

Judgments

Ghannouchi v Middle East Online Ltd and another

[2020] EWHC 1992 (QB)

Queen's Bench Division

Master Dagnall.

23 July 2020

Judgment

Jacob Dean (instructed by **Carter-Ruck**) for the **Claimant**

Jonathan Barnes (instructed by **Lewis Silkin LLP**) for the **Defendants**

JUDGMENT: APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

MASTER DAGNALL:

Introduction

1. This is my Judgment assessing damages for defamation of the Claimant by the Defendants by the publication of an Article (“the Article”) in their “Middle East Online” online newspaper (“the Newspaper”) from 5 July 2019 until the Article was taken down in about April 2020. The Claimant brought this Claim on 2 December 2019 asserting that the Article had a number of seriously defamatory meanings (“the Defamatory Meanings”) in relation to him. By an Order of 24 April 2020 (“the April Order”), Mr Justice Nicklin granted a Default Judgment against the Defendants in the absence of their having filed or served any Defence, and on the Defendants giving various undertakings (“the Undertakings”), including both (i) not to further publish or cause or authorise to be published the Article or its contents and (ii) to publish a composite summary of both that judgement and this judgment, and ordered that damages (and in due course costs) were and are to be assessed by a Master and paid by the Defendants. It is the assessment of damages which is the subject of this judgment.

2. I was provided with and fully considered a Bundle of relevant documents (including not only the Particulars of Claim but also witness statements from both the Claimant and the Second Defendant) and written Skeleton Arguments from Mr Dean, counsel for the Claimant, and Mr Barnes, counsel for the Defendant.

3. I have also conducted a remote video Teams Hearing under the provisions of Civil Procedure Rules Practice Direction 51Y (in the present circumstances of the COVID pandemic) and heard full oral submissions from both counsel. The remote hearing was publicised on the Courts Listing website as was the fact that provision would be made for attendance at it by any members of the public (including the press) who wished to do so. In fact, I provided for a number of individuals to attend the hearing upon my being notified of their email addresses by the solicitors for the parties. Subsequently when considering my judgment I became concerned as to a particular point arising as to the meanings which the Article had been accepted to bear, and I sought and obtained further written submissions from Mr Dean and Mr Barnes as to that point.

4. I am satisfied that the procedure adopted has enabled the court to conduct a public hearing consistent with the requirements of open justice, and has enabled the parties to deploy their full cases and to be properly heard. I have considered all the material and submissions before me, and if I do not deal with any particular matter or submission expressly in this judgment then that is due simply to considerations of space and time.

The Parties and the Newspaper

5. It is common ground that: the Claimant is a national of Tunisia and the leader of the political party in Tunisia called “Ennahdha” and is currently speaker of the Tunisian Parliament; and he lived in exile in England from 1992 to 2011, when he returned to Tunisia after the ousting of the former President.

6. The First Defendant is a company incorporated in England & Wales and which publishes the Newspaper. The Second Defendant is the editor of the Newspaper and the sole director of the First Defendant. The Newspaper is published online only. The Claimant’s case that the Newspaper is a “serious” (as opposed to a sensationalist) press publication has not been challenged and I accept it.

The Article, the Defamatory Meanings, and History of the Claim

7. On 5 July 2019 onwards, the Defendants published the Article in the Newspaper, making it available to anyone who chose to access it on the internet. The Article was written in Arabic but was, of course, readable by anyone proficient in Arabic and, potentially, by others who used a means of translation (whether through a human, or electronic such as by Google online) or engaged in their own translation. The author of the Article was Farouq Yousef, and the Claimant’s case that he is a well-known political commentator has not been challenged, and I accept it.

8. The Article has been referred to me in full by both the Claimant and the Defendants, is set out in full in the Particulars of Claim, and there has been no request for it to be dealt with in private. I therefore now reproduce it in its English translation as follows:

““Ennahdha” in the country of grapes and olives

It is not inconceivable for Tunisia to turn into Gaza if Ghannouchi assumes its leadership.

Farouq Yousef

Friday 5 July 2019

[There then appeared a photograph of the Claimant]

The leader of the Tunisian Hamas

Terrorism has been linked with religious groups and organisations. That is no longer speculative. Everything that the world has witnessed in recent years of terrorist operations, these groups and organisations planned and carried out.

Let's say, for argument's sake, that a religious organisation claims to renounce violence and the killing of civilians. It would not dare announce such a position by taking a firm stance that criminalizes groups that adopt violence as a means of terrorising and subjugating society to their rules.

In fact, every religious organisation wants to reach the same objectives that terrorist groups seek to achieve through violence. That conclusion does not require a search for evidence to be acceptable.

For the Muslim Brotherhood or the Lebanese Hezbollah to seek to deny terrorism accusations, this can be expected without the need to believe it. In all cases of murder, the courts do not consider the murderer's confession of his crime as an indispensable element in judging him as a murderer.

If we look at the Ennahdha Party in Tunisia, as a front for the brotherhood, its behaviour, both inside and outside the government, stands at the heart of the storm that leads to change through violence. And though it persists in the midst of a democratic process, it does not believe in democracy when it comes to others.

It would be a scary event if the Ennahdha Party was not overwhelmingly defeated in any election, be it presidential, parliamentary or municipal. This is because they expect that the party will remove its temporary mask to show its true face.

And because religious organisations establish hidden relationships amongst themselves, owing to their common goals, it is not inconceivable that the Ennahdha Party is familiar with the group that carried out the recent bombings at the beginning of the tourist season.

Ennahdha does not want Tunisia to be a tourism country. For them, tourism is true corruption. But stealing state funds and people's votes, receiving money from a foreign state and conspiring to overthrow the civil state in all its forms, in its views are not corruption.

The Ennahdawis, as are the brotherhood in their various denominations, depend on the establishment of a poor and rent-seeking state, whose people rely on aid provided by the countries that adopt the brotherhood's ideology.

The Ennahdha Party is similar to Hamas in that sense.

Therefore, it is not inconceivable for Tunisia to turn into Gaza if Ghannouchi assumes its leadership. What a miserable fate.

This is not an exaggeration, because the man who relies on "Qatar" to finance his movement and has not yet been held accountable is capable of transforming Tunisia into a desert roamed by the terrorists who are then exported around the Arab world in a travel campaign, similar to the one that went to Syria in the days of Ennahdha Party rule.

Tunisia can be imagined under Ghannouchi's rule as a country that does not plant olives, figs, grapes, oranges, or produce wine or olive oil, and where thousands of its hotels by the sea do not receive millions of tourists coming from different parts of the world with their various cultures.

That Tunisia will not be happy with its civilizational history, with its poets, philosophers, writers, musicians and activist women. It would become a Tunisia that harbours terrorists coming from everywhere. There are countries that dream of turning Tunisia into a terminal for the export of terrorists.

All these factors lead me to the conclusion that the Ennahdha Party, which claims to have nothing to do with violence, is through its plans and ambitions one of its staunchest advocates.

Ennahdha is not worried about the terrorism that strikes Tunisia, because it will ensure that terrorism does not strike Tunisia if the whole country becomes a terrorism incubator.

There is no place for Tahir Haddad, Mahmoud al-Messadi and Abul Qasim Chebbi in a Tunisia led by Ennahdha.”

9. The Defendants had not sought to contact the Claimant prior to publication of the Article. On 19 July 2019 the Claimant's solicitors wrote to complain to the Defendants asserting defamation and requesting removal of the Article and seeking other remedies. Following a number of chasing letters in August and an absence of any response or any removal of the Article, the Claim Form was issued on 2 December 2019 and served with full Particulars of Claim.

10. In Paragraphs 8 and 9 of the Particulars of Claim it was and is stated that the Article meant and would be understood to mean (“the Defamatory Meanings”) that:

i) (by their natural and ordinary meaning) the Claimant:

1. had knowingly permitted the corrupt receipt by his party, Ennahdha, of money from the state of Qatar, thereby facilitating Qatar to exert improper influence over Tunisian politics; and

2. falsely pretends to believe in democracy, but leads a party which is a front for a terrorist organisation, and which tolerates, encourages and actively supports terrorism both in Tunisia and abroad.

ii) (by way of an innuendo) the Claimant had breached Tunisian law by knowingly permitting the receipt by his Ennahdha party of money from the state of Qatar. In Paragraph 10 it was stated that it is contrary to Tunisian law for a political party to accept any donations from foreign sources, and that there would be and have been a substantial number of readers who would have known that.

11. In Paragraph 11 of the Particulars of Claim it was stated that “the words complained of” (which were references to those which had the Defamatory Meanings) were defamatory of the Claimant; and in Paragraph 12 that the publication had caused and was likely to cause serious harm to the reputation of the Claimant and because he has a substantial reputation in England and Wales stemming from his high political profile and from the contacts and relationships built during his many years in this jurisdiction. In Paragraph 13 the Claimant stated that he had suffered severe distress and embarrassment. Damages, including aggravated damages, and injunctions restraining further publication, were sought.

12. The Claim Form and Particulars of Claim were served but no Acknowledgement of Service (and thus no statement of intention to defend) or Defence were filed or served by the Defendants within the relevant

time-limits or at all, and the Claimant therefore brought an application for judgment in default by Application Notice dated 12 February 2020.

13. The Defendants still did not seek to defend the Claim, and that application was eventually dealt with by consent and so that Nicklin J made the April Order containing the provisions set out in paragraph 1 of this Judgment. The Article was only thereafter removed from the online Newspaper.

14. It was, however, agreed by the parties that in return for, or at least in consequence of, the Defendants agreeing to undertake, as they did, to publish a summary of the court's various judgments in accordance with [section 12](#) of the Defamation Act 2013, the claim for aggravated damages would not be pursued. I therefore do not have to be concerned with it as such (although material relevant to it may be relevant to the claim for ordinary damages).

15. I do, though, note, that there is no agreement by the Defendants to make or to publish any apology, and none has been proffered. I asked Mr Barnes whether he had any instructions as to any possible apology, and he confirmed that he had none. I return to this below.

16. I also note that the Defendants have not in any way sought to assert that the Article did not bear the Defamatory Meanings or that those meanings were true or that it was fair comment in circumstances of qualified privilege or that they had any other defence. That of course is to be contrasted with the fact that they both published it and did not remove it until after the April Order. I return to this below.

17. In accordance with provisions of the April Order, witness statements have been served from the Claimant and from the Second Defendant. No application has been made by either side to cross-examine and so it seems to me that, except where they conflict, I should and do, accept the evidence contained in them.

However, that is only to the extent that those witness statements contain admissible evidence of fact of the witnesses' own knowledge, and it is for me to decide what, if any inferences to draw or facts to find in the light of them.

The Defamatory Meanings and the effect of the Default Judgment

18. I think that it was common-ground between counsel but, in any event, it seems to me that it must follow from the Defendants consenting and submitting to the Default Judgment, and not seeking to defend or to contest the Particulars of Claim (which allege the following matters) as to liability, that the Defendants cannot contest and the Court should proceed on the basis that (although I would find this in any event from simply reading the Article and accepting the Claimant's evidence as I do):

- i) The Article bore each and all of the Defamatory Meanings, and which the reasonable reader would understand it to bear
- ii) The publication of the Article with its bearing those Defamatory Meanings has caused substantial and serious harm to the Claimant and his reputation.

19. The defamation relating to the Claimant's political party being a "front for a terrorist organisation" and with not only "tolerates", but also "encourages and actively supports" terrorism, which must mean by positive words or actions, and in both Tunisia and abroad, is particularly serious. This is both directly, and mainly, in terms of the Claimant, through his political party, being such a front for and advancing terrorism, but also indirectly as supporting the defamatory statements that the Claimant does not believe in democracy but falsely pretends to do so.

20. However, strictly speaking, in relation to terrorism, the Defamatory Meaning stated only that the Claimant “leads a party” which “is a front for a terrorist organisation” and “tolerates, encourages and actively supports terrorism”, without an express allegation that the Claimant himself does this or is such a front himself. On the other hand, there is the fact that the Claimant is the leader of Ennahdha, the “but” is linked grammatically with his stated “falsely pretends to believe in democracy” and the general tenor of the Article.

21. I was therefore concerned that something further might be implied within the words of the Defamatory Meaning regarding the Claimant himself and his views and conduct in relation to terrorism, and accordingly I sought further written submissions from counsel in particular as to whether and how I should construe that Defamatory Meaning and including whether it extended to an assertion that the reasonable reader would have understood the Article to be saying that the Claimant:

- (1) himself is a front for a terrorist organisation and tolerates, supports and encourages terrorism; or
- (2) simply (without any allegation of knowledge) is the leader of a party which is such a front and tolerates etc. terrorism; or
- (3) is knowingly the leader of a party which is such a front and tolerates etc. terrorism; and (perhaps) is content for that and not seeking to change it; or
- (4) is/believes something else.

22. Mr Dean contended for meaning (1) above and if not then something along the lines of meaning (3). He emphasised the word “falsely” and the wording of the Article as giving context to the Claimant as the leader of Ennahdha, and submitted that it would usually be implicit that the leader of a party would know of its true nature and activities and there was nothing in the Article to suggest that the Claimant might be a mere figurehead or ignorant of the activities of subordinates.

23. Mr Barnes contended for meaning (2). He submitted that a court cannot, even at a trial, find a more seriously defamatory meaning than that pleaded (see [Koutsogiannis v The Random House Group Ltd \[2020\] 4 WLR 25 at paragraph 12\(xiii\)](#)) (although here I am construing what is pleaded), and that Paragraph 8.1 used the words “knowingly permitted”, implying that Paragraph 8.2 was not stating “knowledge”, and that Paragraph 9 dealt with innuendo, and that it is for the Claimant (and his legal representatives) to set out precisely what meaning is alleged. He contended that the Claimant, acting by highly experienced lawyers, should be held strictly to what he had chosen to state to be the Defamatory Meaning, and that it would be unfair to the Defendants to do otherwise where the Defendants have chosen to submit to a Default Judgment on the basis that the only defamatory meanings which the Claimant had chosen to allege against the Defendant were those set out in paragraphs 8 and 9 of the Particulars of Claim. I note that the Claimant's solicitors' letter of 31 July 2019 was much more specific in alleging that the Article would be read by the reasonable reader as asserting both active and knowing support of terrorism.

24. It seems to me that Mr Barnes' submissions have force as far as they go, but that I still must apply ordinary principles of construction to what was actually stated in Paragraph 8.2 of the Particulars of Claim. That involves considering the actual words used in their context (here the Particulars of Claim which do include the text of the Article) and purpose, and identifying the most appropriate (where there is more than one possible) of the possible meanings for them, together with any necessary or obvious implication from them (but bearing in mind that the test for implication is a high one both generally and for the particular reasons that Mr Barnes has given).

25. If the word “falsely” had not been used, but only the word “pretends” then I would have construed the word “pretends” as simply being objective without necessarily conveying the meaning that the Claimant actually had relevant knowledge, and thus I would have favoured meaning (2) although possibly with the addi-

tion that the Claimant could and should (if he was acting reasonably) have learnt of the relevant matters. However, there is still the use of the word “falsely” to make “falsely pretends” which must add something to the word “pretends”. The word “falsely” seems to convey some sort of assertion of subjective pretending on the part of the Claimant, although it is ill-defined.

26. I therefore do agree in part with Mr Barnes and do not find for meaning (1) as I do not see such an allegation of personal involvement being made against the Claimant within the Defamatory Meaning. I have considered carefully whether I should find for meaning (3), one of actual subjective knowledge and appreciation on the part of the Claimant of his party being a front and tolerating etc. terrorism, as either conveyed (as a matter of construction) or necessarily implied (as a matter of implication) by “falsely”, but it seems to me that I should be confining the allegation to its proper minimum where the Claimant has not chosen to allege knowledge as such (and it would have been easy for the pleading to have been “when he knows” rather than “but”, and Paragraph 8.2 is to be contrasted with Paragraph 8.1 which does contain an express allegation of actual knowledge).

27. Since it does seem to me that “falsely pretends” conveys some sense of subjective mind, I find that the pleading is that the reasonable reader would understand the Article as meaning that the Claimant was deliberately shutting his eyes to the facts that his party was a front for a terrorist organisation and tolerated, supported and encouraged terrorism, and, which follows from such “Nelsonian blindness” (a reference used in various case-law to Admiral Nelson putting his blind eye to a telescope in order to deliberately avoid having to read a signal from his superior which he suspected did not accord with his own plans) that the meaning does extend to that the Claimant knew and appreciated that such facts might well be the case and ought to be investigated but was deliberately choosing not to do so (and thus not to do anything about it). In my judgment, such a Nelsonian blindness would still seem to a reasonable reader to fall within the words “falsely pretends”. Although I have approached this on the basis of looking for the minimum alleged, it seems to me that this meaning is also consistent with the tenor of the Article and the fact that the word “know(ingly)” appears in Paragraph 8.1 but not in Paragraph 8.2 of the Particulars of Claim (and, for the avoidance of doubt, I do not find that the pleaded meaning went so far as stating that the Claimant did subjectively know and appreciate that those various matters were actually the case about his party, nor do I find that the pleaded meaning went as far as stating that the Claimant was himself a participant in such matters or knowingly supported or engaged in or agreed with them).

28. That is not as serious as the meanings which Mr Dean has pressed upon me. However, and this is in the context of the leader (and not a mere member) of a political party, it is still a serious and seriously defamatory meaning, and which the Defendants have accepted that the Article bears (and they have not sought to assert that it or the other Defamatory Meanings are true) by consenting to the Default Judgment.

29. Mr Dean has also sought to persuade me that I should assess damages on the basis that the Article asserted involvement in terrorist attacks and, in particular, the “recent bombings” to which it referred; and also on the basis that it asserted that the Claimant aimed to turn Tunisia into a desert roamed by terrorists.

30. I agree that I should see the Defamatory Meanings in the light of the Article as a whole. It gives them context and the rest of it is an aid to their interpretation, and which I have borne in mind above. However, it seems to me that Mr Dean is trying to add further defamatory meanings to the Defamatory Meanings set out in the Particulars of Claim and that he should not be permitted to do so, and in particular for the following reasons,

(1) It is a critical element of defamation procedure that the Particulars of Claim set out the defamatory meanings asserted (whether by way of natural and ordinary meaning or innuendo). That is provided for by CPR Practice Direction 53 paragraph 4.2(4). It is essential as both the Defendants and the Court must know what is the actual case being brought in order to (in the case of the Defendants) respond to it and (in the case of the Court) manage and decide it.

They also control and confine matters of disclosure and evidence, and a claim will fail if they are not established

(2) It then follows that it is on that basis, as has happened here, that Defendants may decide not to contest the case whether by contesting the fact of the alleged meaning or alleging that they were true or subject to some other defence such as fair comment (and none of which the Defendants have sought to do here). However, that response, of accepting that they have committed wrongs, is in relation to the defamatory meanings alleged and not to any other defamatory meanings. I accept Mr Barnes' submission that if other Defamatory Meanings had been alleged, then the Defendants may have sought to raise defences; and also that the Koutsogiannis decision limits the claim to nothing more serious than the Defamatory Meanings stated

(3) Thus the default judgment is on, but only on, the basis of defamation and serious harm by and arising from the publication of words having the Defamatory Meanings. If the Claimant had wished to advance other Defamatory Meanings then he could have sought to amend to allege them prior to taking the decision to apply for and then obtain the Default Judgment

(4) No application has been made by Mr Dean to amend to add further Defamatory Meanings; and it seems to me that that would have been the proper procedural course. If one had, then it would have been heavily contested, and I see no reason why I would have dispensed with (even if such dispensation had been requested) the usual procedure of an Application Notice in accordance with CPR23.4.

31. I should not, however, in any way ignore or diminish the fact that the defamation also extends to statements that the Claimant, as a Tunisian politician, has permitted his party to be financed by Qatar and done so contrary to Tunisian law. That is both an allegation of local criminality (and of what is an offence under the laws of many countries) in the Claimant's own country (and a country with or in which readers of the Article are likely to have substantial connections or at least interest) and a further attack on the Claimant's political credentials, and at a time where foreign governmental interference in domestic politics is a matter of worldwide speculation and concern, and where various persons and entities, especially in the Arab world, have expressed concern as to speculated or rumoured activities of the state of Qatar. Of course, I do not in this judgment in any way make any finding whatsoever regarding the truth or falsity or reasonableness or the lack of reasonableness or the credibility or the lack of credibility of those speculations, rumours or concerns, and have no evidence or basis upon which do so. However, I do think that I can take judicial notice that such speculations, rumours and concerns exist, and that their mere existence is relevant to the damage to the Claimant's reputation which will have resulted from the publication of the Article and its Defamatory Meanings, as the reasonable reader will see them as more important in context as a result. On the other hand, the hearing proceeded on the basis, and I think correctly, that the main defamation was in relation to the meaning of the words that the Claimant is the leader of a party which was stated to encourage and support terrorism, and, as I have found to have been alleged, that he is deliberately shutting his eyes to (and choosing not to investigate and then do something about) that and so falsely pretending to believe in democracy.

Principles of Assessment of Damages in Defamation

32. The principles guiding my assessment of damages were largely, although not completely, common ground as between counsel. They referred me to a chain of authorities regarding the function of a damages award as being compensatory and in particular to compensate the Claimant for damage to his reputation, vindicate the Claimant's good name and to take account of the distress, hurt and humiliation which the defamatory publication has caused.

33. These principles were set out and expanded upon in a number of authorities. Mr Dean referred me in his Skeleton Argument to various decisions as follows:

34. First, to *Barron v Vines* [2016] EWHC 1226 (QB) where Warby J said at paragraphs [20] – [21]:

20. The general principles were reviewed and re-stated by the Court of Appeal in *John v MGN Ltd* [1997] QB 586. A jury had awarded Elton John compensatory damages of £75,000 and exemplary damages of £275,000 for libel in an article that suggested he had bulimia. The awards were held to be excessive and reduced to £25,000 and £50,000 respectively. Sir Thomas Bingham MR summarised the key principles at pages 607 – 608 in the following words:

“The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must [1] compensate him for the damage to his reputation; [2] vindicate his good name; and [3] take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is [a] the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. [b] The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. [c] A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that [d] compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as "he" all this of course applies to women just as much as men.”

21. I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

a. The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: *Steel and Morris v United Kingdom* (2004) 41 EHRR [37], [45].

b. The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

c. The impact of a libel on a person's reputation can be affected by:

i. Their role in society. The libel of Esther Rantzen was more damaging because she was a prominent child protection campaigner.

ii. The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

iii. The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if it is circulated amongst

strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

iv. The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: *C v MGN Ltd* (reported with *Cairns v Modi* at [\[2013\] 1 WLR 1051](#)) [27].

d. It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

e. A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: *Scott v Sampson* (1882) QBD 491, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

f. Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

i. "Directly relevant background context" within the meaning of *Burstein v Times Newspapers Ltd* [\[2001\] 1 WLR 579](#) and subsequent authorities. This may qualify the rules at (5) above.

ii. Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

iii. An offer of amends pursuant to the [Defamation Act 1996](#).

iv. A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

g. In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: *Rantzen* 694, *John*, 612; (b) the scale of damages awarded in personal injury actions: *John*, 615; (c) previous awards by a judge sitting without a jury: see *John* 608.

h. Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: *Rantzen v Mirror Group Newspapers* (1986) Ltd [\[1994\] QB 670](#). This limit is nowadays statutory, via the [Human Rights Act 1998](#).

35. Second, to *Barron v Collins* [\[2017\] EWHC 162 \(QB\)](#) where Warby J said at paragraph [26]:

26 As to the measure of damages, there is a notional "ceiling" on libel awards. It is arrived at by reference to the top figure for pain, suffering and loss of amenity in personal injury claims. The figure is now about £300,000: *Raj v Bholowasia* [\[2015\] EWHC 382 \(QB\)](#) [179] (HHJ Parkes QC). Awards at that level are reserved for the gravest of allegations, such as imputations of terrorism or murder. One must seek to place an individual case in its proper position on the scale that leads up to this maximum. There is nowadays a more or less

coherent framework of damages awards to guide a trial judge: see the discussion in the Vines Damages Judgment at [80]-[82].

36. That last reference is to the fact that following the decision in Associated Newspapers v Dingle [1964 AC 371](#), and as recognised in the MGN v John decision, a series of judicially (as opposed to jury) determined and reasoned damages awards for defamation has grown up, and which has given rise to a framework which of assistance to a judge in seeking to determine what might be an appropriate band of award for the case before that judge; the framework supplying information both as to appropriate factors to take into account and as to potentially comparative amounts. However, and while I analyse what have been argued to be relevant comparables below, I have to and do apply the general principles set out above to the facts of this particular case.

37. Mr Dean also referred me to case-law in situations of limited publication cases to the “percolation effect” (as referred to by Warby J in Barron v Vines [21](c)(iv) above) being what Warby J had said in Slutsker v Romanova [2015] [EWHC 545](#); [\[2015\] 2 Costs LR 321](#) at paragraph [69]:

“... it to be has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere number game, and also that the reach of a defamatory imputation is not limited to its immediate readership. ... The graver the imputation the more likely it is to spread, and to cause serious harm.”

38. Mr Barnes accepted the general principles as set out in John v MGN above but added in his Skeleton references to Rantzen v Mirror Group Newspapers (1986) Ltd [\[1994\] QB 670](#); John; Cairns v Modi [\[2013\] 1 WLR 1015](#), in order to submit that the sum awarded must always be proportionate to the damage suffered and reasonably required to compensate the claimant and re-establish his reputation; this being in particular because an award of damages is a restriction upon freedom of expression which must be justified under the European Convention on Human Rights article 10(2). He did, however, dispute the “percolation effect” both generally and in relation to the facts of this case, and I deal with that below.

39. He also referred me, at least on the issues of distress, to the Judicial College Guidelines on Damages in Personal Injury Cases, where I have noted the figures referred to although they relate to different torts and wrongs (as to damages for injury to feelings in discrimination cases) which proceed on different bases (see Cairns v Modi [2013 1 WLR 1015](#) at paragraph 37), and to Warby J’s statement at paragraph [87] in Barron v Vines that

“...Politicians may in general have thicker skins than the average. Whether or not that is so in the individual case, they are expected to tolerate more than would be expected of others.”

40. Both counsel accepted, and which seems to me to be correct, that damages can only be obtained in relation to publication to persons (then) located in this jurisdiction (see Jameel v Dow Jones [\[2005\] QB 946](#) at [paragraph 66](#)), and that there is no allegation in the Particulars of Claim, and hence no allegation (unlike in Slipper v BBC [\[1991\] 1 QB 283](#)) which the Claimant can rely upon, as to any actual republication by those persons to anyone else (identified or unidentified, determinate or indeterminate, and whether within or without this jurisdiction). However, I consider below the extent to which that engages with the “percolation” argument.

41. I have also been referred to Cairns v Modi [2013 1 WLR 1015](#) where at [paragraphs 34-38](#) the Court of Appeal analysed the approach in defamation cases of the court considering all the circumstances and then *“Having taken all relevant factors into account and weighed them against each other, the judge will normally arrive at a global figure by way of award”* rather than engaging in a more analytical reasoning process..

42. I have further been referred to Flood v Times Newspapers [2013] EWHC 4075 where at paragraph 52 Mrs Justice Nicola Davies summarised further principles to be drawn from Cairns v Modi as:

“The three interlocking purposes of an award of damages in defamation cases are to: compensate for the damage to the claimant's reputation; vindicate his good name; take account of the distress, hurt and humiliation caused to him;

The conventional ceiling for general damages is now of the order of £275,000. This does not take account of the uplift consequential on the Jackson reforms...

Conduct or aggravation on the part of the defendant is reflected in compensatory damages where it causes additional hurt to the claimant's feelings, or, in the context of vindication, injury to his reputation, over and above that caused by the publication itself;

There is no general principle that there is a reduced need for vindication once a reasoned judgment has been given at the conclusion of a trial. It is unlikely that the readers of a web article will download the judgment and read it with close attention. The general public is concerned to discover the “headline” result;

The Judge will normally arrive at a global figure by way of award, rather than splitting the award into conventional figures of injury of feelings.”

43. There is also a useful summary in paragraph 32 of the decision in Woodward v Grice [2017] EWHC 1292 where King J referred to:

“... the guidance given in Cairns v Modi as regards (i) the need for proportionality in libel awards; (ii) the scope of publication (iii) taking an approach which recognises the need for vindication and (iv) the lack of necessity for a detailed breakdown of the award. These factors were rehearsed in the above way by Langstaff J in Karl Samuel Oyston v Stephen Reed [2016] EWHC 1067 (QB) (at paragraph 30) with which I agree. As Langstaff J there further observed, the damages must not be out of proportion to those awarded for serious personal injury.”

44. I have borne these various statements of principle and approach in mind in identifying and weighing the material factors, and then in seeking to arrive at my global figure. I now turn to particular asserted factors which have been canvassed in the evidence and submissions before me.

The Claimant, his Reputation and Feelings

45. The Claimant is a Tunisian national who founded the precursor to Ennahdha in April 1981 and in the 1980s was twice imprisoned (and tortured, as were other members of his party over the years) by the then regime. He left Tunisia and obtained asylum in this country where he lived from 1991 to 2011. He then returned to Tunisia and has received international prizes and recognition for promoting democratic values and playing a moving role within Tunisia's transition to democracy. He maintains substantial connections with and often visits the United Kingdom, where two of his daughters live, and is regularly invited to speak at events organised by UK institutions including Chatham House and the London School of Economics and to meetings with government officials, Members of Parliament and academic figures, as well as universities, community organisations and mosques. This is all set out in his unchallenged witness statement, and I find it as fact.

46. The Claimant thus has a very real UK connection and reputation; and to which the Defamatory Meanings are obviously very damaging. The Defendants sought to counter this by suggesting that the Claimant was a

figure who attracted polarised opinions which Mr Barnes contended were unlikely to be changed by a single short publication such as the Article. It seems to me that that submission is speculative. It is correct that there is no specific evidence that any particular person's view of the Claimant has changed as a result of the publication of the Article, but such evidence is not necessary (for there to have substantial damage and a substantial damages award, although if such had been evidenced and proved then it might well have led to a higher figure being appropriate – see, for example, Woodward v Grice [2017] EWHC 1292 at paragraphs 54-56) and the Default Judgment must include an acceptance of serious and substantial harm having been caused to the Claimant's reputation. Even if opinions do not change, they can very well be reinforced and so made less likely to change, and the view of a “neutral” is likely to be heavily influenced by statements such as the Defamatory Meanings, although it also seems to me to be perfectly possible that an avowed supporter of the Claimant might change their loyalty or at least have reduced their confidence in him as a result of the Defamatory Meanings (and all the more so where, as here, the Article was from a respected writer and in a respected publication). On the other hand, there is no evidence or suggestion that the Claimant has had any specific meeting or speaking event refused (or not offered) as a result of the publication of the Article, albeit that there must be some measure of risk of such a consequence.

47. Thus, and even if this did not flow from the Default Judgment, it does seem to me that the Claimant's UK reputation will have been caused serious and substantial damage, and so that the damages award will need to provide proper vindication. The Claimant has made clear in his witness statement that it is vindication which he primarily seeks, and I accept that, in the absence of an apology (and none has been forthcoming) it is the public judgment and the award of damages which is the route provided for by the law to achieve that.

48. However, it seems to me that I should also accept the Claimant's unchallenged witness evidence that he found the Article extremely unpleasant and left him very concerned and embarrassed (and after several family members, friends and acquaintances [although their locations are not identified and so there is no reason why I should locate them within the UK] had drawn his attention to them). The witness statement does not seem to go beyond that except in stating that the Claimant has found the lapse of time and non-engagement within him of the Defendants “particularly distressing” and that he inferred that others would see the continued presence of the Article (until it was eventually removed following the Default Judgment) as inferring that either he or the Defendants did not care about the Defamatory Meanings. While I accept the Claimant's evidence as true, it does seem to me that he has not been caused especial mental distress (as opposed to concern and very considerable annoyance) and I should approach this matter on the basis of his being a politician with considerable resilience to attacks of this nature. On the other hand, it would be natural for anyone, politician or not, to be highly aggrieved and aggravated by the Defamatory Meanings being published and I find that this is exacerbated in the Claimant's case by the fact that his reputation of believing in and supporting democratic process was being attacked.

49. I have referred the parties to the fact that in the case law (see Al-Amoudi v Kifile [2011] EWHC 2037 at paragraph 44) cited to me, it appears that the Claimant was in 2007 awarded £165,000 for a libel broadcast to an Arabic-speaking audience measured in hundreds of thousands alleging that the Claimant was an extremist linked to Al-Qaeda. However, neither counsel sought to draw anything from this, and except for noting the scale and circumstances of that award, neither do I.

Extent of Publication and Percolation etc.

50. The Defendant's witness evidence includes an investigation and consequent record of how many times the Article was accessed. As it was only published electronically, that record would seem to be accurate, and it is not challenged by the Claimant, and so I accept it. That record shows that the Article was accessed some 60 times on or closely following the date of first publication, and then occasionally thereafter resulting in an overall total of 202 occasions.

51. This record does not show whether more than one person was watching the relevant computer screen on any particular accessing occasion, or whether (as Mr Dean accepted will have occurred) the Article was being accessed by a member of the Claimant's legal team. However, it suggests, and I find, that there were something a little less than 200 readers of the Article, and to whom were published the Defamatory Meanings.

52. There is no pleaded allegation of republication of the Article, and thus (see above and [Slipper v BBC \[1991\] 1 QB 283](#)) the Claimant cannot assert that that has occurred. However, it does seem to me that the damages award should still reflect considerations of the “percolative effect”, in two ways. First, in that allegations of this nature are likely to be repeated even in only a very inchoate way and without reference to the original Article of itself or its specific content. If a person's reputation is damaged by a specific attack then the “mud” may stick and be referenced in indirect and merely consequential ways by readers or those to whom they have spoken, and it seems to me that the Defamatory Meanings are the sort which would lead to precisely those consequences (for example, the Claimant may become “known” as a politician who closes his eyes to terrorist connections or permits finance from Qatar). This it seems to me is what Warby J was referring to in the *Barron v Vines and Sloutsker* to which Mr Dean referred me as I have said above. I also note and bear in mind that in *Cairns v Modi* at paragraphs 26-27 it was held that in the modern world of the Internet, the scope for percolation especially in relation to defamation of libel claimants already in the public eye (as is the Claimant) taking place in a “respected” publication by a “respected” writer (as occurred in this case) “is a legitimate factor to be taken into account in the assessment of damages”. Second, there is the need for a substantial damages award in order to seek to block the possibility of further surfacing of the libel causing resultant damage to reputation as stated by Nicola Davies J in the *Flood* decision (above). Mr Barnes submitted to me that any percolation would be “vanishingly small” but I do not see why this should necessarily be the case where, even in the absence of any specific evidence, readers in this country are likely to have a real interest in politics in Tunisia and to associate with others (e.g. expatriate Tunisians) who would also have such interest.

Nature and Duration of Publication

53. I accept the Claimant's evidence that the Newspaper is a respected “serious” publication and that Farouq Yousef is a respected writer on Arab political affairs. As stated in *Barron v Vines* this has the effect that the Article may be seen by its readers as being credible and thus results in greater damage to the Claimant's reputation than if it had appeared in a more “sensationalist” setting.

54. I also accept that the Article appeared so that it could be read for some eight months, and notwithstanding the Claimant's requests that it be removed and the Defendants' decisions not to defend it but to consent to the Default Judgment. However, while I accept that, as the Claimant says, this increased his annoyance and outrage; and will have led to more people reading it, to delay in learning that the Defendants were not going to seek to defend it, and to an increased chance of its having “percolated” further; in the absence of evidence of republication or specific evidence of “percolation”, it seems to me that this only adds a limited amount to the fact that the Article was read by (but only by) nearly 200 persons.

Absence of Apology, Publication of Judgments and Aggravating Conduct

55. The Defendants have not made or published any apology to the Claimant. I asked Mr Barnes whether he had any instructions to proffer any apology and he said that he did not. That, however, is not a reason for increasing the damages over what they would otherwise have been. It is, though, relevant in considering the comparability of awards of damages in other cases, as the making of such an apology can reduce the damage to reputation, serve itself as partial vindication, and reduce damage to feelings.

56. The Defendants have, however, agreed to publication of summaries of both the Default Judgment and of this Judgment, under the court's powers contained in [section 12](#) of the Defamation Act 2013 (“the 2013 Act”),

such to be at a time and in a manner and form (and place) to be agreed between the parties or, in the event of disagreement, to be settled by the court. This agreement was made in return for the Claimant agreeing not pursue any claim for aggravated damages (i.e. an additional award to reflect aggravating conduct by the Defendants additional to the publication of the libel itself) as recorded in communications of 22 April 2019 between solicitors.

57. The publication of summaries of the judgments will serve as partial vindication and afford the Claimant comfort (and thus limit the damage to his feelings); although not, it seems to me, to the same extent as an apology (as, for example, it does not involve any statement by the Defendants of contrition or repentance). Also, it is a further reason as to why the damages award should be substantial in order to achieve the effect required by Nicola Davies J in paragraph 52 of her judgment in Flood v Times as an insubstantial award might give the wrong impression to the bystander regarding the “baselessness of the charge”, and (as stated in Cairns v Modi at paragraph 32) it is the ““headline” result” of how much the Claimant is to receive which the “interested “bystanders” who need to be convinced” will most easily see and understand, which may (the judgment makes clear that this is always a fact-specific question, and that the judgment itself may be wholly or partially sufficient) best serve to vindicate the Claimant and his reputation.

58. On the other hand, I do not think that the Claimant, having agreed not to pursue a claim for aggravated damages, can then seek to rely upon the Defendants' conduct, other than the publication (and continuing publication) of the Article with its Defamatory Meanings itself and its resultant effect on his reputation and feelings etc., to seek to increase the damages award. Those are the wrongs which give rise to the damages which I am to quantify. The Claimant has chosen not to pursue a claim for aggravated damages, and I should be careful not to achieve such a result by a different route.

59. I note also that Dr El-Zobaibi in his witness statement states that the Defendants did not remove the Article as they thought that, notwithstanding the Claimant's solicitors' letters, the Claimant would not pursue the matter; and suggests that the Claimant was not pursuing others (and see below). I do not see that as any answer to the Claimant's case or justification. Taking proceedings for defamation is a serious and expensive step, and there is no legal compulsion on a Claimant to do so, and a Claimant can choose which (if any) of a number of targets to pursue. The Claimant, through his solicitors, made very clear his position at a very early stage, and the Defendants took the risks of disregarding it.

Other Matters relating to the Claimant's Reputation

60. The Defendants in their witness evidence have sought to raise a number of matters relating to the Claimant's general reputation and attacks being or to be made upon him and questions to be levelled at him by his political opponents and others interested. They refer to the fact that in his previous libel litigation, it was directed (see Ghannouchi v Houni [2003] EWHC 552) that the jury could be afforded evidence of his general political background and involvements in order to provide context.

61. Mr Barnes did not press these points and I think that he was right not to do so. Dr El-Zobaidi accepted in his witness statement that they could be no more than “background” and not any defence. While a general poor reputation may be relevant to mitigate damages, instances of specific misconduct (even were they alleged, and I do not think that they are, or proved, and which they are not) cannot (see paragraph 21e of Bar-ron v Vines and paragraph 30 of Woodward v Grice). The evidence does not in any way go to suggest a general poor reputation, and while it gives some limited support to Mr Barnes' contention that (some) opinions as to the Claimant may be polarised, it does not demonstrate that the opinions of all persons (and especially of those located in this country who are the persons to whom were made the relevant publication) were or are either polarised or irreversibly polarised.

Other Publications of Material Adverse to the Claimant

62. Dr El-Zobaidi in his witness statement refers to other entities (including an entity related to the Defendants) publishing material critical of the Claimant, and which material contains matters which might be said to be similar to elements of the Defamatory Meanings (although not going as far as them) and to threats from the Claimant to sue those entities. Mr Barnes submits that this is relevant under [section 12](#) of the Defamation Act 1952 (“the 1952 Act”) which provides that:

“In any action for libel or slander the defendant may give evidence in mitigation of damages that the plaintiff has recovered damages, or has brought actions for damages, for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded, or has received or agreed to receive compensation in respect of any such publication.”

63. However, and as Mr Dean points out, there is no evidence that any such recovery has been made or action has been brought or receipt or agreement has taken place. Thus section 12 is simply inapplicable. Further, the policy behind it seems to me to prevent double recovery in relation to damage to reputation being caused by a number of similar attacks. However, that has not happened, and it is for the Claimant to choose whom he sues or pursues. If others have also caused overlapping or co-extensive damage by similar attacks then the Defendants may (and I only say “may” as I am not making any judgment as to this) have a remedy against them under the [Civil Liability \(Contribution\) Act 1978](#) to share out the financial consequences of such damage having been caused. However, that is no concern of the Claimant, and does not affect the amount he should be awarded in relation to what, on the evidence before me, is the sole action that he has brought and recovery that he has presently made. I am, of course, only concerned with the damage which has been caused by the publication of the Article, and must be careful to exclude any damage which was caused by something else (and as stated in [paragraph 21.f.ii of Barron v Vines](#)) but I can see no evidence of that here.

Comparable Cases

64. Counsel drew my attention to a number of awards (and their “2020 values” allowing for the “Simmons v Castle” 10% uplift in tort damages following the 2013 “Jackson” reforms, and for inflation) in other cases in order to seek to put this case into the comparables framework of defamation awards.

65. In [Velju v Mazrekaj \[2007\] 1 WLR 495](#) allegations that the claimant had been a protagonist or participant in the London 2005 bombings were made in a Kosovan newspaper available to a community of the low tens of thousands and read by thousands (paragraph 2) which was held would have had an impact “significant among a large proportion of Albanian speakers in England and Wales, mostly in London... when wounds were still fresh, and feelings were running especially high as to the outrage which had taken place...” leading to a starting figure of £180,000 (which would uplift now to about £261,000) and a discounted (after a limited and delayed apology) final figure of £120,000. However, although that is a “terrorism” case, Mr Barnes points out, and I think correctly, that the defamation there was more severe in that case, as being as to actual involvement in recent and local bombings (and I have held above that the Defamatory Meanings do not convey and cannot be extended to such) and to a vastly greater readership.

66. In [Al-Amoudi v Kifle \[2011\] EWHC 2037](#) (where, although this is coincidental, Mr Barnes appeared as junior counsel for the Claimant) there were numerous serious defamatory statements but which included of financing terrorism (as well of kidnapping a daughter so as to lead to her incarceration and possible execution). Evidence was given of damage to reputation in the minds of specific individuals and the judge concluded that the publication had been read by several thousands of Ethiopian expatriates in the UK (see [paragraphs 31 and 41](#)) and had caused substantial distress leading to an award of £175,000 (with uplifts now £237,000). However, it does seem to me that the defamation was much more serious (both in terms of the actual financing and the other allegations) and the publication much wider in terms of readership than in this case.

67. In Cairns v Modi (2013), the defamation concerned statements that a very prominent international cricketer had been involved in match-fixing. The original publication had been only to 65 people, and then there was a republication which may have been read by in the region of 1000 people, but the publication did extend to key people in the sport, and where it was held that relevant percolation would have taken place (see above). The basic award was of £65,000 (being with uplift now £98,000) and was held on appeal to be proportionate to the damage suffered. In that case in one sense the defamation was less serious than that in this one as not relating to terrorism, but it did strike at the heart of the claimant's life and reputation, and where published to key figures in his own personal sporting world, and in context seem to me to more serious in terms of their relative effect than in this case. The number of people who directly read it was also a real multiple of those in this case; and would clearly have included those to whom the Claimant and his reputation were of very great interest. It therefore seems to me that both the damage to reputation and injury to feelings were considerably more severe than in this case.

68. In Flood v Times (2013), the defamation was of corrupt sale of information by a police officer, in a respected national newspaper, leading to his feeling that he had had destroyed his reputation in a specialist area of extradition, and to a basic award of £45,000 (which with uplifts would now be £52,000). The defamation there was substantial and going to the heart of the claimant's job and professional relationships although not relating in any way to terrorism or violence, and the publication was national and thus much and altogether greater than in this case.

69. In Barron v Vines (2016) the libel defamation was as to local Members of Parliament knowingly standing by and doing nothing when aware of large-scale sexual abuse of children in their constituencies, made on television news channels which would have been viewed by tens of hundreds of thousands (see paragraph 40) and with inferred percolation (paragraph 48). After taking into account aggravating and mitigating factors and the importance of avoiding an "over-chilling" effect on free speech, the claimants were awarded £45,000 each after allowing a £5,000 reduction for a late offer of amends, and thus the base figure was £50,000. In some respects the "knowing standing by" allegations are similar to the some of the main (but not all) of the Defamatory Meanings in this case, and some people (although not all) might think that such conduct in relation to widespread child sexual abuse was on a similarly reprehensible level to such conduct in relation to terrorism. However, the extent of publication was massively greater than in this case. There was also a slander defamation to a limited number of political opponents which resulted in a base award of £10,000 (again discounted by 5% for the late offer of amends).

70. In Woodward v Grice [2017] EWHC 1292 the defamation was that the claimant solicitor had been struck-off and was made in a football web fanzine (in the context of internal differences between supporters of the club and its owners whose solicitor was the claimant) and where the postings were read by "at most 100s of people rather than 1000s" (paragraph 53) with limited percolation (paragraph 54). There was a limited late apology but various aggravating factors. The sum of £18,000 was awarded. Here the extent of readership was greater, but not that much greater, than in this case but the defamation was less serious.

71. In Fentiman v Marsh [2019] EWHC 2099 the defamations were that the claimant was a computer-hacker responsible for illegal cyber-attacks on a company, and made by blog posts read by about 500 people and which it was found had deeply troubled people who were close to the claimant and who had previously trusted and admired him (see paragraph 55). This resulted in a basic award of £45,000. The allegations were less grave than in this case, as not relating to terrorism, but particularly harmful to the claimant in view of those to whom they were published (and with actual evidence of specific harm), although the readership was again a (low) multiple of the readership in this case.

72. I have borne in mind the parties' various submissions as to each of their awards and their possible application to this case. Mr Dean submits to me that these comparables are to be seen as a framework of defamation awards and would suggest a range, bearing in mind the particularly grave nature of imputations relating to terrorism, of considerably more than £50,000 and a figure of perhaps up to £100,000. Mr Barnes submits to me that in the light of the limited number of readers, I should be taking an approach closest to that

of the award in Woodward, although it does seem to me that while a statement that a solicitor has been struck-off is serious, the Defamatory Meanings in this case are of a different level of greater seriousness.

Concluding Discussion

73. I have borne in mind all the evidence and submissions advanced to me. I do, however, bear in mind that although I should, and do, approach the matter guided by the principles set out in the case-law above, it is clear that this is not to be a closely reasoned exercise involving an analytical calculation, but rather a weighing of the relevant factors and a determination of a single figure to be the award in the circumstance of this case.

74. I have, however, born particularly in mind (as well as and with all other matters referred to above):

(1) each of the Defamatory Meanings, together and separately, and that they are serious and are such to cause serious and substantial damage to the Claimant's reputation. Statements conveying the meaning of deliberately shutting one's eyes to one being the leader of a party which is stated to be a front for a terrorist organisation and to actively support and encourage terrorism (and thus doing nothing about it) are grave even if meanings of actual personal involvement and actual personal knowledge are not being conveyed. Statements of knowingly permitting the funding of one's party by a foreign state, and where the state is Qatar in the particular context, are serious. Statements of contravention of Tunisian law are, in one sense, only an addition, but are still allegations of criminality and a disregard of law

(2) that the relevant publication was distinctly limited in that there were slightly less than 200 readers (with no actual positive evidence of the Claimant's reputation being diminished as far as any UK readers are concerned, although it is accepted that, and in any event for the reasons given above, I should and do find that it has been seriously and substantially damaged). This number is much less than in any of the comparable cases cited, and there is no evidence of the UK readership including persons who are "key people" to the Claimant (while the Claimant does say that acquaintances have passed on the contents of the Article to him, I do not think that he is saying either that they are UK readers or that their estimation of him has been lowered as a result) in distinction to such cases as Cairns, Fentiman and Woodward. This is not a national newspaper or television service or a thousands of readers case.

(3) that there is potential for percolation and a need to come to a figure which will block it and which will act as the headline so that it will be clear to "bystanders" that the Claimant has been vindicated

(4) the terrorism cases which have given rise to very large awards, such as Veliu and Al-Amoudi involved more serious meanings and very much wider readerships

(5) the agreement to publish summaries of the judgments is late and not an apology, and while it will afford the Claimant some satisfaction, and limit the injury to his feelings, there is the need for a sufficient "headline" figure.

75. I do see the Defamatory Meanings as being much more serious than in Woodward, itself a case of limited publication. I see them as somewhat more serious than in *Barron v Vines* although that it is to be balanced against the massively greater publication in that case. They are also more serious than in *Fentiman* although there is not in this case the evidence there of specific lowering of reputation to those who had previously trusted and admired the victim, and where, again, there was a greater readership. I do note that the award in *Cairns* (from which the Court of Appeal did not dissent) was for a substantially higher figure, although it does seem to me to have been a "top of the range figure" (and it was an instance of a strike at the heart of the victim's reputation communicated to "key people") when contrasted with the other above cases.

76. It seems to me that the figure which will fulfil the principles of a defamation award in this case is £45,000. That reflects both the seriousness of the defamations and the distinctly limited (in comparison with the other cases) readership while providing a "headline" figure which should make clear the vindication of the good name of the claimant to bystanders who read the summaries (or this judgment) as well as compensating him for damage to his reputation and taking account his distress, hurt and humiliation. It is not out of accord with such cases as *Barron v Vines* and *Fentiman* and should not have a chilling-effect on free speech but is proportionate. That is my determination.