Neutral Citation Number: [2024] EWHC 774 (KB)

Case No: KB-2022-003244

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 April 2024

Before :

His Honour Judge Lewis
(sitting as a Judge of the High Court)

- -

Between :

MOHAMED AMERSI

Claimant

- and -

BRITISH BROADCASTING CORPORATION

Defendant

- -
- -

Hugh Tomlinson KC and **Kirsten Sjøvoll** (instructed by Carter-Ruck), for the **Claimant**
Catrin Evans KC and **Jonathan Scherbel-Ball** (instructed by Bristows LLP), for the **Defendant**

Hearing date: 8 December 2023

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Approved Judgment

This judgment was handed down remotely at 2:00pm on 9 April 2024 by circulation to the parties or their representatives by e-mail and release to the National Archives

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HIS HONOUR JUDGE LEWIS

1. The claimant describes himself as a businessman and philanthropist, and the founder and chairman of the Amersi Foundation.

2. The defendant is a media organisation responsible for services including the television channel BBC One, BBC iPlayer and the BBC News website.

3. The claimant has sued the defendant in respect of two separate publications:

    a. An episode of Panorama first broadcast on 4 October 2021 on BBC One and BBC iPlayer entitled "Pandora Papers: Political Donors Exposed" ("the Programme"); and

    b. An article first published on 4 October 2021 on the BBC News website shortly before the broadcast of the Programme, entitled "Pandora Papers: Tory donor Mohamed Amersi involved in telecoms corruption scandal" ("the Article").

4. Proceedings were issued on 3 October 2022. The claimant seeks damages up to £100,000, an injunction and an order under s.12 Defamation Act 2013 requiring the publication of a summary of the court's judgment.

5. On 28 November 2022, nearly two months after proceedings were commenced, the claimant's solicitors sent the defendant a letter of claim. The defendant provided its substantive response on 30 January 2023, denying liability and indicating that if the claim was pursued, it would be relying on defences of truth and public interest pursuant to sections 2 and 4 of the Defamation Act 2013. The Claim Form and Particulars of Claim were served the next day.

6. By order dated 4 September 2023, Nicklin J ordered that there be a trial of the following preliminary issues:

    a. The natural and ordinary meaning of each of the publications complained of; and

    b. Whether the meaning of each of the publications complained of, determined by the court, is defamatory of the claimant at common law.

7. The only dispute between the parties is in respect of the first of these issues. On the second, the defendant admits that both its proposed meaning and those meanings proposed by the claimant are defamatory of the claimant at common law.

<u>The parties' pleaded cases on meaning</u>

8. The claimant's case on meaning:

    a. The claimant's pleaded case is that the natural and ordinary meaning of the Programme was:

i. “There are strong grounds to suspect that the Claimant was involved in a transaction which he knew or ought to have known was corrupt and unlawful in that it violated anti-corruption laws. This included the handling by the Claimant of the day-to-day negotiations by Telia of a US$220m bribe to the daughter of the then President of Uzbekistan.”

ii. “There are strong grounds to suspect that the Claimant used some of the more than US$65m he was paid by Telia over a 6-year period to make payments that he knew or ought to have known were corrupt and which were made to secure for Telia regulatory benefits and/or the go-head of transactions such that, when this conduct was uncovered by Telia, the Claimant’s relationship with the company was terminated.”

b. The claimant’s pleaded case on the natural and ordinary meaning of the Article is as follows:

i. “The Claimant was closely involved in a transaction between Telia (a Swedish telecoms company) and an offshore company which, there are strong grounds to suspect, he knew or ought to have known constituted the corrupt payment of a US$220m bribe to the daughter of the then President of Uzbekistan for which involvement the Claimant was paid US$500,000.”

ii. “There are strong grounds to suspect that the Claimant used some of the more than US$65m he was paid by Telia over a 6-year period to make payments that he knew or ought to have known were corrupt and which were made to secure for Telia regulatory benefits and/or the go-ahead of transactions such that, when this conduct was uncovered by Telia, the Claimant’s relationship with the company was terminated.”

9. The defendant’s pleaded case is that the Programme and the Article convey the same natural and ordinary meaning, namely that: “There are reasonable grounds for suspecting that, during his work for Telia, Mr Amersi had been involved in deals on its behalf which he knew or should have known were corrupt, or involved corrupt payments.”

10. Whilst there are a few issues between the parties, they have identified the two main areas of dispute as being:

a. The “level of guilt”. The claimant says there are “strong grounds” to suspect the claimant of serious wrongdoing, whereas the defendant says there are “grounds” or “reasonable grounds” to suspect.

b. Whether the Programme and the Article allege specific wrongdoing or make a single general allegation.

<u>Legal principles</u>

11. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words to bear.

12. In ***Jones v Skelton*** **[1963] 1 WLR 1362** the Privy Council explained what is meant by a natural and ordinary meaning:

> "The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. …. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words." per Lord Morris at 1370-1371.

13. I must first read (or view) the words complained of to form a provisional view about meaning, before turning to the parties' pleaded cases and submissions: see ***Tinkler v Ferguson*** **[2019] EWCA Civ 819** at [9].

14. In ***Poroshenko v BBC*** **[2019] EWHC 213 (QB)** at [20], Nicklin J considered the approach to be taken by the court when considering television programmes:

> "The governing principles require the Court to put itself, so far as possible, in the position of the hypothetical reasonable viewer or reader. Several points flow from that:
>
> i) First, the ordinary reasonable viewer will have watched the Television Report once. Although modern technology now makes it possible for many viewers to pause or rewind and replay live television broadcasts, few will do so. The important consequence of this, when assessing the meaning of a television broadcast, is that the ordinary reasonable viewer has a limited opportunity to analyse what s/he is viewing and hearing. The overall impression created by the broadcast is likely to be more important, and the Court should be careful not to pore over a transcript, which no viewer would have had.
>
> ii) That principle is relaxed, to an extent, in relation to publications delivered in text. There, the ordinary reasonable reader has a greater opportunity to absorb what s/he is being told. Nevertheless, the principle is still that s/he will read the text once and will not subject it to any form of textual analysis.
>
> iii) Second, no reader or viewer has someone at their shoulder making submissions as to what s/he should make of the broadcast/text, highlighting particular sentences or phrases.
>
> iv) Finally, proper regard to the overall context and presentation of the words complained of is probably the most important principle to be applied in the assessment of meaning."

15. The long-established principles to be applied when reaching a determination of meaning were re-stated by Nicklin J in ***Koutsogiannis v Random House Group Ltd*** **[2019] EWHC 48 (QB)** at [12]:

> "(i) The governing principle is reasonableness.
>
> (ii) The intention of the publisher is irrelevant.
>
> (iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
>
> (iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
>
> (v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
>
> (vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
>
> (vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
>
> (viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (eg bane and antidote cases).
>
> (ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.
>
> (x) No evidence, beyond publication complained of, is admissible in determining the natural and ordinary meaning.
>
> (xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

(xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

(xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

Levels of meaning

16. The courts now commonly refer to various levels of possible defamatory meaning, to distinguish between different types of defamatory allegation. This was explained by Nicklin J in ***Brown v Bower and another*** **[2017] EWHC 2637 (QB)** at [17]:

> "Finally, I need to refer to what are called the *Chase* levels of meaning. They come from the decision of Brooke LJ in *Chase –v- News Group Newspapers Ltd* [2003] EMLR 11 [45] in which he identified three types of defamatory allegation: broadly, (1) the claimant is guilty of the act; (2) reasonable grounds to suspect that the claimant is guilty of the act; and (3) grounds to investigate whether the claimant has committed the act. In the lexicon of defamation, these have come to be known as the *Chase* levels. Reflecting the almost infinite capacity for subtle differences in meaning, they are not a straitjacket forcing the court to select one of these prescribed levels of meaning, but they are a helpful shorthand. In *Charman -v- Orion Publishing Group Ltd* [2005] EWHC 2187 (QB), for example, Gray J found a meaning of *"cogent grounds to suspect"* [58])"

17. In ***Charman***, Gray J rejected the claimant's Chase level one meaning, and indeed the defendant's proposed Chase level three meaning. He considered that "the book would be understood by such a reader to mean that there were reasonable grounds for *suspecting* that Mr Charman had been guilty of corruption" [54]. He went on to note that the degree of reasonable suspicion may potentially vary greatly from case to case, with "a considerable gulf or spectrum between an imputation of guilt of a criminal offence on the one hand and an imputation of the existence of grounds, even reasonable grounds for suspecting guilt on the other hand" [55]. Gray J considered the epithet "reasonable" to be inadequate to convey the degree of suspicion conveyed to readers in that case and concluded that the article would be taken to mean that there are "*cogent* grounds to suspect" (emphasis added) [58].

18. Mr Tomlinson KC relies on the commentary in *Gatley on Libel and Slander* (13th ed):

> "Since *Chase* was decided, it has been recognised that more than three levels of meaning may be required: for example, it has been observed that there is a considerable gulf between the imputation of guilt of a criminal offence (level 1) and the imputation of the existence of grounds - even reasonable grounds - for suspicion of guilt (level 2), because the degree of reasonable suspicion may vary greatly from case to case. Furthermore, as Simon Brown LJ mentioned in *Jameel v Wall Street Journal Sprl*, there is the scope for the

border between levels of meaning to be blurred, and as Sedley LJ added in *Jameel v Times Newspapers Ltd* the distinction between *Chase* level 2 and level 3 meanings was a fine one" (at §32-006).

19. The footnotes in *Gatley* provide further examples of decisions on the degree of reasonable suspicion. For example, in ***Feyziyev v The Journalism Development Network Association*** **[2019] EWHC 957 (QB)** at [25] and [36], Warby J (as he then was) found one of the articles complained of to mean that there were "reasonable grounds to suspect", whereas the second article he found to convey "strong grounds to suspect". Similarly, in ***Sheikh v Associated Newspapers Limited*** **[2019] EWHC 2947 (QB)** at [37], Warby J found that the words complained of included an imputation that the claimant's conduct provided "strong grounds for suspecting" that he was secretly an anti-Semite.

20. Mr Tomlinson makes the further point that in ***Poroshenko*** (supra) the claimant pleaded a Chase level one meaning, but the defendant - the BBC - pleaded "strong grounds to suspect". Mr Tomlinson noted that presumably the BBC did this because they considered that the word "strong" added something to the pleaded meaning.

The claimant's case

21. Mr Tomlinson KC for the claimant says:

    a. There is very little difference in substance between the meanings borne by the Programme and the Article. In respect of the Article, he says the graphic – showing how the bribe worked – was slightly more powerful and analytical than the Programme, but he broadly accepts that they cover the same ground.

    b. Whilst the peg for both publications was political donations, they were in fact about donors. The tone was one of exposing wrongdoing. The Programme referred to leaked documents which "expose the financial secrets" of a big donor to the Conservative Party, which is the claimant. The Article makes clear from the start that the defendant's investigation had "discovered" the claimant's involvement "in one of Europe's biggest corruption scandals". Both publications presented a picture of serious allegations supported by evidence and fact.

    c. The allegations were detailed and specific. A generic allegation of corruption does not reflect the reality of the defamatory sting. The publications were not making some vague and general allegation of involvement in corruption.

    d. The reader or viewer is left with little room for doubt about the claimant's direct involvement in a specific corrupt transaction (the payment by Telia of a US$220m bribe to the daughter of the then President of Uzbekistan) and specific wrongdoing (using money paid by Telia to secure benefits and transactions).

    e. In respect of that specific corrupt transaction, whilst reference is made to the claimant having been involved in other deals, these were referred to in

passing. Neither publication said that he was involved in a series of corrupt deals.

f. In respect of the specific wrongdoing referred to, it is clearly stated in the Article that the claimant, in fact, made payments. It is accepted that the Programme is more circumspect, but the allegation made was the same. It was clearly suggested that the sum paid to the claimant was excessive, and either given to him for things that were dubious, or given to him so he could pass it to dubious third parties. This is a distinct allegation of wrongdoing which led to the relationship being terminated.

g. The nature of what was said was "not far below" a Chase level one meaning. The publications were not just making allegations of reasonable grounds.

    i. Both publications state as a fact that the claimant had been involved in one of the biggest corruption scandals seen in Sweden in modern times.

    ii. The Programme specifically linked the alleged corruption at Telia with violations of anti-corruption laws, telling the viewer that what was being alleged was also unlawful.

    iii. Both publications said that the claimant had been let go because his behaviour had been such as to force the company to terminate his contract.

    iv. The specificity of the allegations made added to their authority, and their seriousness.

h. Whilst the claimant's denials of wrongdoing had been included, the Programme went on to set out contradictory information. The occasional qualifications do not have any great diluting effect. It is of note that the denials also relate to the two specific matters. With the Programme, Mr Tomlinson notes there is a denial from solicitors, but then the programme moves to an interview with a Swedish investigator who tells viewers that the claimant was involved in one of the country's biggest corruption scandals. The fact that the Article includes the claimant's denial is insufficient to provide any antidote to the bane given that most of the Article clearly contradicts those denials.

<u>The defendant's case</u>

22. Ms Evans KC for the defendant says:

a. The claimant's approach to meaning is overly analytical and does not reflect the overall impression which the reader or viewer would take from the publications.

b. Both parties agree a level two meaning. Both also put their case on meaning as *involvement* in deals that were corrupt, and the imputations of knowledge of

corruption on the part of the claimant are of "actual or constructive knowledge".

c. The tone of publications is not about exposing wrong-doing, as Mr Tomlinson suggests. They are about the world of political donations, the lack of transparency and suspicion and doubt in respect of the provenance and source of funds. Both the Article and the Programme looked at the claimant's very substantial donations to the Conservative Party and whether he is an appropriate donor, having regard to the circumstances in which he made substantial amounts of money working for Telia.

d. Looked at in this context, the reasonable reader or viewer would understand the allegations concerning the claimant to form part of a common theme about the claimant's work for Telia generally, rather than drawing any distinction between the specific deals or payments made.

e. The Article and the Programme started and finished by looking at the claimant's work for Telia in general terms, rather than focussing on a specific deal.

    i. With the Programme, the presenter explains "We've been looking at Mohamed Amersi's past and where his money comes from. Well some of it comes from this company in Sweden. A company fined almost a billion dollars for bribery. Telia employed Mr Amersi as a consultant. He earned big fees for helping them structure telecoms deals in some notoriously corrupt countries". A short while later, the presenter explains that "We've also seen evidence about how Mr Amersi was involved in other Telia deals". At the end of the section about the claimant, a former Telia executive explains how it is important to understand "the whole context of his career and wealth…".

    ii. The Article starts by referring to the claimant's work for Telia as "involve[ment] in [a] telecoms corruption scandal" and as "involve[ment] in one of Europe's biggest corruption scandals". The Article then goes on to describe him as having worked "on a series of controversial deals for a Swedish telecoms company that was later fined $965 (£700m) in a US prosecution". It then asks questions about the claimant's sources of wealth, concluding with the same information from the ex-Telia executive, as used in the Programme.

f. In respect of the claimant's second limb, the defendant says there is nothing in the Programme to suggest that the claimant himself made payments he knew or ought to have known were corrupt to secure regulatory or transactional benefits. There was no mention in the Programme of making payments at all, nor of regulatory or transactional benefits. The Article did refer to a report which stated some of the payments to the claimant "may have been utilised improperly to acquire regulatory benefits and/or secure the go-ahead of transactions" but this was not presented as a separate and distinct allegation, did not impute that the claimant himself made corrupt payments and simply said that this "may" have happened. The Article also included the claimant's

lawyers' specific denial of this point, making clear the allegations were "categorically false". In respect of both publications, the reader or viewer would understand that the claimant's contract was terminated because of a high level of risk associated with keeping him on, and no other reason was given.

g. It is unnecessary to ascribe an adjective of "strong" or "reasonable" to a suspicion. The only relevant point of distinction is to identify that this is an allegation merely of suspicion, not guilt. If an adjective is relevant or helpful, then it should be "reasonable" grounds to suspect. What is said about the claimant is heavily qualified. The Article and Programme include the claimant's express denials of responsibility. There are no particulars given to suggest guilt on the claimant's part, and neither publication specifically imputes any detail relating to the claimant's constructive or actual knowledge of corruption.

h. The claimant's explanations and denials were set out throughout the Programme, close in time to the allegations being made. Ms Evans says that it is well established that where a disclaimer or denial is included, the closer this is to the bane that the antidote is intended to affect, the stronger is the degree of antidote.

Discussion

23. I need to consider the two publications separately, even though the defendant says that the two publications convey the same meaning, and the claimant acknowledges that the meanings of the Article and the Programme are broadly the same.

24. The ordinary and reasonable viewer would have watched the Programme once. They would not have had a transcript available, nor be taking notes, nor rewinding to review things that had been said.

25. The Programme is very clearly framed from the outset as being about political donations, and it comprises case studies on the claimant and others.

26. When I watched the Programme before knowing the position taken by each party, I was struck by two things. Firstly, that the Programme was looking in broad terms at concerns around the sources of the claimant's money, in the context of him being a significant donor to the Conservative Party. In a single viewing, my focus was not on specific, identified events. There was a common sting. Secondly, I came away with the impression that the Programme was making very serious allegations about the claimant, his involvement with Telia and the source of his wealth.

27. Having now considered the submissions of the parties, I am satisfied that the ordinary and reasonable viewer would have understood the Programme to be looking generally at the concerns arising out of the claimant's work for Telia, and the source of his wealth, in circumstances where he was making large political donations.

28. The viewer would not have focussed on the specific deal identified. It would have been apparent to the viewer that the Programme was looking at the claimant's wider

relationship with Telia – the viewer was indeed told that he earned USD 500,000 from the Uzbekistan deal, but in the context of him being involved in other work for the company that led to him receiving USD 65m.

29. The Article is slightly different. It is just about the claimant. The heading and opening paragraph make clear that the story is about a donor to the Conservative Party and involvement in a corruption scandal. It then explains immediately that he had worked on a "series of controversial deals".

30. As with the Programme, the Article provides details of the Uzbekistan deal, but again very much in the context of a man who had been involved in a lot of deals for Telia that together had personally earned him fees of USD 65 million. The Article was not just about specific transactions but was making a broader allegation about him, and his relationship with Telia.

31. The defendant's proposed meaning focusses on a common sting. This appears to capture the impression that would have been given to the ordinary and reasonable reader. I agree with the defendant that the publications conveyed that there were grounds for suspecting that, during his work for Telia, Mr Amersi had been involved in deals on its behalf which he knew or should have known were corrupt or involved corrupt payments.

32. I do, however, consider this to be a case where the ordinary and reasonable viewer or reader would have understood the publications to be saying that there are *strong* grounds to suspect.

33. What is said about the claimant in both publications is serious. Both refer to him being involved in deals that involved corrupt payments. Both make repeated references to "corruption", particularly the Programme. The Article has the graphic explaining "how did the "bribe" work?". Both refer to the extraordinary amount of money that the claimant received from Telia, which only strengthens the reader's and viewer's suspicion that the claimant had been involved in deals that he knew or should have known were corrupt or involved corrupt payments. The reference to the claimant having lost his job, and the suggestion that his political donations should be returned, strengthens the level of suspicion. Whilst the denials to a degree diluted the strength of what was said, considering each publication as a whole, the overall impression given was one of there being strong grounds to suspect the claimant of the wrongdoing that is identified.

34. I am satisfied that each publication has the following meaning: "There are strong grounds for suspecting that, during his work for Telia, Mr Amersi had been involved in deals on its behalf which he knew or should have known were corrupt, or involved corrupt payments". It is agreed that this meaning is defamatory of the claimant at common law.

Costs

35. The defendant makes a discrete application for an award of some costs in respect of its application to the court for a trial of a preliminary issue. It accepts that the costs of the trial itself should be costs in the case.

36. I have been provided with a separate bundle of documents in respect of the application for costs.

37. From these documents, it appears the relevant chronology is as follows:

    a. On 27 March 2023, the defendant wrote to the claimant seeking agreement to a trial of a preliminary issue on meaning.

    b. On 11 April 2023, the claimant's solicitors suggested that before inviting the court to direct such a trial, there be further discussions between the parties to try and reach agreement on meaning, since there was very little between them. The claimant said that if agreement could not be reached, the claimant would consent to the usual order for such a trial.

    c. Discussions came to nothing, and on 21 April 2023 the defendant indicated that it would seek an order for a trial of a preliminary issue.

    d. On 26 April 2023, the claimant's solicitors said that the claimant did "not oppose" the application, but said it was "for the Court to decide whether there should be a trial of a preliminary issue rather than the matter being disposed of by consent. The Court may wish to consider whether a stay to permit compromise discussions on meaning might be appropriate".

    e. The defendant issued its application on 28 April 2023. It sought an order that there be a trial to determine the following preliminary issues:
        i. "the natural and ordinary meaning of each of the publications complained of;
        ii. if the Court determines that either of the publications complained of bears more than one imputation concerning the Claimant, whether those imputations are distinct or have a common sting;
        iii. whether the meaning of each of the publications complained of, as determined by the Court, is defamatory of the Claimant at common law".

    f. On 24 August 2023, Nicklin J considered the matters on paper. He listed the defendant's application for a one-hour hearing, and said the following:

        "[…] (B) The Defendant proposed a trial of meaning as a preliminary issue on 27 March 2023. The Claimant was invited to agree. He did not. In his solicitors' letter of 26 April 2023, the Claimant suggested that it was for the Court to decide what directions should be given for the trial of any preliminary issues.

        (C) Thereafter, the Defendant issued the PIT Application. Following issue, at no point has the Claimant modified his position. He has not consented to the application, nor has he proposed alternative directions. This is unhelpful. It also causes delay, which most claimants in defamation proceedings want to avoid.

(D) I considered whether, in light of the lack of engagement, I should simply make the directions that I think are appropriate. However, I do not presently understand the basis on which the Court is being asked to determine whether, if the relevant publication bears more than one imputation concerning the Claimant, whether those imputations are distinct or have a common sting. Whilst I recognise the point, I am not aware of a preliminary issue being directed in these terms before. On one view, if the Defendant advances a 'common sting' meaning, that would become apparent from its case (ordered as part of the PIT directions) and the Court would consider this as part and parcel of the determination of the natural and ordinary meaning.

(E) So I have ordered a hearing. If the Claimant wants to engage more constructively in the interim, and the parties are able to provide agreed joint directions for the trial of preliminary issues, then I will consider them (when time over the vacation permits) and may vacate the Hearing. (…)

(G) I should sound a warning about costs. Directions for preliminary issue trials are routinely made without a hearing. If I were to conclude that the hearing that I have directed was unnecessary, then I would go on to consider whether that was as a result of the conduct of one of the parties and whether that party ought to be sanctioned with an order for costs."

g. In response to this, on 26 August 2023, the defendant's solicitors wrote to the claimant's solicitors inviting them once again to agree to the application. The defendant also offered to remove the second limb of its application, being the one highlighted in paragraph D of the explanatory section of Nicklin J's order (above).

h. The claimant's solicitors confirmed their agreement to this way forward by letter dated 29 August 2023.

i. By an order dated 4 September 2023, Nicklin J vacated the application hearing and directed a trial of the preliminary issues. He also directed that "costs of the Application are to be reserved to the Judge hearing the Trial of the Preliminary Issues." Nicklin J also noted that he had made this order because "the parties have now reached agreement on the issues that previously prevented the PIT Application being dealt with without a hearing".

38. The defendant seeks an order that the reserved costs of the Application are paid by the claimant. The amount sought is £7,434.70, which includes £3,250 for Leading and Junior Counsel, and £3,909.70 for just under ten hours of external solicitors' costs. The costs are for the period from 26 April 2023 when it is said the claimant changed his mind in respect of the application, to the date on which the consent order was signed. Whilst the defendant is seeking the costs of preparing the application, it is not seeking costs that would overlap with those that relate to the trial.

39. The defendant says that the claimant adopted a deliberately unhelpful approach to the application and had failed to provide any reason for his change of position.

40. The claimant points out that there would have had to be an application regardless of the claimant's position. He did not put forward any positive resistance to the application. They took the view that as there was little between the parties on meaning, there was an obligation not to waste resources and so it was reasonable for the court to consider whether it was appropriate to have a TPI. These were cogent and specific reasons. Also, the claimant points out that the court had been concerned in any event at the second limb of the defendant's application.

41. The court has discretion as to whether costs are payable by one party to another, the amount of those costs and when they are to be paid: CPR rule 44.2(1). The approach to be taken by the court is set out in CPR rule 44.2(2), (4) and (5).

42. In ***Poroshenko*** (supra) at [51], Nicklin J held that whilst early trials of meaning "are not mandatory, once it is clear that meaning is in dispute, the issue should be considered by all parties, and a burden will normally fall on any party who contends that the issue should not be resolved by determination at a preliminary issue trial to present cogent and case-specific reasons why not. The disadvantages of ploughing on, not only to the parties in terms of potentially wasted costs, but also in disproportionate drains on the resources of the Court mean that that burden may be difficult to discharge."

43. I have read all the party/party correspondence that has been provided. From this, I think it was fair for Nicklin J to characterise the claimant's approach as "unhelpful".

44. Whilst I can understand the defendant's frustration, I am not going to make any order for the costs of the application, other than that they should be costs in the case. I do this for two reasons.

45. Firstly, it is apparent from the order of Nicklin J that there were two matters of note. The first of these was the claimant taking a neutral position and not consenting to the application. If this had been the only issue, it seems likely that Nicklin J would have just made the order on the papers. He did not do so because of the second matter of note, namely the proposed scope of any trial. The Judge wanted to understand more about the second limb of the defendant's application before making an order.

46. Secondly, I do not consider it to be proportionate to make a separate costs order in the specific circumstances of this case. The defendant would have had to issue an application regardless of the claimant's position. It is a routine application, that should not have taken long to prepare. Whilst there would have been some limited, additional costs incurred by the defendant as a result of the claimant's obstructive approach in correspondence, having regard to the overriding objective I do not think this justifies satellite litigation on costs, or the making of a separate costs order.

SCHEDULE

Transcript of Panorama - Pandora Papers: Political Donors Exposed – 4th October 2021

Richard Bilton – On Panorama Tonight we investigate the money going into our political parties.

Gavin Millar QC (Barrister) – It is in their interest not to look too hard and it is lucrative not to look hard if you are good at raising the money.

Richard Bilton – Our evidence raises serious questions about the funding of our democracy.

Peter Oborne (Political Journalist) – The gravest threat at the moment is the purchase of our political system by the super-rich.

Richard Bilton – Leaked documents expose financial secrets of big donors to the Conservative Party.

Richard Bilton – In this report it says we relied very much on the services of Mr XY. Who is Mr XY?

Michaela Ahlberg (Telia Compliance Officer 2013 – 2017) – That is Mohamed Amersi.

Richard Bilton – Are the rules on political donations up to the job?

Andrew Mitchell QC (Fraud and Corruption Expert) – Come and have supper with the Prime Minister, come and have supper with the leader of the opposition. What is really important is the access and the influence but that's what is always on sale, isn't it?

Richard Bilton – It's the time of year when political parties get together but where their money comes from is not on the agenda. Parties can take as much as they like, so long as the donor is on the electoral role or is a UK company doing business here.

Gavin Millar QC – You would have thought there should be some sort of obligation placed on them in law to enquire a little bit into where that large sum of money comes from. In fact, there is nothing like that, nothing at all.

Richard Bilton – We've been investigating political donors. First up, is Mohamed Amersi. He's very well connected. Here he is talking about corruption.

[clip of Mohamed Amersi: "corruption is a very, very heinous crime. Every stolen dollar robs the poor of an equal opportunity in life."]

Richard Bilton – You might have heard of Mr Amersi because he recently revealed he paid for meetings with Prince Charles, but we're interested in the money he's given to the Conservative Party. More than half a million pounds.

[clip of Boris Johnson: "the campaign is over and the work begins, thank you all very much."]

Richard Bilton – Ten thousand pounds went to Boris Johnson's leadership campaign. His cash also bought him facetime with leading Conservatives. Critics say this kind of access damages democracy.

Peter Oborne – What is completely fascinating under Boris Johnson's Conservative Party, is that if you give enough you are having dinner with the Prime Minister, you meet the top chap, the Prime Minister, or various cabinet ministers and you get access, it's crony capitalism, it's capitalism for the super-rich.

Richard Bilton – We've been looking at Mohamed Amersi's past and where his money comes from. Well some of it comes from this company in Sweden. A company fined almost a billion dollars for bribery.

Richard Bilton – Telia employed Mr Amersi as a consultant. He earned big fees for helping them structure telecoms deals in some notoriously corrupt countries. Like Uzbekistan. In 2007 Telia worked with Gulnara Karimova, the daughter of the then president of Uzbekistan. Her family, the Karimovs, had a reputation for corruption.

Prof Kristian Lasslett (Uzbekistan Expert) – In order to gain access to the golden goose there was a gatekeeper and that gatekeeper was the eldest daughter of the president. Gulnara Karimova ran a umm racket in Uzbekistan, it was an organised crime racket and if you wanted to make a load of money you had to go and be her business partner.

Richard Bilton – Telia became Gulnara Karimova's partner by giving shares to an offshore shell company she secretly controlled. Three years later Telia bought most of the shares back for $220 million dollars. The American authorities say this was a $220 million dollar bribe. We have now obtained documents that show how Mr Amersi was involved in the deal. In one email the Telia boss writes "I do not want to be involved in [sic] the day to day negotiations so maybe you can handle it". Mr Amersi responds, "Sure, I agree". And here's Mr Amersi's invoice for his part in Project Uzbekistan. He got a success fee of $500,000 for his work.

Andrew Mitchell QC – The problem that Mr Amersi faces is that he has received money for being in the shell company in which the president of Uzbekistan's daughter umm had a full role.

Richard Bilton – Mr Amersi's lawyers said the offshore company had been vetted and approved by Telia, its involvement did not raise any red flags to Mr Amersi. His only role was helping Telia buy the shares back.

Richard Bilton – Telia has accepted responsibility for violating anti-corruption laws. We've also seen evidence about how Mr Amersi was involved in other Telia deals. We've got details of an internal report about a consultant referred to as Mr XY who was paid more than $65 million by Telia over 6 years. It says Mr XY's services appear to have included arranging "*introductions to politically exposed persons*", that's politicians and people linked to them.

Richard Bilton – Now a Telia executive who was brought in to clean up the company has agreed to speak for the first time.

Richard Bilton – In this report it says we relied very much on the services of Mr XY, who is Mr XY?

Michaela Ahlberg – That is Mohamed Amersi.

Richard Bilton – So if we see Mr XY that is Mohamed Amersi?

Michaela Ahlberg – *[nods]* Yes

Richard Bilton – That's important isn't it because some of the things in there are pretty shocking, so Mr XY, Mr Amersi, was paid in excess of $65 million.

Michaela Ahlberg – The amount was brought up, I believe, as a big red flag, because the answer and the explanation to that was that that is normal if you pay an investment bank but you see, Mohamed Amersi wasn't an investment bank, so that was really not a good answer.

Richard Bilton – Mr Amersi's payments included expenses for lavish corporate entertainment. They were usually between $100,000 and $200,000 dollars a month and were not evidenced by copies of receipts. The internal report recommended Telia's relationship with Mr Amersi be terminated.

Richard Bilton – They're basically saying the way that Mr Amersi behaved was unacceptable.

Michaela Ahlberg – Yes, yes, yes.

Richard Bilton – And they had to let him go.

Michaela Ahlberg – Because if I had not thought that I would not have thought that that was an agreement that should be terminated and that there was a high level of risk with it.

[clip of Boris Johnson with people applauding].

Richard Bilton – All this matters because Mr Amersi's cash has been funding the Conservative party.

Gavin Millar QC – I think they should give it back. I think that if serious questions are being asked about the donor they should give it back and the bottom line is they don't have to and there's nothing in the law or the regulation of our system that compels them to do that.

Richard Bilton – Mr Amersi's lawyers said he met senior political figures with Telia managers but only dealt with individuals who were not considered politically exposed persons by mainstream institutions; his fees and expenses were entirely in keeping with industry practice; and that Telia did not require regular sight of the receipts. They say it's entirely false to suggest his contract was terminated.

Michaela Ahlberg – It is important that people around him, that trust him, that listen to him, understand the whole context of his career and wealth. He has been involved in one of the biggest corruption scandals that we have seen in Sweden in modern times.

Richard Bilton – Mr Amersi is in the Pandora Papers. 12 million leaked documents that were obtained by the International Consortium of Investigative Journalists from a secret source.

Gerard Ryle – They want this information to come to the attention of governments all over the world.

Text of article

Pandora Papers: Tory donor Mohamed Amersi involved in telecoms corruption scandal

[photo of claimant]

A prominent Tory donor who contributed to Boris Johnson's leadership campaign was involved in one of Europe's biggest corruption scandals, a BBC investigation has discovered.

Mohamed Amersi has given nearly £525,000 to the party since 2018.

Leaked documents reveal how he worked on a series of controversial deals for a Swedish telecoms company that was later fined $965m (£700m) in a US prosecution.

Mr Amersi denies any wrongdoing.

The 61-year-old is a corporate lawyer who worked as a consultant for Telia between 2007 and 2013.

Working with the International Consortium of Investigative Journalists and the Guardian, BBC Panorama has obtained documents that show how Mr Amersi was involved in a controversial $220m payment to a secretive offshore company in 2010.

The firm was controlled by Gulnara Karimova - the daughter of the then president of Uzbekistan - and the payment was described by the US authorities as a "$220m bribe".

Mr Amersi's lawyers said the offshore company had been "vetted and approved by Telia" and that its involvement "did not raise any red flags" to him.

LINK: A SIMPLE GUIDE TO THE PANDORA PAPERS LEAK

LINK: YOUR GUIDE TO NINE YEARS OF FINANCE LEAKS

Questions about the sources of Mr Amersi's wealth come as the Conservative Party's annual conference is under way in Manchester.

His donations have included more than £100,000 towards the 2019 general election campaign and £10,000 to the prime minister's leadership bid.

Mr Amersi's Russian-born partner, Nadezhda Rodicheva, has also donated money to the Conservatives - more than £250,000 in 2017 and 2018.

Political law expert Gavin Millar QC believes the Conservatives should return the money.

"I think they should give it back… if serious questions are being asked about the donor," he said.

But Mr Millar added "the bottom line is they don't have to, and there's nothing in the law or the regulation of our system that compels them to do that".

The main political parties including Labour and the Liberal Democrats have all faced calls to hand donations back over the years.

LINK: Why are donations to political parties often so controversial?

At the moment individual donors only need to be on the UK electoral register.

Once a party has checked that, they can accept as much money as they like.

Mr Millar said: "You would have thought… that there should be some sort of obligation placed on them in law, to enquire a little bit into where that large sum of money comes from.

In recent months, Mr Amersi has been drawn into a "cash for access" row centred around claims that high-spending Tory donors were able to gain regular meetings with the prime minister and chancellor.

[Photo of Gulnara Karimova]
[Caption: A company owned by Gulnara Karimova was linked to the deal]

Mr Amersi's name is featured in a leak of almost 12 million documents and files known as the Pandora Papers.

They detail the workings of offshore financial firms in locations including the British Virgin Islands, Panama and Singapore.

On Sunday, the BBC revealed how documents showed the King of Jordan amassed a secret property empire, and the Azerbaijani president and his associates have been involved in property deals in the UK worth more than £400m.

The leaked documents also showed how the former UK prime minister Tony Blair and his wife, Cherie, bought a London property for £6.45 million in an offshore deal that saved them £312,000 in stamp duty.

The documents show Mr Amersi purchased two properties in the UK – a Mayfair townhouse and country home in Gloucestershire using secretive offshore companies.

Further investigations by the BBC and its media partners have indicated Mr Amersi was involved in negotiations that resulted in $220m being paid to a Gibraltar-based company.

The firm was secretly owned through an offshore company by Gulnara Karimova, the daughter of the then president of Uzbekistan, Islam Karimov.

Telia had given her shares in one of its companies in 2007 and three years later agreed to buy most of the stock back for $220m - a move US authorities described in a criminal prosecution as a "bribe payment... in order to continue its telecoms business in Uzbekistan".

Telia was seeking new mobile operating licences for its business in the country at the time, and prosecutors say Ms Karimova - a one-time pop star and UN ambassador - had "influence" with the Uzbek regulator.

[GRAPHIC INSERT]

How did the "bribe" work?
[Picture of Telia office block Gulnara Karimova and Mohamed Amersi]
1 – Telia gives shares in its Uzbek subsidiary to Gulnara Karimova, daughter of the then Uzbek president.
2 – Her involvement is hidden behind an offshore company.
3 – Telia then offers to buy back most of Karimova's shares.
4 – Mohamed Amersi handles negotiations with the offshore company
Email from Telia boss: "**I do not want to be involved on day to day negotiations so maybe you… can handle it**".
Mohammed Amersi: "**Sure… I agree**".
5 – **Telia pays Karimova's company $220m.**
6 – US Department of Justice calls it a **"$220m bribe payment"**.
7 – Mr Amersi's lawyers say the offshore company had been "vetted and approved" by Telia.

The incident formed part of the case brought by the US Department of Justice against Telia and some of its officials.

The proceedings were settled in 2017 without going to trial after Telia agreed to pay a penalty of more than $965m and accepted responsibility for breaking anti-corruption laws.

Telia officials were charged in Sweden over their dealings with Ms Karimova - but they were acquitted after a court ruled that the country's bribery laws did not apply in the case.

Who is Mohamed Amersi?

[Photo]
[Caption: Mr Amersi with his partner Nadezhda Rodicheva and the Duchess of Cornwall at a charity fashion show in 2018]

- British citizen born in Kenya to a family from an Iranian-Indian background
- Educated in the UK - studied medicine and law at Sheffield and Cambridge universities
- Described on the website of his charitable foundation as a "renowned global communications entrepreneur, philanthropist and thought leader"
- Spoken out against corruption in speeches
- Recently faced opposition from some Conservatives over his decision to set up a group to help run the party's relationships in the Middle East

What links Mr Amersi to the bribe?

Internal Telia emails seen by the BBC connect Mr Amersi to the company's dealings with Ms Karimova's offshore firm Takilant.

One message shows a Telia executive wrote to Mr Amersi, saying: "I do not want to be involved on day to day negotiations so maybe you... can handle it".

Mr Amersi responded: "Sure... I agree." An invoice for his "success fees" for "Project Uzbekistan" - for $500,000 - is among the internal Telia documents.

[GRAPHIC INSERT]

Dated 10 March 2010
To: Telia Sonera UTA Holding BV
Rotterdam Netherlands

Attn [redacted]

Project Uzbekistan/[redacted] Success Fees as per Agreement
$500,000
TOTAL $500,000

Panorama has also obtained evidence about how Mr Amersi was involved in other deals for Telia.

Leaked details from an internal company report describe the activities of a consultant referred to as Mr XY who was paid more than $65m over six years.

The payments included expenses for "lavish corporate entertainment" - usually between $100,000 and $200,000 a month - that were not evidenced by receipts.

The report states that some of the payments to Mr XY "may have been utilised to improperly acquire regulatory benefits and/or secure the go-ahead of transactions".

It recommended that Telia's relationship with Mr XY be terminated.

Former Telia executive Michaela Ahlberg, who was brought in to clean up the company, told Panorama that Mr Amersi was the consultant referred to in the report.

"It is important that people around him, that trust him, that listen to him, understand the whole context of his career, and wealth," she said.

Ms Ahlberg said: "He has been involved in one of the biggest corruption scandals that we have seen in Sweden in modern times.

Panorama has confirmed that Mr Amersi was the "adviser" referred to at Telia's annual general meeting in 2014 as having had "agreements" with the company terminated after "certain transactions in Eurasia".

In the AGM speech, Telia's then chief mentioned the "inadequate governance" of its Eurasian operations and operations "not aligned with [Telia's] ethical requirements", as well as "questionable lobbying activities… on behalf" of Telia.

Telia has since exited central Asia and divested all of its business there to concentrate on its Scandinavian and northern European businesses and made changes to its corporate governance.

It says it has now committed itself to transparency and openness.

Mr Amersi's lawyers say it is "entirely false" to suggest his contract was terminated.

They said he met senior political figures with Telia managers but "only dealt with individuals... who were not considered politically exposed persons by mainstream institutions".

They said his fees and expenses were "entirely in keeping with industry practice" and Telia "did not require regular sight of the receipts".

They added that: "Any allegation that our client operated as a conduit to help Telia acquire regulatory benefits and secure telecoms deals... is categorically false."

The Conservative Party said "fund raising is a legitimate part of the democratic process" and that all donations to the party are properly and lawfully declared.

It said the party performs compliance checks in line with legislation enacted by the last Labour government.

The BBC searched for information about donors to all of the political parties among the Pandora Papers documents but the stories that emerged from the files were about Conservative donors.