to go into the contents of the [Memos]. However, various questions were asked of me about my Russian and Iranian links.
>
> At the same event, I was sitting on a table with a Parliamentarian who wishes to remain anonymous, who asked me questions about the contents of the [Memos]. I had to explain that I had been to Israel more times that I had to Iran and that far from their questions about links to the Kremlin, I had only visited Russia on three social occasions since 2008 (which was the year I stepped down from the MegaFon board)."

## F: The Strike Out Application

138. On 11 November 2022, the Defendants issued an Application Notice seeking to strike out the Claimant's claim. The Strike Out Application was based on three principal grounds:

(1) The particulars of serious harm to reputation, pleaded in the original Particulars of Claim, failed to comply with CPR PD 53B §4.2(3) (quoted in [67] above). It was argued:

> "Paragraph 5 of the Particulars of Claim advances [an] unparticularised and composite plea of serious harm to reputation and paragraph 64 advances a general and/or composite plea based solely on common inference. This is impermissible in a case, such as the present, involving distinct publications to six individuals, where the Claimant must establish serious harm to reputation in respect of each publication and the impact of each is likely to be (and in the present case is) capable of proof. Further or alternatively, paragraph 64.6 advances an impermissible composite plea of republication and percolation. A case on republication and percolation must be directed to the specific publication complained of. The extent to which any publishees has republished the publication complained of is capable of proof."

(2) Any material reputational harm or "*vindicatory purpose*" arising from the limited publications complained of has been superseded by the widespread media coverage.

(3) The claim was abusive, and inconsistent with any real desire to obtain vindication, having regard to (a) the earlier Data Protection Claim (which was

discontinued); (b) the failure to commence timely proceedings for defamation following receipt of the 14 May Documents; (c) the delay in commencing, and further delay in serving, the defamation claim; and (d) the attempt to obtain relief in the defamation action (identification of the recipients of the Memos) which relief had been sought in the Data Protection Claim but had been abandoned with the discontinuance of those proceedings. Further, the Defendants contended that the publications complained of would have been protected by (at least) qualified privilege, represented political speech and permitting the claim to continue would involve disproportionate use of costs and the resources of the Court.

139. In submissions made on the Claimant's behalf, there has been no real attempt to defend the original 'composite' plea of serious harm to reputation. The Claimant has maintained, in his evidence and submissions, that, by these defamation proceedings, he is pursuing vindication (see [49], [52] and [65] above). He denies any suggestion, implicit in the Defendants' submissions, that this action is an abuse of process.

## G: Legal principles

### (1) Amendments to Statements of Case

140. Permission to amend a Statement of Case can be granted by the Court pursuant to CPR 17.3. The key principles guiding the exercise of this power are:

(1) The threshold test for permission to amend is the same as that applied in summary judgment applications: ***Elite Property Holdings Ltd -v- Barclays Bank plc*** **[2019] EWCA Civ 204** [40]-[42] *per* Asplin LJ ("the merits test").

(2) Amendments sought to be made to a statement of case must contain sufficient detail to enable the other party and the Court to understand the case that is being advanced, and they must disclose reasonable grounds upon which to bring or defend the claim: ***Habibsons Bank Ltd -v- Standard Chartered Bank (HK) Ltd*** **[2011] QB 943** [12] *per* Moore-Bick LJ.

(3) The court is entitled to reject a version of the facts which is implausible, self-contradictory, or not supported by the contemporaneous documents. It is appropriate for the court to consider whether the proposed pleading is coherent and contains the properly particularised elements of the cause of action or defence relied upon: ***Elite Property Holdings Ltd*** [42] *per* Asplin LJ.

(4) In addition to being coherent and properly particularised, the pleading must be supported by evidence which establishes a proper factual basis which meets the merits test: ***Zu Sayn-Wittgenstein -v- Borbón y Borbón*** **[2023] 1 WLR 1162** [65] *per* Simler LJ.

(5) In an area of law which is developing, and where its boundaries are drawn incrementally based on decided cases, it is not normally appropriate summarily to dispose of the claim or defence. In such areas, development of the law should proceed on the basis of actual facts found at trial and not on the basis of hypothetical facts assumed to be true on an application to strike out: ***Farah -v- British Airways plc*** **[1999] EWCA Civ 3052** [42]-[43] *per* Chadwick LJ.

141. As the merits test for granting amendments is the same as that for summary judgment, it is necessary to identify some of the key principles that apply in that area.

142. The, now familiar, principles governing summary judgment were summarised in ***Easyair Ltd -v- Opal Telecom Ltd*** **[2009] EWHC 339 (Ch)** [15] *per* Lewison J (and approved by the Court of Appeal in ***AC Ward & Sons Ltd -v- Catlin (Five) Ltd*** **[2009] EWCA Civ 1098**). Drawing upon other relevant authorities the following can be stated:

(1) The court must consider whether the claimant has a "*realistic*" as opposed to a "*fanciful*" prospect of success: ***Swain -v- Hillman*** **[2001] 1 All ER 91**. The criterion is not one of probability; it is absence of reality: ***Three Rivers DC -v- Bank of England (No.3)*** **[2003] 2 AC 1** [158] *per* Lord Hobhouse.

(2) A "*realistic*" claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: ***ED & F Man Liquid Products -v- Patel*** **[2003] EWCA Civ 472** [8]

(3) In reaching its conclusion the court must not conduct a "*mini-trial*": ***Swain -v- Hillman***. This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: ***ED & F Man Liquid Products -v- Patel*** [10]; ***Optaglio -v- Tethal*** **[2015] EWCA Civ 1002** [31] *per* Floyd LJ.

(4) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: ***Royal Brompton Hospital NHS Trust -v- Hammond (No.5)*** **[2001] EWCA Civ 550**; ***Doncaster Pharmaceuticals Group Ltd -v- Bolton Pharmaceutical Co 100 Ltd*** **[2007] FSR 63**.

(5) Nevertheless, to satisfy the requirement that further evidence "*can reasonably be expected*" to be available at trial, there needs to be some reason for expecting that evidence in support of the relevant case will, or at least reasonably might, be available at trial. It is not enough simply to argue that the case should be allowed to go to trial because something may "*turn up*". A party resisting an application for summary judgment must put forward sufficient evidence to satisfy the court that s/he has a real prospect of succeeding at trial (especially if that evidence is, or can be expected to be, already within his/her possession). If the party wishes to rely on the likelihood that further evidence will be available at that stage, s/he must substantiate that assertion by describing, at least in general terms, the nature of the evidence, its source and its relevance to the issues before the court. The court may then be able to see that there is some substance in the point and that the party in question is not simply playing for time in the hope that something will turn up: ***ICI Chemicals & Polymers Ltd -v- TTE Training Ltd*** **[2007] EWCA Civ 725** [14] *per* Moore-Bick LJ; ***Korea National Insurance Corporation -v- Allianz Global Corporate & Speciality AG*** **[2008] Lloyd's Rep IR 413** [14] *per* Moore-Bick LJ; and ***Ashraf -v- Lester Dominic Solicitors & Ors*** **[2023] EWCA Civ 4** [40]

*per* Nugee LJ. Fundamentally, the question is whether there are reasonable grounds for believing that disclosure may materially add to or alter the evidence relevant to whether the claim has a real prospect of success: ***Okpabi -v- Royal Dutch Shell Plc*** **[2021] 1 WLR 1294** [128] *per* Lord Hamblen.

(6) Lord Briggs explained the nature of the dilemma in ***Lungowe -v- Vedanta Resources plc*** **[2020] AC 1045** [45]:

> "… On the one hand, the claimant cannot simply say, like Mr Micawber, that some gaping hole in its case may be remedied by something which may turn up on disclosure. The claimant must demonstrate that it has a case which is unsuitable to be determined adversely to it without a trial. On the other, the court cannot ignore reasonable grounds which may be disclosed at the summary judgment stage for believing that a fuller investigation of the facts may add to or alter the evidence relevant to the issue…"

(7) The Court may, after taking into account the possibility of further evidence being available at trial, and without conducting a 'mini-trial', still evaluate the evidence before it and, in an appropriate case, conclude that it should "*draw a line*" and bring an end to the action: ***King -v- Stiefel*** **[2021] EWHC 1045 (Comm)** [21] *per* Cockerill J.

**(2) Serious harm to reputation: s.1 Defamation Act 2013**

143. So far as material, s.1 Defamation Act 2013 provides:

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

144. Whether the publication of the statement has caused or is likely to cause serious reputational harm is a matter of fact, "*which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated*": ***Lachaux -v- Independent Print Ltd*** **[2020] AC 612** [14] *per* Lord Sumption.

145. Even before the introduction of the new threshold requirement in s.1, assessment of harm to reputation was never just a 'numbers game': "*one well-directed arrow [may] hit the bull's eye of reputation*" and cause more damage than indiscriminate firing: ***King -v- Grundon*** **[2012] EWHC 2719 (QB)** [40] *per* Sharp J. Publication to a relatively small number of publishees may yet cause very serious harm to reputation: ***Sobrinho -v- Impresa Publishing SA*** **[2016] EMLR 12** [47]; ***Dhir -v- Sadler*** **[2018] 4 WLR 1** [55(i)]; ***Monir -v- Wood*** **[2018] EWHC 3525 (QB)** [196]. Whether such serious reputational harm has been caused is ultimately a matter of evidence.

146. It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: ***Doyle -v- Smith*** **[2019] EMLR 15** [122(iv)]; ***Sobrinho*** [48]; ***Ames -v- Spamhaus*** **[2015] 1 WLR 3409** [55]. In mass publication cases, it may also be invidious for a claimant to have to seek out those who substantially thought the less of him because of a defamatory publication and, often, it will not be necessary to do so (because ultimately the evidence is likely to go to damages not liability – see further

[157] below). Whether a claimant can be expected to produce "*tangible evidence*" of serious harm to reputation caused by a publication will depend on the circumstances of publication: ***Ames*** [55]. In single publishee cases, however invidious the task may be, a claimant must satisfy the requirements of s.1 by evidence, or his/her claim will fail.

147. When considering the statutory serious harm requirement, it remains important not to lose sight of some of the fundamental aspects of the cause of action. At common law, each publication of a defamatory statement gives rise to a single cause of action. Beyond raising the bar for what is "*defamatory*", s.1 does not alter this basic proposition. At the hearing on 10 January 2023, the Claimant did not challenge this. Since the hearing, the Court of Appeal has handed down judgment in ***Banks -v- Cadwalladr*** **[2023] EWCA Civ 219**, which has confirmed this orthodoxy. Warby LJ explained:

> [41] At common law a statement is defamatory if it conveys an imputation with an inherent tendency to cause substantial harm to a person's reputation. The publication of such a statement is actionable without proof of actual damage. "Publication", for this purpose, means the communication of the statement to someone other than the claimant. A single communication is actionable. Each such communication is a separate tort. Analytically, a mass publication such as a broadcast or online statement … gives rise to as many causes of action as there are viewers, listeners or readers. It does not give rise to a single cause of action, as is the position in some other jurisdictions where the principle that there is only a single cause of action is known as "the single publication rule". Where a defence succeeds in part, damages will be awarded to compensate for all harm caused by all the actionable publications. Any harm caused by publications that have been held to be lawful is ignored for this purpose. These are all elementary propositions, but they form the legal context in which Parliament enacted the 2013 Act.
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> [42] Section 1 of the 2013 Act was intended to modify the common law by requiring a claimant bringing a claim for defamation to prove as a fact that the publication complained of has caused the claimant actual reputational harm that is serious (or that the publication of the statement is likely to cause such harm). The means Parliament adopted to achieve this was to modify the pre-existing common law definition of the term "defamatory". That term can no longer be applied to a statement just because the statement has the inherent qualities required by the common law. Parliament has provided that such a statement "is not defamatory unless" it also satisfies the additional statutory criterion that "its publication has caused … serious harm to the reputation of the claimant" or is likely to do so.
>
> [43] The touchstone here is not the nature of the statement but the impact of "its publication". Those two words are plainly critical. It would be impossible to construe them as implicitly importing the single publication rule that applies in some other countries. It is presumed that Parliament does not intend to alter the common law unless (and to the extent that) such an intention is expressed or is necessarily implicit in the wording used. There is nothing in the 2013 Act or in the legislative history to show or to suggest that in enacting section 1 Parliament intended to adopt the single publication rule or to depart in any other way from the common law meaning of the word "publication". Quite the contrary. Section 15 of the 2013 Act expressly provides that in the

> Act "'publish' and 'publication' have the meaning they have for the purposes of the law of defamation generally". And section 8 of the Act, which enacts the "single publication rule" for the purposes of the law of limitation (and for that purpose only) expressly achieves that aim by using the word "publication" in its common law sense.
>
> [44] Once it is accepted, as it must be, that "publication" for the purposes of the 2013 Act bears its established common law meaning save where the Act expressly says otherwise, there are only two available readings of section 1(1) of the 2013 Act. Either it means that a statement is defamatory if any publication of that statement causes serious harm to the claimant's reputation; or it means the statement is defamatory *only if and to the extent* that the publication of it causes serious harm.

148. The Court of Appeal found that the correct interpretation was the latter: [46]. The case concerned whether the claimant could succeed with his claim for the continued publication of the statement complained of after the point at which the defendant's public interest defence had been lost. However, Warby LJ's judgment contains statements of principle that have wider application. He identified several reasons why there was no inconsistency in this approach, one of which was: "*a claimant cannot succeed in establishing liability in respect of publications which do not cause serious harm, because there is some other publication that does, or because serious harm is caused by the 'publication' taken as a whole*": [47]. As to the Court's task when evaluating whether a publication has caused serious harm to reputation, Warby LJ explained that the nature and extent of the publication will be relevant ([49]):

> "I do not agree that this analysis requires proof that each individual publication caused serious reputational harm. There will doubtless be cases in which an individualised approach is both possible and necessary. That might be so, for instance, in a case of publication to a small number of identified individuals only one of whom turns out to have believed the allegation complained of. But the statutory words 'its publication' are flexible enough to embrace other kinds of case, including the typical case of media or online publication involving a mass of individual publications to numerous unknown individuals. There is no principled objection to the application in such a case of a modified version of the traditional pragmatic approach of the common law, which is to consider the relevant publications collectively when assessing reputational harm…"

149. This statement of the law – and at its heart the recognition that each publication is a separate cause of action – is consistent with several earlier first instance decisions on section 1; see e.g. ***Sube -v- News Group Newspapers Ltd*** **[2018] 1 WLR 5767** [22]-[23], [34] *per* Warby J; ***Webb -v- Jones*** **[2021] EWHC 1618 (QB)** [13]-[28] *per* Griffiths J; ***Banks -v- Cadwalladr*** **[2022] ELMR 21** [51] *per* Steyn J; ***Mahmudov -v- Sanzberro*** **[2022] 4 WLR 29** [42] *per* Collins Rice J; ***Gooderson -v- Qureshi*** **[2022] EWHC 2977 (KB)** [68]-[70] *per* Heather Williams J; and (by parity of analysis on the issue of the impact of publication to a single individual in a malicious falsehood case) my observations in ***Peck -v- Williams Trade Supplies Limited*** **[2020] EWHC 966 (QB)** [16].

150. Of particular relevance and importance is Collins Rice J's decision in ***Sivananthan -v- Vasikaran*** **[2023] EMLR 7** in which the Judge explained:

[42] The 'harm' of defamation is the reputational damage caused in the minds of publishees, rather than any action they may take as a result. Nevertheless the existence, and seriousness, of reputational harm are factual questions, and facts must be established by evidence. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be.

[43] Particularly where a general readership rather than identified publishees are involved, the test may also be satisfied by general inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication of the statement complained of; whether the statement has come to the attention of at least one identifiable person who knew the claimant; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.

[44] Aspects of the inferential evidential process have been explored in more detail in other leading cases. The well-established 'grapevine' or 'percolation' tendencies (***Slipper -v- BBC*** **[1991] 1 QB 283**; ***Cairns -v- Modi*** **[2013] 1 WLR 1015**) of defamatory publications, particularly online and through social media, may in an appropriate case be factored into inference about scale of publication. Allowance may then be made for the inherent difficulties of identifying otherwise unknown publishees who thought less well of a claimant, since they are unlikely to identify themselves and share that with him. And the likely identity, as well as the numbers, of at least some of a class of publishees may be relevant to the assessment of harm, for example where some individuals may be particularly positioned to lose confidence in a claimant or take adverse action as a result. But these are highly fact-specific matters; the inferences which may properly be drawn in any individual case depend entirely on the circumstances of that case.

[45] Section 1(1) uses the language of causation prominently ('*caused or is likely to cause*'). The 'serious harm' component of libel therefore contains an important causation element, as with any other tort or civil wrong. The starting point is that defendants are responsible only for harm to a claimant's reputation caused by the effect of each *statement* they publish in the minds of the readership of *that* statement. A claimant therefore has to establish a causal link between each item he sues on and serious harm to his reputation, actual or likely.

[46] The causation element has a number of aspects of particular application to repeated statements. Since *each* publication must satisfy the serious harm test, it is not possible to aggregate or cumulate injury to reputation over a number of statements or publications in order to pass the serious harm threshold (***Sube -v- News Group Newspapers*** **[2018] 1 WLR 5767**). If a statement has been repeated or republished *by a defendant*, and a claimant has elected to sue on a subset of those publications, he cannot rely on the effects of statements he has not sued on to establish harm caused by those he has (although they may be relevant to aggravation). Where multiple publishers have published the same statement, an individual defendant is responsible only where harm is caused by their own publication in the minds of their own readership. But at

> the same time, *if* such causation is established, it is not possible for a defendant to diminish the *seriousness* of the harm caused by pointing to the same publication by others, or else the claimant risks falling between the various stools (see the explanation of the so-called 'rule in *Dingle*' set out in ***Wright -v- McCormack*** **[2021] EWHC 2671 (QB)** from paragraph 149 onwards).

And later, the Judge made some general observations as to what these principles meant in terms of the evidence required to prove serious harm to reputation:

> [53] I start with some general observations about how [the Claimant] seeks to establish his case on serious harm. The first is that a *purely* inferential case, while in principle available, is not an *alternative* to an evidential process for establishing serious harm – it must *be* an evidential process for establishing serious harm. There is a difference between inference and speculation. The components of an inferential case must themselves be sufficiently evidenced and/or inherently probable to be capable of adding up to something which discharges a claimant's burden.
>
> [54] The second is that, given [the Claimant] accepts the class of direct publishees is a small one, the absence of evidence from any direct publishee is not inconsequential. The concern [the Claimant] expresses about inflaming an already partisan context by seeking evidence from direct publishees may or may not be understandable (it is asserted rather than demonstrated). But deciding not to do so places him at an evidential disadvantage. The authorities on establishing serious harm by inference alone tend to feature mass-circulation publications so that evidence of individual impact may be both genuinely unreachable and inherently probable at the same time. Publication to a closed and small WhatsApp group where there is little or no evidence of adverse impact in the chat itself or from any member or reader is a different matter. These facts alone do not easily facilitate an inference of serious harm.
>
> [55] The third is that where direct publication is to a limited class of publishees, the inferential case may have harder work to do in establishing wider publication by percolation. The percolation effect is a proposition about onward dissemination *by the original publishees* in a way which forges links in a causal chain between the publications and any harm they may do. It posits the original publishees spreading the allegations *because* they read about them in the original publication. The fewer the original publishees, the more intense the scrutiny needed of their probable potential or propensity for onward publication.
>
> [56] The fourth is a point which also arose on the facts in ***Lee -v- Brown*** **[2022] EWHC 1699 (QB)**. Where a libel claimant selects some publications as examples of a wider campaign of allegations by a defendant, that claimant may face a daunting problem of causation. If a defendant has undertaken a protracted course of conduct publicising allegations, a corresponding improbability arises that any member of that public later re-encountering them in published form will be impacted *as an effect of that specific publication*. The serious harm test is about the impact of an individual publication by a defendant on its readership. If the readership already knows everything about the defendant's view of the claimant contained in the publication from the

defendant's own history and course of conduct, it is correspondingly unlikely that the publication will have material impact. There are other torts addressed to campaigns and courses of conduct (such as harassment), but libel is concerned with the effects of individual publications.

[57] The fifth point is related, but distinct. If publication is not only in the context of a well-known dispute between the parties, but to an audience already either partisan or resolutely neutral as between them, then again a claimant may have to work harder to make their case on causation. In a polarised context, it may be less probable that anyone's mind will have been changed either way by the publication. If no-one's mind is changed, then establishing the causation of reputational harm is a problem.

151. Mr McCormick KC referred to Collins Rice J's later decision in ***Soriano -v- Société d'exploitation de l'hebdominaire Le Point SA*** **[2022] EWHC 1763 (QB)** as supporting the role of an inferential case as to serious harm to reputation (see [8]-[9]). ***Soriano*** was a case of a newspaper. As the Judge noted, where there is a general readership of the publication complained of, as opposed to identified publishees, there is a greater scope for (and, in cases of extensive publication, probably an inevitability of) inferences being drawn as to reputational harm. She emphasised the need to avoid "*a mini trial of the strength of the evidence*" as to reputation harm, but noted that the "*'serious harm' test is about establishing the facts of the impact of publication, by one evidential means or another*" ([58]). I accept, as the Judge did, in that sort of case that it is a "*multifactorial and evaluative*" exercise ([68]), that it can properly include the "*percolation effect*" and that it will be relatively rare for there to be a "*paper trail*" demonstrating the link between the publication and the reputational harm caused by it ([75]).

152. However, some care needs to be taken with the 'percolation' effect caused by republication of the statement. To take a simple example. A publishes a defamatory statement to B and thereafter, B publishes or communicates the defamatory statement (or its substance) to C. A claimant in a defamation claim can rely upon republication of a defamatory statement to C in two distinct ways.

(1) The first is to rely upon the republication to C as additional harm caused by and flowing from the original publication to B. Providing such republication by B to C is the natural and probable consequence of the publication to B, the claimant can recover for any additional harm caused by the further republication to C: ***Slipper -v- BBC*** **[1991] 1 QB 283**, **301B-C** *per* Slade LJ (see also 296E *per* Stocker LJ and 300D *per* Bingham LJ). The additional claim for the republication is often called *Slipper* damage(s).

(2) The second is to hold A responsible, as tortfeasor, for the publication of the statement to C. In such a case, the claimant relies upon a distinct and separate cause of action arising from the publication to C (whether or not s/he relies in addition on the publication to B). An example of a case in this second category is ***Berezovsky -v- Terluk*** **[2011] EWCA Civ 1534**.

There remains an issue in the authorities as what a claimant must prove to establish liability in this second category, and specifically whether a claimant must show that the republication was intended or authorised by the defendant (see discussion of Laws LJ in ***Berezovsky*** [22]-[29], which refers to commentary in *Gatley* and *Duncan & Neill* on

the point). That debate does not matter for present purposes. The important point is that, in this second category, the publication to C is a separate cause of action.

153. Even before the enactment of the serious harm requirement in the Defamation Act 2013, the choice of how the action was framed had potentially important consequences where a claimant sought to rely upon republication of a defamatory statement. In a *Slipper* case, the cause of action is the publication of the defamatory statement to B. ***McManus -v- Beckham*** **[2002] 1 WLR 2982**, is a good example. The claimants relied upon an alleged slander that was republished in subsequent national newspaper articles. In a slander case, a claimant would need to establish all the necessary ingredients of that cause of action: publication of words that referred to the claimant which bore a meaning that was defamatory of him/her. The action could fail for several reasons, for example, if the words spoken by the defendant were found not to bear a meaning that was defamatory of the claimant at common law. If the action failed, any subsequent republication of the slander in a newspaper which *did* bear a meaning defamatory of the claimant would not assist. The cause of action having failed, no issue of damages would arise. The same result would follow if A established a defence for the publication to B (e.g. qualified privilege) even if such a defence would not have been available for the publication to C.

154. If the claimant seeks to hold A liable, as tortfeasor, for the republication to C, then s/he must establish all the necessary ingredients of that cause of action and A would be able to rely on all defences available for that publication.

155. The introduction of the serious harm requirement in s.1 Defamation Act 2013 also has potentially important consequences for how a claimant seeks to treat republication. Again, using the example of the publication by A to B and the onward republication to C. If the claimant sues A over the publication to B (and relies on the republication to C as *Slipper* damage), then s/he must establish that the publication to B has caused serious harm to his/her reputation (or is likely to do so). If the claimant fails to show that the publication to B caused serious harm to his/her reputation (for example because B did not believe the allegation, perhaps because s/he knew or believed it to be false) then the cause of action will fail. It would be irrelevant to show that C believed the allegation, possibly acting to the claimant's detriment in consequence, because this would be relevant only to the assessment of damages in the claim for publication to B. If the publication to B *did* cause serious harm to the claimant's reputation, then (assuming the claim succeeds) s/he would potentially be able to recover in relation to the republication to C.

156. If, alternatively, the claimant seeks to hold A liable, as tortfeasor, for the republication to C, s/he must prove that the publication to C meets the s.1 threshold. Again, if C did not believe the allegation – occasioning therefore no reputational harm – the claim would fail. It is irrelevant, in a claim over publication to C, that B believed the allegation and serious harm to the Claimant's reputation was caused in his/her eyes.

157. Finally, on the issue of republication, it is necessary also not to lose sight of the basic rules of causation, a point that Collins Rice J noted in ***Sivananthan***. There is a clear, and principled basis, on which the Court can, in an appropriate case, infer a degree of "*percolation*" caused by the repetition of defamatory allegations in cases involving widespread publication (e.g. a national newspaper article). That principle is well-recognised: ***Slipper*** **300C** *per* Bingham LJ; and ***Cairns -v- Modi*** **[2013] 1 WLR**

**1015** [26]-[27] *per* Lord Judge CJ. But that is in the context of *Slipper* damages. Whilst there is an obvious overlap between the issues of serious harm to reputation and damages, s.1 is a threshold issue: ***Riley -v- Murray*** **[2022] EMLR 8** [43] (and on appeal **[2023] EMLR 3** [15]). A claimant suing on a seriously defamatory article published in a national newspaper article may well be able to satisfy the s.1 requirement by a wholly inferential case: see ***Lachaux*** [21] *per* Lord Sumption. In such a case, it is unlikely that the claimant would need to rely on the 'percolation' effect to surmount the s.1 threshold, although this inferred republication can legitimately be taken into account at any assessment of damages.

158. But where a claimant complains of publication of a defamatory statement to either a single publishee or a limited number of publishees, the scope for reliance on inference is likely to be very much reduced, both in relation to the direct harm caused to the claimant's reputation in the eyes of the immediate publishee(s) and any 'percolation' effect. The impact of ***Lachaux*** is that such reputational harm must be proved. Where the publishees can be identified, that means that an absence of evidence of the actual impact on the individual publishees may mean that a claimant cannot discharge the evidential burden placed on him/her by s.1. Drawing inferences is not a process of optimistic guesswork; it is a process whereby the court concludes that the evidence adduced enables a further inference of fact to be drawn.

159. Likewise, any reputational harm caused by 'percolation', similarly, must be proved, and proved to have been caused by the original publication sued upon. If, for example, the court were to accept a publishee's evidence that s/he did not pass on the defamatory statement (or its gist), there is simply no 'percolation' effect because there has been no republication. If the publishee says that s/he sent the defamatory publication to one other identified person, it would be a relevant issue whether the claimant's reputation had been seriously harmed in the eyes of this person. I am deliberately keeping the examples simple to demonstrate the relevant principles. Much will depend upon the nature and extent of the original publication and the nature and extent of any republication that is alleged to have been caused by it.

160. Without the benefit of the Court of Appeal's decision in ***Banks -v- Cadwalladr***, Mr McCormick KC argued that the Claimant was entitled to rely on "*the cumulative reputational harm caused by the publication of the same or substantially the same allegations across [the Memos]*". He submitted that this was "*in line with the common law and established practice*" and was not ruled out by s.1 or the approach adopted in the authorities identified in [149] above. The Claimant accepts that publication takes place on each occasion on which the words complained of are published. Consequently, Mr McCormick KC recognises that, strictly, the publication of each copy of a newspaper, containing a defamatory article, creates thousands of causes of action. Nevertheless, he contends that "*the law recognises the reality that… for the purposes of assessing the impact upon the claimant's reputation, one takes account of all the technically separate publications and aggregates their impact*". Mr McCormick could provide no authority for this proposition. Even before the Court of Appeal's decision in ***Banks -v- Cadwalladr***, for the reasons I have outlined above, I would have been satisfied that it was wrong.

161. The fact that, in mass publication cases, the Court pays little attention to the individual causes of action is because it is rarely (if ever) necessary or relevant to do so. This is simply a recognition of the realities of defamation litigation. If the published statement

has remained unaltered (i.e. there has been no change to the article as first published), then the objective single meaning remains the same across all causes of action. This, in turn, calibrates the availability of substantive defences of truth/honest opinion across the board. With the advent of s.8 Defamation Act 2013, for the purposes of limitation, it is only the date of first publication that is relevant. A newspaper defendant might be able to demonstrate, by evidence, that some of the publishees, for example, did not understand the words complained of to bear the objective single meaning that the law ascribes to a publication, or did not understand the words to refer to the claimant, or did not believe what was alleged against him/her. That evidence may be relevant (potentially) to s.1 and/or damages. But it rarely benefits a defendant to explore such matters because they will never be a 'knock-out' blow, and could only ever (potentially) reduce the damages in the event that no substantive defence succeeds or is available. Further, the costs of obtaining such evidence would usually be so wholly disproportionate to the likely impact that it might have on any award of damages that, even if the Court did not exclude such evidence on case management grounds, most commercially sensitive publishers would be unlikely to want to expend resources obtaining it.

162. Publication to a limited number of identified individuals is wholly different. In such cases, focus upon the particular circumstances of each publication is not only possible, in most cases it will be necessary for several important reasons, not least investigation of serious harm to reputation under s.1 and, potentially, the availability of defences. Take an example of a letter that has been published to 10 people. Of those, the publication to half of them might successfully be defended on the grounds of privilege. In consequence, the defamation claims based on publication to those individuals would be dismissed (quite apart from whether the s.1 threshold could be met in respect of any of those publications). Even if the claimant could prove 'percolation' of the defamatory allegations, if that republication was a result of a privileged publication, s/he cannot rely upon this reputational harm for the non-privileged publications because such harm has not been *caused* by those publications. A claimant cannot, as a matter of basic principle, "*aggregate*" the reputational harm either for damages or s.1. Ultimately a claimant must satisfy s.1 by evidence. Absent some very unusual features, a purely inferential case of such reputational harm in single publishee cases is highly unlikely to discharge this burden, whether at the summary judgment or trial stage, particularly if there is direct evidence available from the relevant publishee.

163. It was faintly argued by Mr McCormick KC in his skeleton argument that this point should be left to a trial. I disagree. The point about whether it is permissible to 'aggregate' reputational harm across multiple publications is a pure matter of law. It can, and should, be resolved now. For the reasons I have given, the argument is wrong and must be rejected. The point has been decided by the Court of Appeal in ***Banks -v- Cadwalladr***. The proper course, in this case, is for the Court to assess, publication by publication, whether the Claimant has a real prospect of showing that it has caused or is likely to cause serious harm to his reputation. As each of these is a single publishee case, the question in each case is whether the Claimant has a real prospect of demonstrating serious harm to reputation in relation to *this* publishee.

## H: Submissions

164. As I have rejected the 'composite' case of serious harm to reputation, I can turn to consider the submissions of the parties in relation to the Claimant's case on serious

harm to reputation caused by the publication of each Memo to the named publishees. Although not strictly relevant to the issues I must resolve, I simply note that in respect of the Unidentified Publishees, the evidence presented by the Defendants (see [54] above) provides no support that any serious harm to the Claimant's reputation has been caused (or is likely to be caused) by further publication of the Memos to the Unidentified Publishees.

165. The Claimant's overarching submission is that he has pleaded the best case he can as to the serious harm to reputation that he alleges has been caused by publication of the Memos. He says that the proper place for the Court to carry out what is an assessment of evidence is at trial. In summary, he has a pleaded case as to serious harm to reputation with a real prospect of success and he should be granted permission to amend his Particulars of Claim.

**(1) Sir David Lidington**

166. The Claimant recognises that Sir David has refused to become involved in the proceedings and there is no indication that his position is likely to change. He has refused to provide a witness statement. The Claimant's case that, nevertheless, he has a case with a real prospect of success rests, principally, on two pieces of evidence.

(1) First, Sir David's email of 9 January 2021, in which he said that the allegations made against the Claimant "*if true, would cause considerable concern*" (see §§21 and 99 Amended Particulars of Claim and quoted in [85] above). This, it is submitted, is "*good evidence of the damage to the Claimant*" in Sir David's eyes.

(2) Second, the allegation that, after publication of the Memo to him, Sir David told the Claimant that he no longer wanted him to contribute financially to RUSI (see §§106-106A Amended Particulars of Claim).

167. The Defendants argue that Sir David saw the Memo he was sent as being part of a "*nasty spat*" between two Conservatives (see 9 January 2021 email). The broader issue identified by the Defendants is a contention that the Claimant, here, as with other publishees, fails to distinguish between concern about political matters (i.e. a damaging row between two prominent Conservatives) and evidence of actual harm to the Claimant's reputation caused by the allegations in the Memo. Sir David confirmed to the Defendants' solicitors that, in relation to any reputational harm to the Claimant in his eyes, he could not now distinguish between the effects of the Memo and the effects of later media coverage (see [90] above). Finally, in his most recent proposed amendments (§106A Amended Particulars of Claim), the Claimant now contends only that publication of the Memos to Sir David only "*contributed*" to what is alleged to be Sir David's decision to suspend acceptance of donations from the Claimant.

**(2) Sir Julian Lewis**

168. Sir Julian was the Chair of the Intelligence and Security Committee. The Claimant contends that he "*considered the allegations contained in the documents sent to him to be of sufficient importance and seriousness that… he sent them on to the United Kingdom's security services…*" This, the Claimant submits, is "*good evidence not only*

*of the damage to [his] reputation in his eyes, but also of how the seriousness of the allegations made in the documents would be perceived by others*".

169. In response to the evidence submitted by the Defendants, the Claimant complains that Sir Julian's witness statement is unsigned and of "*uncertain admissibility at trial*". As to Sir Julian's evidence, that he did not remember forming any view about the Claimant upon receipt of the Memo, the Claimant suggests that "*this is not evidence that he did not form any view, let alone that he did not form any adverse view*".

170. The Defendants contend that, as he states in his approved witness statement, Sir Julian felt under a duty to pass on the Memo to the security services. Even if the inferential case (advanced in §28A Amended Particulars of Claim) were to be accepted, the Claimant has simply failed to provide any evidence in support of his case that the publication of the Memo to Sir Julian caused serious harm to his reputation.

**(3) Crispin Blunt**

171. Understandably, the Claimant places much weight on the email exchanges between Mr Blunt and the First Defendant on 30/31 December 2020 (see paragraphs 5 and 6 of Mr Blunt's witness statement – [102] above), in particular the description of the Claimant as being a "*total bounder*" and a "*Melmotte figure*" (see §41.1 to 41.4 Amended Particulars of Claim). It is submitted on the Claimant's behalf that this is "*as good contemporaneous evidence as there could be of the damage caused to [the Claimant] in Mr Blunt's eyes*".

172. Mr Price KC for the Defendants submitted, however, that the seven defamatory imputations that the Claimant complains were published to Mr Blunt are all "*borderline defamatory*". Four relate to using money for political advantage (three in relation to honours). None of the imputations relates to the Claimant's business history. It is suggested that there is no basis to interpret Mr Blunt's "*flippant references*" to "*bounder*" and "*Melmotte*" as reflecting any belief that the Claimant had been guilty of any improper business practices. Mr Blunt's awareness of the Claimant and his promotion of COMENA pre-existed receipt of the Memo and his hostility was largely based on his perception that COMENA was seeking to supplant CMEC and to promote the Abraham Accords in place of Palestinian statehood. The allegation of the Claimant seeking an honour as a reward for his political donations may, on Mr Blunt's evidence, already have been communicated to him by Sir Hugo Swire.

**(4) Sir Alan Duncan**

173. In support of his amendments advancing a claim that the publication of Documents 10 and 11 to Sir Alan Duncan has caused him serious reputational harm, the Claimant submitted that Sir Alan was "*unfriendly*" towards him in a telephone call the day after receiving the Memos. Based on this, the Claimant contended that:

> "… the reasons for that unfriendliness and the extent to which it was based on the allegations published to Sir Alan… is the subject of … disputed evidence. This is not an issue which can be resolved against [the Claimant] without a trial."

174. The Defendants submit that it is plain from the evidence that any antipathy shown by Sir Alan to the Claimant pre-dated receipt of the Memos. The two men had spoken on or before 24 December 2020. The Defendants contend that, on the basis of Sir Alan's

witness statement, the Claimant has no real prospect of demonstrating serious harm to his reputation. The inferential case that he has advanced is bound to fail.

**(5) Ben Elliot**

175. Mr Elliot has completely refused to engage with either side. As such, both sides have based their submissions on the available contemporary evidence.

176. The Claimant relies upon the fact that in his covering email, sending Documents 12 and 13 to Mr Elliot, Sir Nicholas Soames referred to a "*potentially worrying situation*" and that the issues raised in the Memos were "*serious enough to warrant urgent attention at the highest levels of the party organisation.*" The Claimant's broad case is that, prior to receipt of the Memos, Mr Elliot had been supportive of COMENA and that in the Summer of 2020, the Claimant had been given the 'all-clear' as a donor (see §§84-85 Amended Particulars of Claim). Yet, following the Memos, steps were being taken to investigate the Claimant (see [109] above). The Claimant recognises that the absence of evidence from Mr Elliot means that his case of serious reputational harm is based entirely on inference but hopes "*that it will not always be so*".

177. The Claimant has also acknowledged that the extent to which the publication of Documents 12 and 13 to Mr Elliot on 4 January 2021 has harmed his reputation has been complicated by his decision to send Document 14 to Mr Elliot on 2 January 2021.

178. The Defendants have argued that the reaction of Sir Nicholas Soames to the Memo is not evidence of what Mr Elliot thought of it. They submit that, looked at as a whole, the evidence provides no support for the Claimant's case that the publication of the Memo to Mr Elliot had caused serious harm to the Claimant's reputation. On the contrary, the Defendants contend that Mr Elliot appears to have been unconcerned about the contents of the Memo but much more concerned about a potentially damaging public spat between the Claimant and the First Defendant.

**(6) Sheikh Fawaz**

179. The Claimant contends that he has a claim as to serious harm to his reputation with a real prospect of success arising from (a) the fact that he sought permission to forward Document 14 to four other Ambassadors; (b) his letter to Mr Elliot of 12 January 2021, in which he suggested that the "*Arab diplomatic community*" had found it "*disturbing to see varied and conflicting accounts of the Conservative party's backing of 'COMENA'*". As to Sheikh Fawaz's witness statement, the Claimant submitted:

> "Sheikh Fawaz says in his witness statement that he 'formed the view of the Claimant's character as a result of my interaction with him at the time rather than anything in the [Memo]'… However 'at the time' in that sentence appears to refer to a meeting said to have taken place in May 2021 and Sheikh Fawaz's (disputed) account of that meeting. He does not give any evidence about the impact of the [Memos] on him at the time of the publication, in January 2021 which substantially undermines the inference invited in the Amended Particulars of Claim. Again this would be a matter to be explored in evidence with him at trial."

180. The Defendants place substantial reliance on Sheikh Fawaz's witness statement as demonstrating that the publication of the Memos did not cause any harm to the Claimant's reputation, still less serious harm. Further, the fact that Sheikh Fawaz sought

permission to forward Document 14 to four other Ambassadors, the Defendants argued, does not demonstrate that the Claimant's reputation had been harmed in Sheikh Fawaz's eyes. As is clear from the Sheikh's letter to Mr Elliot, the issue that was of apparent concern to Sheikh Fawaz was the potential for the establishment of COMENA to undermine CMEC. Sheikh Fawaz was anxious to establish whether the formation of COMENA had the backing of the Conservative Party in light of the "*conflicting accounts*" that he had received. The Defendants argue that there is nothing to suggest that the document was forwarded by Sheikh Fawaz because of reputational concerns about the Claimant. The fact that the document was forwarded, and any contention this republication has caused further harm to the Claimant's reputation is, the Defendants submit, irrelevant to the issue of whether the publication of the Memos to Sheikh Fawaz caused serious harm to the Claimant's reputation in his eyes.

### (7) General reputational harm caused by (re)publication of the Memos

181. Fundamental to the Claimant's submissions on serious harm to reputation was his contention that he was entitled to rely upon the "*aggregation*" of evidence of harm to reputation caused by any publication of the Memos. As I have rejected that submission ([163] above), it is not necessary to set out the Claimant's submissions on this evidence (which is set out in Section E(2)(h): [125]-[136] above). My conclusions on this evidence are set out in Section I(7) of this judgment ([220]-[232] below).

## I: Decision: Amendment Application

182. I shall deal with each of the identified publishees and consider whether the amendments for which the Claimant seeks permission demonstrate a case in relation to serious harm to reputation that, applying the principles I have set out, has a real prospect of success. Whist material disputes of fact cannot be resolved otherwise than at trial, and faithful to the principle that I must not conduct a mini-trial, at this stage, I am nevertheless entitled (and bound) to assess the evidence (even if it is voluminous) to see whether it satisfies this merits test.

183. Before turning to the case in respect of the individual publishees, I should set out some general observations as to the approach of the Claimant. The Claimant has provided no direct evidence from any of the identified publishees capable of demonstrating that publication of the relevant Memo(s) to him/her has caused (or is likely to cause) serious harm to his reputation. On one level, that is a surprising (and potentially risky) approach for any claimant to adopt in defamation proceedings. It was seriously suggested, on the Claimant's behalf, that the parties (and the Court) might have to wait until trial to hear from the relevant publishees. If the relevant witness refused to assist the Claimant by providing a witness statement, it was envisaged that the individual would be compelled by the Claimant to attend the trial by service of a witness summons (assuming the relevant witness could be compelled) and then asked questions as whether the Claimant's reputation was seriously harmed in his eyes. Alternatively, if the relevant publishee was a witness called by the Defendants, the Claimant would attempt to cross-examine the relevant publishee to seek evidence of serious harm to the Claimant's reputation caused by the relevant publication(s).

184. This might be thought to be the paradigm example of waiting to see whether something turns up at trial. It is not how modern defamation litigation is conducted. Unless the Court can be satisfied, by evidence, that there is a real prospect that the Claimant will

be able to produce evidence in support of his claim of serious harm to reputation – whether by documents or witness evidence – then the Court is likely to dismiss the claim summarily at an earlier interim stage. It will do so, applying the well-established principles of summary judgment, and in furtherance of the overriding objective, to avoid the potentially massive waste of the resources of the Court and the parties by speculatively taking the matter to trial to find out whether the relevant publication has caused serious harm to the Claimant's reputation.

## (1) Sir David Lidington

185. The high point of the Claimant's case as to serious harm to his reputation caused by publication of the Memo to Sir David is what he says in his email of 9 January 2021 (see [85] above). However, this does not demonstrate that the allegations in the Memo caused harm to the Claimant's reputation in Sir David's eyes. His abiding concern appeared to be the potential for the dispute between the Claimant and the First Defendant to cause harm to the Conservative Party. Of particular importance is Sir David's use of the words "*if true*" in the email. This shows that he was treating the contents of the Memo as representing allegations that had yet to be substantiated. Indeed, in his email of 10 January 2021, he referred to them as "*questions that [the First Defendant] is posing*" (see [87] above). As at 9 January 2021, Sir David was also aware that the Claimant was threatening legal action against the First Defendant, even if it was not until 21 January 2021 that he was sent a copy of the MdR Letter which contained the Claimant's rebuttal of the allegations (see [112(3)] above). I accept that a publication that casts suspicion of wrongdoing on a person may still be found to be defamatory (at *Chase* level 2 or 3), but Sir David's evidence already demonstrates that he did not understand the Memos to bear the meanings that the Claimant has ascribed to them (which are, bar one, all *Chase* level 1 allegations of guilt).

186. Paragraph 105 of the Amended Particulars of Claim contains a bald assertion of what Sir David understood the Memos to mean, which is unsupported by any evidence from the Claimant and is positively undermined by Sir David's own evidence. Paragraph 108 seeks to rely upon the "*appetite of Parliamentarians… for gossip*" as providing a base on which to infer that there has been further dissemination of the contents of the Memos by Sir David. Against this optimistic inferential case, the Defendants have provided actual evidence. Sir David did not circulate the Memos to anyone else. In consequence, the Claimant has no real prospect of showing any 'percolation'/republication as a result of the publication of the Memo to Sir David.

187. The evidence regarding RUSI's refusal to accept a donation from the Claimant, on analysis, also does not demonstrate a case of serious harm to the Claimant's reputation caused by publication of the Memos with a real prospect of success. The Claimant's pleaded case – for which he seeks permission to amend – is set out in Paragraphs 106-106A of the Amended Particulars of Claim. Paragraph 106 contends that, immediately following publication of the Memos, Sir David informed the Claimant that he no longer wanted the Claimant to contribute financially to RUSI given "*the Claimant's alleged Russian links*". It is to be noted that only Document 4 contained any suggestion of any "*Russian Links*" (see [29(13)]). That case is, at least, clear, but it has been undermined by what is now alleged by the Claimant in Paragraph 106A. Although Sir David, on the Claimant's case, appears to have vacillated about whether RUSI should accept a donation, at least initially, in early July 2021, Sir David is alleged to have endorsed receipt by RUSI of funds donated by the Claimant. That is inconsistent

with the Claimant's case that publication of the Memos had caused serious harm to his reputation in Sir David's eyes.

188. There are also significant causation problems with the Claimant's inferential case in relation to RUSI. Following receipt of the Memos, Sir David had found and noted earlier publicity concerning the Claimant. In his email of 10 January 2021 (see [87] above), Sir David expressly referred to "*press articles*" as one of the likely sources of the First Defendant's information about the Claimant. There is direct evidence from Dr von Hippel which contradicts the inferential case advanced by the Claimant, on the basis of an unidentified "*member of the RUSI fundraising team*", that Sir David had an effective "*veto*" over acceptance of donations by RUSI. Finally, the Claimant himself sent RUSI a copy of the First FT Article and, on the basis of the evidence from the unidentified member of the fundraising team, the decision to refuse the donation in August 2021 may also have been influenced by the ST Article (see [98] above).

189. As now seems to be acknowledged in Paragraph 106A of the Amended Particulars of Claim, the Claimant's case that the issues with donations to RUSI demonstrate reputational harm caused by publication of the Memos to Sir David is weak. Following receipt of the Memos, Sir David continued to engage with the Claimant regarding his proposed donations to RUSI and, in July 2021 (i.e. some 6 months after publication of the Memos to him), he had initially agreed that RUSI would accept a donation from the Claimant only. Leaving to one side Dr von Hippel's evidence, these facts alone undermine the Claimant's case that the publication of the Memos had caused any harm to his reputation. I accept that it is the Claimant's case that Sir David changed his position about whether any donations from the Claimant should be accepted, but this whole issue is further complicated by the Claimant sending RUSI a copy of the First FT Article and the subsequent publication of the ST Article. These matters only serve to emphasise how, without evidence from Sir David, the Claimant's case that publication of the Memos caused serious harm to his reputation lacks any real prospect of success.

190. In my judgment, there is nothing in Sir David's evidence that can support a case that the Claimant's reputation had been seriously harmed by publication of the Memos to him. The inferential case based on the seriousness of the pleaded imputations breaks down once the evidence demonstrates that the publishee did not understand the words to bear these meanings. Significant aspects of the Claimant's inferential case of serious harm to reputation in Sir David's eyes, arising from RUSI's decision to refuse donations from him are contradicted by direct evidence from Dr von Hippel. Against that, little weight can be attached to the hearsay evidence from an unidentified member of the fundraising team. Finally, in the most recently advanced amendment (§106A Amended Particulars of Claim), the Claimant's case as to the reputational harm caused by publication of the Memos to Sir David, has been significantly downgraded to an allegation only that the Memos "*contributed*" to the decision by RUSI to refuse the donation.

191. The case of serious harm to reputation caused by publication of the Memos to Sir David will be as evidentially hopeless at trial as it is now. There can be no real prospect of the position improving before trial and there is no material dispute of fact that would require to be resolved at trial. It has not been suggested by the Claimant that there is any real possibility of something turning up in disclosure. Sir David has refused to get involved and so the prospect that he will provide a witness statement for the Claimant must be somewhere between remote and nil. Even if the Claimant were, by use of a witness summons, to compel Sir David's attendance at the trial of this claim to answer questions

as to the impact that the publication of the Memos had on the reputation of the Claimant, Sir David has already made clear that he cannot now differentiate between harm caused by the Memos and subsequent press coverage of the Claimant. Had the Claimant approached Sir David for a witness statement when he received the 14 May Documents, that problem might have been overcome. This is perhaps one of the pitfalls of adopting what I have found to be a tactical approach to the conduct of these defamation proceedings adopted by the Claimant.

192. Overall, the Claimant's case that his reputation has been seriously harmed (or is likely to be) as a result of publication of the Memos to Sir David Lidington is fanciful and devoid of reality. The Claimant's case of serious harm to his reputation is not based on any properly premised inference. It is speculative and optimistic guesswork. Applying the merits test, the time has come to bring an end to this part of the Claimant's claim. Allowing it to continue would not serve the overriding objective. Permission to amend is refused for the case of serious harm to reputation alleged to have been caused by Publications 3 and 4 to Sir David Lidington.

**(2) Sir Julian Lewis**

193. Whilst it might have been better if Sir Julian had signed his witness statement, the Claimant has not suggested that the approved draft witness statement that has been provided does not represent Sir Julian's evidence. I do not understand the Claimant's challenge to the admissibility of this evidence at trial, and the point was not explored in submissions. As it stands, Sir Julian's evidence is admissible hearsay. If, ultimately, Sir Julian did not give evidence at trial, unless a successful application were made to exclude the hearsay evidence on other grounds, the Claimant's points would go only to the weight to be attached to this evidence.

194. Sir Julian did not know the Claimant before he received the Memo. He had spoken to the First Defendant before receiving the Memo and it was at her request that the Memo was sent by Sir Julian to the security services because he considered that it was his duty "*simply to pass on the information to the appropriate body*". Critically, in that context, Sir Julian's evidence is that it was not necessary for him to form a view about the Claimant – someone he did not know – and Sir Julian did not recall doing so. He did not distribute the Memo further or discuss their contents. Although the Claimant has highlighted that Sir Julian has not, in terms, stated, in his approved statement, that he did not form a view of the Claimant having read the Memo (still less an adverse view), the Claimant has not challenged the substance of Sir Julian's evidence.

195. Against that evidence, the Claimant's inferential case that Sir Julian's act of passing of the Memo to the security services demonstrates serious harm to his reputation (Paragraphs 28A and 104A Amended Particulars of Claim) is hopeless and devoid of reality. It is not saved by the speculative and optimistic pleading of serious harm to reputation in Paragraphs 105 and 108 in the Amended Particulars of Claim (and my reasons for rejecting this evidence in relation to the publication to Sir David Lidington apply equally to this publication – see [186] above).

196. Again, applying the merits test, in respect of the publication to Sir Julian Lewis the Claimant has no real prospect of demonstrating that it caused serious harm to his reputation. There is no material dispute of fact that would require to be resolved at trial and the Claimant has not suggested that any evidence is likely to emerge on disclosure

that might change this assessment. Allowing the claim to continue, on the speculative basis that some evidence of reputational harm might turn up at the trial, would not serve the overriding objective. Permission to amend is refused in respect of the publication to Sir Julian Lewis.

**(3) Crispin Blunt**

197. Looked at in isolation, and superficially, the evidence from Mr Blunt's emails may appear to provide evidence of some harm being caused to the Claimant's reputation as a result of his reading the Memo. However, the Claimant must show that he has a real prospect of demonstrating *serious* harm to his reputation caused by the publication of the statement. The defamatory meanings said to be conveyed by this publication are more limited – and arguably less serious – than other publications. Meanings (1) to (6) concern allegations which I would describe as being internal Conservative Party matters, touching upon the Claimant's role in setting up COMENA (and what he hoped to gain from it) and potential conflict with CMEC. Meaning (7) is the only imputation that has a reach beyond the Conservative Party.

198. As I have already indicated, I shall proceed on the assumption that all seven imputations are borne by the publication and that they are defamatory of the Claimant at common law. However, in my judgment, and judged objectively, these allegations are not the most serious. They do not allege any sort of criminal or seriously antisocial behaviour. Nor does the Claimant contend that they suggest that he was guilty of any sort of corruption. At best, the Claimant can contend that the imputations are capable of reflecting adversely on his honesty and integrity. It is on this point that evidence of actual impact on the publishee is perhaps most important. Mr Blunt may have been particularly sensitive to allegations concerning the integrity of the Claimant in his dealings with the Conservative Party and its groups. But it remains for the Claimant to demonstrate that it was the publication of the Memo that has caused serious harm to his reputation. In other words, he must show that it was the nature of the allegations that caused the reputational harm, not unconnected concerns or considerations. In my judgment, he has not done so.

199. The important evidence is Mr Blunt's witness statement. He has explained, in detail, what he thought of the Claimant. He was opposed to the affiliation of COMENA to the Conservative Party and he had reservations as to the sources of the Claimant's money (not a meaning complained of by the Claimant). He also thought that the Claimant was seeking to obtain an honour in reward for his political donations to the Conservative Party. Importantly, however, Mr Blunt thought that this reflected on the Claimant's motives rather than his integrity. Perhaps most importantly, the clear tenor of Mr Blunt's evidence is that the Memo did not cause serious harm to the Claimant's reputation in his eyes. He points to the subsequent media coverage as having more significant impact.

200. Mr Blunt's evidence that he did not further circulate the Memo or discuss its contents has not been challenged by the Claimant. Again, this direct evidence disposes of the inferential case of further onward publication of the Memo and any suggestion that this further 'percolation' has caused the Claimant serious reputational harm.

201. Stepping back, this is another instance where the Claimant has not provided evidence that discloses a real prospect of establishing that publication of the Memo has caused him serious reputational harm. The inferential case has been undermined by positive

evidence provided by the Defendants demonstrating a lack of serious reputational harm. It was not suggested on the Claimant's behalf that there were grounds upon which to challenge Mr Blunt's evidence. Tellingly, in his evidence, the Claimant appeared to accept that Mr Blunt's evidence tended to show that he had not been "*personally affected*" by the Memo. Insofar as the Claimant sought to challenge aspects of Mr Blunt's witness statement (see [105] above), this could only be relevant if the Claimant were making some attack on Mr Blunt's credibility, but he has not seriously done so. There are no material disputes of fact that require resolution and the Claimant cannot suggest (and has not suggested) that there is any real prospect of further evidence becoming available before trial. That leaves the Claimant's prospects of success dependent on the cross-examination of Mr Blunt at trial providing evidence of serious reputational harm. Set against Mr Blunt's witness statement, that prospect is simply fanciful. Permission to amend in respect of the publication to Mr Blunt will be refused.

**(4) Sir Alan Duncan**

202. The amendments for which the Claimant seeks permission follow the same pattern as for the previous three publishees. The only direct evidence of serious harm relied upon in respect of Sir Alan Duncan is the alleged "*unfriendliness*" in the telephone call between him and the Claimant on 4 January 2021 (see §45 Amended Particulars of Claim). In addition, the Claimant again relies upon the inferential case as to serious harm to reputation (§105) and Parliamentarians' appetite for gossip as a basis for an inferential case as to further publication/percolation (§108).

203. Against that, the evidence demonstrates that any antipathy shown by Sir Alan towards the Claimant in the telephone call on 4 January 2021 pre-dated his receipt of the Memos. The Claimant had contacted Sir Alan "*out of the blue*", just before Christmas 2020, to tell him about COMENA. Sir Alan's evidence was that he was unimpressed by the proposals, describing them as "*ill-conceived and unacceptable*". He thought that the Claimant was "*trying to destroy CMEC*". Sir Alan also thought that it was inappropriate for the Claimant, a donor, to lead COMENA. By the time he had "*skim-read*" the Memos in advance of his further call with the Claimant on 4 January 2021, he had already formed a negative view of him. Sir Alan says that this negative view was not created by the Memos, but "*because [he] did not believe that a donor should lead as Chairman or promote an organisation such as the one suggested by the Claimant.*" Sir Alan did not discuss the Memos with, or send them to, anyone else. In summary, Sir Alan's evidence, provides no evidence that the publication of the Memos caused any harm (still less, serious harm) to the Claimant's reputation.

204. In his fourth witness statement, the Claimant has raised some points of challenge to Sir Alan's evidence, for example whether the call in December 2020 had been 'out-of-the-blue' and whether the Claimant and Sir Alan had previously met at a Mansion House dinner in April 2018. In my judgment, none of these points has any substance and the Claimant has not suggested that the rest of Sir Alan's evidence should be rejected. The Claimant has left, essentially unchallenged, the key parts of Sir Alan's evidence as to the harm to the Claimant's reputation caused by the publication of the Memos. In consequence, there is no material dispute of fact that would require resolution at a trial.

205. Put simply, the Claimant's case of reputational harm was based on the alleged unfriendliness of Sir Alan in a telephone call. From that, the inference was invited

that this unfriendliness was caused by receipt of the Memos and the further inference that this indicated serious reputational harm had been caused by them. Sir Alan's evidence has destroyed the single plank on which that inference rested. Further, Sir Alan has disposed of the suggestion that the Memos did, in fact, cause serious harm to the Claimant's reputation. All that remains is the submission that the minor disputes as to unimportant aspects of Sir Alan's evidence should be resolved at trial. This is simply a reworking of the "*something might turn up*" refrain. The Claimant has demonstrated no case of serious harm to his reputation caused by publication of the Memos to Sir Alan Duncan that has a real prospect of success. The inferential 'percolation' case has been disposed of by Sir Alan's direct evidence. Permission to amend will be refused.

**(5) Ben Elliot**

206. The Claimant's case of serious reputational harm is at its weakest in relation to Mr Elliot. There is no direct evidence that supports the Claimant's case on this issue and so he has been forced to rely, again, entirely on an inferential case. I accept Mr Price KC's submission that Sir Nicholas Soames' reaction to the Memo is not evidence of what Mr Elliot thought of it. The absence of Mr Elliot as a witness does not necessarily determine the issue against the Claimant. If the contemporaneous documents demonstrated a credible basis upon which to conclude that the Claimant's reputation had been seriously harmed in Mr Elliot's eyes, then the Claimant's case might pass the merits test for an amendment. But, in my judgment, plainly they do not.

207. The evidence that the Claimant has relied upon is in two main categories: internal Conservative Party emails (see [109] above) and messages exchanged between him and Mr Elliot (see [110]-[111] above). In respect of the former category, at best, the emails demonstrate that receipt of the Memos caused Mr Elliot to require some further due diligence checks be carried out. To that extent, the evidence demonstrates that he did not dismiss the Memos (or their contents) out of hand. That, however, does not establish *what* impact the publication of the Memos had on the Claimant's reputation and, critically, whether it caused serious reputational harm in Mr Elliot's eyes. On that point, the emails provide no support for the Claimant's case.

208. Mr Elliot's emails clearly demonstrate that his reaction was one of irritation at an unwelcome spat between the Claimant and the First Defendant where "*the only loser… is the party*". If Mr Elliot had understood the Memos to bear the meanings attributed to them by the Claimant, and to have seriously damaged the Claimant's reputation in his eyes, he could have been expected to do two things. First, it is likely that he would have challenged the Claimant about them. Second, it is likely that he would have raised his concerns specifically within the party. He did neither. All Mr Elliot did was to seek a report confirming that the Claimant was a "*due and proper person*". Mr Elliot got the response he sought in the Report on 12 January 2021. It apparently assuaged any concerns that Mr Elliot had because there are no further emails in which Mr Elliot refers to the issue. Importantly, despite the Claimant's claim that the Memos were circulated within CCHQ, none of the allegations contained in the Memos appears in the Report.

209. After receipt of the Report, what did remain of concern to Mr Elliot – see his 15 January 2021 email ([109(7)] above) – was the potential for the ongoing dispute to cause damage to the party and his desire to see both sides "*down tools and keep quiet*". The other emails relied upon by the Claimant do not shed light on Mr Elliot's views of the Memo or demonstrate any harm to the Claimant's reputation in his eyes. The emails in

April/May did not (apparently) involve Mr Elliot and, critically, the conclusion was that "*nothing bad came back from CRD on this*" (see [109(8)] above). If anything, that evidence tends to prove that no real harm had been caused to the Claimant's reputation.

210. The messages exchanged between Mr Elliot and the Claimant are in a similar vein, and support the conclusions I have reached on the basis of the emails relied upon by the Claimant. The first, and perhaps most striking, thing to note is that (in his messages at least) the Claimant appears unconcerned about the Memos. On 2 January 2021, after sending Document 14 to Mr Elliot, the Claimant says that it is "*not causing any damage*". I will not attach weight to this comment because (a) it was an early reaction; and (b) the Claimant's response to the Memos no more sheds light on the impact on Mr Elliot than does the reaction of Sir Nicholas Soames.

211. On 4 January 2021, not having received any response from Mr Elliot, the Claimant bombarded him with messages, but Mr Elliot remained unresponsive. The clear message that the Claimant wanted to send was that his priority was the affiliation of COMENA to the Conservative Party and he wanted Mr Elliot's support: "*I don't care about her or CMEC*". In a change of position from the message 2 days earlier, the Claimant did suggest that he had "*taken a huge reputation hit*" and had spent money "*helping the party and HMG*" (a reference to the Claimant's promotion of COMENA) but he then described this as "*not important*".

212. On 6 January 2021, still not having stimulated any real engagement by Mr Elliot, the Claimant sent further messages. Asked whether he wanted to see a copy of the Claimant's solicitors' letter to the First Defendant, Mr Elliot provided a one-word response: "*No*". This exchange is significant. First, if the Claimant had been really concerned about the allegations in the Memos, he would have been keen to send the MdR letter to Mr Elliot to refute the allegations, not asked him whether he wanted to see it. Second, and more importantly, if Mr Elliot had taken seriously any of the allegations in the Memos, he would probably have asked to see the Claimant's response. His lack of interest in it is consistent with his view that this was a distracting – and potentially damaging – "*spat*" which he wanted to "*close down*". Despite being told by Mr Elliot that he did not want to see the MdR letter, the Claimant responded that he would receive it "*officially*" the next day. The Claimant then returned the focus of his messages to promoting COMENA. Mr Elliot's protest that "*this has turned into an unnecessary spat before even launch*" indicate, again, that his concern was not about the allegations in the Memos but the risk of damage to the party caused by the dispute.

213. On 8 January 2021, the Claimant changed tack. He offered to "*drop this*", which was clearly an offer not to pursue his complaint with the First Defendant. In the context of the exchange as a whole, I construe this as an offer to "*drop*" the dispute with the First Defendant if COMENA got the go-ahead. It is, perhaps, a revealing insight into the Claimant's attitude to the dispute with the First Defendant, at least at that moment.

214. None of these messages or emails provides any support for the Claimant's claim that the publication of the Memos to Mr Elliot caused any real harm to the Claimant's reputation, still less serious harm. On the contrary, Mr Elliot appears to have been troubled by the contents of the Memos only to the extent that he wanted to make sure that they had been properly checked. On 7 January 2021, he received the MdR letter setting out the Claimant's refutation of the allegations in the Memos. Thereafter, having received, substantially, the 'all-clear' in the Report on 12 January 2021, there is no

evidence that Mr Elliot harboured any concerns about the Memos beyond his fear that the party might be damaged by the "*spat*".

215. Apart from the rather vague hope that Mr Elliot may have a change of heart, and perhaps provide him with a witness statement, the Claimant has not suggested that the evidential position is going improve between now and any trial. He has used a subject access request to obtain documents relating to him from the Conservative Party. There can be no real expectation that there will be any further documentary material available at trial that might be relevant to his case. Judged by the documents he has obtained, it would be somewhat surprising if any documents came to light that actually provided any support for his case that publication of the Memos caused serious harm to the Claimant's reputation in Mr Elliot's eyes. The Claimant has identified no material dispute of fact that would require resolution at a trial.

216. For these reasons, permission to amend in relation to the claim in respect of publication of the Memos to Mr Elliot is refused. The claim is entirely speculative and devoid of reality. There is no real prospect of the evidence improving prior to trial and the overriding objective would not be served by allowing this claim to continue.

217. Having reached these conclusions, I do not need to resolve the issue of causation in relation to this publication. The chronology demonstrates that Mr Elliot first received a copy of the Memo – Document 14 – from the Claimant, on 2 January 2021. The Claimant was under no duty to send it to him. If the allegations contained in Document 14 (which, on the Claimant's case, are more extensive than those in Documents 12-13) caused any damage to the Claimant's reputation in Mr Elliot's eyes, then the Claimant is responsible for that publication and that damage. These causation arguments cannot be explored further because Mr Elliot has refused to engage with either side, but they weaken yet further the Claimant's case that it was a publication of the Memos by the Defendants that had caused harm to his reputation.

**(6) Sheikh Fawaz**

218. The Claimant's response to Sheikh Fawaz's evidence was to challenge him to submit to cross-examination. That will not do. If there were some material dispute of fact that needed to be resolved on the issue of whether the publication of the Memo caused serious harm to reputation, that might be an issue that would require resolution at a trial. But there is not. The challenges made by the Claimant to Sheikh Fawaz's evidence are principally to what took place at the meeting between the Claimant and the Sheikh, in May 2021, and the claim that the Sheikh had told the Claimant that his main concern about the Claimant was his links to Russia, which the Claimant suggests was caused by the publication of the Memo. There is a complete absence of reality in the suggestion that the Court should allow this issue to go forward to a trial at which the Claimant, presumably, would attempt to cross-examine Sheikh Fawaz into accepting his version of what took place at the May 2021 meeting with a view to persuading him to change his evidence that publication of the Memo had not caused serious harm to the Claimant's reputation. The Claimant has provided no other evidence that could provide a realistic basis upon which he could seek to impeach the evidence of Sheikh Fawaz on the issue of serious harm to reputation. Permission to amend will be refused in relation to this publication.

219. Sheikh Fawaz has provided a witness statement to the Defendants. His statement provides no evidence that publication of the Memo to him has caused serious harm to the Claimant's reputation. Not only does Sheikh Fawaz state, expressly, that his view of the Claimant's character was formed as a result of his personal interaction with the Claimant rather than anything in the Memos, the contemporaneous evidence, in Sheikh Fawaz's letter of 12 January 2021 to Mr Elliot, demonstrates that any concerns that he had following receipt of the Memo were focused on the formation of COMENA, and its potential to harm the standing of CMEC. Sheikh Fawaz noted that CMEC had "*long performed an important role in facilitating dialogue..., one built on forty years of trust and hard work*". The letter from Sheikh Fawaz contains no expression of concern about any of the allegations complained of by the Claimant. It is also clear from his letter that the MdR letter had been widely circulated in the Arab diplomatic community in London by 12 January 2021. Put shortly, most of those who had received a copy of the Memo had very shortly thereafter received the Claimant's rebuttal in the MdR letter.

## (7) General reputation harm caused by (re)publication of the Memos

220. In the preceding sections of the judgment, I have explained why I am not satisfied that the Claimant has demonstrated a case of serious harm to reputation caused by the publications complained of to the six identified individuals which has a real prospect of success. The consequence of that is that permission to amend will be refused for those publications. For the reasons explained in the next section of the judgment, as the existing pleading fails to disclose a proper case on serious harm to reputation, the effect will be that the claims in respect of these six publishees will be dismissed. In consequence, it is not necessary to consider whether the Claimant has a real prospect of showing that any 'percolation'/republication caused serious harm to the Claimant's reputation. I have set out my conclusions in the preceding sections as to the extent to which any of the identified publishes has republished the contents of the Memos they received, but as already explained (see [153] above), if the cause of action in respect of any publication fails, any further damage alleged to be caused by it falls away.

221. Therefore, it is not strictly necessary for me to deal with the extensive further particulars upon which the Claimant has relied (§§69-128 Amended Particulars of Claim). A separate substantial complaint could be raised regarding these paragraphs on the grounds that they do not set out a clear case on causation. But, on analysis, even ignoring these fundamental problems, the particulars do not themselves raise a case of serious harm to reputation with a real prospect of success.

222. The Claimant states that he believes that the evidence shows that there has been "*percolation*" of the allegations made against him in the Memos. It may be that – in a very general sense – his evidence does support a broad case that the Memos have circulated more widely than the original publishees, but the critical questions are:

    (1) is there evidence that such percolation/republication caused harm to the Claimant's reputation; and

    (2) was the percolation/republication caused by one of the publications complained of in the Particulars of Claim?

223. That second question is a basic requirement of causation. In this case, the issue of causation is further complicated by (1) the fact that the Claimant himself had circulated

the Memos and the MdR Letter (see [110] and [112]-[113] above); and (2) the subsequent media publication about the Claimant and the dispute (see [18]-[24] above).

224. I do not intend to lengthen this judgment even further by dealing with every aspect of the Claimant's case on 'percolation'/republication. I shall deal with what I regard to be the key points.

225. Mark Garnier MP does refer to the Memo he had seen as being "*libellous*", but his reference to its contents being "*inaccurate*" strongly suggests that he did not believe its contents (see [127] above). As such, and particularly in the absence of any evidence from Mr Garnier, this does not provide a credible basis on which to contend that the Claimant's reputation was seriously harmed by the publication of the Memo to Mr Garnier, or its republication by him.

226. Even if assumed to be proved, the alleged further dissemination of the Memos by Sheikh Fawaz (see [130] above) goes no further than establishing republication. It does not demonstrate any reputational harm, still less serious reputational harm.

227. My conclusions as to the Lebanese Ambassador's Email (see [130] above) are:

(1) beyond raising questions/concerns about the Claimant's "*motives and alleged proximity to some foreign actors*", it does not identify what of the allegations in the Memos relied upon by the Claimant was of concern;

(2) it does not identify which of the Memos was the basis for the "*concerns raised*" and to whom it/they had been published;

(3) generally, it does not provide evidence suggesting that the imputations relied upon by the Claimant were effectively communicated to the Lebanese Ambassador (or others) such as to cause serious harm to the Claimant's reputation. In short, the evidence demonstrates little more than that the Lebanese Ambassador thought that there were questions over the Claimant's suitability; and

(4) the extent and cause of reputational harm had to be seen in the context of other "*Amersi-related reports*" which had been published. These are not identified, but they would probably have included at least some of (if not all) the media coverage of the dispute (see [13]-[23] above).

228. Without more information about the Claimant's experience at meetings at embassies (see [132] above), and particularly the dates of these events, it is impossible to attach much weight to this evidence on the issue of the extent of any reputational harm to the Claimant's reputation and, more importantly, its cause. Certainly, after the publication of the First and Second FT Articles (particularly having regard to paragraphs 5-7 and 10-20 of the First FT Article, paragraphs 1-2, 4-17 of the Second FT Article, and paragraphs 2, 24-27 of the Mail Article), questions about the Claimant's connections with Russia, could not necessarily be ascribed to circulation of the Memos or their contents.

229. In respect of the alleged damage to the Claimant's reputation in the eyes of the Kuwaiti Ambassador (see [133] above), Ms Al Hashem's evidence does pre-date the publication of the First and Second FT Articles. However, it is difficult to see how the

Kuwaiti Ambassador could have extracted the meaning that the Claimant was an "*Iranian stooge*" from the Memos, particularly as one of the meanings complained of by the Claimant said to be conveyed by several of the Memos is that he "*dishonestly claims to be of Iranian heritage and to hold networks of influence in Iran*" (see [29(12)] above). Also, the only reference in the Memos alleged to be defamatory of the Claimant that might be capable of suggesting that he was "*close to the Russian regime*", are:

(1) the meaning that "*the Claimant is or has been a representative of Alfa Bank which is run by a close ally of President Putin*" (see [29(18)] above); and

(2) the meaning that "*there are grounds to suspect that the Claimant was a director of the Russian company Megafon and as such complicit in its activities during a period when it … assisted Russia in the military and economic annexation of Georgia…*" (see [29(13)] above).

In light of this, and the stated contributions of Sheikh Fawaz and Sir Nicholas Soames, there would appear to be real causation issues in demonstrating that any negative view that the Kuwaiti Ambassador took of the Claimant was caused by publication of any of the Memos (leaving aside the need to show that any reputational damage has been caused by one of the publications complained of).

230. As a basis for demonstrating serious harm to the Claimant's reputation, there are several problems with Mr Lehmann's evidence (see [135] above). First, Mr Lehmann is not a publishee in one of the publications that the Claimant has sued on (indeed, it is not clear from his letter whether he even received a copy of any of the Memos – directly or indirectly – or if he did, which one(s)). Second, it is clear from his letter, that what Mr Lehmann learned of the contents of the Memo did not in any way damage or diminish *his* view of the Claimant's reputation. Third, insofar as Mr Lehmann's evidence discloses what imputation(s) *he* thought the Memo(s) bore, it is limited to calling into question his "*bona fides and suitability to lead*", which is some way short of the meanings complained of by the Claimant. At best, Mr Lehmann's evidence goes some way to demonstrating that the Claimant's reputation has been harmed in the eyes of others, but, crucially, there remains a problem of causation. Mr Lehmann's evidence does not assist in showing a causative link between the publication of any of the Memos to the publishees and the reputational harm. Further, Mr Lehmann identifies a separate factor that was also in play in causing any reputational harm beyond the Memos: the "*lobbying*" of the "*party stalwart and grandee*" (which may be a reference to Sir Nicholas Soames) and "*former Parliamentarians associated with CMEC*". No weight can be attached to Mr Lehmann's opinion that the Claimant's character has been "*unfairly besmirched*", particularly because the Claimant's reputation had not been damaged in Mr Lehmann's own eyes. Mr Lehmann's evidence provides some limited hearsay evidence that the Memos may have been a factor in a negative attitude demonstrated by some towards the Claimant, but the details are unclear.

231. The evidence about the cancellation of the Hever Castle dinners (see [136] above) and the Conservative Networking event (see [137] above) is similarly vague, cannot be linked the any of the publications complained of in the Particulars of Claim and therefore suffers from similar causation issues.

232. In summary, the Claimant's evidence demonstrates that there has been some republication of the Memos and their contents beyond the original publishees.

The evidence is far too speculative. On the evidence, the only publishee who further distributed a copy of the Memo was Sheikh Fawaz, but as the Claimant had himself distributed Document 14, it is not possible to draw any reliable conclusions as to those responsible for circulating the Memo(s) more widely. Further, the Claimant has failed to produce any evidence that such republication has caused serious harm to his reputation.

## J: Decision Strike Out Application

233. In contrast to the previous section, I can state my conclusions on this issue very shortly. The original Particulars of Claim failed to disclose a proper pleading of serious harm to reputation alleged to have been caused by the relevant publications. To satisfy the requirements of CPR 53B PD §4.2(3), and to disclose a proper cause of action, each publication relied upon by the Claimant was required to be supported with particulars of serious harm to reputation that the Claimant alleged was caused (or likely to be caused) by that publication. The composite case – because it did not distinguish between the publications alleged to have caused the harm – failed to do so.

234. The Claimant has not seriously argued against this conclusion. His argument rested upon the premise that such a composite/aggregate case was sufficient in law to satisfy the serious harm requirement. For the reasons I have explained, I have rejected that submission (see [147]-[163] above).

235. In consequence, the plea of serious harm to reputation in the original Particulars of Claim (contained in Paragraphs 5 and 64) will be struck out pursuant to CPR Part 3.4(2)(a). Having reached that conclusion, it is not necessary to consider that alternative bases on which the Defendants advanced the Strike Out Application.

236. As I have refused permission to amend, the Particulars of Claim do not disclose a proper cause of action in respect of any publication relied upon and, ordinarily, the Court would strike out or dismiss the claim. Before doing so, I should consider whether the Claimant ought to be given a further opportunity to attempt to remedy the issue that has led to the claim being struck out. Whether to give a party such an opportunity is a question of making an assessment whether there is any realistic prospect that s/he would be able to remedy the problem if given a chance. If there is no realistic prospect that the party can fix the problem, providing a further opportunity is simply likely to waste further the parties' costs and the Court's resources. Even were the Court to consider that the party might be able to remedy the issue, an important discretion is to be exercised as to whether to permit a party to have another go. That discretion must be exercised having regard to the overriding objective.

237. In my judgment, the Claimant should not be given a further opportunity to see whether he can plead a case of serious harm to reputation caused by the publications relied upon. I do not consider that there is any realistic prospect that he could advance such a case. The Amendment Application has failed not on a technicality, because of a deficiency in pleading, but substantively, because the evidence relied upon does not disclose a claim with a real prospect of success. The Claimant has put forward the best evidential case he has on serious harm, and it does not meet the merits test. He has not suggested that this evidence would improve were he to be given a further opportunity to replead his case. For the reasons I have set out, unless the named publishees significantly

changed their positions, the prospect of such further evidence emerging is fanciful. For this reason, I refuse to give the Claimant a further opportunity to replead his case.

238. Even had the Claimant been able to raise some prospect that he might be able successfully to replead his case on serious harm, there is a further factor which would have weighed heavily against him. In pursuit of the overriding objective, the Court strives to deal with cases justly and at proportionate cost. That includes, so far as practicable, saving expense, ensuring that a case is dealt with expeditiously and fairly, and allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases: CPR 1.1. "*It is no longer the role of the court simply to provide a level playing-field and to referee whatever game the parties choose to play upon it. The court is concerned to ensure that judicial and court resources are appropriately and proportionately used in accordance with the requirements of justice*": ***Dow Jones & Co Inc -v- Jameel*** **[2005] QB 946** [54] *per* Lord Phillips MR.

239. It has not been necessary for me to rule on the Defendants' argument that the Claimant's claim has been an abuse of process (see [138(3)] above). The circumstances in which a Court will dismiss a defamation claim as an abuse of process, because of some impermissible collateral purpose, are rare. Strong evidence is required that a claimant is, in reality, seeking something beyond the protection and vindication of his reputation before the court would stay or dismiss the proceedings as an abuse of process: ***Goldsmith –v- Sperrings Ltd*** **[1977] 1 WLR 478, 500** *per* Scarman LJ. The hurdle is a high one. See also discussion in ***Broxton –v- McClelland*** **[1995] EMLR 485, 497-498** *per* Simon Brown LJ.

240. Nevertheless, there are several aspects of the conduct of the Claimant – many of which were relied upon by the Defendants – that give real cause for concern as to (1) whether his pursuit of these proceedings has been genuinely to seek vindication rather than some other impermissible collateral purpose(s) and (2) whether he has sought to obtain this vindication at proportionate cost.

    (1) First, the delay in commencing the defamation proceedings (and then taking almost the maximum permitted period to serve the claim) is inconsistent with a desire to seek prompt vindication. The Claimant had sufficient information to commence a libel claim, substantially in the form in which it has now been advanced, after receipt of the 14 May Documents. The failure to do so has not been adequately explained.

    (2) Second, the Claimant has adopted an exorbitant approach to the litigation (including the Data Protection Claim) and has refused to provide information about his costs to the Court. When this defamation claim was finally commenced, it advanced multiple causes of action (including several to unidentified publishees) that substantially added to the complexity (and likely cost) of the proceedings without adding anything of tangible benefit that a more restrained approach to selection of the causes of action could not have achieved. A litigant suitably concerned about the costs of the litigation – having proper regard to the overriding objective – would not have acted in this exorbitant way. Given the overlap of defamatory meanings, the cost of pursuing multiple causes of action was likely to be wholly disproportionate to any benefit that the Claimant could legitimately achieve. Whilst conducting the proceedings in this manner, the Claimant has steadfastly refused to provide accurate information

about his incurred costs to the Court (see [43] and [47]-[49] above), including on the ground that the information was confidential. It is difficult to treat that submission seriously when the Claimant was willing to share the figure of his costs with a journalist (for publication) (see [18] above).

(3) Third, in his interview with Mr Burgis, given at some point before 7 July 2021, the Claimant said that he intended to "*take [the First Defendant] to the cleaners*" and that once the Data Protection Action had been completed, he intended to commence a libel action. This demonstrates that, at least by early July 2021, the Claimant fully intended to bring a further claim against the Defendants for libel (which he did not finally serve until April 2022). Subjecting a person to successive civil claims can be a hallmark of abusive conduct: see ***Henderson -v- Henderson*** **(1843) 3 Hare 100**. Without good reason, a claimant is expected to bring all his/her civil claims against a defendant in one action. The Claimant could and should have brought his libel action when he commenced his Data Protection Action. The decision to proceed first with the Data Protection Claim was, I am satisfied, both deliberate and tactical. A claimant who was genuinely interested in vindication is unlikely to have delayed as the Claimant did. Pursuit of two sets of proceedings has also taxed the resources of the Court and the Defendants beyond what was justifiable.

(4) Fourth, the Claimant's interviews in the media (particularly the Observer Article – see [23] above) – and some parts of his witness statements filed in these proceedings – strongly suggest that the Claimant has treated this libel action as providing him with an opportunity also to seek to embarrass (and possibly to punish) the Conservative Party for, as he perceives it, having wronged him. That is not a legitimate purpose of civil proceedings for defamation.

241. For the reasons I have explained, I do not need to resolve whether the Claimant has pursued this libel action for an impermissible collateral purpose. What I am entitled to conclude is that, by conducting the proceedings in the way I have identified, the Claimant has exhausted any claim he might have on the further allocation of the Court's resources to this action. Although I have concluded that no purpose would be served by giving the Claimant a further opportunity to replead his claim, I am also satisfied that it would not serve the overriding objective to permit the Claimant to do so. As a result, this claim is at an end.

## Annex 1 – Published Articles

[Paragraphs numbers added in square brackets]

### (1) The First FT Article: *Financial Times* - 7 July 2021

[1] Late in 2020, the Conservative grandee Sir Nicholas Soames received a memo about a party donor called Mohamed Amersi. The 61-year-old Amersi describes himself as 'a renowned global communications entrepreneur, philanthropist and thought leader'. Along with his partner, he has given the party more than £750,000 since 2017. That has bought him membership of the exclusive Leaders Group of donors and its monthly lunches with British government ministers.

[2] The memo, and a more-detailed follow-up, sketched out some details about Amersi's past, his associates and his dealings in Russia, according to four people with knowledge of the matter. In early January 2021, Soames, the grandson of Winston Churchill who recently stepped down as an MP, forwarded the memos to the man charged with bringing in the money that helps keep the Tories in power: Ben Elliot. The founder of Quintessentially, a 'concierge' company that serves the super-rich, Elliot is the party's co-chair. If the memos caused him any concern, it was not enough to stop the party accepting another £50,000 of Amersi's money on January 18.

[3] When copies of the memos reached Amersi, his lawyers sent letters to Soames and to Charlotte Leslie, the former Tory MP who had written them. The letters demanded that Soames and Leslie should not obstruct Amersi's plan in effect to insert himself into one of the most sensitive areas of UK foreign policy by setting up a group to handle the Conservatives' relations with the Middle East. The party's board is due to decide imminently whether to back Amersi's group.

[4] This libel action is not the first claim brought by the Claimant against these Defendants.

[5] Amersi's growing sway has alarmed some in the Tory party, including two former cabinet members. One of them points to last year's report by parliament's intelligence committee on Russian influence in the UK as a reason to carefully scrutinise all donations. After scandals over the Greensill affair, the funding of Boris Johnson's Downing Street redecoration and Covid-19 contracts going to favoured Tory contacts, divisions over Amersi add to differences in the party about who to accept money from.

[6] Court documents and company records show that Amersi made part of his fortune doing deals in 2005 with a business empire that a Swiss tribunal found to be controlled by a close associate of Vladimir Putin, Russia's president. Amersi was also accused in a separate 2006 lawsuit of trying to 'extort' a $2bn payment from a businessman on behalf of a Russian oligarch.

[7] In an interview with the Financial Times, Amersi says: 'I have not made a dishonest deal in my life, in Russia or elsewhere.' He says he made $7m in Russia but has not done business there since 2008. 'Not a penny that I earned in Russia… has even remotely come close to being invested in the UK political system.'

[8] More recently, he says, he has spent £300,000 on legal fees in a dispute with those who raised concerns about his growing influence in the ruling Conservative party.

[9] The party says: ‘Donations to the Conservative party are properly and transparently declared to the Electoral Commission, published by them and comply fully with the law.’ But it had no comment on Amersi’s legal dispute with some figures in the party.

**Doing business in Russia**

[10] A UK citizen born in Kenya with family roots in Iran and India, Amersi began his career as a lawyer. While at Jones Day in the early 1990s, he was embroiled in a dispute over conflict of interest rules in a venture involving Lebanese businessmen and a Saudi bank.

[11] A UK High Court judge described his conduct as ‘lamentable’ — and his evidence in the ensuing lawsuit as ‘unreliable’. Amersi says the judge had ‘no clue… how sophisticated dealmaking works in the real world’ and behaved like a ‘farmer’. He adds that, despite this ruling, he was later given senior positions at major companies such as Rothschild’s.

[12] Amersi turned to business, including in Russia, where the collapse of the Soviet Union meant vast industries were falling into the hands of those with the cash and connections to acquire them. He joined a consortium bidding in a telecoms privatisation. His side lost but further opportunities soon appeared. ‘He’s very ambitious,’ says a western businessperson who encountered Amersi at the time. Another remarks: ‘He knew God and the devil and everybody.’

[13] In 2005, Amersi cut a deal that made him millions. The owners of the US group Metromedia wanted to exit Russia. The jewel of their assets was one of St Petersburg’s biggest fixed-line telecoms companies, PeterStar. They found a buyer: a Luxembourg company called First National Holding which already had a stake in PeterStar. Amersi helped put the $215m deal together. When the sale was completed in August 2005 he received a small equity stake and the right to sell that stake to the buyers, which he promptly did, making him $4m.

[14] Ostensibly, First National Holding’s owner was a Danish lawyer, Jeffrey Galmond, who in the 2000s was embroiled in a brutal corporate battle against one of the most formidable oligarchs of the Putin era, Mikhail Fridman. Both sides claimed to be the rightful owner of a disputed stake in MegaFon, a Russian telecoms company worth billions of dollars. The legal battle culminated in a May 2006 ruling in a Zurich arbitration tribunal. It concluded that Galmond was not a telecoms tycoon but acting as a frontman for Leonid Reiman, a senior member of the Putin regime.

[15] When Putin became Russia’s president in 2000, the former KGB officer brought with him some of those with whom he had run St Petersburg in the years after the collapse of communism. Reiman was one of them. A fluent English speaker, he had worked in the city’s telecoms department, alongside Putin’s then wife Lyudmila, overseeing deals in the newly liberalised telecoms market.

[16] Putin named Reiman as his minister in charge of the telecoms industry. But according to the Zurich arbitration tribunal, Reiman had also amassed private interests in Russian telecoms. Some of the telecoms assets that had passed to the group that Reiman was found to control had been misappropriated from the Russian state, the tribunal found. Its ruling was subsequently upheld by the Swiss Supreme Court and endorsed by other courts elsewhere.

[17] Reiman, who declined to comment for this article, has previously denied the allegations that Galmond — who insists that he was the owner of the telecoms empire — was acting as a frontman for him.

[18] Ahead of the 2005 PeterStar deal, the allegation that Galmond was fronting for Reiman had appeared in the Financial Times and the Wall Street Journal. But Amersi says his lawyers produced a 'path to fortune memo' on the sources of Galmond's wealth that was 'pretty good'. He adds: 'Who am I going to go and ask and say, "Oh, is Galmond the owner or is his wife the owner or is his secretary or Mr Reiman?" Who would tell me that? Let's get real.'

[19] His relationship with Galmond appears to have deteriorated shortly afterwards. Amersi allegedly delivered a message from Fridman to the Danish lawyer threatening that he 'would be imprisoned' unless he agreed to pay $2bn to the Russian oligarch for the disputed MegaFon stake. The alleged 2006 incident is recounted in a New York lawsuit, brought by a fund controlled by Galmond, that was dismissed after a banker who was party to the case vanished and the other parties agreed it should be dropped.

[20] Amersi says he did relay a message to Galmond that Fridman wanted $2bn for the stake but that he did not make the imprisonment threat nor did the oligarch ask him to. Fridman declined to comment. Amersi's dealmaking stretched from Nepal to Dubai and beyond. From 2007 to 2013, he served as an adviser to the executives of TeliaSonera, a Scandinavian telecoms company that had interests across the former Soviet Union. With the exception of Mauritania, he says he has done business in every country in the Middle East and north Africa.

**Rubbing shoulders with royalty**

[21] Having made his money, Amersi began to amass influence. But the millions he dispensed would in time draw scrutiny. He set up a charitable foundation in 2012 registered in the Bahamas and says his priorities as a philanthropist have been in education, youth empowerment and social cohesion.

[22] He also became a client of Quintessentially. Its founder, Elliot, 'connected us to the Prince of Wales', says Amersi. At a 2018 event at Lancaster House Amersi posed in flower-patterned black suit with his Russian-British partner, Nadezhda Rodicheva, also known as Nadia, flanking Elliot's aunt, Camilla Parker-Bowles. In 2015 Amersi became a trustee of the Prince's Trust International, an organisation founded by Parker-Bowles' husband, the heir to the British throne, Prince Charles. Amersi stood down recently after two terms.

[23] Amersi says Elliot seemed to act as an 'unofficial treasurer' for the Tories and 'started seeking donations from me and Nadia for the Conservative party even before he became chair'. Their first donation came during Theresa May's premiership, when other donors, displeased with her leadership, held back. In 2019, after her resignation as prime minister and during the general election campaign, she delivered a tribute to him at the opening of an Oxford lecture theatre named in his honour after he paid for it to be refurbished.

[24] Amersi, dressed in red robes, told the dignitaries present: 'You begin by learning how to make money. Then how to hang on to it. And then finally how to give it away.'

[25] He had by that stage already given £10,000 each to Jeremy Hunt, Michael Gove, Boris Johnson and Rory Stewart — who says he later returned the money — during the leadership election to choose May's successor as Conservative party leader and prime minister in July 2019. More money followed after Johnson's victory. In total, Amersi has given half a million pounds to the party, twice the amount donated by his partner and outspending over

the past three years more celebrated Tory donors such as Lord Ashcroft, Zac Goldsmith and Lakshmi Mittal.

[26] Now Amersi wants to take up a position helping to manage the Conservatives' relations with the Middle East, an important geopolitical region for the UK.

[27] The party already has a body that takes delegations of MPs to the region: the Conservative Middle East Council (CMEC), founded in 1980. In 2019, CMEC ceased to be formally affiliated with the party, allowing it to accept non-Conservatives as members and seek wider funding. Amersi claims 'the party clearly felt there was a vacuum in its and the government's UK-Middle East relations, which should be addressed'. He says that over dinner with Johnson, before he became prime minister, he proposed that the party needed a new organisation 'post-Brexit, to develop better ties with Middle East countries', and that Johnson subsequently told him, 'great idea, go out and do it'. Downing Street declined to comment.

[28] Recent CMEC delegations have enjoyed audiences with the region's power brokers, including Saudi Crown Prince Mohammed bin Salman and Egyptian president Abdel Fattah al-Sisi. Through his new group, the access Amersi stands to gain would be, in the words of one Arab ambassador, 'top - very top'. Amersi says today he has no commercial interests in the Middle East and few anywhere else.

[29] Among those Amersi says have agreed to take positions at his Conservative Friends of the Middle East and north Africa group (Comena) are May, as patron, Johnson's confidant Lord Lister, MP Mark Garnier and former MP Sir Hugo Swire. May declined to comment. Lister says he would only take up the role if the party grants Comena's affiliation. The others did not respond to requests for comment.

[30] Amersi, who has registered Comena as a private company with himself as the only named shareholder, plans to sit as chair. Its funding of £500,000 a year will, he says, come equally from him and another Tory donor, the Egyptian businessman Mohamed Mansour. A spokesman for Mansour declined to confirm to the FT that he would be providing this funding.

[31] As the Comena project gathered momentum last year, Leslie, who has run CMEC since 2017, began to look at Amersi's background. She sent at least two memos to Soames, CMEC's honorary chair. Within days of Soames passing them on to Elliot, Amersi donated another £50,000 to the party. Amersi says this was an annual donation to keep up his Leaders Group membership.

[32] He also retained London law firms that specialise in 'reputation management'. Mishcon de Reya sent an initial letter to Leslie, followed by about a dozen from a second firm, Carter Ruck. Threatening to bring a lawsuit, they alleged that the Leslie memos were defamatory of their client, say people with knowledge of the matter. They demanded an apology, a retraction, damages and assurances from Leslie and others including Soames that they would not try to block Comena's affiliation.

[33] The Leslie memos, says Amersi, mischaracterised a Russian woman's role at Comena, his attempts to secure affiliation for the group and his Iranian connections. 'Not even a Russian in my career has ever behaved in the atrocious, selfish and dishonest way that this woman has behaved. And if I have to take her to task for it, then I will absolutely do it. Because she has lied and she has made up stories.' He adds: 'How dare she insult me?'

[34] Amersi says his legal costs are approaching £300,000, 'which I could have given to the party, to the poor, to other people'. Initially, he says, he thought, 'I do not want to hurt them. I do not want to bankrupt them. They are not wealthy people. All I'm asking for is, "Say you're sorry".'

[35] Court records show that on June 29, the day after the FT approached him for comment, Amersi began legal proceedings under data protection law against Leslie and the CMEC. 'I have thus far spared Sir Nicholas the embarrassment of being sued', he says, 'based on his grandioseness'.

[36] Speaking for herself and Soames, Leslie says: 'We have done nothing wrong.' She adds: 'I have been subjected to a political and legal assault for more than six months. Amersi has been able to use expensive lawyers to bring a legal sledgehammer to our small organisation.' She says her actions 'have been in the public interest'.

[37] Party officials are attempting a mediation between Amersi and Leslie. At the same time party bosses must decide whether to grant Amersi's Middle East group formal affiliation. It is a decision that will bring fresh scrutiny to one of the most powerful forces in British politics: the Conservative money machine.

**(2) The Second FT Article: *Financial Times* - 2 August 2021**

[1] A major Conservative donor received $4m from a company he knew to be secretly owned by a powerful Russian who was at the time a senior member of Vladimir Putin's regime, according to three people with direct knowledge of his business dealings.

[2] Although Mohamed Amersi has said that "not a penny that I earned in Russia . . . has even remotely come close to being invested in the UK political system", these new claims raise questions about the origins of the fortune that has propelled him to a position of influence at Westminster.

[3] A Kenya-born UK citizen, Amersi and his Russian partner Nadezhda Rodicheva have given £750,000 to the Tories since 2017. He intends to spend a further £250,000 a year on a new organisation to help run the party's relationships in the Middle East, a plan he says he has discussed with Prime Minister Boris Johnson.

[4] In 2005 Amersi worked on a deal in which a Luxembourg company called First National Holding acquired PeterStar, one of the biggest telecoms ventures in St Petersburg. First National Holding paid him $4m via a Cyprus company. The following year a Swiss arbitration tribunal found that Leonid Reiman, then Putin's telecoms minister, secretly controlled the group of companies that included First National Holding. Some of the group's assets had been misappropriated from the Russian state, the tribunal found.

[5] Amersi has said he "wasn't aware" that Reiman was First National Holding's owner at the time the company paid him $4m. But James Hatt, a British veteran of Russian telecoms, recalls conversations that indicated to him Amersi did know.

[6] Hatt had known Reiman since he was an official at the state telecoms company in 1990s St Petersburg, where Putin, then deputy mayor, was beginning his rise to power. He calls First National Holding the "mother lode" of Reiman's secret telecoms empire.

[7] First National Holding held a minority stake in PeterStar. The listed US group Metromedia held the majority. Hatt was running Metromedia's international telecoms arm and

developed a plan to take the company private. After working in Russian telecoms in the 1990s, Amersi was seeking to organise a telecoms fund. Hatt thought it could potentially finance his take-private plan. He recalls meeting Amersi in the second half of 2000 at his Park Avenue flat in Manhattan, "a rather dark apartment filled with very rich furnishings".

[8] "Mohamed understood a lot about Russian telecom," Hatt said. "If we're going to discuss British politics, we're not going to spend a lot of time discussing who the prime minister is. We know who the prime minister is. And in the same way, that meeting with Mohamed to discuss telecoms in St Petersburg — you're not going to spend a lot of time talking about whether or not Leonid [Reiman] owns First National Holding. Because you know he does."

[9] Asked why he believes Amersi knew of Reiman's secret ownership, Hatt said they talked about how Reiman used frontmen to disguise his ownership of First National Holding.

[10] Another person with knowledge of the matter, who asked not to be named, corroborated Hatt's account. The take-private deal did not come to pass but five years later Amersi made his $4m helping First National Holding buy Metromedia out of PeterStar.

[11] Amersi said of his meeting with Hatt: "I cannot speculate on what Mr Hatt may have known at the time but, for my part, it is untrue that I was aware of Mr Reiman's concealed ownership of First National Holding, so I could not have possibly engaged in discussions about this."

[12] Amersi said that at the time of the PeterStar deal he believed First National Holding was owned by a Danish lawyer called Jeffrey Galmond. That is disputed by a third person who spoke to the Financial Times, who described meeting Amersi on a number of occasions before 2005.

[13] Amersi was "keen to help" Reiman secure accounts at a Swiss bank for an offshore company, the person said, and was looking for "friendly bankers" Reiman could trust. The offshore company was formally owned by Galmond but Galmond was acting as a front for Reiman, the person recalled Amersi explaining. The person, who spoke on condition of anonymity, added that Amersi gave assurances that the paperwork showing Galmond as the purported owner was "watertight".

[14] Amersi disputed this account. He recalls once introducing Galmond to a bank or "wealth manager". But he said: "It is complete nonsense that I said at these alleged 'series of meetings' that the companies were owned by Leonid Reiman and that Reiman was looking for 'friendly bankers he could trust'."

[15] Reiman declined to comment. He has previously denied secretly owning Russian telecoms assets. Galmond still insists that he was their true owner.

[16] In January 2005 — months before he made $4m from First National Holding — Amersi was appointed to the board of the Russian telecoms company MegaFon. A legal fight between Reiman's faction and the oligarch Mikhail Fridman had broken out over a disputed MegaFon stake. It had led to news reports in the Wall Street Journal and the FT about allegations that Reiman secretly owned telecoms assets through First National Holding. Despite being on the board of the company at the centre of the fight, Amersi has said he was not aware even of rumours about Reiman's hidden interests.

[17] Amersi said he did serve as a messenger between Fridman and Galmond but "knew nothing" about Galmond being a front for Reiman. He also said he met Reiman himself to

discuss the dispute but was unaware he had an interest in it beyond his role as Putin's telecoms minister.

[18] Amersi is now fighting a legal battle against former Conservative MP Charlotte Leslie, which has cost him £300,000 in legal fees. Last year she wrote memos raising questions about his past business dealings after learning of his plans to start a rival to the Tory Middle East group she runs.

[19] Two people with knowledge of the matter say Leslie was warned that she risked facing legal action by Fridman, the oligarch she had mentioned in the memos she wrote on Amersi.

[20] But Fridman rejected any suggestion that he had sanctioned any warning that he would bring legal action against Leslie. His spokesperson said: "Mr Fridman has had no relationship with Mr Amersi for 15 years. He was not aware of these allegations, finds them deeply offensive and categorically denies any involvement in any threats of legal action against Ms Leslie."

[21] The origin of the warning is unclear. Amersi said he had told Lord David Hunt, the Tory peer seeking to mediate in the dispute: "It's much better to keep third parties out of all this correspondence and out of the memos that Charlotte is writing because it will invite trouble."

[22] But describing to the FT his conversation with Hunt, Amersi added: "I'm not going to lie to you, I'm not going to make something up. What I'm saying to you is, I never used the word 'Fridman'." Amersi's lawyers at Carter-Ruck said any suggestion Amersi had threatened that Fridman might take legal action against Leslie would be false and defamatory of their client.

[23] Hunt said: "Discussions with a mediator are not only confidential but they are privileged."

[24] Asked whether she had received such a warning, Leslie said: "We would very much like to help you in confirming the suggestions you are making. However, we have been participating in a quasi-legal process which confers on its participants a duty of confidentiality."

[25] The Conservatives did not comment on the dispute but said: "Donations to the Conservative party are received in good faith. They are properly and transparently declared to the Electoral Commission, published by them, and comply fully with the law."

**(3) The Mail Article: *Daily Mail* – 2 August 2021**

[1] … As a result of an internal row over Amersi's plans to reshape Tory relations with the Middle East, some within the party asked questions about his past business practises (sic).

[2] Where did his fortune come from exactly, and how? What were his links to Russia and the hostile Iranian regime?

[3] Amersi was outraged. First he began legal action against former MP Charlotte Leslie over memos she allegedly wrote and circulated, containing the allegations.

[4] He says he is seeking full disclosure of relevant documents before he decides whether to sue her for libel.

[5] Now his ire is also being directed at Elliot and other senior figures at Tory HQ.

…

[6] Amersi has hosted and been hosted by Prince Charles at a number of events since and given more than £1million to his charities. In 2015, he also hosted a polo match in which Prince Harry played.

[7] Elliot saw other opportunities for Amersi's money, too.

[8] He was 'seeking donations from me and Nadia for the Conservative party even before he became chair,' said the tycoon.

[9] The register shows that the first large donation – £215,000 – was made by Ms Rodicheva in June 2017, during Theresa May's embattled premiership.

[10] The politician did not forget her benefactor. In 2019 she paid tribute to him at the opening of the Oxford University lecture theatre named in his honour after he paid for its refurbishment.

[11] In his own address Amersi said: 'You begin by learning how to make money. Then how to hang on to it. And then finally how to give it away.'

[12] But where did the money come from? This question began to be asked in certain Tory circles after a new initiative was announced.

[13] This time, rather than simply give money Amersi would head up a new body called the Conservative Friends of the Middle East and North Africa (Comena).

[14] It would exist to oversee the party's relations with the influential region's powerbrokers.

[15] Amersi told the Mail that he had been approached by Central Office to set up such an affiliate in February 2020.

[16] He said he had done business in 21 of the 22 countries in the region and had lived in two of them.

[17] So far Amersi has registered Comena as a private company, with himself as sole shareholder.

[18] He is seeking official affiliation to the Conservative Party and says he will jointly meet the £500,000 per annum costs, along with another major Tory donor.

[19] But there is another Tory group which has occupied this role since 1980: The Conservative Middle East Council (CMEC).

[20] This has been run since 2017 by Charlotte Leslie. Sir Nicholas Soames, the former MP, is CMEC's honorary chairman.

[21] The Conservative-Middle East Council (CMEC) has been run since 2017 by Charlotte Leslie... Sir Nicholas Soames..., the former MP, is CMEC's honorary chairman.

[22] In 2019, CMEC ceased to be formally affiliated with the Tory party, allowing it to accept non-Conservatives as members and seek wider funding.

[23] At least two memos questioning Amersi's business dealings and loyalties were reportedly sent by Leslie to Soames. They were also seen by Elliot and eventually by the subject himself.

[24] One of the transactions questioned in the memo was the sale in 2005 of the Russian communications company, PeterStar, to a Luxembourg-based conglomerate. Amersi was paid $4million for working on the deal.

[25] It later emerged that Leonid Reiman, then Putin's telecoms minister, secretly controlled the Luxembourg company.

[26] It was alleged in the memo – and has been repeated in the financial press – that Amersi knew of Reiman's ownership at the time.

[27] Last night he absolutely denied this and said all due diligences had been carried out. None had revealed Reiman's hidden connections.

[28] Amersi told the Mail: 'They say (in the memos) that I have made my money in Russia in dodgy circumstances and on behalf of the Russian state I am taking over an important asset of British Middle Eastern diplomacy. They have also questioned my connections with Iran, a hostile state.

[29] 'If I have done anything wrong in life I am very happy to accept it. But I have done nothing wrong. All of the transactions mentioned were carried out in a legitimate manner and with regulatory approval. Nothing hidden, nothing sinister, nothing I am ashamed of.

[30] 'This is just a vicious attempt by Nicholas Soames and Charlotte Leslie, supported by some Arab states lobbying behind the scenes to make me appear not fit for purpose for this position.

[31] 'I find myself wasting my time and my money over this. I have retired from business. I do not need any (political) favours or permissions to build.

[32] 'There is nothing in it for me. The party approached me and asked me to set up an affiliate which had widespread support from senior figures.

[33] 'But when (CMEC) found out they thought ''woah, our franchise is going to be hit hard''. They took umbrage and Leslie decided she would stop this from happening and so composed an anonymous memo and sent it to 16 parliamentarians, the security services and four members of the Arab diplomatic corps.'

[34] '(Comena) is not my initiative, but a joint initiative,' Amersi adds. 'I was told (by Central office) that they wanted me to form Comena because the previous Mid East friendship group had disaffiliated. That is why I'm involved.'

[35] He said he had not sued Soames only because of his 'distinguished ancestry' (his grandfather was Winston Churchill).

[36] Amersi told the Mail he wanted to apologise to the Prince of Wales for him being drawn into the row.

[37] 'My intention was never to embarrass the Royal Family and particularly the Prince of Wales,' he said.

[38] ‘I have had the privilege of meeting him and serving him on a number of bodies. I have the greatest respect for him and have witnessed his work first hand round the world. I am sorry he has been dragged into this inadvertently.’

…

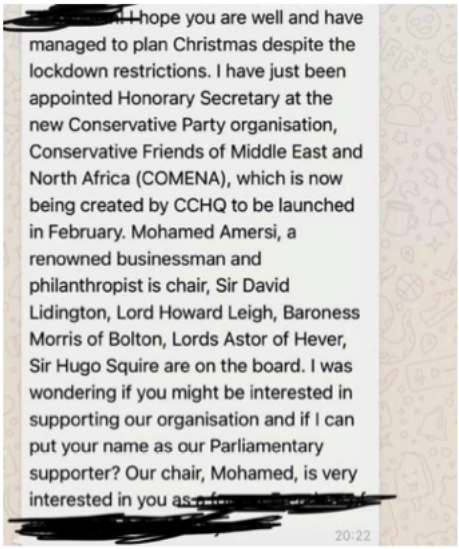
**Annex 2 – Document 14**

(Hypertext links in the original document shown underlined. Irrelevant parts of the document referring to third parties have been removed)

IN CONFIDENCE

## What is happening:

**Mohamad Amersi is attempting to set up 'Conservative Friends of The Middle East and North Africa' ('COMENA'). He has made himself Chair and lined up a Russian woman called Ms Ilma Bogdan to run it. Ilma is a graduate of the Russian Foreign Office-run university. The Moscow State Institute of International Relations. Some of their claims about their nascent organisation do not appear to be supported by fact.**




*1redacted recent text from Ms.Bogdan to an MP*

Mr Amersi says CCHQ has asked him to set up 'COMENA'. Ilma Bogdan, in a text to an MP, says COMENA has been "created by CCHQ". She claims it has a board which includes parliamentarians and ex-parliamentarians. **CMEC's Director approached one of the people named in the text as 'on the board'. They had <u>not</u> agreed to be 'on the board'.** She understands that CCHQ did not 'ask' him to set this up, and that this is not Mr Amersi's first attempt to do so: he has approached the Conservative Party on at least one previous occasion and the Party Board apparently turned him down.

In March and again in September 2020, Mr Amersi approached CMEC's Director, offering money if she agreed to him being appointed CMEC's chairman. For obvious reasons this offer was politely declined. Mr Amersi said he had given enough money to the party and felt he deserved either a knighthood or a peerage and that running a 'friends of' group would help him achieve this.

CMEC's Director suggested he could be introduced and involved in CMEC in other ways and offered him the opportunity to be the main sponsor of the prestigious annual PM's Gala Lunch. Mr Amersi rejected this offer. He told her that he had been considering setting up a similar organisation to CMEC and had a young woman in mind who would run it. However, he told her that he would not set up this organisation.

Mr. Amersi promised he would keep in touch and notify **CMEC's Director** if he changed his mind on setting up an organisation and if he did he would work collaboratively with CMEC. **He did not honour this promise. CMEC's Director was notified that Mr Amersi was trying to set up 'COMENA' by an 'insider', then a concerned MP, then a perturbed ambassador.**

**Who is trying to set up 'COMENA'?**

1. **Mohamad Amersi - Proposed Chairman**

**Mr. Amersi and his Russian wife, Nadeja Roditcheva/ Nadezda Rodicheva have between them donated 750K to the Conservatives since Summer 2017.**

- **New Donor:** Mr. Amersi is a recent Conservative Party donor (£500k since 2018). He donated to main Conservative leadership candidates, and to the Rochdale and Central Devon Conservative Associations.
- His wife is Russian. Prior to Mr. Amersi's donating, his wife, was a donor to the party. (£268,000 between June 2017 and March 2018)

- **Origin and contacts:** Mr. Amersi says he is of Iranian heritage and claims to travel frequently to Iran and hold networks of influence in Iran. However, multiple sources within Iran claim he is not originally Iranian and he is unknown to them. He has reportedly spent time in Russia. Details are unclear.

- **Off-Shore Philanthropic Foundation:** Mr. Amersi is generally listed as a philanthropist: Founder of The Amersi Foundation. The Foundation is not a UK Charity, it was registered in The Bahamas in 2012.

- **Business in UAE:** His country of residence is listed as the UAE on Companies House. His main business. Inclusive Ventures Ltd was dissolved.in the UK n December 2017 (just before his wife stopped donating to the party and he started) and appears to be now registered in Dubai.

- **PPE Contract:** A government minister rang the CMEC Director on 2nd September to press the case for Mr. Amersi to be made Chairman of CMEC. This minister had had no prior involvement in CMEC. To support his demand, he said he and Mr. Amersi had been involved in a PPE contract which involved equipment Mr. Amersi sourced from the UAE. The Minister said that the Director should appoint Mr. Amersi Chairman because he would be a generous benefactor to CMEC. If necessary, she

can provide a text message from the minister, in support of this account.

- The minister demanded that she meet with Mr. Amersi. Subsequently, on 25th September, she met Mr. Amersi, near her home. During this meeting, he confirmed he had acquired PPE from the UAE "free of charge" as a gift. He said he believed that this was another demonstration as to why he deserved a peerage or knighthood.

2. **Ilma Bogdan: 'COMENA Honorary Secretary'**
   **…** [text omitted]

**…**

**Website similarities:**
The websites of The Amersi Foundation, Terrestres Servo Coronas, and Paul Borrow-Longain share a resemblance. (See next page.) [omitted]

**Annex 3 – Table of publications complained of**

| Publication | Date | Document(s) | Publishee |
|---|---|---|---|
| 1 | >21 Dec 2020 | 1 | Person B<br>(National Security Individual) |
| 2 | c.21 Dec 2020 | 2 | Person C<br>(National Security Individual) |
| 3 | 26 Dec 2020 | 3 | David Lidington |
| 4 | 4 Jan 2020 | 4 | David Lidington |
| 5 | 29 Dec 2020 | 5 | Sir Julian Lewis |
| 6 | 5 Jan 2021 | 4 | Sir Julian Lewis |
| 7 | 29 Dec 2020 | 6 & 7 | Person E<br>(National Security Individual) |
| 8 | 30 Dec 2020 | 8 | Person G<br>(Conservative MP) |
| 9 | 30 Dec 2020 | 9 | Crispin Blunt |
| 10 | 3 Jan 2021 | 10 & 11 | Sir Alan Duncan |
| 11 | 4 Jan 2021 | 12 & 13 | Ben Elliot |
| 12 | 5 Jan 2021 | 4 & 13 | Person A<br>(Former MP) |
| 13 | Early Jan 2021 | 13 | Person H<br>(Former MP) |
| 14 | Early Jan 2021 | 14 & 16 | Person D<br>(now confirmed to be His Excellency Sheikh Fawaz bin Mohamed bin Khalifa Al Khalifa) |

**Annex 4 – Extracts from the draft Amended Particulars of Claim**

[This Annex contains extracts from the draft Amended Particulars of Claim (using the paragraph numbers in the original document) with explanatory words in square brackets. Where "[redacted]" appears, it indicates that the words in the underlying document were redacted]

"…

5. From late December 2020 to mid-January 2021 the First Defendant published a series of documents to a number of influential individuals which contained allegations highly defamatory of the Claimant at common law and which have caused him and/or are likely to cause him serious reputational harm.

…

**Publication to Sir David Lidington [Publications 3 and 4]**

…

21. In an email dated 9 January 2021 sent to an unknown individual at Conservative Campaign Headquarters (CCHQ) with the subject heading "COMENA and CMEC" (pleaded in more detail at paragraph 99 below) Sir David stated that the First Defendant had *"made a number of allegations about [the Claimant's] background and conduct which, if true, would cause considerable concern"*. The content of that email, and the fact that Sir David considered the issues raised by Documents 3 and 4 to be of such importance, gravity and reliability that they merited the involvement of CCHQ, will be relied on as demonstrating the serious harm caused to the reputation of the Claimant in the eyes of Sir David by the publication to him of Documents 3 and 4. That email will also be relied on as demonstrating the likely reaction to the allegations contained within Documents 3 and 4 (and the same or similar allegations contained within the other Documents) by other reasonable readers of those Documents and thus the serious harm caused to the reputation of the Claimant in their eyes by any such publication (whether directly, by republication, or by percolation). The Claimant's case on the serious reputational harm caused to him and likely to be caused to him by the Defendants' publication to Sir David is further particularised at paragraphs 99 - 127 below.

…

**Publication to [Sir] Julian Lewis [Publications 5 and 6]**

…

28A. The fact that Mr Lewis (sic) considered Documents 5 and 4 and the allegations contained within them of sufficient importance, gravity and reliability that they merited onward transmission to the United Kingdom security services will be relied on by the Claimant as demonstrating the serious harm caused to his reputation in the eyes of Mr Lewis (sic). That fact will also be relied on as demonstrating the likely reaction to the allegations contained within Documents 5 and 4 (and the same or similar allegations contained within the other Documents) by other reasonable readers of those Documents and thus the serious harm caused to the reputation of the Claimant in their eyes by such publication (whether directly, by republication, or by percolation). The Claimant's case on the serious reputational harm caused to him and likely to be caused to him by the publication to Mr Lewis pleaded above is further particularised at paragraphs 104 – 127 below.

…

**Publication to Crispin Blunt [Publication 9]**

…

41.1. In reply to the First Defendant's email of 30 December 2020 Mr Blunt wrote the following:

> "Plainly a total bounder! With some very odd fish for company. More than enough here to kill it off I think."

41.2. The First Defendant replied the next day as follows:

> "Thanks Crispin. Good to know I'm not alone in feeling uneasy about this. Apparently Johnnie Astor & Trish are supportive."

41.3 Mr Blunt then replied as follows:

> "Supportive of you or this Melmotte figure?"

41.4 Mr Blunt's description of the Claimant as a *"total bounder"* and a *"Melmotte figure"* (a reference to a dishonest and corrupt financier with a mysterious past in Anthony Trollope's novel *"The Way We Live Now"*) will be relied on as demonstrating the serious harm caused to the reputation of the Claimant in the eyes of Mr Blunt by the publication to him of Document 9. It will also be relied on demonstrating the likely reaction to the allegations contained within Document 9 (and the same or similar allegations contained within the other Documents) by other reasonable readers of those Documents and thus the serious harm caused to the reputation of the Claimant in their eyes by such publication (whether directly, by republication, or by percolation). The Claimant's case on the serious reputational harm caused to him and likely to be caused to him by the publication to Mr Blunt is further particularised at paragraphs 104 – 127 below.

**Publication to Sir Alan Duncan [Publication 10]**

…

45. The Claimant and Sir Alan spoke in a telephone conversation around 11am on 4 January 2021 on the subject of COMENA, following an email exchange on 2 and 3 January 2021. During that conversation Sir Alan was unfriendly to the Claimant regarding amongst other things his motives in setting up COMENA and his alleged misrepresentation of which people supported COMENA. The inference will be invited that this unfriendliness was a consequence of the publication by the Defendants to Sir Alan of Documents 10 and 11 the day before, demonstrating the serious harm caused to the Claimant's reputation in the eyes of Sir Alan by the statements contained within those documents. The Claimant's case on the serious reputational harm caused to him and likely to be caused to him by the publication to Sir Alan pleaded above is further particularised at paragraphs 104 – 127 below.

**Publication to Ben Elliot [Publication 11]**

…

47A. The covering email from Sir Nicholas to Ben Elliot of 4 January at 9:44 included the following words:

> "My dear Ben thank you for returning my call and for listening so patiently to this potentially worrying situation[.] I WRITE in my capacity as the honorary president of

CMEC. Charlotte Leslie who is the director got in touch with me just before Christmas about this issue and it seems to me is serious enough to warrant urgent attention at the highest levels of the party organisation … In view of the seriousness of this I asked Charlotte Leslie to lay out the details of the background and some further information on the players concerned."

…

49. In support of his case that the publication of Documents 13 and 14 to Ben Elliot (and the further republication of those Documents and the percolation of the allegations contained within them) has caused him and is likely to cause him serious reputational harm the Claimant will rely on the words of Sir Nicholas quoted above at paragraph 47A which reflect the reaction of a reasonable person to the gravity of the allegations contained within those Documents. The Claimant's case on the serious reputational harm caused to him and likely to be caused to him by the publication to Ben Elliot pleaded above is further particularised at paragraphs 84 – 89, 92 – 103 and 108 - 127 below.

…

**Publication to Sheikh Fawaz [Publication 14]**

…

60. On a date unknown in early January 2021 ~~Person D~~ Sheikh Fawaz forwarded ~~one or all of~~ Documents 14 ~~to~~ and 16 ~~which had been sent to him by the First Defendant~~ ("the Fawaz Documents") to four other Ambassadors being the Ambassadors to the UK of Saudi Arabia, Egypt, the UAE and Kuwait. The latter then ~~acts~~ acted as Dean of the Council of Arab Ambassadors. The republication by Sheikh Fawaz of Document 14 to those four Ambassadors was (as the First Defendant has admitted) with her express authorisation, following a request by Sheikh Fawaz. In support of his case that Document 16 was also forwarded by Sheikh Fawaz to those four Ambassadors the Claimant will rely on (a) the Second Defendant's statement to that effect in its then solicitors' letter dated 14 May 2021 (accompanying the 14 May disclosure) (b) the fact that Sheikh Fawaz considered it necessary to forward Document 14 to those four Ambassadors and the similarity of the issues raised by Documents 14 and 16 (c) the facts that Document 16 was not marked, as Document 14 had been, "IN CONFIDENCE" and was not stated in any covering exchange to be confidential and (d) the fact that the First Defendant had given her permission to Sheikh Fawaz to forward Document 14.

60A. That republication of the Fawaz Documents to those four Ambassadors was foreseen and/or intended by the First Defendant which foresight and/or intention is imputed to the Second Defendant and the Defendants are jointly responsible for those republications (and such further republications that occurred, these also being foreseen and/or intended) and/or are responsible for the reputational harm caused to the Claimant by those republications and further republications. In support of his case that the Defendants are responsible for the reputational harm caused to him by the republication by Sheikh Fawaz of Document 16 to those four Ambassadors the Claimant will rely on the fact that the First Defendant gave Sheikh Fawaz express authorisation to republish Document 14 and subsequently published Document 16 to him without describing the document as confidential or placing any restriction on its use and in the knowledge that Sheikh Fawaz considered it important that those four Ambassadors know the content of Document 14 and would likely therefore take the same view in relation to Document 16, which was marked "Further information on Mohamad Amersi".

60B. The Claimant will rely in support of his case that the publication by the Defendants of the Fawaz Documents has caused him serious reputational harm and is likely to do so on the fact that Sheikh Fawaz considered that the Fawaz Documents contained allegations of sufficient importance, gravity and reliability that it was necessary for the Ambassadors to the UK of Saudi Arabia, Egypt, the UAE and Kuwait to see those documents.

60C. The Claimant will rely in further support of his case that the publication by the Defendants of the Fawaz Documents has caused him serious reputational harm and is likely to do so on paragraphs 69 – 83, 86 – 91 and 108 – 127 below.

…

**Serious harm**

[Paragraph 64 is quoted in the main judgment – see [35]]

65. The Claimant will in addition rely on the following facts and matters in relation to the serious harm caused to his reputation by the publications complained of in paragraphs 16 – 21 (Appendices 3 and 4 including Documents 3 and 4), 22 – 28 (Appendices 5 and 6 including Documents 5 and 4), 38 – 41 (Appendix 9, including Document 9), 42 – 45 (Appendix 10, including Document 10), 46 – 49 (Appendix 11, including Documents 12 and 13) and 56 – 60 (Appendix 14, including Documents 14 and 16) above (i.e. the claims which are not stayed by Order of Nicklin J dated 27 June 2022).

66. It is apparent that the Documents listed within paragraph 65 above were being amended by the First Defendant throughout late December 2020 to early January 2021 to add or revise the allegations made against the Claimant, and further Documents were created (such as the covering letter to Julian Lewis contained at the beginning of Document 5).

67. In those circumstances the Claimant has pleaded a set of meanings for the publication to each recipient. However, as is apparent from those pleaded meanings, there are a number of meanings pleaded which are common to some or all of those publications. By way of example the meaning pleaded above at paragraph 17.3 above in relation to Document 3 published to Sir David Lidington, namely (in summary) that the Claimant had acted in bad by failing to honour a promise to the First Defendant, is also pleaded in relation to the other publications (at paragraphs 23.5, 40.4, 44.4, 48.4 and 58.4 above). This is because the same, or substantially the same statement bearing that meaning appears in each of the publications set out at paragraph 65 above. The Claimant will rely on the cumulative reputational harm caused, or likely to be caused by the publication of each such statement to the identified individuals (and on the cumulative reputational harm caused, or likely to be caused by the natural and foreseeable onward republication and percolation of each).

**Serious reputational damage suffered within and as a result of publication within the diplomatic community**

68. Not used

69. The allegations concerning the Claimant contained within the Fawaz Documents were in early January 2021 the subject of discussion during meetings of the circa 22 member Council of Arab Ambassadors, as part of deliberations concerning CMEC and COMENA, and concerns were raised in connection with the suitability of the Claimant to lead COMENA. The inference will be invited that these Ambassadors discussed these concerns with numerous persons within the jurisdiction as part of their diplomatic functions.

70. During those meetings some of the Arab Ambassadors suggested that concerns about the Claimant's background should be relayed to the Conservative Party. Although it was decided that no letter should be written on behalf of the Council of Arab Ambassadors Sheikh Fawaz did subsequently write to Ben Elliot (see paragraph 72 below).

71. The Ambassador to the UK of the UAE told the Claimant during a phone call in early January 2021 and then again at a meeting between the two on 7 January 2021 that he had seen documentation containing allegations against the Claimant. During the phone call, the UAE Ambassador also informed the Claimant that the Ambassadors to the UK of Bahrain, Kuwait, Egypt and Saudi Arabia were also aware of such documentation. The inference will be invited that he was referring to the Fawaz Documents. The UAE Ambassador told the Claimant during these conversations that he had seen negative remarks about him and during the meeting he said that the content of what he had seen was "not good" and would not be helpful to the Claimant's reputation. As a result, and in order to mitigate the damage which was being caused to his reputation, the Claimant provided the UAE Ambassador with the MDR Letter (as defined in paragraph 98 below). The UAE Ambassador asked the Claimant's permission to circulate the MDR letter to other Ambassadors, which (for the same reason) he gave.

71A. On 12 January 2021 Sheikh Fawaz wrote to Ben Elliot (copied to Sir Nicholas Soames) purportedly on behalf of not only of the Kingdom of Bahrain but also the *"Arab Diplomatic Corps in the UK"* expressing his *"concern regarding reports that a party donor, Mohamed Amersi, is setting up an alternative Conservative Middle East Council by the name of 'The Conservative Friends of the Middle East and North Africa', called COMENA"* and referring to the *"sentiment of many colleagues"* who were said to have *"concerns regarding the formation of such a group"*. The letter referred to *"varied and conflicting accounts of the Conservative party's backing of 'COMENA'"*, which it is apparent from the context is at least in part a reference to the Fawaz Documents and said that the *"the Arab community in London"* had found such accounts *"disturbing"*.

72. During a meeting with the Ambassadors to the UK of Jordan, Saudi Arabia and Oman on 28 January 2021 and two subsequent meetings each Ambassador told the Claimant that he had seen documentation containing allegations concerning the Claimant. Again, the inference will be invited that each was referring to the Fawaz Documents. The Head of the Palestinian Mission to the UK told the Claimant during a telephone call in early January 2021, and at a meeting on 28 January 2021, that he had seen or received a document which it is inferred was one of the Fawaz Documents.

73. As a result of reading the allegations within the Fawaz Documents the Kuwaiti Ambassador requested Lord (John) Astor to write to him providing background information concerning the Claimant and COMENA. The letter sent by Lord Astor was then forwarded to the (then) Egyptian Ambassador.

74. The Claimant was informed by the (then) Egyptian Ambassador during a meeting between the two on 29 April 2021 that he was in receipt of documentation containing allegations against the Claimant. Again the inference will be invited that the Ambassador was referring to the Fawaz Documents. The Ambassador informed the Claimant that it was important for him to meet Sheikh Fawaz, so that the Claimant could explain his background and in order to discuss COMENA.

75. The Claimant was informed by the Kuwaiti Ambassador on 5 May 2021 that he was in receipt of "writings" about the Claimant. The inference will be invited that the Ambassador

was referring to the Fawaz Documents. The Kuwaiti Ambassador also informed the Claimant that it was important for him to meet with Sheikh Fawaz.

76. On 11 May 2021 the Claimant attended a meeting with Sheikh Fawaz which had been arranged by the Kuwaiti Ambassador. Sheikh Fawaz informed him that he was in receipt of "several writings" from the First Defendant which he had read. That was a reference to the Fawaz Documents.

77. During that meeting the Claimant was asked by Sheikh Fawaz about the work undertaken by the iShia foundation, a charity which the Claimant chaired and which he had organised with the Milani family. The Claimant explained that the main purpose of the charity was to ensure greater alignment and unity of all Islamic sects by extolling the edicts of Shia Islamic scholars that preached unity. The Claimant told Sheikh Fawaz that the charity's lawyers were Farrer & Co.

78. Within around two weeks of this meeting the Milani family received harassing telephone calls asking questions about the Claimant and the work of the iShia foundation. Farrer & Co were also telephoned by anonymous individuals attempting to find out information on the Claimant and the charity, as was the Claimant. As a result of the pressure and stress created by this unwanted contact the Milani family instructed the Claimant to wind up the charity, which he reluctantly did. The inference will be invited that this unwanted contact was prompted by the publication to Sheikh Fawaz of the Fawaz Documents.

79. On 30 May 2021 the Claimant was asked by Lord Lamont to arrange a meeting between him and the Milani family. The Milanis declined the Claimant's request to that effect on the grounds that they did not wish to become involved in any other political matters. The inference will be invited that this reluctance was a result of the matters pleaded at paragraphs 77 and 78 above which were themselves the result of the publication of the Fawaz Documents to Sheikh Fawaz by the Defendants.

80. [Not used]

81. Shortly after the publication of the Documents by the Defendants, at the first meetings attended by the Claimant at various embassies of Arab Council countries, either the Ambassador was accompanied by "Political Directors" or the Claimant was subject to a pre-meeting interview where questions were asked about his activities in Russia and visits to Iran and whether he had made his money legally. Before the publication of the Documents the Claimant had been able to meet such Ambassadors one-on-one at short notice and had never encountered such scrutiny before. The inference will be invited that this was prompted by the publication of the Fawaz Documents to the Arab Council Ambassadors.

82. A close friend of the Claimant, Safa Al Hashem, the first female member of the Kuwaiti Parliament, was approached by the Kuwaiti Ambassador (to whom she had first introduced the Claimant) on calls between them between 22 April 2021 and 1 June 2021. The Kuwaiti Ambassador told her that he was embarrassed at having been introduced to the Claimant as he had a very bad reputation, and was not as clean as he seemed to be, and that he was very close to the Russian regime and an Iranian stooge. By reason of what was said by the Kuwaiti Ambassador, the inference will be invited that this conversation was as a consequence of the publication to him of the Fawaz Documents.

83. A good friend of the Claimant from Oman (a distant relative of the Omani Ambassador to the UK and who had introduced the Claimant to that Ambassador) told the Claimant in around late February or early March 2021 that he had heard that the Claimant was in *"some*

*bother"* and that questions had been raised about his past business dealings and other allegations raised in the Documents. The Claimant's friend asked him to speak to the Omani Ambassador to reassure him. However a proposed meeting around the 9 May 2021 between the Claimant and the foreign minister of Oman who was visiting the UK did not take place. The inference will be invited that this was a result of the publication of the Fawaz Documents to the Omani Ambassador and the subsequent percolation of the allegations within the Documents within the Omani government.

**Serious reputational damage suffered within the executive leadership and staff of the Conservative Party**

84. On 1 July 2020, Mike Chattley, Head of Fundraising stated that the Claimant *"passed our compliance and is a well-connected worldwide man."* In order to further assess whether the Claimant was an appropriate person from whom to accept donations to the Conservative Party, the Conservative Research Department ("CRD") of the Conservative Party carried out background checks on the Claimant. The CRD concluded, in a document sent to 10 Downing Street on 8 July 2020, that the Claimant was *"Low risk".*

85. In August 2020 a further *"donor check"* was carried out into the Claimant by the Conservative Party which concluded *"Fine to proceed with minor concerns"*. The "*minor concerns*" were described as follows: *"For future events, in order to prevent accusations of undue influence, recommend that interaction with Ministers responsible for telecommunication infrastructure is kept to a minimum."*

86. The Claimant first became aware that a document containing serious allegations against him was circulating within the diplomatic community on 2 January 2020 [(sic) the date is 2021 (see judgment [126])], when he was provided with a copy of Document 14 by Mohamed Mansour, an Egyptian national who had by then consented to becoming Chairman of COMENA. It was immediately apparent to the Claimant from its content that Document 14 was likely to have been written and published by the First Defendant, in an attempt to damage the Claimant and COMENA to the benefit of her and CMEC.

87. Document 14 contained seriously misleading allegations concerning the Claimant's dealings with the Conservative party and CCHQ, including the false allegation that the Party Board had already turned down an attempt by the Claimant to set up a COMENA-style group, on at least one previous occasion. It was immediately apparent to the Claimant that the allegations made in Document 14 were likely to become known to the Conservative Party and CCHQ, if they had not already, whether by direct publication by the Defendants or their agents, or by republication by other direct recipients.

88. The Claimant therefore took immediate action in an attempt to mitigate damage to his reputation caused by such publication, and pursuant to a moral duty he correctly perceived that he was under to inform the Conservative Party of this attack on him and on the formation of COMENA. He sent Document 14 to Ben Elliot on 2 January 2020 (sic) [the date was 2021 – see judgment [110]] by WhatsApp at 15:03 with the accompanying words:

> "Happy new year my friend. I know you said I shouldn't disturb you before the 4th but this is out there. Not causing any damage but obviously a little awkward. Let me if you want to chat about it; otherwise, we now have 130 supporters, 100 needed and going very strong!!!"

89. The Claimant's reference to the publication *"Not causing any damage but obviously a little awkward"* was borne out of his limited knowledge at that date as to how far the Defendants'

allegations had circulated, his awareness of only one document being in circulation (namely Document 14) and a desire to downplay the seriousness of the false allegations contained within Document 14 in the eyes of Mr Elliot. That WhatsApp message also attached the latest "Proof of Concept" for COMENA.

90. As the allegations within Document 14 directly concerned the creation of COMENA, the Claimant correctly considered that he was under a moral duty to inform members of the putative COMENA Board (ie those who had indicated a willingness to serve on its Board once it was established) of the fact and nature of the allegations. He therefore sent a copy of Document 14 to Baroness Trish Morris, Mark Garnier MP and Hugo Swire MP on 2 January 2021 at 13:57, with the accompanying words:

> "This is doing the rounds. I am minded to get my lawyers on top of this. If we don't nip it in the bud. It's likely to continue……let me know what you think?"

91. On 2 January 2021 at 17:33 Mark Garnier MP sent an email to an "Amanda" at CCHQ (assumed to be Amanda Milling, Co-Chair of the Party with Ben Elliot) to which he attached Document 14 and including the following:

> "I did want to bring to your attention some negative reactions from CMEC. I have attached a copy of a note being circulated by Charlotte Leslie that has been passed to us at COMENA. As you can see it is libellous to COMENA and Mohamed, and has implications for the Conservative Party, and ministers too. Its unpleasant, as you can see, and inaccurate. This will be dealt with in the appropriate fashion, the intention being to stop this action by Charlotte in as sensible a manner as possible.
>
> …
>
> I can't see any reason why you need to be drawn into this, but I didn't want you to be blindsided by it if it came up."

92. The Claimant's concern that the Defendants would send Document 14, or something containing similar allegations to CCHQ was demonstrated to be well founded when (as pleaded above at paragraph 46) Sir Nicholas Soames sent Documents 12 and 13 to Ben Elliot by email dated 4 January 2021 timed at 9:44. The inference will be invited that Ben Elliot further circulated those Documents within CCHQ.

93. On 4 Jan 2021 at 21:15 Mark Garnier MP sent a further copy of Document 14 to the email address chairman@conservatives.com, with the subject heading "CMEC document as discussed" and the words:

> "As promised, the note [redacted] is passing around middle eastern embassies."

94. The inference will be invited (from the opening words "As promised") that this email was in response to a request by Ben Elliot or Amanda Milling (or someone on their behalf) to see a copy of the document which Mr Garnier had in his possession, prompted by the email from Sir Nicholas earlier in the day.

95. Mr Garnier's email was forwarded on 5 January 2021 to at least 4 other "conservatives.com" email addresses, the recipients of which are unknown to the Claimant (as they were redacted).

96. It is apparent that the Claimant and Mr Garnier's attempts to prevent the Defendants' allegations causing the Claimant reputational harm were unsuccessful, as on 7 January 2020

in an email timed at 9:44 an unidentified individual in CCHQ sent an email to two other unidentified individuals with words including:

> "I would like a proper report on Amersi himself as a due and proper person-we might have to speak to number ten to ask their friends for some info."

The reference to the "friends" of "number ten" is inferred to be to persons with additional research resources available to government, over and above those available to the Conservative Party.

97. Another individual within CCHQ commenting (it is inferred on the Claimant and the First Defendant) in an email timed at 14:45 later that day:

> "They are both as bad as each other.
>
> Keen to have neither."

98. On 7 January 2021 Mishcon de Reya solicitors sent a letter to the First Defendant on behalf of the Claimant drawing attention to a number of the inaccuracies in Document 14 and seeking, amongst other things her confirmation as to whether she was the author ("the MDR Letter").

98A. On 7 January 2021 at 12.33, in an attempt to mitigate the damage being done by the Defendants' allegations and to inform Myles Stacey, who had been a key contact at CCHQ and who had made various introductions on behalf of the Claimant in connection with the establishment of COMENA, the Claimant sent the MDR Letter to Mr Stacey immediately followed by the message:

> "Call me before you do anything! Needless to say it's totally confidential!!!"

to which Mr Stacey immediately replied

> "Totally I haven't and won't share x"

The Claimant re-sent the MDR Letter to Mr Stacey on 8 January 2021 at 19:00.

98B. On 7 January 2021 at 13:41, in a further attempt to mitigate damage which he believed was being caused by the Defendants allegations, the Claimant sent the MDR Letter by email to Ben Elliot and Amanda Milling with the words:

> "Dear Ben & Amanda
>
> You are in receipt of an anonymised memo presumably authored and/or authorised and/or distributed by Charlotte Leslie/CMEC.
>
> Please find attached a response thereto by my Counsel."

99. On 9 January 2021 Sir David Lidington sent an email to an unknown individual at CCHQ with the subject heading: "COMENA and CMEC". In that email he referred to discussions with the Claimant in late December 2020 concerning his potential involvement in COMENA. His email then included the following:

> "Subsequently, [redacted] whom I obviously know as [redacted], called me.

[redacted] made a number of allegations about Mr Amersi's background and conduct which, if true, would cause considerable concern. [redacted] also said that her understanding was that the Board had not invited Mohamed to establish COMENA and that this was very much his personal initiative.

I now understand that solicitors' letters are being exchanged.

It would be helpful to understand exactly what the Party's position is on what seems to be developing into a nasty spat between different Conservatives."

100. Sir David's email referred to above was forwarded to another individual with a "conservatives.com" email address at 8:53 on 10 January 2021, with accompanying words which further indicated that the Claimant's attempt to mitigate the reputational damage being caused to him had not been successful, namely:

> "We need a proper report on Amersi and [redacted] and I think we should kick both into the very long grass and also instruct them both to down tools as the only loser in this is the party through no fault of its own."

101. On 10 January 2021 at 8:51 Sir David received a reply from the unidentified individual at CCHQ he had emailed the previous day, asking to speak. Sir David replied at 9:11 saying:

> "… I have seen details of the questions that [redacted] is posing about Mohamed – the sources for which appear to be press articles (asp Forbes). But I assume that [redacted] or others have supplied you with that material anyway."

102. A further internal request was made within CCHQ for a report on the Claimant on 11 January 2021 at 16:02 in an email which read:

> "Hi team,
>
> Have CRD ever done a check on him and if so can we do one please. [redacted] has asked for quite a deep dive."

102A. On 12 January 2021 at 17.44 the Claimant sent Document 14 and the MDR Letter to Mark Chisholm. Mr Chisholm is the son of Baroness Chisholm who was the Claimant's first point of contact within the Party after he had been given the go ahead to set up COMENA. She had asked the Claimant to keep her son "in the loop" on COMENA-related matters.

103. The continuing damage to the Claimant's reputation is further demonstrated by the fact that calls within the Conservative Party for checks on him continued through the Spring of 2021, with an unidentified individual asking the following of an unidentified individual with an email address "no10.gov.uk" and Tom Skinner, CCHQ Head of Operations, Visits and Events on 25 April 2021 in an email with the subject heading "Re: Mohamed Amersi Breakfast":

> "Can we get CRD to do some really thorough checks before we go any further, just check there's nothing that's going to surprise us eg any controversial PPE contracts, no links to potential bailouts, no close links to shady characters etc etc."

**Serious reputational damage suffered in the eyes of Parliamentarians and politicians**

104. As pleaded above at paragraphs 21 and 99, Sir David Lidington was of the view that the allegations made by the Defendants in Documents 3 and 4 *"would cause considerable concern"* if they were true.

104A. As pleaded above at paragraph 28A Julian Lewis's decision to forward the Documents published to him to the UK security services is inferred to demonstrate serious harm to the Claimant's reputation by the Documents published to him.

104B. As pleaded above at paragraphs 41.1 – 41.3 the view of the Claimant formed by Crispin Blunt having read Document 9 was that he was a *"total bounder"* and a *"Melmotte figure"*.

104C. As pleaded above at paragraph 45 Sir Alan Duncan's attitude to the Claimant when he spoke to him on 4 January 2021 is inferred to demonstrate serious harm to the Claimant's reputation by the Documents published to him.

104D. As pleaded above at paragraph 49 the wording of Sir Nicholas Soames' email of 4 January 2021 to Ben Elliot demonstrates that the content of the Documents he had seen had caused serious harm to the reputation of the Claimant in his eyes.

105. To the extent necessary the inference will also be invited that the Parliamentary direct publishees, namely Sir David Lidington, Julian Lewis, Sir Alan Duncan and Crispin Blunt, took a substantially similar view to that inferred in paragraphs 104 to 104D above and that the reputation of the Claimant suffered similar serious damage in the eyes of each.

106. Sir David Lidington, in addition to expressing an interest in becoming involved with COMENA, chairs the Royal United Services Institute (RUSI), an organisation which the Claimant had agreed with Sir David that he would become involved by offering financial support. Immediately following the publication of the Documents Sir David informed the Claimant that he no longer wanted him to contribute financially to RUSI or to be involved in any way given the Claimant's alleged Russian links. The inference will be invited that an operative cause of that decision was the allegations which had been made by the Defendants to Sir David about the Claimant.

106A. Contrary to Sir David's statement concerning RUSI, RUSI engaged with the Claimant about his becoming involved with it and agreed in principle on 1 July 2021 to accept a donation from the Amersi Foundation (which agreement in principle Sir David endorsed on 2 July 2021). That donation was not made as prior to disbursement, Sir David suspended it. Similarly, the Claimant was again requested by RUSI to disburse on 1 August 2021 (supported by Sir David) only for it to be again suspended due to the intervention of Sir David. Ultimately the donation was never made because RUSI never followed up. The Claimant asserts that these actions of Sir David in suspending the donation were contributed to by the publication to Sir David of Documents 3 and 4.

107. On 21 January 2021, and in a further attempt to mitigate the damage being caused to him, and at Sir David's express request, the Claimant sent Document 14 to Sir David along with the MDR Letter which drew attention to the inaccuracies in that document. Sir David asked the Claimant that his name should henceforth be placed in square brackets in any document indicating his potential involvement in COMENA (thus indicating that he no longer wished to be presented as unequivocally committed to COMENA).

108. The inference will be invited, by reason of the nature of the allegations within the documents and the appetite of Parliamentarians and those who work with them for gossip, particularly that involving potential political or financial scandal, that as a consequence of the Defendants' publication of the allegations about the Claimant to Sir David, Mr Lewis (sic), Sir Alan, Mr Blunt and Mr Elliot and Sheikh Fawaz, the allegations quickly percolated widely within Westminster and particularly amongst those connected with the Conservative Party and that those to whom the allegations percolated formed a similar view of the Claimant as had Sir David, Mr Lewis, Mr Blunt, Sir Alan and Sir Nicholas. The percolation of the allegations within the Fawaz Documents into Parliament will have been in part due to the impact of the All Party Parliamentary Groups ("APPGs") linking parliamentarians (from both Houses) to each of the Arab and MENA countries. The members of an APPG liaise on a regular basis with the Embassy and Ambassador of the country with which that group is concerned. Within the course of such liaison it is inferred that the allegations made by the Defendants against the Claimant would have been mentioned, and would have spread both within and outside the Conservative Party. The Claimant will rely on the following as indications of the soundness of that inference.

109. In early January 2021 Ronel Lehman, a Treasurer of the Conservative Party learnt (from a source unknown to the Claimant) that the First Defendant had published documents which he understood called into question the Claimant's bona fides and suitability to lead COMENA. The allegations as relayed to him shocked Mr Lehmann. The inference will be invited that such information came to Mr Lehmann as a result of one or more of the Defendants' publications complained of in these proceedings.

110. As a result Mr Lehmann contacted the Claimant. He asked the Claimant about the allegations and requested to see a copy of the Document which the Claimant had and the MDR Letter, which the Claimant provided him with. In addition Mr Lehmann was at around this time compelled to answer questions concerning the Defendants' allegations from many associates to whom he had introduced the Claimant.

111. Mr Lehmann had wished to invite the Claimant to become the new Chairman of the Advisory Board of his company Finito Education Limited. However he has chosen not to, out of fear of the impact which such appointment would have on his company's business reputation.

112. Lord Rami Ranger is a Conservative Peer and longstanding acquaintance of the Claimant, whom the Claimant had asked for assistance in relation to the setting up of COMENA. In early January 2021 Lord Ranger was told by Parliamentary colleagues and Conservative Party officials of the contents of the Documents which had been published by the Defendants. He told the Claimant that he was of the view that they were highly reputationally damaging to the Claimant. The inference will be invited that such information came to Lord Ranger as a result of one or more of the Defendants' publications complained of in these proceedings.

113. In early 2021 the Claimant had been planning with Lord Astor, a Conservative peer, to host a series of dinners at Hever Castle. Invitations had been prepared to the Arab Ambassadors, various Foreign Office diplomats and other individuals who had links to the Gulf. In May 2021 Lord Astor told the Claimant that the plans for the dinners would have to be called off, after the letter of recommendation which he had been asked to send to the Kuwaiti Ambassador (see paragraph 73 above) did not have the intended effect of neutralising the allegations against the Claimant contained in the Documents which had circulated within the diplomatic community.

114. In February 2021 a very senior Labour politician who was not in Parliament told the Claimant that he knew about the Documents. He told the Claimant that he should *"tread very carefully"* because the Documents were going to damage him (i.e. the Claimant). He told the Claimant he had seen a copy of one of the Documents and that they were *"doing the rounds"*. It is apparent from that conversation that the Documents and the allegations within them had percolated beyond Conservative circles and beyond Westminster.

115. In March 2021 the Claimant invited Lord Udny-Lister, a Conservative peer and former Downing Street Chief of Staff under Boris Johnson to participate in COMENA. Lord Udny-Lister told the Claimant that whilst he understood the vision of the COMENA initiative, he could only accept the Claimant's invitation on the proviso that the Claimant's dispute with the Defendants was resolved and COMENA subsequently gained Party affiliation.

116. In June 2021 the Claimant attended the launch event of a Conservative Networking group to which he had been invited. Various questions were asked of him at that event concerning his links with Russia and with Iran. The inference will be invited that such questions were prompted by awareness by the questioners of the Defendants' publications and/or the allegations contained within them.

**Serious reputational impact in relation to COMENA**

117. As of December 2020 the Conservative Party executive leadership had given significant positive encouragement to the Claimant to form and lead COMENA. By way of example, Myles Stacey, then Head of Party Outreach, emailed the Claimant saying:

> "You have our support in setting up the Conservative Friends of MENA. We are agreed in that you should be making an application for this group to be fully affiliated to the Party".

118. Further, Ben Elliot sent an email to the Claimant on 7 December 2020 saying the following:

> "think a new group may be the best way to proceed which is completely affiliated to the party. Let's get going".

119. However from January 2021, after the publication of the Documents, and the circulation of the Documents and the allegations which they contained within CCHQ and within Conservative Parliamentary circles, the attitude of the Party became significantly cooler towards the formation of COMENA. As confirmed to the Claimant by members of the Party's Outreach Team there was unease about COMENA's application to become affiliated, as result of the publication of the Documents and subsequent lobbying by the Defendants' allies, and Ben Elliot subsequently refused to take COMENA's application to the Party Board.

120. As pleaded above at paragraph 90 the Claimant sent a copy of Document 14 to some of the putative Board members of COMENA on 2 January 2021. He later provided them with a copy of the MDR Letter. It became obvious to the putative Board members during subsequent conversations with others in Conservative Parliamentary circles that the allegations in the Documents published by the Defendant were known more widely, and had caused those who came to know of them to form a negative view of the Claimant. As a result the putative Board members of COMENA sought an assurance from the Claimant, which he gave, that he would stand aside as prospective Chairman of COMENA if the reputational issues caused by the Defendants' publications were preventing the affiliation of COMENA to the Conservative Party.

121. The COMENA putative Board Members also asked that none of their names be registered at Companies House as being associated with COMENA, and that the Claimant should stall the opening of COMENA's bank account with Coutts, on the basis that they did not want any of their names to be specified on the account as officers of COMENA.

122. In December 2020 the Claimant asked Ozan Ozkural, founder and CEO of Tanto Capital a leading emerging markets investment bank if he would consider being the lead member for Turkey in relation to COMENA, to which Mr Ozkural agreed. Mr Ozkural was also considering at that time asking the Claimant to join the Advisory Board of Tanto Capital. In January 2021 Mr Ozkural tweeted about his potential involvement in COMENA. He was immediately contacted by two of Tanto's partners who said they were concerned about the reputational damage which Tanto and Mr Ozkural would suffer as a result of association with the Claimant. The partners had heard that questions had been raised about the Claimant's business background and alleged links with Russia and Iran. The inference will be invited that this was a result of percolation of the allegations within the Documents published by the Defendants. Mr Ozkural telephoned the Claimant who confirmed that allegations had been made in writing about him by the Defendants and that he had hired lawyers to rebut them. As a result of this, Mr Ozkural has put on hold his involvement with COMENA and has not invited the Claimant to sit on Tanto's Advisory Board.

**Other serious reputational harm**

123. The Claimant is a board member of a company known as CoJiT. The mentions in Document 11 (as published to Sir Alan Duncan) and Document 16 (as published to Sheikh Fawaz) of CoJiT and Cojit (UK) Limited (as pleaded above at paragraphs 44.7 and 59.2) and the Claimant's connection to CoJiT made it significantly harder for CoJiT to raise funds in the first half of 2021. On being told of this the Claimant offered to step aside from his role with that company. The Board declined to accept his offer, but rather placed him on "board watch" which meant that any further allegations against him could require him to step down.

124. Each of the University of Oxford's Vice Chancellor's Office, Brasenose College's Office, the British Academy's Development Office and the Director of the Rose Castle Foundation received telephone calls following the Defendants' publication of the Documents during which questions were asked about the Claimant, his Foundation, whether his Foundation was genuine and what due diligence had been done by them on the Claimant, his Foundation and their sources of funds. The inference will be invited that this contact with those bodies was the result of the circulation and/or percolation of the allegations within the Documents published by the Defendants. As a result the Claimant felt, on being informed of the questions which had been asked of the British Academy and the Rose Castle Foundation and given their changed reaction to him and his Foundation that he had no choice but to resign his positions with them.

125. Following the Defendants' publication of the Documents the World Benchmarking Association also raised concerns with the Claimant about the allegations contained within the Documents, as a result, it is to be inferred, of the percolation of those allegations following the Defendants' publication. Whilst that organisation was willing to allow the Claimant to remain on its board, it also put him on "board watch".

126. In the first half of 2021, that is before the first negative press article concerning the Claimant was published by the Financial Times in July 2021, the Claimant noticed a very significant downturn in the willingness of previously friendly contacts and associates to take his calls. The inference will be invited that this shunning and avoiding of the Claimant was caused

by the publication by the Defendants of the Documents complained of to the publishees in relation to whom the Claimant's claim has not been stayed.

127. In support of his case that the extensive percolation of the allegations which the Defendants had made against the Claimant was not as a consequence of the publication to the unidentified publishees (i.e. the publications in relation to which the claims have been stayed) the Claimant will rely on the Defendants' evidence (contained in the witness statement of Tim Lawrence dated 21 June 2022 and the witness statement of the First Defendant of the same date) to the effect that (in the words of the First Defendant) "there is no proper basis for inferring any 'percolation' arising from the Unidentified Publishees".

128. Each publication by the Claimant of Document 14 or the MDR Letter was on an occasion when he rightly considered that it was necessary in order to attempt to mitigate serious harm being caused, or likely to be caused to his reputation to provide a copy of Document 14, and/or the MDR Letter to the recipient. If and insofar as such actions led to damage to his reputation, such damage was the natural and probable and/or foreseeable and/or intended consequence of the Defendants' original publications and as such it is reputational damage caused by the statements complained of and for which the Defendants should justly be held responsible. Further and alternatively, any such reputational damage was the result of the Claimant acting pursuant to his duty to mitigate his loss and is for that reason harm caused to the reputation of the Claimant by the Defendants' publication of the statements complained of which is properly recoverable in this claim.

…