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Case No: QB-2019-002507

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/06/2022

Before :

THE HON. MRS JUSTICE STEYN DBE

Between :

ARRON BANKS

Claimant

- and -

CAROLE CADWALLADR

Defendant

**William McCormick QC and Sara Mansoori QC (instructed by Kingsley Napley LLP) for
the Claimant**

Gavin Millar QC and Aidan Wills (instructed by RPC LLP) for the Defendant

Hearing dates: 14, 17, 18, 19 and 21 January 2022

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MRS JUSTICE STEYN DBE

This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.00 AM on Monday 13th June 2022.

Mrs Justice Steyn :

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I

A. Introduction

1. This is the judgment following the trial of a libel claim brought by the claimant, Mr Arron Banks, against the defendant, Ms Carole Cadwalladr. The claim concerns a TED

talk entitled “*Facebook’s role in Brexit – and the threat to democracy*” (‘the TED Talk’) which Ms Cadwalladr gave on 15 April 2019 at the TED2019 Conference in Vancouver, Canada (‘the TED Conference’). A video recording of the TED Talk was published on the TED.com website shortly after it was given. Mr Banks also complains about a tweet published by Ms Cadwalladr on 24 June 2019 (‘the Tweet’). The text of the Ted Talk, and a hyperlink to it, are set out in Saini J’s judgment: *Banks v Cadwalladr* [2019] EWHC 3451 (QB), [4a] and Annex A. Both publications remain accessible.

2. Mr Banks is an important public figure in the political domain, having been one of the leaders of, and by far the largest donor to, the successful campaign for the United Kingdom to vote in favour of leaving the European Union in the referendum held on 23 June 2016 (‘the EU Referendum’). He is also a businessman with a diverse range of business and investment interests, including in the insurance industry. Ms Cadwalladr is a freelance journalist and writer who has written predominantly for *The Observer* and *The Guardian* newspapers over the past 16 years.

3. The words spoken by Ms Cadwalladr in the TED Talk, of which complaint is made by Mr Banks in these proceedings, were:

“And I am not even going to get into the lies that Arron Banks has told about his covert relationship with the Russian Government.”

4. In the Tweet, Ms Cadwalladr provided a hyperlink to the TED Talk and wrote:

“Oh Arron. This is too tragic. Nigel Farage’s secret funder Arron Banks has sent me a pre-action letter this morning: he’s suing me over this TED talk. If you haven’t watched it please do. I say he lied about his contact with the Russian govt. Because he did.”

5. The essential issues in this trial have been whether each of the statements made by Ms Cadwalladr has caused or is likely to cause serious harm to Mr Banks’s reputation, within the meaning of s.1 of the Defamation Act 2013 (‘the 2013 Act’). And, if so, whether Ms Cadwalladr has established a public interest defence to the claim pursuant to s.4 of the 2013 Act.

6. On 12 December 2019, Saini J determined that the meaning of the words complained of in both the TED Talk and the Tweet is:

“On more than one occasion Mr Banks told untruths about a secret relationship he had with the Russian government in relation to acceptance of foreign funding of electoral campaigns in breach of the law on such funding”.

(See *Banks v Cadwalladr* [2019] EWHC 3451 (QB). I refer to this below as ‘the single meaning’.)

7. Ms Cadwalladr does not contend that the single meaning is true. On the contrary, as she stated unequivocally in a letter of apology sent to Mr Banks on 25 March 2021:

“It was not my intention to make any such allegation and I accept that such an allegation would be untrue.”

8. Although the sincerity of that apology has been called into question (a matter I address below at paragraph 46 below), Ms Cadwalladr has not sought to withdraw from or dilute her clear acknowledgment that the single meaning is untrue. Ms Cadwalladr gave evidence that “*there was no evidence*” that Mr Banks “*had gone through with the deals*” (proffered via the Russian embassy) “*or made any money from them*”; or that he “*had accepted any money from the Russian government or its proxies*”. Nor was there any evidence “*that Russian money went into the Brexit campaign*”. Ms Cadwalladr also made clear that she had never thought Mr Banks was a “*Russian agent*” or a “*Russian actor*”.
9. Ms Cadwalladr has repeatedly labelled this claim a SLAPP suit, that is a strategic lawsuit against public participation, designed to silence and intimidate her. I have set out a summary of my conclusions in paragraph 416 below. Although, for the reasons I have given, Mr Banks’s claim has failed, his attempt to seek vindication through these proceedings was, in my judgment, legitimate. In circumstances where Ms Cadwalladr has no defence of truth, and her defence of public interest has succeeded only in part, it is neither fair nor apt to describe this as a SLAPP suit.

B. Issues for determination

10. The agreed issues for determination are:

Serious harm

- i) Has the claimant proved that the publication of the TED Talk and/or the Tweet has caused and/or is likely to cause serious harm to his reputation?

Public Interest Defence

In respect of each publication:

- ii) Has the defendant shown that she believed that publishing the statement complained of was in the public interest?
- iii) If so, has the defendant shown that her belief was reasonable having regard to all the circumstances of the case?
- iv) If so, has there been a significant change in circumstances since the original publication such that the defence in section 4 of the 2013 Act ceased to apply and, if so, when did any such change occur?

Damages

- v) If the claimant succeeds on liability in relation to the TED Talk and/or the Tweet, what sum should be awarded in damages?
11. If the claimant succeeds on liability, the parties have agreed further issues arise in relation to remedy, concerning an injunction and orders under sections 12 and 13 of the 2013 Act. However, it was agreed that those are matters on which it would be better to

hear argument, if the issues arise, once the parties have had the opportunity to consider my judgment on liability.

C. Brief history of the proceedings

12. The claim form was issued on 12 July 2019, and amended on 12 September 2019. The Particulars of Claim were served on 31 July 2019.
13. By a consent order made by Master McCloud on 30 August 2019, the matter was set down for a trial of the preliminary issue of the meaning of the words complained of in the four publications which were then the subject of the claim. The trial of meaning was heard by Saini J on 4 December 2019 and he gave the judgment to which I have referred on 12 December 2019.
14. A re-amended claim form and Amended Particulars of Claim were served on 20 December 2019. The claimant dropped his claim in respect of two publications (namely, a talk given by Ms Cadwalladr on 4 June 2019, entitled “*The Convention: Never Again*” and a tweet published by her on 11 July 2019), while maintaining his claim in respect of the TED Talk and the Tweet.
15. The Defence was served on 31 January 2020 in which limitation, truth and public interest defences were raised. On 27 February 2020, the claimant served a request for clarification and further information in relation to the defence under CPR Part 18, to which the defendant responded on 3 April 2020.
16. On 22 May 2020, the claimant filed an application to strike out part of the defendant’s Defence and Response to the Request for Further Information. On 23 October 2020, a hearing took place before Saini J, at the joint request of the parties for clarification of the single meaning (see paragraph 6 above). Saini J made no order in relation to the clarification sought. On 19 November 2020 the claimant filed a further strike out application (relating to the limitation defence).
17. Following the hearing before Saini J, by a letter dated 11 November 2020, the defendant served a draft Amended Defence removing the defence of truth. By a letter dated 23 November 2020, the defendant agreed to remove the defence of limitation. On 25 November 2020, Saini J gave the defendant permission to file and serve the Amended Defence. He made no order on the claimant’s two strike out applications, save that the defendant pay the costs of those applications. The Amended Defence was served on 10 December 2020. The claimant’s Reply was served on 23 December 2020.
18. Statements of case were closed following the service of Re-Amended Particulars of Claim on 20 May 2021, a Re-Amended Defence on 25 June 2021, and a Re-Amended Reply on 21 July 2021.

D. Overview of the witness evidence

19. Mr Banks and Ms Cadwalladr each gave evidence. No other witnesses were called by either party. I had the benefit of hearing Mr Banks give evidence for a day (split over two days) and of hearing Ms Cadwalladr give evidence for two and a half days (over the course of three days). I have borne in mind the observations regarding evidence based on recollection made by Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd*

[2013] EWHC 3560 (Comm) at [15] to [22]. I have received a considerable amount of contemporaneous evidence, such as tape-recorded interviews, emails, tweets and press articles, and I have placed greater reliance on the contemporaneous evidence than the parties' recollections.

Arron Banks

20. Mr Banks rose to national prominence in October 2014 when he switched allegiance from the Conservative Party to the UK Independence Party ('UKIP'), making a highly publicised pledge of £1,000,000 to UKIP, including engaging in a media event with Mr Nigel Farage, the leader of UKIP. Mr Banks was a long-standing and strong supporter of leaving the European Union ('the EU'). Prior to 2014, Mr Banks had stood for election to a local council, as a candidate for the Conservative Party, on two occasions in his early twenties. He had made donations to the Conservative Party, but not on the same scale as his donation to UKIP, or subsequent donations to the leave campaign. When interviewed by Ed Caesar, for an article in the *New Yorker* (see paragraph 212 below), he said he had given the Conservative Party about £200,000.
21. At the General Election in 2015, UKIP campaigned for a referendum on the UK's membership of the EU. The newly elected Conservative government announced, in the Queen's Speech on 27 May 2015, that it would promote legislation for the holding of a referendum on the UK's membership of the EU. The "*regulated period*" for campaigning for the EU Referendum ran from 14 April 2016 until the day of the vote, 23 June 2016.
22. In May 2015, Better for the Country Ltd ('BFTC') was incorporated. It was set up by STM Fidecs, a company in Gibraltar that Mr Banks regularly used if he wished to set up a company. Mr Banks became a director of BFTC in January 2016 and on 6 April 2016 was notified to Companies House as a person with significant control of BFTC.
23. Mr Banks was also a co-founder and co-chair of "*Leave.EU*" (formally, Leave.EU Group Ltd). Leave.EU was originally formed in September 2015, under the name "*TheKnow.EU*". Mr Banks became a director in January 2016, and it changed its name to Leave.EU in February 2016. Leave.EU was subsequently registered as a "*permitted participant*" in the EU Referendum campaign. It was the second largest leave campaign after Vote Leave which, in April 2016, was officially designated the lead leave campaign (a statutory designation that Leave.EU had also sought). BFTC was not itself a participant in the EU Referendum campaign, but was a vehicle through which funds for Leave.EU were administered.
24. Mr Banks made a very significant contribution in terms of time and money towards the leave campaign. He was a figurehead of the Leave.EU campaign, appearing, for example, on the platform at the press launch of the campaign. In oral evidence, Mr Banks could not recall how much he had donated towards the leave campaigns, but there is no dispute that he contributed in the region of £8 to £9 million, the majority of which was provided to Leave.EU, with the remainder being provided to Grassroots Out Ltd and several other leave campaigns.
25. Mr Banks accepted that it was fair to describe him as a controversial public figure. His account of the referendum campaign, *The Bad Boys of Brexit*, Arron Banks (ed. Isabel Oakeshott) ('BBOB'), published on 31 October 2016, which Mr Banks explained was

ghost written by Ms Oakeshott, stated, “*We are going to be blunt, edgy and controversial, Donald Trump-style*”; “*If BBC Producers aren’t spluttering organic muesli over their breakfast tables every morning, we won’t be doing our job*”. He also maintained a substantial Twitter output on politics during the relevant period which he acknowledged was often provocative.

26. Mr Banks is a British businessman with a diverse range of business and investment interests. His general business background is in the insurance industry and, at the relevant time, Mr Banks’s main insurance company in the UK, until it was sold in July 2021, was Eldon Insurance Services Ltd (‘Eldon Insurance’), which owned a brand called Go Skippy. Mr Banks also owned diamond mines and a concession in southern Africa, invested in gold, and had interests in the legal industry and a jewellery business. At the material time, Mr Banks was also the Honorary Consul to Wales for Belize.
27. For the most part, Mr Banks’s evidence came across as truthful. In particular, I accept that the evidence he gave on the issue of serious harm, and the impact on him of the words complained of, was open, honest and entailed no attempt to exaggerate the reactions of others or the harm he has suffered. The strong impression I gained was that Mr Banks was far more angered and vexed by the way in which he considered that contents of his emails had been obtained by Ms Cadwalladr in June 2018 (inaccurately suggesting they had been stolen or obtained by blackmail) than by what she had said or written about him. To the extent that he was concerned about what Ms Cadwalladr had said or written about him, the impression I gained was that the concern flowed from the fact that she spoke on an *international* platform and he is an *international* businessman keen to protect his reputation beyond this jurisdiction.
28. In his witness statement, Mr Banks chose to enter the fray in relation to the public interest defence. His answer to many questions on this aspect of the evidence was that he could not recall. Although it was striking how often and how quickly he responded that he could not recall, I accept that he will naturally have forgotten much that occurred in the key period of 2015-2016, particularly given how busy the period running up to the EU Referendum will no doubt have been for him. But there were aspects of Mr Banks’s evidence that came across as evasive and lacking in candour. For example, his attempt to claim that the “*Russian gold sector consolidation play*” seven-page presentation was prepared by Andrew Umbers, rather than a document provided to him by Siman Povarenkin, was not credible. Nor was his denial that the leaking of the text of emails to the press in early June 2018 had forced him to give a more detailed account of his relationship with the Russian Embassy credible. Nevertheless, I bear in mind that the focus of the public interest defence is on the evidence as to what Ms Cadwalladr knew, did and believed at the time of publication.

Carole Cadwalladr

29. Ms Cadwalladr is a freelance journalist and writer. Her journalism over the past 16 years has consisted primarily of interviews, features and comment pieces published in *The Observer* and *The Guardian*. She was awarded the Orwell Prize for Political Journalism in June 2018 and shortlisted for the Pulitzer Prize for National Reporting in 2019, alongside reporters from *The New York Times*.
30. It was manifest that Ms Cadwalladr found the litigation process, and being subjected to cross-examination over the course of three days, very stressful indeed. Even when

undertaken properly and professionally, as it was by leading Counsel for the claimant, Mr McCormick QC, cross-examination can be an ordeal, especially when it is lengthy and directed to a witness's professional competence. Although Ms Cadwalladr held herself together, she was evidently anxious throughout and became distressed and agitated on a number of occasions, particularly later on in her evidence.

31. As Mr McCormick realistically and fairly acknowledged, her evidence has to be assessed in the context of the degree of stress she was naturally feeling, given the potential impact on her of these proceedings, both financially and professionally. Nevertheless, he submits that she is not a reliable witness of fact and, in light of the numerous errors in her witness statement and oral evidence, her evidence needs to be approached with care and corroboration sought from contemporaneous documents.
32. My assessment is that at the outset of her evidence Ms Cadwalladr was anxious to answer questions fully and honestly, and she sought to do so to the best of her ability. She had made a concerted effort to recollect what she had known, thought and believed when she wrote the TED Talk. There were many occasions when she asked for questions to be repeated. She was not playing for time but making a genuine effort to understand the question, and due to the stress she was under, finding it difficult at times to focus on what she was being asked.
33. Over the course of her evidence, Ms Cadwalladr became more evasive. I do not accept the contention that she had a plan to disrupt cross-examination, although she sought at times to bring in matters unconnected to the question she was being asked. But it was plain that instead of straightforwardly answering the questions put to her, she sought (as she put it) to "*work out the significance*" of the question. When she could not see where Mr McCormick was "*going with this*", there were times when she sought to avoid answering the question because she considered that he was "*laying endless traps*" for her. Ms Cadwalladr's increasing wariness over the course of her evidence substantially increased the length of time for which she was cross-examined. For example, it took an inordinate time before she would answer that she has no evidence of contact between Mr Banks and the Russian Embassy between 1 November 2016 and 1 November 2017. Nevertheless, for the most part, Ms Cadwalladr did eventually answer the questions she was asked, and my assessment is that she gave truthful answers throughout her evidence.
34. Nor do I accept that she made gratuitous attacks. When questioned about the fact a tweet from 18 February 2017 referred to "*dark-funding*" of Brexit on LBC, Ms Cadwalladr twice described the radio presenter as being from the "*far right*" and having recently been sacked by LBC. However, my impression was that she was genuinely surprised to see that in February 2017 the term "*dark money*" (or similar) was already being used. In referring to the fact that he was, she believed, from the "*far right*" she was implicitly querying whether, if it were the person she had in mind (to whom she referred in the way she did to identify him), he would have been looking into the same matters she subsequently investigated. As regards the other 'attack' relied on, Ms Cadwalladr evidently considered the fact that a director of STM Fidecs had been arrested on money laundering charges was relevant, albeit when questioned she was unsure that he had been involved in the company at the same time as the claimant.
35. Ms Cadwalladr accepted in her oral evidence that there were some errors in her 46-page witness statement and also that she made some errors during her oral evidence. The

claimant highlights three errors in her witness statement that she accepted in cross-examination. The clearest error in her statement was in paragraph 65 where she said:

“I put Neil Barnett’s suspicions about using his diamond business directly to him. I suggested to him that owning the entire supply chain was a “well known money laundering” device. He did not deny the charge. He said: “You have no evidence of that”.”

36. The recording of the interview on 25 March 2017 shows that this aspect of the conversation was in these terms:

“CC: Well, the argument is that diamond mines are the perfect vehicle for money laundering because you own the entire flipping supply chain! So you own it from mine to shop, and so you just throw some extra diamonds in.

AB: But that is just pure speculation.

CC: Yeah, it is pure speculation.

AB: ((Laughs)) You have no clue if that’s true or not.”

37. The inaccuracy in paragraph 65 flows from the fact that Ms Cadwalladr put in quotation marks “*well known money laundering*” and “*You have no evidence of that*”. She has not accurately quoted either herself or Mr Banks. However, she has conveyed the substance of this part of the conversation.
38. In paragraph 61 of her statement, Ms Cadwalladr said that during the interview Mr Banks refused to say if he knew any Russian, whereas in cross-examination she accepted that in response to her question, “*Do you speak some Russian?*” He responded, “*A tiny bit*”.
39. In paragraph 60 of her statement, Ms Cadwalladr said that when she asked Mr Banks “*if he had known about his wife’s history with the Portsmouth MP, Mr Hancock, before the news came out during the Zutliveter hearing, he did not answer the question ... he would not say if it was a new piece of information*”. The transcript of the interview shows that Ms Cadwalladr tried asking the question several times before coming back to it, getting some response (albeit vague) and eventually turning to a new topic when her question whether it was a shock remained unanswered:

“CC: Did you know anything about this -?

AB: And page five, six and seven!

CC: When that happened, did you know anything about this episode?

AB: No, but it gave me a little bit of an inkling of how the press operate. ...

CC: So you didn't know about that before that appeared in the newspapers?

AB: We had no Russian money into Brexit. ...

CC: The question I actually asked you, I said when that story came out about Katya did you know about that bit of her history beforehand?

AB: Um (.) I knew that she had been in er lived in Portsmouth and I knew – yeah, I-I knew broadly the kind of, you know, thing.

CC: How do you mean?

AB: W-well, broadly the fact that she had written to the local MP and various other things.

CC: But her ex-husband said that it was more than writing to him, that he found her with him.

AB: Yeah, you know, that's the evil of an ex-husband or wife, isn't it? They're hardly on your side. As far as I can see it's just a pack of Daily Mail lies.

CC: So was that a shock - ?

AB: Which I have taken up with The Daily Mail.

CC: But when that came out –

AB: We're trying to get a frame front page with Dacre's signature on it. ((Laughs))”

40. In cross-examination Ms Cadwalladr accepted that the transcript shows that Mr Banks “*did answer questions around the subject”* (my emphasis) about what he knew. This is, at most, a minor overstatement.

41. In paragraph 153 of her statement, Ms Cadwalladr stated:

“At no point did I suggest in the Observer or elsewhere that the Claimant had accepted any money from the Russian government or its proxies. There was no evidence to suggest that, and I was always careful to point that out. At no point at this time or later did I ever suggest that the Claimant had taken the gold or diamond deal or had profited in any way from these proposed transactions. I have never said that Russian money went into the Brexit campaign. I have always stressed that there is no evidence to suggest it did. I have spoken on the record multiple times about it and I have never made that suggestion or that the Claimant is “a Russian actor”.” (Emphasis added.)

42. In this paragraph, Ms Cadwalladr said both that there are certain things she never said about Mr Banks and also that she (positively) pointed out, and stressed, that there was no evidence to suggest that Mr Banks accepted money from the Russian government or its proxies or that Russian money went into Brexit. Asked where she had pointed out or stressed this, Ms Cadwalladr said, “*I believe that in the talk in the Convention, for example, I carefully pointed out that we had no evidence to suggest that he had accepted any money, and we were certainly not making that accusation*”. When she was later shown the transcript of the Convention Speech that she gave on 7 June 2019, Ms Cadwalladr accepted that she did not state that there was no evidence to suggest that Mr Banks accepted any money, albeit she considered that was the import of what she had said as, if there was evidence of that, she would have said so. The parts of paragraph 153 that I have underlined are inaccurate.
43. There were other minor inaccuracies. In her witness statement, Ms Cadwalladr said that the ‘Airplane tweet’ – a tweet posted by Leave.EU on 14 November 2017 describing her as “*hysterical*” and photoshopping her image into a scene from the film Airplane so that it showed her being assaulted – had been up for 72 hours, whereas her contemporaneous account was that it had been up for 42 hours. In paragraph 137 of her statement, she said Mr Banks had posted a tweet – “*I’m buying gold at the moment & big mining stocks*” – “*in the run up to the EU referendum*”, whereas it was posted shortly afterwards, on 17 July 2016.
44. I also accept that on the first day of giving oral evidence Ms Cadwalladr mistakenly suggested that she had only mentioned Mr Banks’s former wife (and the so-called “*spy scandal*”) in a *New York Review of Books* article, whereas she acknowledged the following day that she had also referred to her in two further articles (see paragraph 255 below).
45. I do not consider that the admitted inaccuracies in Ms Cadwalladr’s evidence warrant a finding that she is not a reliable witness of fact. The inaccuracies in reporting her interview with Mr Banks do not go to the core of the defence, and it is obvious they were not intended to mislead. Ms Cadwalladr would have been well aware that what she wrote could be checked against the record of the interview. Her overstatement in paragraph 153 is more significant and it is a factor that I bear in mind, particularly in considering Ms Cadwalladr’s intended meaning.
46. As I have said, on 25 March 2021 Ms Cadwalladr sent Mr Banks a written apology (see paragraphs 7-8 above). In cross-examination, she avoided answering the question whether her apology was sincere. The impression I gained was that she felt unable to say that it was “*sincere*” because that word may convey the meaning that the apology was heartfelt and willingly given. Plainly, that was not the case. Ms Cadwalladr was obviously reluctant to apologise for a meaning she is convinced she never conveyed, to a man she believes is hounding her in a SLAPP suit. At the same time, in my view, part of the reason for avoiding answering the question was that a simple ‘no, it was not sincere’ would not have been accurate, either. My impression was that Ms Cadwalladr found it difficult to convey, under the stress of cross-examination, the point that the apology was honest (and so in that sense sincere) – she did not intend to make the allegation conveyed by the single meaning and accepts it is untrue – albeit she did not give it willingly and wholeheartedly. Ms Cadwalladr’s evidence on this point did not undermine the impression that she was an honest witness.

47. Although I reject the contention that Ms Cadwalladr is not a reliable witness of fact, I fully accept that it is important to check the accuracy of her evidence against the contemporaneous documents. As I have said, that follows in any event from the general fallibility of memory, particularly over a period of years, and especially when a witness is asked to recollect what they knew and believed at a particular point in time.

II: SERIOUS HARM TO REPUTATION: S.1 DEFAMATION ACT 2013

E. The law

48. At common law, a meaning or imputation is defamatory only if it would tend to have a substantially adverse effect on the way that right-thinking members of society generally would treat the claimant. This formulation encapsulates the common law threshold of seriousness and the consensus requirement. These are objective tests that turn on the inherent tendency of the words. See *Ameyaw v McGoldrick* [2020] EWHC 3035 (QB), Warby J, [48(4)]. It is not disputed that the common law test is met.

49. However, the common law rules have been modified by statute. For a publication to be defamatory it must also satisfy the condition set out in s.1 of the 2013 Act. Section 1 provides:

“(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.

(2) For the purposes of this section, harm to the reputation of a body that trades for profit is not “serious harm” unless it has caused or is likely to cause the body serious financial loss.”

50. This provision was considered by the Supreme Court in *Lachaux v Independent Print Ltd* [2020] AC 612, and the principles have been analysed by Nicklin J in *Turley v Unite the Union* [2019] EWHC 3547 (QB), [107]-[109] and *Riley v Murray* [2021] EWHC 3437 (QB), [2022] EMLR 8, [34]. Although there were differences of emphasis, I do not understand there to be any dispute between the parties as to the principles to be drawn from these authorities.

51. In summary, the relevant legal principles are as follows:

- i) The protection of reputation is the primary function of the law of defamation and section 1 is concerned with harm to the reputation of the claimant, being harm of the kind represented by general damage, rather than special damage: *Lachaux*, Lord Sumption JSC (with whom all members of the court agreed), [15] and [19].
- ii) Section 1 imposes a higher threshold of seriousness than the common law rules “*which were seen unduly to favour the protection of reputation at the expense of freedom of expression*”: *Lachaux*, Lord Sumption [1], [12]; *Turley*, Nicklin J, [107(i)]. The provision was intended to effect “*a substantial change to the law of defamation*”: *Lachaux*, Lord Sumption, [16]. As Saini J emphasised in *George v Cannell* [2021] EWHC 2988 (QB), [2021] 4 WLR 145, [117], it is important not to lose sight of the statutory qualifier *serious* harm.

- iii) The court should assess whether the serious harm test is met in respect of each statement individually, not cumulatively: *Sube v News Group Newspapers Ltd* [2018] EWHC 1961 (QB), [2018] 1 WLR 5767, Warby J, [22].
- iv) There is no presumption of serious harm. A claimant must demonstrate *as a fact* that the publication of the statement he complains of has caused or is likely to cause harm to his reputation that is ‘*serious*’: *Lachaux*, Lord Sumption, [12]-[16], [21]; *Turley*, Nicklin J, [107(iv)].
- v) The propositions that (i) the publication ‘*has caused*’ serious harm to the claimant’s reputation and that (ii) it ‘*is likely to*’ cause such harm are each propositions of fact which necessarily call for an investigation of the actual impact of the statement. When determining whether a statement ‘*has caused*’ serious harm, the focus is on historic harm. What were the consequences for the claimant’s reputation, in terms of the actual impact on those to whom the statement was communicated? When determining whether a statement ‘*is likely to*’ cause serious harm, the focus is on probable future harm. *Lachaux*, Lord Sumption, [14]-[15]; *Turley*, Nicklin J, [107(ii)-(iv)].
- vi) Whether a publication causes serious harm depends on the reactions of others, rather than the perception of the claimant: *Economou v De Freitas* [2016] EWHC 1853 (QB), [2017] EMLR 4, Warby J, [131]. The assessment of harm to the claimant’s reputation may take account of the impact of the publication on those who do not know the claimant but might get to know him in the future: *Lachaux*, Lord Sumption, [25].
- vii) A claimant who has the burden of proving that a statement caused, or is likely to cause, serious harm to his reputation may do so by evidence directly going to prove such harm, or by inference from other facts. A claimant may produce evidence from those who watched, heard or read the statement complained of about its impact on him, but his case will not necessarily fail for want of such evidence: *Lachaux*, Lord Sumption, [21], *Turley*, Nicklin J, [107(vi)]. The difficulties of obtaining such evidence from those in whose eyes the claimant’s reputation was damaged are obvious and well-recognised: *Sobrinho v Impresa Publishing SA* [2016] EWHC 66 (QB), [2016] EMLR 12, Dingemans J, [48]; *Economou v De Freitas* [2018] EWCA Civ 2591, [2019] EMLR 7, Sharp LJ (with whom all members of the court agreed), [28] and [31]; *Turley*, Nicklin J, [109(ii)]. Comments posted online by those who have watched, heard or read the publication “*can be evidence of reputational harm, to the extent they can be said to be a natural and probable consequence of the publication complained of*”: *Economou*, Warby J, [129].
- viii) Sometimes inference may be enough, but it cannot always be so. The evidence may or may not justify an inference of serious harm. Inferences of fact as to the seriousness of harm done to a claimant’s reputation may be drawn from the evidence as a whole, including the meaning of the words, the scale and circumstances of publication, the claimant’s situation and the inherent probabilities: *Lachaux*, Lord Sumption, [21]; *Turley*, Nicklin J, [107(vi)-(vii)] and [108] (citing Warby J’s judgment in *Lachaux*, which Lord Sumption considered to be “*coherent and correct, for substantially the reasons he gave*”: *Lachaux*, Lord Sumption, [20]). Even a seriously harmful allegation about a

person may not cause serious harm to their reputation if those within the jurisdiction to whom it has been made consist only of people whose opinion of the claimant is of no consequence to the claimant and/or those who are unlikely to have believed the words complained of: see *Ames v Spamhaus Project Ltd* [2015] EWHC 127 (QB), [2015] 1 WLR 3409, Warby J, [92(8)]; *Economou*, Warby J, [68].

- ix) If it is shown that the claimant already had a bad reputation in the relevant sector of his life, that will reduce the harm: see, albeit in the context of assessment of damages: *Lachaux v Independent Print Ltd* [2021] EWHC 1797 (QB), [2022] EMLR 2, Nicklin J, [209]; and *Lachaux*, Lord Sumption, [16] (and see the recognition that assessment of whether the serious harm test is met and assessment of the measure of general damage “raise a similar question of causation”: *Lachaux*, Lord Sumption, [24]). The evidence that is admissible is limited to evidence of general bad reputation in the sector: *Gatley on Libel and Slander*, 13th ed., 34.081-34.091. Rumours are not admissible: *Umeyor v Innocent Ibe* [2016] EWHC 862 (QB), Warby J, [78].
- x) Evidence of damage to the claimant’s reputation done by earlier publications of the same matter is legally irrelevant to the question whether serious harm was caused, or is likely to be caused, by the publication complained of: *Lachaux*, Lord Sumption, [24] (accepting that Warby J was entitled to apply the *Dingle* rule in applying s.1 of the 2013 Act). However, in circumstances where a claimant “points to some hostile remark or other adverse event in his life as evidence of harm to reputation caused by the publication complained of, and there are other possible causes of the remark or event, in the form of other publications to the same or similar effect”, the *Dingle* rule has no bearing in determining causation: *Economou v De Freitas*, Warby J, [19].
- xi) The court should not “consider the issue of serious harm in blinkers”. Directly relevant background context (see *Burstein v Times Newspapers* [2001] 1 WLR 579, May LJ, [47]) may be relevant to the assessment of whether the serious harm test is met: *Umeyor v Innocent Ibe*, Warby J, [77]-[78].
- xii) In general, a libel has greater potential to cause harm if it is published to the world at large, and if it has been published repeatedly, than if it has been published to a single person on a single occasion: *Cairns v Modi* [2012] EWCA Civ 1382, [2013] 1 WLR 1015, Lord Judge CJ, [24]. But assessment of harm to reputation is not a ‘numbers game’: “one well-directed arrow [may] hit the bull’s eye of reputation” and cause more damage than indiscriminate firing: *King v Grundon* [2012] EWHC 2719 (QB) [40], Sharp J. Very serious harm to reputation can be caused by publication to a relatively small number of publishees: *Sobrinho* [47]; *Dhir v Sadler* [2017] EWHC 3155 (QB); [55(i)]; *Monir v Wood* [2018] EWHC 3525 (QB) [196]”: *Turley*, Nicklin J, [109(iii)]. Moreover, in an appropriate case, a claimant “can also rely upon the likely ‘percolation’ or ‘grapevine effect’ of defamatory publications, which has been “immeasurably enhanced” by social media and modern methods of electronic communication: *Cairns v Modi*, Lord Judge CJ, [26] and *Slipper v British Broadcasting Corporation* [1991] 1 QB 283, Bingham LJ, at 300”: *Turley*, Nicklin J, [109(i)].

- xiii) A vindictive or vengeful motive for bringing the claim is not relevant to the assessment of whether the test in s.1 of the 2013 Act is met: see *Economou v De Freitas*, Warby J, [134].
52. Leading Counsel for the defendant, Mr Millar QC, reserves the right to contend on appeal, if it arises, that when determining whether a statement has caused or is likely to cause serious harm, the gravity of the statement should not be assessed solely by reference to the single meaning. However, that is not an issue in respect of which I have heard any argument. While reserving her position, the defendant accepts that I should proceed on the basis that serious harm is to be assessed by reference to the single meaning, following the approach taken by Warby J in *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB), [2016] QB 402, [57]-[59] and [65].
53. There is one contentious point of law which arises for determination. If I were to uphold the public interest defence in respect of the original publication(s), in considering the claim in respect of continuing publication from the date of any significant change, should I undertake a fresh assessment of whether the serious harm condition in s.1 of the 2013 Act is met from that (later) date? The claimant's answer is 'no'; the defendant's is 'yes'.
54. Mr McCormick submits the question whether the test in s.1 of the 2013 Act is met only falls for determination once, from the date of each original publication. Unlike the position with respect to damages, serious harm should be assessed by reference to the entire period of publication, even if the court has determined that the defendant has a defence to the libel claim in respect of the first part of that period.
55. Mr Millar contends that if the court were to find that the public interest defence applies in respect of the original publications but that there was a significant change of circumstances, say, 12 months later, the court would have to revisit the question whether serious harm is established in respect of the publication from the date of the significant change of circumstances. As publication for the first 12 months would, on this hypothesis, be lawful and protected by s.4 of the 2013 Act, it would be illogical to take account of harm caused by that lawful publication in assessing whether the s.1 test is met in relation to the post-change of circumstances publication.
56. This issue was addressed briefly, and only in oral submissions in response to a question I raised during closing submissions, so I express my view on it more tentatively than if I had heard full argument. In my judgment, as a matter of logic, the defendant must be right that any harm to the claimant's reputation that is attributable to a publication for which she establishes a defence ought to be disregarded. If there is a significant change of circumstances, such that the defendant ceases to have the benefit of the public interest defence, the question whether publication has caused or is likely to cause serious harm should be assessed from the date of that change.
57. First, the introduction of s.1 was "*evidently intended as a significant amendment*" (*Lachaux*, Lord Sumption, [16] and see paragraph 51 above) which raises the bar for bringing a libel claim. It would run counter to the purpose of the provision if a claimant could surmount the serious harm threshold by bringing into account evidence of harm caused by a lawful publication in respect of which the defendant has established a defence.

58. Secondly, for the purpose of assessing *damages* any harm to the claimant's reputation suffered as a consequence of publication in respect of which the defendant establishes a defence falls, of course, to be disregarded. In *Lachaux* Lord Sumption observed at [24],

“Section 1 of the Act is concerned with the threshold of harm and not with the measure or mitigation of general damage. But both raise a similar question of causation.”

I am not persuaded that there is any good reason, having regard to the words of s.1 and the purpose of that provision, to apply a different approach in the context of assessing whether the serious harm threshold is met to that which is taken when assessing damages.

59. Thirdly, the claimant's argument, in effect, treats the word “*publication*” in s.1 of the 2013 Act as meaning the first publication, when the cause of action accrued. However, the “*single publication rule*” introduced by s.8 of the 2013 Act applies only for the purposes of limitation. At common law, each communication of a statement is a separate publication. There is nothing in the words of s.1 to support the proposition that the word “*publication*” can only mean the first publication, even where the defendant only ceases to have a defence in respect of a later publication.

F. Evidence and submissions

60. Mr Banks's case on serious harm is primarily based on the gravity of the imputation and the scale of publication. In addition, he relies on evidence of the reaction to the TED Talk and Tweet of those who made written comments and Mr Banks gave some evidence of the reactions he has received.
61. The claimant relies on the single meaning. In his pleaded case, he contends the imputation was “*an extremely grave one*”, a contention that is denied. Mr McCormick realistically accepts that the imputation is not at the most serious end of the scale, but nevertheless contends it is a very serious allegation. The claimant contends the statements impute “*very serious dishonesty on the part of the Claimant by stating that he has lied on more than one occasion about a secret relationship he had with Russia, a foreign power that is adverse to the United Kingdom in certain fundamental respects, for illegal and improper purposes, namely the acceptance of foreign funding of electoral campaigns in breach of the law on such funding*”.
62. Mr Millar contends that Mr Banks has not discharged the burden of proving that each of the statements has caused or is likely to cause harm to his reputation and that any such harm can properly be characterised as serious. With respect to the gravity of the allegations, Mr Millar contends that even the single meaning is not at the most serious end of the scale of libels. It is an allegation that a controversial high-profile political figure has misconducted himself in the context of a national political campaign. It is not an allegation that he committed a criminal offence, nor does it concern him in his personal or private life.
63. Mr Millar submits that allegations that national political figures have lied about their conduct in that capacity are increasingly common in contemporary political discourse, and this political context is relevant in determining whether the test in s.1 of the 2013

Act is met. Whereas Mr McCormick submits that Mr Banks's role as a public figure, so far as he can be said to be one, can only weigh very lightly, if at all, in deciding whether his reputation in the eyes of others has been seriously harmed.

64. Although it is common ground that the allegations are not at the most serious end of the scale, there is a dispute between the parties as to what follows from that characterisation. Mr Millar submits that because the statements are not at the most serious end of the scale, serious reputational harm cannot be straightforwardly inferred. Whereas Mr McCormick contends that even if an allegation is not at the level of, say, murder or child abuse, it remains legitimate to infer harm on a sliding scale, and in this case serious harm should be inferred.
65. Both parties submitted that the TED Talk was, as Saini J described it, “*a serious talk on a serious subject for people who are interested in such matters*”: *Banks v Cadwalladr* [2019] EWHC 3451 (QB), [40]. TED.com has a global reach and Ms Cadwalladr's TED Talk was a prominent one, presented at an official TED conference and featured on the TED homepage where it is described as “*unmissable*”.
66. The claimant's evidence regarding the scale of publication of the TED Talk on the TED.com website, and on YouTube, can be summarised as follows:

Date	Number of views on TED.com	Number of views on YouTube	Number of languages translated into
24.6.19	2,045,000		
31.7.19	2,340,000	280,000	19
2.9.19		476,978	
19.9.19	2,912,300		22
20.12.19	3,450,000	843,000	
29.4.20	3,850,939		26
24.5.20		897,890	
11.11.20	4,092,447		26
11.12.20		959,932	
19.5.21	4,210,000	985,000	
17.11.21	4,294,959	1,010,549	
16.12.21	4,305,379		27
31.12.21		1,015,640	

67. The claimant's evidence regarding the scale of publication of the Tweet is that by 24 June 2019 the Tweet had appeared in the ‘timeline’ of Ms Cadwalladr's 311,000 followers, been re-tweeted 8,915 times (consequently appearing in the timelines of any followers of those 8,915 accounts) and been ‘liked’ 20,261 times. Mr Banks states that by 17 November 2021 the Tweet had been re-tweeted 8,019 times, quote tweeted 484 times and liked 18,600 times.
68. These figures reflect publication throughout the world. The claimant acknowledges that he may only rely on publication in England and Wales. Mr McCormick submits that it is an obvious and natural inference that a significant proportion of the viewers of the TED Talk were in this jurisdiction and almost all the readers of the Tweet were within this jurisdiction. In particular, he submits this can be inferred in relation to the

continuing publication of the TED Talk as Ms Cadwalladr has been promoting and publishing it to her supporters via her Twitter account and her crowdfunding site.

69. In support of the inference that a significant proportion of the 5 million viewers of the TED Talk will have been in England and Wales the claimant submits the TED Talk would have been of significant interest to those in this jurisdiction because it was primarily about UK politics and by a UK journalist. During the TED Summit 2019 Ms Cadwalladr agreed with her interviewer that the TED Talk had involved “*going outside of Britain to get it bounced back into Britain so that it could really filter into the discussion*”. In addition, Mr McCormick refers to the comments on the TED Talk, some of which include information from which it can be surmised that the writer is based in this jurisdiction (e.g. “*I’ve lived in Ebbw Vale all my life...*”) and others at least indicate the writer is in the United Kingdom.
70. Mr McCormick submits that it is inherently probable that there has been substantial publication in this jurisdiction, at least equivalent to a high circulation domestic newspaper. It is not necessary to prove the exact number.
71. Mr Millar contends that it is striking that Mr Banks has not adduced, nor it appears even sought to adduce, any evidence as to the extent of the publication of either the TED Talk or the Tweet in this jurisdiction. He submits that considerable caution is necessary when drawing inferences about the scope of publication in England and Wales, given that TED is an American entity. He contends it should be inferred that the bulk of the publication would have been outside this jurisdiction.
72. The claimant’s pleaded case is that it is reasonable to infer that the TED Talk and the Tweet have each made people shun the claimant and/or take steps to avoid conducting business with him or with entities for whom he conducts business. In support of this, Mr Banks gave evidence:
- “A number of people I knew, in my personal and my business life, told me that they had heard about the claims that Carole made in the talk. There was no getting away from the fact that it was an immensely evocative and powerful, though inaccurate speech. Some comments were made as banter (people suggesting that it was just another of Carole’s conspiracy theories); but I could not be sure they really felt that. I told people that raised it that the statement was wrong and it would be corrected, and at first I expected this would happen, but when it didn’t, I started to feel uneasy in that I felt people were treating me differently by not being so keen to engage with me because no correction had been made.”
73. Mr Banks referred to comments recounted by his sons that “*they had received from a teacher and from fellow students about me being involved with the Russians*”. Some close friends mentioned the allegations made by Ms Cadwalladr directly, whereas others “*did not mention this at all, which made me feel on edge*”. Mr Banks recalled that after the proceedings had been announced he was approached by “*a member of the public who threw a drink at me. The individual claimed I was a liar and that I had sold the country down the river and was bullying Carole*”.

74. As regards the impact in a business context, Mr Banks gave evidence that:
- “even earlier this year [i.e. 2021, the statement having been signed on 23 November 2021], one part of my business was seeking to raise funds, but a question was asked about the litigation which had come up as part of due diligence. I had to provide an explanation as to what was happening. In the event, the loan was not granted and the business has now been sold. From a corporate standpoint, we were less successful in obtaining approval of funding than we had been previously and I consider that the Ted Talk and the fact that Carole had claimed she could prove what she said was true caused and contributed to this.”
75. In cross-examination in relation to the above statement, Mr Banks said that he was referring to a telephone call with a potential lender who said that “*the litigation had been flagged*”. He said, “*it’s impossible for me to know why that funding failed, but certainly litigation had been flagged*”. He said, “*it was said that the litigation had been flagged so they had clearly seen the TED Talk, how much that contributed to it falling over, that’s debatable, you know, they might have taken exception to something else.*”
76. Mr Millar observes that there is no witness evidence from anyone in this jurisdiction who said they saw the TED Talk and thought any the worse of Mr Banks because of the single line complained of. He submits that those who viewed the TED Talk, whether via the TED website or YouTube, or as followers of Ms Cadwalladr’s Twitter feed or because they were considering donating to her crowdfund, were people amongst whom Mr Banks had no reputation in relation to the matters covered by the words spoken that might be harmed.
77. The defendant also contends that by the time the TED Talk and Tweet were published Mr Banks had no or no meaningful general reputation in respect of the aspects of his reputation engaged by the statements. In the Re-Amended Defence (‘RAD’), the aspects of Mr Banks’s reputation in respect of which the defendant pleads that he had no, or no meaningful, general reputation are: (i) “*a well-known propensity to tell untruths*”; and (ii) “*it was generally known that companies and organisations with which he was associated had shown a disregard for, and had committed serious breaches of, the law*”. In support of these allegations, the RAD merely “*relies on and repeats the matters pleaded above*”, a reference to the entire, lengthy pleading of the public interest defence.
78. In support of this contention, Mr Millar relies on the following:
- i) An Interim Report on “*Disinformation and ‘fake news’*” published by the House of Commons’ Digital, Culture, Media and Sport Committee (‘the DCMS Committee’) on 29 July 2019 which stated:
- “185. Arron Banks is, reportedly, the largest individual donor in UK political history. As far as we understand, he met with the Russian Ambassador, for the first time, in the run up to the EU Reference. Evidence discloses that he discussed business ventures within Russia and beyond, and other financial

ventures, in a series of meetings with Russian Embassy staff. Arron Banks and Andy Wigmore have misled the Committee on the number of meetings that took place with the Russian Embassy and walked out of the Committee's evidence session to avoid scrutiny of the content of the discussions with the Russian Embassy.

186. From the emails that we have seen, it is evident that Arron Banks had many meetings with Russian officials, including the Russian Ambassador, Alexander Yakovenko, between 2015 and 2017. The meetings involved discussions about business deals involving Alrosa, the Russian diamond monopoly, the purchase of gold mines, funded by Sberbank, the Russian-state bank, and the transferring of confidential documents to Russian officials. Mr Banks seemed to want to hide the extent of his contacts with Russia, while his spokesman Andy Wigmore's statements have been unreliable – by his own admission – and cannot be taken at face value. Mr Wigmore is a self-confessed liar and, as a result, little significance can be attached to anything that he says. It is unclear whether Mr Banks profited from business deals arising from meetings arranged by Russian officials. We understand that the National Crime Agency (NCA) is investigating these matters. We believe that they should be given full access to any relevant information that will aid their inquiry.” (Underlining added; italics in the original.)

- ii) A press release issued by the Chair of the DCMS Committee, Mr Damian Collins MP, following a session during which Mr Banks and Mr Andrew Wigmore voluntarily gave evidence, in which Mr Collins said, “*Mr Banks and Mr Wigmore themselves put on the record that they frequently lie, exaggerate, misspeak and misunderstand*”. In relation to Mr Banks, the only basis for this assertion appears to be Mr Banks's evidence to the DCMS Committee that, “*We certainly were not above leading journalists up the country path, making fun of them, and the same with politicians*”.
- iii) In July 2018, Channel 4 published information regarding Mr Banks's business activities in southern Africa, reporting on documents filed in a South African court by a former business partner of Mr Banks, in the context of a civil dispute between them. Channel 4 reported that the court documents allege that Mr Banks sought and raised money in Russia which was used in various ways, including his participation in funding Brexit.
- iv) On 13 June 2018, Ms Cadwalladr gave an interview to the BBC's Media Show in which she recounted the events surrounding the contents of emails to which she had been given access in the late evening of 6 June 2018, which had led to articles being published in *The Sunday Times* and *The Observer* regarding Mr Banks. Ms Cadwalladr said on the programme, “*if I was faced with massive evidence of that fact that I had been lying to and misleading the public for two years – and I think I can say that now because we've - Arron has admitted that now that he had lied about that*”. The interviewer interposed, “*Of course, he's*

not here to defend himself”, to which Ms Cadwalladr responded, “*no, but he said in Parliament that there were three meetings so there is ... absolutely no doubt and Arron has admitted that now*”. Ms Cadwalladr described the “*real story*” as being about “*massive continued undisclosed contact with the highest levels of the Russian Government*”.

- v) In an article published on 16 June 2018 in *The Observer* and online at guardian.co.uk, under the headline “*Arron Banks, Brexit and the Russia connection*”, Ms Cadwalladr wrote that the relationship between Mr Banks, “*the main funder of the Leave campaign*”, and “*officials representing the Russian government*” “*was, until now, partly covert and hidden*”, that “*this relationship is deeper and more complex than we could have imagined*” and she repeatedly stated that Mr Banks “*lied about it*” (see paragraph 197 below).
- vi) Leave.EU and Mr Banks had been the subject of enforcement action by the Electoral Commission and the Information Commissioner’s Office (‘ICO’) in relation to their activities during the Referendum campaign which had been widely reported.

79. In response, Mr McCormick submits the defendant’s case on general reputation is unclear and hopeless. First, it is not permissible for the defendant to rely on earlier publications in which she or others accused Mr Banks of the “*lies*” he was accused of in the TED Talk and Tweet, in support of the contention that the latter publications did not cause serious harm to his reputation. The defendant has failed to address the claimant’s reliance on the *Dingle* rule. Secondly, the meanings of the earlier publications were quite different to the TED Talk. For example, on the Media Show, the interviewer introduced the piece by stating that it was about “*how Arron Banks, a millionaire funder of the Leave.EU campaign, had met with Russian officials multiple times before the Brexit vote. Well Mr Banks says that the story is absurd and any suggestion that the campaign received financial help from Russia is complete, absolute garbage*”. Thirdly, he submits that in *The Observer* article, Ms Cadwalladr did not juxtapose the allegation that Mr Banks had lied about a covert relationship with reference to funding of the referendum campaign. Fourthly, in cross-examination Ms Cadwalladr was (unsurprisingly) unable to point to any part of the evidence that Mr Banks gave to the DCMS Committee which would support the assertion that he had admitted to telling lies.

G. Decision on serious harm

Publication of the TED Talk on 15 April 2019

80. Although there is considerable overlap in the evidence, I shall first consider whether publication of the TED Talk caused, or is likely to cause, serious harm before addressing the same question with respect to the Tweet. The claimant’s pleaded case that the imputation was “*an extremely grave one*” puts it too high. Nevertheless, the single meaning clearly imputes serious, repeated dishonesty on the part of the claimant about serious matters, namely a secret relationship he had with a potentially hostile foreign power for the unlawful and improper purpose of accepting foreign funding of an electoral campaign.

81. Having regard to the global publication figures (see paragraph 66 above), the subject matter of the TED Talk, and the inferences that can be drawn from many of the comments as to the likely location of the viewer, I agree with Mr McCormick that it is inherently probable that there has been substantial publication in this jurisdiction of the TED Talk, at least equivalent to a high circulation domestic newspaper. Ms Cadwalladr herself said when interviewed for the TED Summit that it was hard to break out of the “*Guardian and Observer bubble*” to reach “*more of a mainstream audience*” and so she was “*incredibly grateful*” to TED for having given her a platform to get her talk “*bounced back into Britain so that it could really filter into the discussion*”.
82. The evidence that the TED Talk had any impact on Mr Banks’s reputation and prospects in the business sphere is negligible. The occasion Mr Banks referred to when reference was made to the litigation before a loan was refused does not demonstrate that the lender was influenced by the TED Talk *per se*, as he fairly acknowledged.
83. I accept Mr Banks’s evidence that a “*number of people*” he knew brought to his attention that they had heard what Ms Cadwalladr had said about him in the TED Talk. His reputation was obviously not harmed in the eyes of friends and acquaintances who, as Mr Banks explained, raised it by way of “*banter*”, suggesting it was “*another of Carole’s conspiracy theories*”.
84. By 19 July 2019, 670 comments had been posted regarding the TED Talk. None of the comments refer to Mr Banks by name. Of the comments which the claimant has relied on, most are only relevant to the question whether viewers were within the jurisdiction, and to show that it was being viewed by an audience with mixed views for and against Brexit. There are only four comments that provide any (minimal) support for the contention that viewers thought worse of the claimant as a result of watching the TED Talk. Those comments (which had been posted very shortly after the TED Talk was given) were in the following terms:

“Her talk wasn’t about ‘politics’ – it was about criminals eroding our democratic principles.

While her bias is obvious (whose isn’t?), this was not a ‘pro’ or ‘anti’ Brexit TED Talk. Her focus is on ELECTORAL CRIMES committed on a mass trans-national scale.”

“How is providing verified evidence from countless sources including Insider Whistleblowers about factually proven events a partisan position? ...

Well, I guess if you accept that the patently clear evidence of Russian Interference in Election Campaigns in many countries is now considered an acceptable and legitimate activity then Western Democracy DOES become just another partisan perspective.”

“Why would a net beneficiary of the EU vote to leave the EU? Due to lies and electoral fraud explained in this Ted Talk.”

“I am not a CC apologist or a Guardian reader, but I am disturbed that faceless businessmen can break laws designed to protect the integrity of our democracy by illegally funding a political campaign with money from unknown sources to push blatant lies to targeted votes profiled using stolen data.”

85. The claimant also relied on about a score of negative comments about Mr Banks on Ms Cadwalladr’s GoFundMe fundraising page, in which she embedded a link to the TED Talk, and on Twitter. However, it is highly likely that those who chose to support Ms Cadwalladr’s defence of this litigation are people amongst whom he had no reputation to be damaged and whose opinion of the claimant was of no consequence to him.
86. There is no evidence from any person to the effect that they saw the TED Talk and their opinion of Mr Banks was lowered as a result. The absence of such evidence is unsurprising. Anyone who thinks poorly of Mr Banks would hardly be likely to put themselves forward to support his case against Ms Cadwalladr. On balance, I am persuaded that it can be inferred that a sizeable number of people who knew or would later come to know Mr Banks, would have viewed the TED Talk and believed what was said about him, lowering his reputation in their eyes. I consider that this is a proper inference to draw given the extent of publication, the gravity of the single meaning, the serious nature of the TED Talk, the fact that it was given by an award-winning investigative journalist, and the authoritative and credible nature of the international platform on which it was given (that is, at the main TED conference).
87. I reject the defendant’s contention that, in the eyes of most viewers of the TED Talk, Mr Banks would have had no or no meaningful general reputation to be harmed. In principle, the defendant’s reliance on earlier publications of the allegation that Mr Banks had lied about his contact with the Russian government is impermissible. That applies to Ms Cadwalladr’s own allegations on the Media Show and in *The Observer*, and to Mr Collins’s press release. I also consider that it applies to the DCMS Committee’s Interim Report. Mr Millar did not submit that the *Dingle* rule is inapplicable by reason of the source of the report being a parliamentary committee. In any event, the evidence is wholly insufficient to support the contention that Mr Banks’s *general reputation* was as someone who had a “*well-known propensity*” to lie.
88. Nor has the defendant established that the claimant had no meaningful general reputation by reason of the Electoral Commission’s or the ICO’s investigations or Channel 4’s reporting. The EC’s first investigation resulted in Leave.EU having to pay financial penalties of £66,000 (see paragraph 217 below). The ICO’s investigation resulted in monetary penalties totalling £75,000 being imposed on Leave.EU and a monetary penalty of £45,000 being imposed on Eldon Insurance (see paragraph 215 below). These were “*serious contravention[s]*” of the law relating to the transmission of unsolicited communications by email for the purposes of direct marketing, but the ICO accepted they were not deliberate. Neither outcome involved any finding (or even allegation) that Mr Banks had committed any offence, still less any offence involving dishonesty.
89. Channel 4 reported *allegations* made in on-going litigation in South Africa and carried Mr Banks’s denial of his former business partner’s allegations. The EC’s second investigation was ongoing when Ms Cadwalladr gave the TED Talk (and posted the Tweet) (see paragraphs 218-219 below). The existence of allegations in a civil claim,

and an investigation, manifestly provide no basis for the contention that the claimant had a general bad reputation in the relevant sphere. (The NCA subsequently reported that there was no evidence that any criminal offences had been committed under the Political Parties, Elections and Referendums Act 2000 ('PPERA') or company law by Mr Banks (see paragraph 400 below.)

90. For the reasons I have given, I accept that Mr Banks has established that publication of the TED Talk caused serious harm to his reputation. In relation to the TED Talk, as the claimant has demonstrated serious harm, the onus falls on the defendant to show that she has a defence.

Publication of the Tweet on 24 June 2019

91. In relation to the Tweet, most of the matters I have referred to above are the same. The gravity of the imputation is the same given that the single meaning of the Tweet is the same as the TED Talk. The lack of direct evidence that the claimant has been shunned or lost business opportunities is the same. However, there are two crucial differences.
92. First, although it is reasonable to infer that most of Ms Cadwalladr's 311,000 followers on Twitter, and most of the followers of those who re-tweeted the Tweet, were within this jurisdiction, nonetheless, the number of people within the jurisdiction to whom the Tweet was published is likely to be only a fraction of the number who viewed the TED Talk. The normal inference, in the absence of a reason to think otherwise, would be that access to a Tweet will peak at or shortly after the time of first publication. The numbers given in paragraph 67 above show there is no reason to think otherwise in this case. The Tweet is likely to be a long way down the defendant's timeline. There is no probability of future harm flowing from the Tweet: the question is whether it *has caused* serious harm.
93. Secondly, as Mr McCormick acknowledged, it may reasonably be inferred that the vast majority of the defendant's followers on Twitter "*are likely to be persons within her own echo chamber*" and "*it's probably right that they wouldn't have thought very much of [the claimant] by that time*". In my judgment, those within the jurisdiction to whom the Tweet was published are likely to consist of people whose opinion of the claimant was of no consequence to him.
94. The claimant's case on this issue is essentially dependent on drawing an inference of serious harm from the combination of the gravity of the imputation and the extent of publication. While I have been persuaded, on balance, to draw such an inference in relation to the TED Talk, in my judgment, the claimant has not established that the Tweet caused (or is likely to cause) *serious* harm to Mr Banks's reputation. Accordingly, I dismiss the claim in respect of the Tweet on the grounds that the condition in s.1 of the 2013 Act is not met.

Continuing publication of the TED Talk from 29 April 2020

95. For the reasons that I have given below, I have found that the defendant has established a public interest defence in respect of publication of the TED Talk on 15 April 2019, but that there was a significant change of circumstances on 29 April 2020. Accordingly, the question whether the claimant has proved that the serious harm threshold is met in

respect of the TED Talk falls to be reconsidered by reference to the period from 29 April 2020.

96. The gravity of the imputation remains the same as in respect of the original publication of the TED Talk. The lack of direct evidence that the claimant has been shunned or lost business opportunities is also the same. The claimant's case is dependent on drawing an inference of serious harm from the combination of the gravity of the imputation and the extent of publication.
97. While I have been persuaded, on balance, to draw such an inference in relation to the original publication of the TED Talk, the extent of worldwide publication from 29 April 2020 is close to a tenth of the figure from 15 April 2019, and publication within this jurisdiction is likely to be a similarly small fraction of the total from first publication. The normal inference, in the absence of a reason to think otherwise, would be that views of the TED Talk will have peaked at or shortly after the time of first publication, and certainly within the first year of publication. The numbers given in paragraph 66 above show there is no reason to think otherwise in this case. In addition, the fact that the TED Talk is on the subject of the EU Referendum, which took place nearly six years ago, increases the likelihood that the extent of publication will continue to diminish.
98. I also consider it may reasonably be inferred that most of those within the jurisdiction who have viewed the TED Talk since 29 April 2020 are, like the defendant's followers on Twitter, likely to be people who are supportive of her defence of this claim and "within her own echo chamber" and likely to consist of people whose opinion of the claimant was of no consequence to him.
99. In my judgment, Mr Banks has not established that the publication of the TED Talk since 29 April 2020 has caused (or is likely to cause) *serious* harm to his reputation. Accordingly, I dismiss the claim in respect of publication of the TED Talk from 29 April 2020 on the grounds that the condition in s.1 of the 2013 Act is not met.

III: PUBLIC INTEREST DEFENCE: S.4 DEFAMATION ACT 2013

H. The law

100. Section 4 of the 2013 Act provides:

“(1) It is a defence to an action for defamation for the defendant to show that –

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

(3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant

was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgment as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

(6) The common law defence known as the Reynolds defence is abolished.”

101. The origin of the defence lies in the common law, having been developed by the House of Lords in *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 and *Jameel v Wall Street Journal* [2006] UKHL 44, [2007] 1 AC 359, and the Supreme Court in *Flood v Times Newspapers Ltd* [2012] UKSC 11, [2012] 2 AC 273. But the *Reynolds* defence has been replaced by the public interest defence contained in s.4 of the 2013 Act.
102. The statutory defence is not the same as the now abolished *Reynolds* defence: *Serafin v Malkiewicz* [2020] UKSC 23, [2020] 1 WLR 2455, Lord Wilson JSC (with whom all members of the court agreed), [72]. The rationale for the statutory public interest defence is not materially different to the former common law defence, and the principles which underpinned the *Reynolds* defence remain relevant to the interpretation of section 4, but “it is important to adhere to the statutory wording”: *Serafin*, Lord Wilson, [68], [72]-[73].
103. As Nicklin J observed in *Lachaux v Independent Print Ltd*, “[t]he abolition of the *Reynolds* defence – by s.4(6) – means that the test of ‘responsible journalism’ has been replaced by the requirements of the section”. It follows, as Lord Wilson advised in *Serafin*, [76], that reference to acting “responsibly” is now best avoided.
104. There are three questions to be addressed:
 - i) Was the statement complained of on a matter of public interest, or did it form part of such a statement?
 - ii) If so, did the defendant believe that publishing the statement complained of was in the public interest?
 - iii) If so, was that belief reasonable?

In order to establish the public interest defence, the onus is on the defendant to satisfy the court that all three questions should be answered affirmatively. *Serafin*, Lord Wilson, [74].

105. The first question is an objective one for the court, not a matter of the subjective judgment of a journalist or editor: *Lachaux*, Nicklin J, [130]. The second concerns the defendant's actual state of mind at the time of publication. To establish this element of the defence, the defendant must prove that she *did* believe (not that a reasonable person *could* have believed) that publication was in the public interest: *Lachaux*, Nicklin J, [131]. The third question involves an objective assessment. In *Lachaux*, Nicklin J observed that it is "*the third issue that is likely to be the major point of contention whenever reliance is placed upon a s.4 defence*". That is, indeed, the position in this case.

All the circumstances of the case

106. In assessing whether the public interest defence is established, the court is required to have regard to all the circumstances of the case: s.4(2) of the 2013 Act. The circumstances to be considered are those that go to whether the statement was on a matter of public interest, whether the belief was held, and whether it was reasonable.
107. In assessing whether s.4(1)(b) is met, the focus must be on things the defendant said or knew or did, or failed to do, up to the time of publication: *Economou*, Warby J, [139]. The court should take a fact-sensitive and flexible approach, having regard to practical realities. One or more of the ten illustrative factors identified by Lord Nicholls in *Reynolds*, 205A-D ('the *Reynolds* factors') may well be relevant. "*But, in removing the listed matters from the Bill and in proceeding to substitute a reference to all the circumstances, Parliament made clear its intention that the Reynolds factors, upon which the list had been based, were not to be used as a checklist*": *Serafin*, Lord Wilson, [69], [75] and [77].
108. The public interest defence in s.4 is self-contained and quite separate from the truth defence in s.2 of the 2013 Act. The truth or falsity of the defamatory statement is a "*neutral circumstance*" (*Jameel*, Lord Hoffmann, [62]); it is not one of the "*relevant circumstances*" to which the court should have regard in assessing whether s.4(1) is met: *Economou*, Warby J, [139]. The public interest defence reflects the appreciation that a journalist is not required to guarantee the accuracy of her facts.
109. Nonetheless, where a journalist publishes a statement of fact, whether at the time the journalist *believed* the statement complained of to be true is, leaving aside reportage cases to which s.4(3) of the 2013 Act applies, highly likely to be relevant to the determination: see *Jameel*, Lord Hoffmann, [62], *Flood*, Lord Mance JSC, [122]. A journalist is unlikely to be able to show that she reasonably believed it was in the public interest to publish a statement of fact which she did not believe to be true: *Jameel*, Lord Hoffmann, [62].
110. Moreover, efforts to verify the statement complained of "*will usually be regarded as an important factor in the assessment of the reasonableness of a defendant's belief that publication was in the public interest. That is not to say that a failure to verify will necessarily lead to the s.4 defence being rejected; everything depends upon the particular circumstances of the case*": *Lachaux*, Nicklin J, [137]. In *Economou*, in a statement approved by the Court of Appeal at [101] and by the Supreme Court in *Serafin*, [67], Warby J held at [241]:

“I would consider a belief to be reasonable for the purposes of section 4 only if it is one arrived at after conducting such inquiries and checks as it is reasonable to expect of the particular defendant in all the circumstances of the case.”

111. A failure to invite comment from the claimant prior to publication will “*no doubt always at least be the subject of consideration under subsection (1)(b) and may contribute to, perhaps even form the basis of, a conclusion that the defendant has not established that element of the defence*”. But an invitation to comment cannot be described as a “*requirement*” of the s.4 defence: *Serafin*, Lord Wilson, [76].

Editorial judgment

112. When addressing the third question, the court is required to make such allowance for editorial judgment as it considers appropriate: s.4(4) of the 2013 Act. The importance of giving respect, within reason, to editorial judgment is relevant when considering the tone and content of the material and the nature and degree of the steps taken by way of verification prior to publication: *Serafin*, Lord Wilson, [60], *Flood*, Lord Mance, [137], *Jameel*, Lord Hoffmann, [51].
113. It is important to consider the process and the publication in the round. As Lord Mance noted in *Flood*, in *Bonnick v Morris* [2002] UKPC 31, [2003] 1 AC 300 the journalist had fallen short both in not making further inquiries about the anonymous source and in not including the claimant’s explanation, but the Privy Council was “*prepared to overlook some respects in which the journalist’s conduct could legitimately be criticised*” in reaching an overall judgment as to the availability of the public interest defence ([130]). Lord Mance continued at [131]:

“The need to look at the position in the round was also identified by Lord Bingham in *Jameel’s* case [2007] 1 AC 359, para 34, when he disclaimed too close a focus on particular ingredients which have (or have not) been included in a composite story. He said:

‘This may, in some instances, be a valid point. But consideration should be given to the thrust of the article which the publisher has published. If the thrust of the article is true, and the public interest condition is satisfied, the inclusion of an inaccurate fact may not have the same appearance of irresponsibility as it might if the whole thrust of the article is untrue.’”

114. Journalistic freedom covers possible recourse to a degree of exaggeration or even provocation. It is well established that this is something the court must tolerate: *Yeo v Times Newspapers Ltd* [2015] EWHC 3375 (QB), [2017] EMLR 1. It is not for the court to substitute its views for those of journalists as to what techniques of reporting should be adopted.

Section 4(1) and (4) and the Bonnick principle

115. In *Bonnick*, the Privy Council held that, in assessing whether the *Reynolds* defence is made out, the single meaning rule does not apply. Lord Nicholls observed that the single meaning rule is “*in one sense highly artificial, given the range of meanings the impugned words sometimes bear ... The law attributes to the words only one meaning, although different readers are likely to read the words in different senses*” ([21]). The Privy Council held that the single meaning rule represents a fair and workable method for deciding whether the words under consideration are defamatory, but it was not designed to be applied when considering whether the *Reynolds* defence is established and it would not be suitable for that purpose.

116. Lord Nicholls stated at [24]-[25]:

“To be meaningful this standard of conduct must be applied in a practical and flexible manner. The court must have regard to practical realities. Their Lordships consider it would be to introduce unnecessary and undesirable legalism and rigidity if this objective standard, of responsible journalism, had to be applied in all cases exclusively by reference to the ‘single meaning’ of the words. Rather, a journalist should not be penalised for making a wrong decision on a question of meaning on which different people might reasonably take different views. Their Lordships note that in the present case the selfsame question has resulted in a division of view between members of the Court of Appeal. If the words are ambiguous to such an extent that they may readily convey a different meaning to an ordinary reasonable reader, a court may properly take this other meaning into account when considering whether *Reynolds* privilege is available as a defence. In doing so the court will attribute to this feature of the case whatever weight it considers appropriate in all the circumstances.

This should not be pressed too far. Where questions of defamation may arise ambiguity is best avoided as much as possible. It should not be a screen behind which a journalist is ‘willing to wound, and yet afraid to strike’. In the normal course a responsible journalist can be expected to perceive the meaning an ordinary, reasonable reader is likely to give to his article. Moreover, even if the words are highly susceptible of another meaning, a responsible journalist will not disregard a defamatory meaning which is obviously one possible meaning of the article in question. Questions of degree arise here. The more obvious the defamatory meaning, and the more serious the defamation, the less weight will a court attach to other possible meanings when considering the conduct to be expected of a responsible journalist in the circumstances.”

117. In *Bonnick* the defamatory imputation was a matter of implication ([19]). The alternative meaning was a non-defamatory one ([20]). Not only was the non-defamatory meaning the one the defendant believed she was conveying, one of the members of the Court of Appeal of Jamaica was of the same view ([7], [19]). The Privy Council considered that “*although near the borderline*” ([28]), in circumstances where “*the*

defamatory meaning of the words used was not so glaringly obvious that any responsible journalist would be bound to realise this was how the words would be understood by ordinary, reasonable readers” [27], the failure to make further enquiry and the omission of the claimant’s explanation, although unfortunate, were not sufficient to render the defence inapplicable.

118. In *Flood*, Lord Mance observed at [129]:

“The principle endorsed by the Privy Council in *Bonnick v Morris* appears to be, therefore, that a responsible journalist would have had in mind the less damaging of the possible meanings that reasonable persons might attach to the article, and would have been entitled to focus in that direction when checking and reporting the relevant subject matter.”

119. Both parties cite the *Bonnick* principle. The claimant submits that the court should approach the matter from the starting point of the natural and ordinary meaning that the court has determined the words bear. The reason for this is that the single meaning is intended to reflect the natural and ordinary reaction to the words of reasonable viewers, listeners or readers. The claimant contends that *Bonnick* ([25]) shows that a journalist is expected to be able to predict the natural and ordinary meaning and, even if the words complained of are highly susceptible of another meaning, the natural and ordinary meaning will not be disregarded by a responsible journalist. The claimant submits that if a reasonable degree of thought would have led to recognition of a real risk of the words conveying the single meaning, then the question whether the journalist reasonably believed publication was in the public interest should be assessed by reference to that meaning.
120. The defendant submits that the claimant’s approach misapplies the *Bonnick* principle and risks fatally undermining the value of the public interest defence as its availability would depend on the journalist’s capabilities as a libel lawyer rather than as a public interest journalist. In particular, the defendant contends that the court should not determine the availability of the defence by reference to the single meaning on the basis of a risk; the question should be whether that meaning was “*glaringly obvious*” (*Bonnick*, [27]).
121. In my judgment, in considering the statutory defence, the focus should be on the words of section 4. The references in s.4(1) and (4) to “*the statement complained of*” mean “*the words complained of*” not “*the (single) defamatory imputation they convey*”: see *Economou*, Sharp LJ, [92]-[94] (addressing s.4(1)(b)) and *Lachaux*, Nicklin J, [130] (addressing s.4(1)(a)). The “*public interest defence is not assessed by reference to a meaning or imputation*”: *Doyle v Smith* [2018] EWHC 2935 QB, [2019] EMLR 15, Warby J, [75].
122. As the focus of s.4 is on the statement complained of rather than the single meaning, the defence may be founded on a reasonable belief that it is in the public interest to make statement A, even if the words used unintentionally conveyed imputation B. If a journalist genuinely did not appreciate that the words could carry imputation B, unless that ought to have been obvious to her, she could hardly be criticised for not seeking to verify or give an opportunity to comment on imputation B. See *Economou*, Warby J, [153]-[155] and [159], Sharp LJ, [85], and *Bonnick*, Lord Nicholls, [24]-[25].

123. In *Bonnick* the Privy Council made clear that, given language is inherently imprecise, a journalist should not be penalised for making a wrong decision on a question of meaning on which different people might reasonably take different views. A defamatory meaning should not be ignored by a journalist if it is “*obviously one possible meaning*” ([25]) or “*glaringly obvious*” ([27]); to do so would not be reasonable. But if that threshold is not reached, the reasonable belief of a journalist who did not perceive the more damaging meaning falls to be assessed by reference to the less damaging meaning.

Political speech, reputation and the limits of acceptable criticism

124. Section 4 of the 2013 Act has to be interpreted and applied in conformity with the parties’ respective rights under articles 8 and 10 of the European Convention on Human Rights: s.3(1) of the Human Rights Act 1998; *Doyle v Smith*, Warby J, [102]. This causes no difficulty. As Lord Wilson observed in *Serafin* at [74]:

“just as the common law defence was developed under the influence of Convention principles..., so was the statutory defence. Its three requirements that the statement should have been on a matter of public interest, that the defendant should have believed that the publication of it was in the public interest and that the belief should have been reasonable, all of which have to be established by the defendant, are intended, and may generally be assumed, to ensure that operation of the section generates no violation of either of the claimant’s right under article 8, or of the defendant’s right under article 10. To the extent that a court is persuaded to consult Convention jurisprudence in the course of a determination under section 4, it is likely to find that the word ‘reasonably’ in subsection (1)(b) is sufficiently elastic to enable the section to be given effect in a way which is compatible with Convention rights.”

125. In *Reynolds* Lord Nicholls addressed the value of protecting an individual’s reputation in these terms at 201A-C:

“Reputation is an integral and important part of the dignity of the individual. It also forms the basis of many decisions in a democratic society which are fundamental to its well-being: whom to employ or work for, whom to promote, whom to do business with or to vote for. Once besmirched by an unfounded allegation in a national newspaper, a reputation can be damaged for ever, especially if there is no opportunity to vindicate one’s reputation. When this happens, society as well as the individual is the loser. ... Protection of reputation is conducive to the public good. It is in the public interest that reputation of public figures should not be debased falsely.”

126. The “*value of free speech in a particular case must be measured in specifics*”: *R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115, Lord Steyn, 127A. Although the public interest defence does not apply if the statement complained of was not, or did not form part of, a statement on a matter of public interest,

within the category of statements on matters of public interest there remain gradations in the value of free speech.

127. The special importance of expression in the political sphere, a freedom which is at the very core of the concept of a democratic society, and the wider limits of acceptable criticism in the case of “*press reporting on a matter of real public interest concerning an important public figure*”, are well recognised: *Flood*, Lord Mance, [142]; *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457, Baroness Hale, [148]; *Lingens v Austria* (1986) 8 EHRR 407, GC, [42]; and *Lindon v France* (2008) 46 EHRR 35, GC, [46].
128. As Beatson J explained in *R (Calver) v Adjudication Panel for Wales* [2012] EWHC 1172 (Admin), [2013] PTSR 378, [58],

“This recognition involves both a higher level of protection (‘enhanced protection’) for statements in the political sphere and the expectation that if the subjects of such statements are politicians acting in their public capacity, they lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public: see *Jerusalem v Austria*, para 38, albeit referring to what journalists and the public say about politicians, and, in a common law context, *Lange v Australian Broadcasting Corpn* (1997) 189 CLR 520, 559 (High Court of Australia).”

129. The claimant contends that the principle derived from paragraph 42 of *Lingens* (that, as regards an important public figure, the “*limits of acceptable criticism*” are wider than in the case of a private individual, and such a public figure must “*display a greater degree of tolerance*”) relates only to value judgments and not to statements of fact. I do not accept this submission, although I acknowledge the nature of the statement will have an impact on the degree of tolerance to be expected. It is true that *Lingens* concerned an expression of opinion rather than a statement of fact, and the court drew a distinction between facts and value judgments. But the principle expressed by the Grand Chamber has been applied in the context of statements of fact: in *Flood*, a case concerning statements of fact, Lord Mance applied the principle at [139], [142] and [178], citing paragraphs 38-41 of *Flux v Moldova (No.7)*, in which the Fourth Section expressly applied paragraph 42 of *Lingens* in the context of a statement of fact. See also *Reynolds*, Lord Steyn, 215B-C and *Calver* (above).

130. In *Reynolds* Lord Nicholls held at 205F:

“The press discharges vital functions as a bloodhound as well as a watchdog. The court should be slow to conclude that a publication was not in the public interest and, therefore, the public had no right to know, especially when the information is in the field of political discussion.”

131. The concept of political expression is a broad one. It encompasses “*information and ideas on matters relevant to the organisation of the economic, social and political life of the country*”: *Campbell*, Baroness Hale, [148]; and see *Reynolds*, Lord Bingham CJ, 161C-D. It obviously comprehends speech concerning matters closely connected to the public life of the community, such as the conduct of an election or referendum.

132. The wider limits of acceptable criticism may apply to speech concerning important public figures other than professional politicians. As Lord Cooke commented in *Reynolds*, “[t]here are other public figures who exercise great practical power over the lives of people or great influence in the formation of public opinion or as role models. Such power or influence may indeed exceed that of most politicians” (220B-C).
133. The importance of free political speech, the wider limits of acceptable criticism of important public figures in the political arena, and the value of protecting reputation are matters that may be (and in this case are) of relevance in determining the questions that arise under s.4 of the 2013 Act but they do not give rise to any separate and distinct issues.

Continuing publication and change of circumstances

134. Nicklin J addressed the principles that apply to continuing online publication in *Lachaux* at [156]-[159]:

“156 ... In *Flood v Times Newspapers Ltd*, the trial judge, Tugendhat J, had upheld a *Reynolds* defence for the original publication of an article, but rejected the continued online publication of the article - without amendment or qualification - from 5 September 2007, the date on which the defendant publisher was notified that the claimant had been cleared by the internal police inquiry: [2010] EMLR 8. The Court of Appeal allowed the claimant’s appeal against the judge’s upholding of the *Reynolds* defence for the original publication and dismissed the defendant’s appeal in respect of the continued online publication after 5 September 2007: [2011] 1 WLR 153. Subsequently, the Supreme Court reversed the Court of Appeal and restored Tugendhat J’s upholding of the *Reynolds* defence for the original publication. It did not resolve the defendant’s appeal in respect of the continuing publication beyond 5 September 2007, and, ultimately, the defendant withdrew its appeal on this point.

157 At first instance, Tugendhat J concluded [249]:

“I reach the same conclusion in this case as the Court of Appeal reached in *Loutchansky v Times Newspapers Ltd* [2002] QB 783 [79]. The failure to remove the article from the website, or to attach to the articles published on The Times website a suitable qualification, cannot possibly be described as responsible journalism. It is not in the public interest that there should continue to be recorded on the internet the questions as to the claimant’s honesty which were raised in 2006, and it is not fair to him. It is not in the public interest for the reasons given by Lord Nicholls in *Reynolds* at p.201 cited in [207] above.”

158 His decision, and this conclusion, was approved by Lord Neuberger MR in the Court of Appeal [77], who added [78]:

“On the face of it, at least, that conclusion appears to be not merely one which the judge was entitled to reach: it was plainly right ... If the original publication of the allegations made against DS Flood in the article on the website had been, as the judge thought, responsible journalism, once the report’s conclusions were available, any responsible journalist would appreciate that those allegations required speedy withdrawal or modification. Despite this, nothing was done.”

159 In my judgment, those principles continue to apply to a defence under s.4 of the Defamation Act 2013, with the necessary modifications to reflect the new statutory defence. If a defendant seeks to rely upon a s.4 defence for continuing publication of an article, then it will have to establish the constituent elements of the defence (identified in [129] above). That will require demonstration that the defendant believed that the continued publication was in the public interest and that the belief was reasonable. As with *Reynolds*, that will necessarily require consideration of any significant change in circumstances since the original publication.”

135. It was common ground that if the court finds that the public interest defence is established in relation to the original publications, there is a further issue whether the public interest defence is made out in respect of the continuing and ongoing publication of the TED Talk and the Tweet (subject to my findings on serious harm). With respect to the continuing publications, it is for the defendant to show that the answer to each of the three questions identified in paragraph 104 above is still ‘yes’, and in making this assessment the court should focus on whether there has been a significant change of circumstances.

I. Matters of public interest

136. It is not in dispute, and it is undoubtedly the case, that each of the publications complained of was, or was part of, a publication on a matter or matters of public interest.
137. The defendant contends that the words complained of in the TED Talk were on, and formed part of, a statement on political matters of high public interest. In particular, the defendant has pleaded that it was (or formed part of) a statement on the following matters of public interest:

“7.1.1. weaknesses in the UK election laws regulating election/referendum campaign expenditure, including in relation to undisclosed or foreign donations which fund such campaigning, and regulating online campaigning;

7.1.2 breaches of electoral and data protection laws committed in the course of the EU referendum campaign, including by Leave.EU;

7.1.3 investigations by the EC, the Information Commissioner's Office ('ICO') and the Digital, Culture, Media and Sports ('DCMS') Committee into the same;

7.1.4 investigations by the police and the National Crime Agency ('NCA') of potential breaches of the criminal law by leave campaigners at the EU referendum, including by Leave.EU/the Claimant;

7.1.5 the lawfulness or otherwise of the activities of the Claimant as a funder of political campaigning, including that of Leave.EU;

7.1.6 the sources of the funds used by the claimant to fund political campaigning, including that of Leave.EU."

138. The claimant admits in the Re-Amended Reply that the statement complained of was *part of* a statement on a matter of public interest, including on each of the matters relied on by the defendant in paragraphs 7.1.1 to 7.1.6 of the RAD. Although it is sufficient to meet this aspect of the test for the defendant to establish that the statement complained of was *part of* a statement on a matter of public interest, it is pertinent to the later stages of the analysis to note that the claimant also admits that the words complained of were *themselves* a statement on each of the matters of public interest set out in those paragraphs of the RAD, apart from data protection laws (referred to in para 7.1.2) or the investigation by the ICO (referred to in para 7.1.3).
139. In the pleadings, the claimant took issue with the defendant's contention that the statement complained of was "*high value political speech attracting and deserving of strong protection by the Courts under Article 10 of the European Convention on Human Rights*". In oral submissions Mr McCormick acknowledged that the TED Talk was of "*relatively high public interest*".
140. Given the concession that the words complained of were on, and formed part of, a statement on matters of public interest, it is unnecessary at this stage of the analysis to address the particular value of the speech in issue. This is, however, a relevant matter in addressing whether the defendant reasonably believed publication was in the public interest. For the reasons that I have given below, I accept the TED Talk was political expression of high importance, and great public interest (in the strictest sense), not only in this country but worldwide.

J. Belief that publication was in the public interest

141. Although the claimant has not conceded that Ms Cadwalladr believes (subjectively) that publication of the words complained of was in the public interest, this issue was only lightly challenged, it being suggested to Ms Cadwalladr only that she does not "*today*" believe that it is in the public interest to continue to publish the TED Talk. Ms Cadwalladr responded, "*I believe that the TED Talk addressed matters of the most - - highest public interest, and I still maintain that belief*".
142. As I have said, I accept that Ms Cadwalladr's evidence was truthful. There were times when she sought to avoid answering the question, but there was no hesitation in her evidence on this issue. I have no doubt that Ms Cadwalladr honestly, indeed fervently,

believed when she gave the TED Talk and continues to believe that publication was not only in the public interest, but that it is a matter (as she put it) “*of the absolute highest interest*” to highlight the vulnerability of our democracy. That this was and is her belief was manifest throughout her written and oral evidence, and is conveyed clearly in the contemporaneous documents. Ms Cadwalladr has succeeded in showing that she believed that publishing the words complained of was in the public interest, and that has continued to be her belief at all times since she gave the TED Talk.

K. Reasonable belief: the facts

(a) The subject and nature of the TED Talk

143. The title of the TED Talk is “*Facebook’s role in Brexit – and the threat to democracy*”. It is a 15-minute political speech. Ms Cadwalladr described it in her evidence as the nearest approximation to what in a newspaper would be called an “*op-ed*” or comment piece, rather than a news article. That is an apt description, although the words complained of were a statement of fact rather than opinion.
144. In the TED Talk Ms Cadwalladr addresses political profiling of the electorate, the use of such data to micro-target voters with tailored political advertisements that are not visible to others, and so cannot be challenged, breaches of data protection and electoral laws, the difficulty ascertaining who placed such advertisements and the source of their funding, and the risk of interference by authoritarian states, in particular Russia, in elections in western democracies. Ms Cadwalladr draws connections between the result of the EU Referendum and the election of Donald Trump to the US Presidency.

(b) Broader public interest in Russian interference and Mr Banks’s role as a public figure

145. An important aspect of the background against which the TED Talk was given was that on 13 November 2017, the (then) Prime Minister, Theresa May, gave a speech at the Lord Mayor’s Banquet during which she said that Russia was chief among those who seek to undermine open economies and free societies. The Prime Minister continued:

“...it is Russia’s actions which threaten the international order on which we all depend.

I want to be clear about the scale and nature of these actions.

Russia’s illegal annexation of Crimea was the first time since the Second World War that one sovereign nation has forcibly taken territory from another in Europe. Since then, Russia has fomented conflict in the Donbas, repeatedly violated the national airspace of several European countries, and mounted a sustained campaign of cyber espionage and disruption. This has included meddling in elections, and hacking the Danish Ministry of Defence and the Bundestag, among many others.

It is seeking to weaponise information. Deploying its state-run media organisations to plant fake stories and photo-shopped images in an attempt to sow discord in the West and undermine our institutions.

So I have a very simple message for Russia.

We know what you are doing. And you will not succeed. ...”
(Emphasis added.)

146. This speech followed public remarks given by the (then) Chief of the Secret Intelligence Service (MI6), Alex Younger, about 11 months earlier, on 8 December 2016, regarding his organisation’s work “*countering the increasingly dangerous phenomenon of hybrid warfare*”. The Chief warned:

“The connectivity that is at the heart of globalisation can be exploited by States with hostile intent to further their aims deniably. They do this through means as varied as cyber-attacks, propaganda or subversion of democratic process. ... The risks at stake are profound and represent a fundamental threat to our sovereignty. They should be a concern to all those who share democratic values.” (Emphasis added.)

147. The DCMS Committee published its interim and final reports on “*Disinformation and ‘fake news’*” on 29 July 2018 and 18 February 2019, respectively. In the interim report, the DCMS Committee included a chapter on “*Russian influence in political campaigns*” and at paragraphs 173-174 they reported:

“In January 2018, the Prime Minister, Rt Hon Theresa May MP, announced the establishment of a dedicated national security communications unit to be charged with combating fake news and disinformation by state actors and by others. This followed her speech a few months earlier, when she accused Russia of meddling in elections and planting fake news, in an attempt to ‘weaponise information’ and sow discord in the West.

When we took evidence from the then Secretary of State for DCMS in March, Rt Hon Matt Hancock MP, he accepted that Russia had been involved in directing disinformation at countries including the UK. He said that tackling the ‘multiple threats’ of disinformation and fake news ‘is incredibly important to safeguarding our democracy,’ and, indeed, was ‘the No.1 issue faced by our media.’”

148. In their final report, the DCMS Committee reported, at paragraph 237:

“The speed of technological development has coincided with a crisis of confidence in institutions and the media in the West. This has enabled foreign countries intent on destabilising democratic institutions to take advantage of this crisis. There has been clear and proven Russian influence in foreign elections, and we highlighted evidence in our Interim Report of such attempts in the EU Referendum.”

149. Ms Cadwalladr’s investigation, and the TED Talk, also took place against the background of the Mueller investigation. On 8 November 2016, a presidential election

was held in the United States. The presidency was won by the Republican candidate, Donald Trump, defeating the Democrat candidate, Hillary Clinton. In May 2017, the US Department of Justice appointed Robert S. Mueller III as Special Counsel to lead an investigation into possible interference by Russia in that election and possible coordination or collusion between Russia and the Trump campaign. On 6 November 2018, *The New York Times* reported that Robert Mueller had “*obtained records of Mr Banks’s communications with Russian diplomats*”.

150. Ms Cadwalladr’s knowledge of each of these matters is clearly established not only by her evidence, but also the articles that she wrote, and which were published, prior to the TED Talk.
151. I have given a brief outline of Mr Banks’s political role in paragraphs 20-25 above. These were all matters of which Ms Cadwalladr was aware prior to giving the TED Talk (save for Mr Banks’s acceptance in evidence that it was fair to describe him as a controversial public figure).

(c) Overview of Ms Cadwalladr’s investigation and relevant publications

152. Ms Cadwalladr gave the TED Talk on 15 April 2019, almost three years after the EU Referendum. By 2016, Ms Cadwalladr had been writing about the impact of technology on society for more than a decade. On 6 November 2016, two days before the US presidential election, an article she wrote was published in *The Observer* under the headline “*Tech is disrupting all before it - even democracy is in its sights*”. In this article, she suggested that “*what the last week of the presidential campaign has shown us is that technology has disrupted, is disrupting, is threatening to upturn the democratic process itself*”.
153. The editor of *The Observer* asked her to follow up on this story with a bigger piece for the Review section. On 4 December 2016, an article Ms Cadwalladr wrote was published in *The Observer* under the headline “*Google, democracy and the truth about internet search*”. One of the people that Ms Cadwalladr interviewed for this piece was Mr Jonathan Albright, an assistant professor of communications at Elon University in North Carolina. Mr Albright told Ms Cadwalladr about a company called Cambridge Analytica that could exploit and “*microtarget*” individual voters. In the article Ms Cadwalladr referred, for the first time, to Cambridge Analytica which she described as a “*data-mining and influencing*” company which could follow individuals around on the web and “*send them highly personalised political messages*”. Ms Cadwalladr wrote that Cambridge Analytica was “*employed by both the Vote Leave campaign and the Trump campaign*”, but she says that she subsequently discovered that Cambridge Analytica worked (unpaid) for Leave.EU rather than Vote Leave.
154. In a further article published on 18 December 2016, “*Themes of 2016: is democracy itself threatened by tech disruption?*”, Ms Cadwalladr again referred to Cambridge Analytica, describing it as a London-based data research firm “*where Steve Bannon, founder of Breitbart news and chief strategist to Donald Trump, is a board member*”, and stating that it was used by the Leave campaign and the Trump campaign. These articles prompted letters from Cambridge Analytica to *The Observer*, denying the company had worked for the Leave campaign. The Readers’ editor of *The Observer* sent an email to Mr Wigmore, who was the spokesperson for Leave.EU (and a close associate of, and spokesperson for, Mr Banks), asking “*did Leave.EU employ the*

services of Cambridge Analytica...?” Mr Wigmore responded on 27 January 2017, “We had advice from them yes and met them many times yes – employed them we did not – we did not need to they happily helped”. This email was forwarded to Ms Cadwalladr who was, at the time, investigating Cambridge Analytica and the “fake news ecosystem”.

155. On 14 February 2017, Ms Cadwalladr sent Mr Wigmore an email stating that she was interested in how Leave.EU had reached out to new voters during the referendum campaign, particularly using social media, and asking if he would be prepared to speak to her about it. This approach led to a meeting on 20 February 2017. Prior to this meeting, Ms Cadwalladr “*knew that the Claimant was a businessman who had funded the Leave campaign and that Mr Wigmore was his close associate who handled PR on his behalf*”, but beyond that she knew “*almost nothing*” about either of them. The meeting was expected to be brief but Ms Cadwalladr “*ended up speaking to him for several hours*”.
156. Ms Cadwalladr states, “*Mr Wigmore described how data, artificial intelligence and Facebook had been crucial assets in the Leave campaign. He explained in detail how personal data was the critical difference that allowed the Leave campaign to target individuals in order to message them.*” Mr Wigmore said Cambridge Analytica had been happy to help the Leave.EU campaign because “*the Trump and Brexit campaigns were the same family*” and he talked about the help they had had from a US election consultant Gerry Gunster of the firm Goddard Gunster.
157. Following this meeting, Ms Cadwalladr investigated Leave.EU’s electoral returns by searching the Electoral Commission website and by telephoning the Electoral Commission’s press officer to seek assistance. Ms Cadwalladr ascertained that a political campaign such as Leave.EU not only had to declare its spending, a “*gift of services*” by a company also had to be declared to the Electoral Commission; and she discovered that donations from foreign companies or individuals are impermissible. Ms Cadwalladr established that nothing had been declared by Leave.EU in relation to use of Cambridge Analytica’s or Goddard Gunster’s services. Ms Cadwalladr believed that, according to the reporting rules explained to her by the Electoral Commission’s press officer, Leave.EU “*had potentially broken several UK electoral laws if it had failed to declare a ‘gift of services’ from CA*”.
158. Ms Cadwalladr also investigated Leave.EU’s use of data. She spoke to Professor Paul-Olivier Dehaye, a professor of mathematics at Geneva University and a data activist who had been investigating Cambridge Analytica for many months before Ms Cadwalladr began to do so, and with whom she had spoken before meeting Mr Wigmore. Ms Cadwalladr describes Professor Dehaye as “*an expert in the use of personal data in politics*”. She also interviewed “*a number of authorities on electoral and data law*”. Having done so, Ms Cadwalladr believed that what Mr Wigmore had told her about the way Leave.EU had gathered data, and the crossover with Mr Banks’s insurance business, and about their use of Cambridge Analytica and Goddard Gunster, raised serious questions of potential breaches of electoral and data laws.
159. On 26 February 2017, a “*special report*” by Ms Cadwalladr, “*Who is the secretive billionaire using ‘cognitive warfare’ to take down mainstream media?*” and articles by her under the headlines “*Robert Mercer: the big data billionaire waging war on mainstream media*” and “*Revealed: how US billionaire help to back Brexit*” were

published in *The Observer* and *The Guardian* online. In the second of these articles Ms Cadwalladr referred to how her meeting with Mr Wigmore came about following the letter from Cambridge Analytica to *The Observer*, and what he told her about the way they used personal data to target people with political advertisements. Ms Cadwalladr wrote:

“There were already a lot of questions swirling around Cambridge Analytica, and Andy Wigmore has opened up a whole lot more. Such as: are you supposed to declare services-in-kind as some sort of donation? The Electoral Commission says yes, if it was more than £7,500. And was it declared? The Electoral Commission says no. Does that mean a foreign billionaire [Robert Mercer] had possibly influenced the referendum without that influence being apparent? It’s certainly a question worth asking.”

160. These publications triggered investigations by the ICO and the Electoral Commission which I have addressed in paragraph 213 *et seq* below.

161. Following her meeting with Mr Wigmore, Ms Cadwalladr sought to find out more about Mr Wigmore and Mr Banks. She “*dug more into the Claimant’s business interests*”. I have addressed what Ms Cadwalladr did and what she knew about Mr Banks’s wealth and business interests in paragraph 222 *et seq*. Ms Cadwalladr read about the so-called ‘spy scandal’ into which Mr Banks’s wife (now ex-wife) had been drawn by press reports (see paragraph 248 below).

162. Ms Cadwalladr began following Mr Banks on Twitter and “*noticed the Claimant’s pro-Russia and pro-Putin statements*” on that platform. For example, Mr Banks tweeted:

“Crimea is the Russian equivalent of the Isle of Wight. They all seem quite happy there since the Russian’s [sic] have now invested in the place” (20 November 2016)

“Russia the only country with the balls to take on ISIS & defend our Christian values.” (20 December 2016)

“He [Putin] inherited a terrible mess in Russia and has gone a long way to sorting it out. His approval is very high – Russia needs a firm hand” (1 January 2017)

“Ukraine is to Russia as the Isle of Wight is to the UK. It’s Russian” (13 February 2017)

163. From her research, Ms Cadwalladr learned that Ben Bradshaw MP had raised questions about Russian interference in UK politics in Parliament. Ms Cadwalladr contacted him, and he introduced her to a few people, including Neil Barnett. Before Ms Cadwalladr began investigating Mr Banks, Mr Barnett had written an article which was published in June 2016 in a US journal, the *American Interest*, bearing the headline “*Who Funded Brexit?*” (‘the *American Interest* article’); and he was one of the four authors of a report published by the Atlantic Council in November 2016, entitled “*The Kremlin’s Trojan*

Horses: Russian Influence in France, Germany, and the United Kingdom” (‘the Atlantic Council Report’).

164. Ms Cadwalladr gave evidence that:

“I discovered Mr Barnett was an old acquaintance who I had met through friends many years earlier in Lebanon. He had served in the army and had subsequently set up a private intelligence firm, Istok, as well as writing journalistic reports. I knew Mr Barnett had a credible background and, when I spoke to him on the phone and discovered he had good contacts with MI5 and MI6 officers who he said were very concerned about Russia’s influence in the UK, I took his allegations seriously.

Mr Barnett was particularly interested in the question of Russian money and influence in UK politics and specifically thought there were questions about Mr Farage, the Claimant and the funding of the EU referendum. He and two colleagues had researched the Claimant’s financial filings and said they couldn’t see any visible source for the money that he had donated to Leave.EU. They said that the public records showed he did not have as much money as he had claimed to have. They said it did not add up. Mr Barnett pointed to a pattern across Europe by which businessmen had been groomed and targeted by Russian intelligence. He said there was a pattern where businessmen were rewarded with lucrative business deals and this money later found its way into politics. He said that his intelligence services contacts thought the Claimant was a ‘useful idiot’ – a Russian term for someone who is unwittingly used to achieve a foreign policy objective.”

165. Ms Cadwalladr also read more deeply about “*hybrid warfare*”, the vulnerabilities of social media platforms, and how these were exploited by Russia. During the course of her investigation, prior to giving the TED Talk, Ms Cadwalladr spoke to the following people whom she describes as experts on security and on Russia: Professor Anthony Glees, Director of the Centre for Security and Intelligence Studies at Buckingham University; Ed Lucas, Senior Editor at *The Economist*, whom she describes as a noted Russia expert, security specialist and consultant with close intelligence connections; Dr Andrew Foxall, the director of the Russian Studies Centre at the Henry Jackson Society; Ben Nimmo, Senior Fellow for Information Defense at the Atlantic Council; Chris Donnelly, Director of the Institute for Statecraft; Professor Ronen Palan, Department of International Politics at City University; Ben Bradshaw MP; Dominic Grieve MP, (then) Chair of the Intelligence and Security Committee; Sergei Cristo; Dr Damian Tambini, a senior lecturer in the Department of Media and Communications at the London School of Economics; and Dr Martin Moore, the director of the Centre for Study of Media, Communication and Power at King’s College London.
166. While continuing to investigate Cambridge Analytica, Ms Cadwalladr thought there were questions to answer about the source of Mr Banks’s donation to Leave.EU. In an article published in *The Guardian* on 15 March 2017, under the headline “*Theresa May*

must not trigger article 50 before these vital questions are answered”, Ms Cadwalladr suggested that there were

“mounting and deeply disquieting questions about the role ‘dark money’ may have played during last year’s EU referendum; and about whether the use of offshore jurisdictions, loopholes in European and North American data laws, undeclared foreign donors, a closed, all-powerful technological system (Facebook) and an antiquated and hopelessly out-of-touch oversight body has undermined the very foundations of our electoral system”.

167. Ms Cadwalladr proposed a profile interview on Mr Banks to her editor at *The Observer*. Mr Banks agreed to be interviewed. In preparation for the interview, Ms Cadwalladr “*read everything [she] could find*” on Mr Banks, including BBOB (see paragraph 25 above), which she was aware had been ghost-written by Ms Oakeshott. Ms Cadwalladr interviewed Mr Banks for several hours on 25 March 2017. With his agreement, she tape recorded the interview. I have referred to some of the many matters they discussed in paragraphs 36-39, 169, 213, 227-229, 253 and 268-272. Ms Cadwalladr described the interview, in a pub across the road from the Business Design Centre in Islington, where Mr Banks had been attending a conference earlier in the day, as

“quite a jolly afternoon. I found the Claimant to be open and easy going with a good sense of humour. He was happy to answer my questions and we spoke on a whole manner of subjects. I enjoyed the conversation. I thought that the Leave.EU campaign was a genuinely impressive achievement, and he made an easy interviewee in that he was happy to talk.”

Her description is consistent with the impression gained from listening to the recording of the interview and with Mr Banks’s evidence.

168. Ms Cadwalladr continued her investigation into Mr Banks’s business arrangements (see paragraph 222 *et seq*) and spoke to more of the Russian security experts I have identified in paragraph 165 above. Mr Lucas and Mr Foxall pointed out that Russia had funded far right parties across Europe and had a strategic interest in weakening the EU. They considered the opaque nature of Mr Banks’s finances a worrying concern. Ms Cadwalladr attended a symposium of academics and regulators led by Dr Moore and Dr Tambini. They informed Ms Cadwalladr that new technology platforms had made it simple for foreign money to enter the UK’s electoral process, and that electoral and data laws had not caught up with the technological transformation of political campaigns. The bulk of the cost of political campaigns, building databases to target voters via social media, occurred almost entirely outside the period regulated by law.
169. Ms Cadwalladr’s feature interview of Mr Banks was published in *The Observer* and *The Guardian* on 2 April 2017, bearing the headline “*Interview: Arron Banks: ‘Brexit was a war. We won. There’s no turning back now’*” (‘the Interview article’). She also published an article in *The Guardian* the day before, under the headline “*‘Dark money’ is threat to integrity of UK elections, say leading academics*”, in which she referred to the views expressed by Dr Moore and Dr Tambini, and Mr Banks’s statement in interview that “*we were just cleverer than the regulators and the politicians*”. Mr Wigmore’s response to the Interview article was positive: “*OMG – that’s the best*

article I have ever seen Carole – a massive thank you – had an extraordinary reaction to it – all positive (so far)”. Although Ms Cadwalladr’s articles prompted investigations, Mr Banks and Mr Wigmore did not hold this against her and they remained on friendly terms.

170. In about April 2017, Ms Cadwalladr spoke to a confidential source who had worked for UKIP for many years, and who told her that UKIP had been targeted by Russian individuals with close ties to the Russian state. The source suggested that Russian money had been used to fund the Brexit campaign. Ms Cadwalladr also investigated the timing of Mr Farage’s visit to the Ecuadorean embassy in March 2017 and the leak of “Vault 5” by Mr Julian Assange, and published an article on the subject on 23 April 2017, “*When Nigel Farage met Julian Assange*”.
171. Ms Cadwalladr’s next major articles regarding Cambridge Analytica, Leave.EU, and a “*CA-linked tech firm in Canada, AggregateIQ*” that had worked for Vote Leave, were published on 7 and 14 May 2017 in *The Observer*.
172. On 30 July 2017, *The Sunday Times* reported, in an article by the Political Editor, Caroline Wheeler, to whom Mr Banks appears to have spoken, that Mr Banks had been “*tipped off*” that he would be called to give evidence to the US congressional committee investigating Russian interference, under threat of subpoena. Ms Cadwalladr followed these developments closely, as well as articles that were published regarding the sources of Mr Banks’s wealth, and the comments on the subject made in the House of Commons (see paragraphs 232-237 below).
173. On 30 October 2017, the first indictments in the Mueller investigation were sealed. Ms Cadwalladr was struck, reading the indictment of George Papadopoulos, an aide to Donald Trump, “*by the level of detail about individuals based in London who were implicated in the investigation, the role of London itself as a ‘neutral city’ for key meetings and in particular the role of the Russian ambassador to London, who was not named but I knew to be Ambassador Yakovenko*”.
174. On 1 November 2017, the Electoral Commission announced it would be investigating whether Mr Banks and BFTC were the true source of donations to Brexit campaigns in their names. Mr Banks issued a press statement in response (see paragraph 275 below).
175. Ms Cadwalladr wrote two further articles for *The Observer* about the British connections to the Mueller investigation which were published on 4 November 2017. In one of these articles, “*Brexit, the ministers, the professor and the spy: how Russia pulls strings in UK*”, Ms Cadwalladr included a brief reference to Mr Banks:

“Speaking to the Observer about the inquiry into the sources of funds for his Leave.EU campaign, Banks complained about the focus on him. ‘There should be an inquiry into all the campaigns, not just us.’ And later: ‘What about Vote Leave?’

What about Vote Leave? And what about the new man in the Russian embassy? Some of the suspicion that has encircled Banks has been a result of his Russian wife, Katya, his vocal support of Putin, and the fact that in his memoir, *The Bad Boys of Brexit*, he is quite open about his Russian contacts, describing

how he met a man called ‘Oleg’ in Doncaster at the Ukup conference.

‘He was introduced to us as the first secretary at the embassy – in other words, the KGB’s man in London.’ ‘Oleg’ then introduced him to a figure now of significant interest to the FBI – Alexander Yakovenko, the Russian ambassador to London.” (Emphasis added.)

176. In November 2017, the All-Party Parliamentary Group on Russia began examining the issue of Russian interference in UK politics. Ms Cadwalladr was one of a number of journalists and experts from whom the group heard evidence. In December 2017, the DCMS Committee began its inquiry into fake news and disinformation which led to the reports I have referred to in paragraphs 78 and 147-148 above.
177. In March 2018, Ms Cadwalladr was contacted by Mr Chris Kimber, Mr Banks’s former business partner in South Africa, who made various allegations, including that Mr Banks had solicited investment in the diamond mines from Russian state-owned firms. In August 2018, Channel 4 News broadcast many of these same allegations and Ms Cadwalladr later (but prior to the TED Talk) acquired a copy of Mr Kimber’s affidavit in proceedings in South Africa between Mr Kimber and Mr Banks.
178. On 18 March 2018, having been provided with confidential information by a former Cambridge Analytica data consultant, Chris Wylie, Ms Cadwalladr published a series of articles on Cambridge Analytica, the misuse of Facebook data, connections with Russia, the US elections and the EU referendum, the role of technology platforms and the implications for democracy. These articles “*triggered multiple investigations in a dozen or more countries and fines against Facebook of \$100m and \$5bn in the US and £500,000 in the UK and others against CA*”.
179. Mr Peter Jukes, a journalist, told Ms Cadwalladr about a young researcher (‘the Researcher’) who had worked with Ms Oakeshott and who had told Mr Jukes that they had documents about Mr Banks and Leave.EU, but they did not want to hand them over for fear of losing their job. Mr Jukes discovered that a friend of the Researcher (‘the Friend’) had been given a cache of documents by the Researcher for safe-keeping because the Researcher “*had ‘freaked out’ in November when the FBI investigations had begun intensifying and become worried that they had become involved in something very serious*”. In early June 2018, Ms Cadwalladr saw Mr Wylie when she was giving evidence in the EU Parliament about the risk of technology to the democratic process, and he told her that the Researcher had information about Mr Banks of the utmost seriousness, and that it was about Russia. Ms Cadwalladr relayed this to Mr Jukes who spoke again to the Friend who then handed over a file (‘the email cache’) to Mr Jukes.
180. Mr Jukes showed Ms Cadwalladr the email cache and she first read it late on Wednesday 6 June 2018. It is a 19-page document containing what appears to be the transcribed text of some of Mr Banks’s emails. Ms Cadwalladr considered that the email cache “*showed that there had been a series of invitations from and to Ambassador Yakovenko, many of which were accepted. They also showed that the Claimant had been offered preferential shares in an investment scheme to consolidate several Russian goldmines and the privatisation of a state-owned Russian diamond company, Alrosa.*

They showed that [Mr Banks] was taking these offers seriously and had pursued these possible deals over many months”. Ms Cadwalladr noticed, and said to Mr Jukes after reading them through, that “there was no evidence that the Claimant or Mr Wigmore had gone through with the deals or made any money from them”.

181. Ms Cadwalladr knew the date of the Leave.EU press launch, because it had played a significant role in her reporting on Cambridge Analytica, and she was struck by the timing of the approaches to Mr Banks by the Russian embassy, with the presentation of a deal the day before the launch. Ms Cadwalladr thought Mr Banks
- “appeared to have been deliberately and systematically targeted and groomed by the Russian government. I knew from my research how Russian intelligence operatives would target far-right politicians across Europe and offer funding and assistance. On the surface, this appeared like a similar operation. This often takes the form of indirect funding in which a businessman is offered a ‘sweetheart deal’, i.e. a preferential deal not available to others, and that some portion of this profit would be funnelled to a political party”.
182. The email cache revealed that the man referred to as “*Oleg*” in BBOB was a political secretary at the Russian embassy called Alexander Udod. Open-source searches revealed that Mr Udod was one of the officials expelled from the UK by the British government following Russia’s use of a prohibited nerve agent on 3 March 2018 to try to assassinate Sergei Skripal in Salisbury. Ms Cadwalladr considered this showed the British government regarded Mr Udod as a spy or involved in espionage activities.
183. Ms Cadwalladr believed that the email cache showed that contact between Mr Banks and the Russian embassy was “*extensive and sustained*” and that the reality of the relationship between them had been deliberately concealed. She and Mr Jukes considered that it was “*a matter of the highest public importance and needed to be put into the public domain as soon as possible*”.
184. By Friday 8 June 2018 Ms Cadwalladr and Mr Jukes had established “*to the best of [their] understanding*” that the email cache was authentic and lawfully obtained. Ms Cadwalladr’s belief that it contained the content of genuine emails was based on speaking to the Researcher who said they had seen the documents in their original form as emails and verified that the content was the same as the emails they had viewed. On 9 June, Ms Cadwalladr spoke to Ms Oakeshott. She described the conversation as “*fraught*” and “*very antagonistic*”. Although Ms Oakeshott did not want to confirm the authenticity of the email cache, by the end of their conversation, “*there was no doubt in [Ms Cadwalladr’s] mind*” that, subject to possible minor transcription errors, “*the emails were genuine*”. This belief was further confirmed by the publication of copies of emails by *The Sunday Times* (which Mr Wigmore told the DCMS Committee he had provided to that newspaper), matching some of the content of the email cache, as well as by the later publication of *The New York Times* and *Washington Post* articles. I have addressed what the email cache shows in more detail in paragraphs 292 to 329 below.
185. On 8 June 2018, at 11.57, Ms Cadwalladr sent Mr Banks and Mr Wigmore a detailed email offering a right-to-reply before publication (see paragraph 331 below). She sought a reply by 5.30pm. At 8.53pm, Mr Banks responded, “*I’ve been out today and*

will respond in full on Monday when I've had a chance to look through diary etc". At 9.34pm, Ms Cadwalladr extended the deadline to 12pm on Saturday 9 June 2018 and said, "*we must have any response you wish to give by then*". Mr Banks responded at 10.36pm, "*Sorry I'm away from my office and need access to my computer records, as I'm away for the weekend[.] It's important you get this factually correct.*" At 11.44pm on 8 June, Ms Cadwalladr wrote to Mr Banks, "*We are publishing a story on Saturday night. We will have given you 36 hours to respond. I urge you to do so.*" Minutes later Mr Banks wrote, "*Good luck then since I can't reply without access to my records*". At 12.08am on 9 June Ms Cadwalladr wrote:

"You have staff. You received this email 12 hours ago. I'm sure your legal representative will explain to you the right-to-reply process. These are very serious allegations. You will be able to respond to the general points without access to the granular detail.

We want to publish a fair and balanced report and that's why we went to [sic] with ample time to respond. Again, I urge you to respond by 12pm tomorrow."

186. On the morning of Saturday 9 June 2018 Mr Banks wrote, "*I'm away and have no access to my records[.] Given the detailed nature of the allegations I want a chance to look at diary & office computer[.] I'm back in Monday am*". Ms Cadwalladr sent further emails to Mr Banks, Mr Wigmore and Mr Banks's solicitor, Anthony Julius of Mishcon de Reya, on the morning of 9 June, reiterating that Mr Banks should provide any comment by 12pm and asking further questions (see paragraphs 332-335 below).

187. At 4.41pm on 9 June 2018, Mr Banks tweeted:

"Oi @carolecadwallada the @thetimes have already got your story, you obtained from emails stolen from @IsabelOakeshott computer and at this rate I'll be attending @DamianCollins on Tuesday as planned !"

188. At 5.03pm on 9 June 2018, Ms Cadwalladr sent Mr Banks an email:

"Further to your tweets, I note:

– That you were online tweeting on Friday and therefore had access to your emails.

– You have had 29 hours to provide a response.

– You suggest in another that you have been talking to the Times and have provided a response to them.

If the allegations below are incorrect in any way, please advise now. Otherwise, we will judge that they are correct, fair, balanced and we gave you every opportunity to respond to correct the record."

Mr Banks responded at 8.22pm on 9 June 2018, “*Strangely I don’t keep Old emails cached on my mobile, I will [be] reviewing it Monday*”.

189. On receipt of Ms Cadwalladr’s first email on 8 June 2018, Mr Banks and Mr Wigmore had, in fact, taken the story to Caroline Wheeler of *The Sunday Times*. Mr Banks spent many hours on the Friday and Saturday speaking to her, Mr Wigmore provided copies of emails and a 2000-word document (which Ms Cadwalladr never saw, and is not in evidence). Although Ms Cadwalladr was not aware that Mr Banks was speaking to a rival newspaper, while he was claiming to need until Monday to respond to her questions, by 10 June 2018 she knew that he had taken the story to *The Sunday Times*.

190. On 10 June 2018, *The Sunday Times* carried four articles across the front page and inside on the topic:

i) “*THE KREMLIN CONNECTION Revealed: Brexit backer Arron Banks’s golden Kremlin connection*”, by Richard Kerbaj, Caroline Wheeler, Tim Shipman and Tom Harper;

ii) “*THE KREMLIN CONNECTION Rise of Brexit’s bad boys was fuelled by Stalin’s vodka*”, by Toby Allen-Mills, Jon Ungood-Thomas and Tom Harper;

iii) “*THE KREMLIN CONNECTION Email trail shows how Arron Banks and Andy Wigmore were cultivated*”; and

iv) “*A classic Russian fishing expedition lands back channel to White House*”, by Isabel Oakeshott.

(I refer to articles (i), (ii) and (iii) below as ‘The Kremlin connection articles’ and (iv) as ‘Ms Oakeshott’s article’.)

191. Ms Oakeshott’s article did not itself reveal any of the contents of the emails or text messages that had been provided to her. However, the views she expressed were based on more than the revelations in the Kremlin connection articles which constituted just “*a fraction*” of the material she held. She stated that no conditions were placed on her use of this material, but also that as “*a long-standing Brexit supporter I already knew Farage well, so the relationship with his friends Banks and Wigmore developed naturally. As a result I became privy to a great many secrets. I valued this relationship which was – and continues to be – one of trust*”.

192. Ms Oakeshott wrote that one way

“our adversaries seek to weaken us ... is by cultivating relationships with political figures and attempting to turn them into agents of influence. Russia is expert at this. The offer of lucrative business opportunities is a typical tool.

...As part of my research I uncovered controversial information about links between Arron Banks and his associate Andy Wigmore and the Russian embassy in London. The relationship began in autumn 2015, when Banks was gearing up for the Brexit

campaign, and continued throughout the referendum and beyond.

To the two Englishmen, both of whom have complex overseas investments, this was initially about potential business ventures. To the Russians, it was purely speculative.

The Kremlin was simply doing what it does so well: identifying individuals who might be useful to President Vladimir Putin's geopolitical aims and seeing what might come of it.

In Banks and Wigmore it literally struck gold. ...”

193. Ms Oakeshott's article states that when she wrote BBOB suspicions over potential Russian involvement in Brexit had yet to emerge and so she had not been particularly looking for material about Russia. The article continues:

“It was not until I embarked on this investigation into the state of the British armed forces in 2017 – and public interest in Russian links with Brexit began mounting – that I decided to revisit the material.

I was very surprised by what I found, which conflicted with the public accounts of the relationship with the Russian embassy that Banks and Wigmore had given. My analysis is that Banks and Wigmore were shamelessly used by the Russians. Perhaps the Englishmen did not mind.

As always, the Kremlin's agenda was to weaken western democracies by fuelling political and social division. And in these two incredibly well-connected men it had highly valuable – and surprisingly willing – tools.

...

During the referendum campaign he and Wigmore were happy to disseminate some pro-Russian views both via Leave.EU and less openly. The Kremlin must have been delighted.

The defence secretary, Gavin Williams, has repeatedly warned of the risks to this country posed by the Russian state. He is right to do so. Our information validates his deep concern about the subtle ways in which the Kremlin achieves its geopolitical objectives.

The relationship between Banks, Wigmore and the Russian embassy was part of a much wider Russian hybrid warfare campaign against the UK, America and our allies.” (Emphasis added.)

194. The first of the Kremlin connection articles appeared online at about 6pm on 9 June 2018. Ms Cadwalladr and her editors had decided not to proceed with the planned

publication of a story in *The Observer* on Sunday 10 June, in order to accommodate Mr Banks's request for more time to reply. However, on seeing the first of *The Sunday Times*' articles included a response from Mr Banks, they decided it was safe to publish a limited story. On the evening of 9 June 2018, after Ms Cadwalladr and Mr Jukes had filed their story, but before it had been published, Mr Banks phoned Ms Cadwalladr. There is no contemporaneous evidence of what was said during this conversation. In her witness statement, Ms Cadwalladr had recounted this conversation, but in cross-examination she said this part of her statement should be struck out as she has no contemporaneous notes to support the words she had put in quotation marks. I have, therefore, taken no account of it.

195. The article by Ms Cadwalladr and Mr Jukes, bearing the headline "*Arron Banks 'met Russian officials multiple times before Brexit vote'*", was published in *The Observer*, appearing online at 11.35pm on 9 June 2018.
196. On the evening of Monday 11 June 2018, Mr Banks and Mr Wigmore appeared on The Nigel Farage Show, a radio programme on LBC (see paragraphs 279-282 below). Ms Cadwalladr listened to, and sought to phone in to, the programme. On 12 June 2018, Mr Banks and Mr Wigmore gave evidence to the DCMS Committee (see paragraphs 283-287 below), a session that Ms Cadwalladr attended. On 13 June, Ms Cadwalladr gave an interview to the BBC's Media Show (see paragraphs 78(iv) and 79 above).
197. On 16 June 2018, Ms Cadwalladr published an article in *The Guardian* bearing the headline, "*Arron Banks, Brexit and the Russia connection*" ('the Russia connection article'). In this article, Ms Cadwalladr wrote:

"Last week, the *Observer* published details of multiple meetings between Banks and Wigmore and the Russian embassy, the details of which they confirmed when they passed the original emails to the Sunday Times in order to try to scoop us. ...

The foreign secretary of Britain had made critical remarks about a hostile foreign power. And so these documents appear to suggest, prompted the Leave.EU team to swing into action in support of the hostile foreign power. And, astonishingly, to write a personal note of support to the country's ambassador.

Was the 'personal note of support' sent? We don't know, but it's a fascinating, revealing, and disturbing insight into the nature of the relationship between officials representing the Russian government and the main funder of the Leave campaign. A relationship that was, until now, partly covert and hidden. And which Banks conceded in parliament on Tuesday that he'd lied about for two years.

... Two years on, we are in the dark about so much. What was the exact nature of Farage's Leave.EU campaign's relationship to the Russian government? Why did it exist? And to what end?

Just last week, Farage robustly denied any improper relationship with the Russians on his radio show.

So far, all that we can say for sure is that, for the last two years, Banks and Wigmore have lied about it. And, it's this, perhaps, that raises the most critical question of all: why?

A week and a half ago, a fellow journalist, Peter Jukes, showed me this material for the first time, and my jaw dropped. ... I found myself looking at a computer screen that shone a light on a part of the investigation that I had never expected to uncover.

...

There were references to the content of the astonishing email that Wigmore was said to have sent to his contact at the Russian embassy in August 2016. Farage had been on the campaign trail for Trump when his aide and fundraiser, George Cottrell, was arrested by the FBI on money-laundering charges. Material seen by the Observer suggests Wigmore sent confidential legal documents, including the FBI indictment, to the Russian embassy.

And then there was the possibility of the gold deal. A deal, brokered by Yakovenko, and funded by the state-owned Russian bank, Sberbank, negotiated in the months leading up to the referendum, and announced on 5 July, 12 days after the country voted to leave the EU. There is no public record of whether Banks invested or not. Twelve days later, he tweeted: 'I'm buying gold at the moment and big mining stocks.'

... There was nothing hidden or covert about the hundreds of social media postings and tweets that showed Leave.EU's and Farage's support of Russian policies and the Russian political agenda. What I hadn't contemplated, until now, was that this may have been co-ordinated with the Russian government.

That Banks and Wigmore may have been communicating with the embassy when they were launching these attacks. ...

Arron Banks and Andy Wigmore have declined to answer any questions the *Observer* put to him.

Did the deal take place? The gold deal that Yakovenko made the introduction for? Journalists and investigators will hopefully now try to find out, to unravel the complex, offshore structures through which Banks runs his businesses.

Because what we appear to see through Banks and Wigmore is a linked series of relationships between the Trump campaign – via Steve Bannon – to the public face of Leave.EU's campaign, Nigel Farage. Through Farage to Banks and Wigmore. And through Banks and Wigmore to the Russian government. Whether it's a channel for anything else is for other specialist

investigators to figure out. Because ever since Watergate, we've known that you need to follow the money.

But, in this new age of information, there are new lines to pursue. One can follow the lies for the example. The meetings Banks and Wigmore admit they lied about, a third passport – a diplomatic one from Belize – that Banks told me about last year, but which he denied to MPs on Tuesday.

...You can also follow the tweets. Follow the Facebook posts. Follow the memes. It's all out there: the Leave campaign's intimate relationship with the Russian government appears public, visible, undisguised. Just as Banks – and his ghostwriter Isabel Oakeshott – were careful to include the approach from the Russian embassy and a nine-hour 'boozy lunch' in The Bad Boys of Brexit, is this a relationship between the Russians and the Leave campaign that is hiding in plain sight?

What we know now is that this relationship is deeper and more complex than we could have imagined. And that Banks and Wigmore lied about it: to the public, to parliament. And we don't know why.

...

We don't know if there was collusion. But here's what we do know, what these communications suggest to us: that there was co-ordination." (Emphasis added.)

198. Mr Banks gave interviews to *The New York Times*, which published an article on 29 June 2018 with the headline "*Russians Offered Business Deals to Brexit's Biggest Backer*", by David Kirkpatrick and Matthew Rosenberg ('the *New York Times* article', see paragraph 288 below); and to the *Washington Post*, which published an article a day later, under the headline "*Arron Banks: The brash British millionaire who backed Brexit, befriended the Russian ambassador and loves Trump*", by William Booth and Karla Adam ('the *Post* article', see paragraph 289 below).
199. The *New York Times* article was based not only on the emails that "*were first leaked earlier this month to the British press. But the broader record of his messages, described this week to The New York Times by several people who had read them*". The only proposed business deal referred to in Ms Cadwalladr's right-to-reply email of 8 June 2018, or in the British press prior to the *New York Times* article, was the gold consolidation deal. The *New York Times* article revealed two other business proposals made to Mr Banks:

"One involved a state-controlled Russian diamond mining giant, Alosa. The other involved a Russian businessman – described in an email to Mr Banks as 'a mini oligarch' – and a gold mine in Conakry, Guinea."

200. Ms Cadwalladr wrote a further article with Mr Jukes addressing the email cache, which was published in *The Observer* on 8 July 2018 under the headline “*Revealed: Leave.EU campaign met Russian officials as many as 11 times*”. Ms Cadwalladr sent Mr Banks further right-to-reply requests prior to publishing this article (see paragraphs 337-342 below). In the article, she and Mr Jukes wrote:

“Arron Banks’ Leave.EU campaign team met with Russian embassy officials as many as 11 times in the run-up to the EU referendum and in the two months beyond, documents seen by the *Observer* suggest – seven more times than Banks has admitted. The same documents suggest the Russian embassy extended a further four invitations to Brexit’s biggest funder, but it is not known if they were accepted.

It is the third time the number of such meetings has been revised upwards. For two years, Banks insisted his only contact with the Russian government consisted of one ‘boozy lunch’ with the Russian ambassador.

After the *Observer* revealed a month ago that he had had multiple meetings at which he had been offered lucrative business deals, Banks told a parliamentary inquiry into fake news he had ‘two or three’ meetings.

Last week, when pressed by the *New York Times*, he admitted a fourth meeting. But the *Observer* has seen evidence that suggests there were at least seven more. When questioned about this, Banks offered no response.”

201. On 19 July 2018, Ms Cadwalladr was interviewed on a programme called Fresh Air on US National Public Radio. She again accused Mr Banks of having lied about his relationship with the Russian government and raised the question why he had lied.
202. On 29 July 2018, the DCMS Committee published its interim report which addressed the relationship between Leave.EU, Mr Banks and Russia in paragraphs 177-186 and in which the Committee concluded that Mr Banks and Mr Wigmore had misled them on the number of meetings that took place with the Russian embassy (see paragraph 78 above).
203. On 9 August 2018, *The Observer* published an article by Luke Harding, bearing the headline “*Revealed: details of exclusive Russian deal offered to Arron Banks in Brexit run-up*”. The seven-slide presentation “*Russian gold sector consolidation play*” (see paragraphs 299-301 below) had been obtained by the Dossier Centre, an investigative unit funded by Mikhail Khodorkovsky, an exiled critic of Vladimir Putin, and was made public in this article.
204. On 23 September 2018, Ms Cadwalladr attended an event at the Labour Party conference during which the (then) deputy lead of the Labour Party, Tom Watson MP, said that “*he had received information that suggested Theresa May had blocked an investigation into the Claimant in 2016*”.

205. On 1 November 2018, the Electoral Commission published a statement regarding the investigation into Mr Banks and BFTC, that it had opened one year earlier, announcing that it had referred them to the NCA for multiple suspected offences (see paragraph 219 below).
206. On 3 November 2018, *The Observer* published an article by Ms Cadwalladr, Mark Townsend and Toby Helm, with the headline “*Arron Banks faces new claims of misleading MPs over Brexit*”. Ms Cadwalladr again sent Mr Banks right-to-reply requests prior to publishing this article (see paragraph 345 below). On 4 November 2018, Mr Banks appeared on the BBC’s Andrew Marr Show and was questioned about the source of his funds used to donate to the Brexit campaign (see paragraph 247 below).
207. On 6 November 2018, the Information Commissioner’s report to Parliament was published, notices of intent to levy penalties having been served on Leave.EU and Eldon Insurance the day before (see paragraphs 215-216 below).
208. On 9 November 2018 Ms Cadwalladr gave an audio interview for *The Guardian* entitled “*Arron Banks: The Man Who Bankrolled Brexit*”. A further lengthy piece by Ms Cadwalladr was published in the *New York Review of Books* on 16 November 2018, entitled “*Why Britain Needs a Mueller Investigation*” (‘the NYRB article’). Ms Cadwalladr did not make fresh press inquiries of Mr Banks for the purposes of this interview or the NYRB article, both of which were based on her earlier reporting.
209. On 25 November 2018, *The Observer* published an article by Ms Cadwalladr under the headline, “*Who is the real Nigel Farage ... and why won’t he answer my questions?*” The focus of the article is on Mr Farage, but it includes the statement,

“Much of this story, like Arron Banks’s relationship with the Russian ambassador, is hidden and covert. But there’s also much that is out in the open, like Farage’s support of pro-Russian parties in the European parliament, and his association with RT.

...

But the biggest questions are about why Farage’s team sent confidential legal documents about Cottrell’s arrest to the Russian embassy in London. In June, the Observer was shown confidential emails that revealed that Andy Wigmore emailed Cottrell’s legal documents including his federal indictment to his main contact at the embassy, the political secretary, Alexander Udod. (Udod was expelled from Britain in March this year after Sergei Skripal’s poisoning.)

According to Banks’s emails, on 17 August 2016, Banks and Wigmore were inside the Russian embassy, visiting the ambassador Alexander Yakovenko. ...”

210. On 5 December 2018, BBC Newsnight broadcast a report on Mr Banks’s finances and Russian connections (see paragraph 247 below). The same month, Ms Cadwalladr was

contacted by Paul O’Sullivan, a South African forensic investigator, and others who said they had given evidence to the NCA in relation to its investigation into Mr Banks.

211. On 5 March 2019, Channel 4 broadcast a further programme regarding Mr Banks’s dealings with Russia. In this broadcast Channel 4 revealed for the first time the “*helicopter view ‘consolidation of Russian Gold’ doc*” sent by Mr Andrew Umbers of Oakwell Capital (copied to Mr Banks) to Mr Siman Povarenkin on 12 January 2016 (see paragraphs 305-306 below). Ms Cadwalladr said in her witness statement that this new document:

“priced the cost of buying the gold companies at \$4 billion and set out that the deal would be funded by ‘friend of GeoProMining’ and the sanctioned Russian bank Sberbank and suggested meetings with the Claimant or his associates and Sberbank in Moscow. The Claimant had previously told ITN that he had not had meetings about investments in Russia because he knows it is a complicated place to do business. The new documents contradicted that assertion. The report also included an interview with a former head of GCHQ, Sir David Omand, who said that the proposed deal had the appearance of a Russian influence operation.”

212. On 18 March 2019, a lengthy article by Ed Caesar was published in the *New Yorker*, entitled “*The chaotic triumph of Arron Banks, the ‘Bad Boy of Brexit’*” (‘the *New Yorker* article’) (see paragraph 291 below). It appears from the article that Mr Caesar had interviewed Mr Banks and Mr Wigmore in November 2018. The *New Yorker* article was drawn to Ms Cadwalladr’s attention by Ms Stivers. She read it before giving the TED Talk and it had an impact on what she included in her draft. The *New Yorker* article includes the following:

“Banks’s 2016 memoir, ‘The Bad Boys of Brexit,’ acknowledges that before the referendum he met with Russian officials, including Alexander Yakovenko, the Russian Ambassador to London. Subsequent reporting has uncovered several other previously undisclosed meetings and contacts between Banks and Russian businessmen, during which opportunities with Russian firms in the mineral sector were discussed.

...

No other meetings with Russian diplomats or businessmen are described in ‘The Bad Boys of Brexit.’ For more than a year, the public had the impression that this single lunch engagement was Banks’s only meeting with Ambassador Yakovenko. This wasn’t true.”

(d) The ICO, Electoral Commission and NCA investigations

213. The articles by Ms Cadwalladr that were published on 26 February 2017 (referred to in paragraph 159 above) triggered (as the report to Parliament makes clear) an

announcement about a week later by the ICO that it would be conducting an assessment of the data protection risks arising from the use of data analytics, including for political purposes. In the Interview article, Ms Cadwalladr referred to Mr Banks's answers to her questions about the use of Leave.EU data to target subscribers with advertisements for one of his insurance products, and his response that it was "*his data*". Mr Banks told Ms Cadwalladr, "*I didn't do anything illegal but I pushed the boundary of everything to the, right to the edge of*". Professor Dehayé told Ms Cadwalladr that he had reported Leave.EU to the ICO because he thought the use of political data for commercial purposes, and possibly vice versa, was illegal.

214. On 17 May 2017, the Information Commissioner announced that she had decided to open a formal investigation into the use of data analytics for political purposes, which would involve "*deepening our current activity to explore practices deployed during the UK's EU Referendum campaign but potentially also in other campaigns*".
215. On 5 November 2018, the ICO served Notices of Intent on Leave.EU and Eldon Insurance indicating that the Information Commissioner was minded to impose monetary penalties on them. On 1 February 2019, the Information Commissioner served two monetary penalty notices on Leave.EU in the sums of £60,000 and £15,000 and one monetary penalty notice on Eldon Insurance in the sum of £45,000 for "*serious contravention[s]*" of regulation 22 of the Privacy and Electronic Communications (EC Directive) Regulations 2003.
216. On 6 November 2018, the ICO submitted a report to Parliament, "*Investigation into the use of data analytics in political campaigns*", describing the investigation as "*the most complex data protection investigation we have ever conducted*". Leave.EU and Eldon Insurance were two of thirty organisations which formed the main focus of the investigation which led to, among other matters, the (then) maximum fine of £500,000 being imposed on Facebook and a criminal prosecution of Cambridge Analytica (which was by then in insolvency).
217. Ms Cadwalladr's articles in *The Observer* on 26 February 2017 also appear to have prompted an investigation by the Electoral Commission ('the EC's first investigation'), which opened on 21 April 2017 and led to a report published on 11 May 2018. The Electoral Commission concluded that Leave.EU and Elizabeth Bilney (the prescribed responsible person under the relevant legislation for Leave.EU) had committed certain offences under PPERA and the European Union Referendum Act 2015. The Electoral Commission imposed total penalties on Leave.EU in the sum of £70,000 which were reduced on appeal to £66,000.
218. The Electoral Commission opened a second investigation on 1 November 2017 into whether BFTC and/or Mr Banks had breached campaign finance laws in relation to donations during the EU referendum campaign ('the EC's second investigation'). The Electoral Commission stated that it would look at (among other matters) whether "*Mr Banks was the true source of loans reported by a referendum campaigner in his name*" and whether BFTC was the true source of donations made to referendum campaigners in its name, or if it was acting as an agent.
219. On 1 November 2018, the Electoral Commission published its report of the outcome of its second investigation, stating:

“Following its investigation, the Commission has reasonable grounds to suspect that:

- Mr Banks was not the true source of the £8m loans made to Better for the Country.
- Loans to Better for the Country, on behalf of Leave.EU, involved a non-qualifying or impermissible company – Rock Holdings Limited, which is incorporated in the Isle of Man.
- Arron Banks, Elizabeth Bilney and others involved in Better for the Country, Leave.EU and associated companies concealed the true details of these financial transactions.
- A number of criminal offences may have been committed.

Due to multiple suspected offences, some of which fall outside the Commission’s remit, the Commission has referred this matter and handed its evidence to the National Crime Agency.

Bob Posner, Electoral Commission Director of Political Finance and Regulation & Legal Counsel said:

We have reasonable grounds to suspect money given to Better for the Country came from impermissible sources and that Mr Banks and Ms Bilney, the responsible person for Leave.EU, knowingly concealed the true circumstances under which this money was provided. This is significant because at least £2.9m of this money was used to fund referendum spending and donations during the regulated period of the EU referendum.

Our investigation has unveiled evidence that suggests criminal offences have been committed which fall beyond the remit of the Commission. This is why we have handed our evidence to the NCA to allow them to investigate and take any appropriate law enforcement action. This is now a criminal investigation. ...”

220. The Electoral Commission considered that there were reasonable grounds to suspect that Rock Services Limited (‘Rock Services’) a company incorporated in the UK, did not fund the payments of £8m it was said to have made to BFTC, and that its parent company, Rock Holdings Ltd (‘Rock Holdings’, a company incorporated in Isle of Man which could not lawfully make a donation or be a party to any loan to Leave.EU), was a party to the relevant financial agreements and transactions, and to the loans.
221. Ms Cadwalladr followed the development of each of these investigations closely. The Electoral Commission’s statement on 1 November 2017 reinforced Ms Cadwalladr’s

“view of the strong public interest in investigating and publishing information relating to these matters”. At the time of publication of the TED Talk the position remained that the NCA was investigating.

(e) Mr Banks’s wealth and business interests

222. Ms Cadwalladr is not a financial journalist and made clear that it is an area in which she relied on and “*trusted the reporting of far more expert financial journalists*” than herself. In oral evidence she said, “*I only had the haziest notion of how offshore structures work. I still don’t understand how offshore structures work*”.

223. Ms Cadwalladr read an article in *The Guardian* by Daniel Boffey, published on 7 November 2015, “*Tax-avoidance Gibraltar firm behind anti-EU campaign group*”, regarding the setting up of Leave.EU, and an article in *The Observer* by Luke Harding, “*Offshore secrets of Brexit backer Arron Banks revealed in Panama Papers*”, which states that in the “*Panama Papers*” “*Banks’s offshore arrangements are shown to be highly complex*”. She “*discovered that he owned at least 19 different companies but that his name is spelled in multiple different ways in the Companies House register*”.

224. Ms Cadwalladr read the *American Interest* article in which Mr Barnett wrote:

“Mr Banks himself is mysterious. He has been a director of over 35 UK companies, and is currently running 13. His fortune mainly appears to derive from three insurance companies that he founded, and then sold, in 2005: Brightside, GoSkippy and Southern Rock. He has made extensive use of offshore companies in the Isle of Man and Gibraltar.”

225. Ms Cadwalladr also read the Atlantic Council Report. She read:

“the Kremlin’s concerted effort to establish networks of political influence has reached into Europe’s core. Be they Putinverstehern, useful idiots, agents of influence, or Trojan Horses, the aim is the same: to cultivate a network of organizations and individuals that support Russian economic and geopolitical interests, denounce the EU and European integration, propagate a narrative of Western decline, and vote against EU policies on Russia (most notably sanctions) – thus legitimating the Kremlin’s interventionism in Ukraine and Syria, weakening transatlantic institutions, and undermining liberal democratic values.”

226. Ms Cadwalladr learned that the Atlantic Council Report, when published in November 2016, had stated:

“KEY PRO-RUSSIAN ACTORS IN THE UK

The most openly pro-Russia political party in the UK is UKIP. ...UKIP campaigned for Brexit together with the Leave.eu and Grassroots Out campaigns of Arron Banks (the Bristol-based insurance entrepreneur who made the largest financial

contribution to the Out campaign). In the immediate post-Brexit period, Banks spoke of launching a new, more professional party that would corral disaffected voters under an anti-EU, nationalist agenda.”

However, Mr Banks threatened to sue for defamation and the underlined words were removed from the report.

227. Ms Cadwalladr spoke to Mr Barnett who was “*concerned that Leave.EU could have received funding from Russia, possibly through the Claimant’s offshore entities*”. Mr Barnett told Ms Cadwalladr that Mr Banks owned diamond mines in Southern Africa and a jewellery shop in Bristol. He said that “*a well-known money laundering technique is to own the supply chain from mine to shop*”. When she interviewed Mr Banks, Ms Cadwalladr put this theory to him (see paragraph 36 above), although she acknowledged that it was, as he said, “*pure speculation*” for which she had no evidence.
228. Ms Cadwalladr learned that Mr Banks and Mr Jim Mellon “*own a bank together in the Isle of Man and Mr Mellon had been an early funder of the Leave.EU campaign*”. In interview, Mr Banks acknowledged that he was introduced to Mr Mellon by Mr Farage. Ms Cadwalladr read into Mr Mellon’s background, learning that he “*had made his fortune in Russia after the collapse of communism and it was reported that he still maintained close business links to the country*”. Unlike Mr Banks, she read that Mr Mellon “*is a tax exile who is unable to vote in British politics*”.
229. Ms Cadwalladr put to Mr Banks when she interviewed him that the source of his wealth is not transparent, a point he denied, saying it came from the insurance industry (see paragraph 269 below). She also asked him why he maintained a complex network of offshore companies:

“CC: ...You own dozens of companies –

AB: Of course I do!

CC: - which are offshore and some very complicated tax jurisdictions

AB: Why should I pay more tax?

...

AB: I’m an internationalist, ok? If I own diamond mines in South Africa, why would I register a company in the UK to own diamond mines in South Africa? I pay my tax in North Bristol and I pay huge amounts of them, ok? Legally. ...

...

CC: The structure of your companies is incredibly complicated.

AB: Well, I don’t think it is.

CC: Isn’t it?

AB: I have a UK insurance business, ok? It's got an Isle of Man holding company that's registered in the UK for tax. It's very common, so it pays tax in the UK. I've got diamond mines in South Africa That's owned by an offshore company, and why wouldn't it be, because it's an offshore holding. And I've got various other interests. I don't understand why you say it's complicated.

CC: How many companies have you got?

AB: I actually (.) sitting here right today I couldn't tell you.

...

AB: I do own quite a lot. Often companies are used for very specific purposes."

230. Ms Cadwalladr said in evidence:

"My impression was that as a private businessman, he had used Britain's offshore structure – all of which is entirely legal – to make his business affairs more complex to avoid regulatory and other scrutiny. My impression was that he liked to keep his business affairs to himself and he did not consider this anybody else's business. I pointed out to him that it was his decision to put this money into politics that was the problem and made it my and other people's business to ask these questions. He did not seem to accept this point."

231. Many of the experts on Russia and security with whom Ms Cadwalladr spoke raised questions about Mr Banks's financial dealings and links to Russia. Professor Glee told her that he had contacts with the security services, he was working with *The Sunday Times* on an investigation into the Claimant's business arrangements (which was never published), and that he had serious concerns about the sources of Mr Banks's income. Ms Cadwalladr spoke to Ronan Palen, an academic at City University who had done some preliminary work investigating Mr Banks's companies and their offshore structures. He expressed the opinion that "*the structures were opaque. He said this was a common structure that businessmen set up for different purposes but generally the intention was the same: to make their income and sources of wealth complex and make it difficult for investigators to track*".

232. On 30 June 2017, the *Financial Times* published an article bearing the headline "*How the businesses of Brexit campaigner 'King' Arron Banks overlap*", by Cynthia O'Murchu and Henry Mance. The FT investigation concluded that the extent of Mr Banks's wealth "*is unclear*". The article states:

"...public filings covering Mr Banks' business interests show the use of a range of accounting techniques that mask the value of his investments.

He is a shareholder in at least 20 UK registered companies according to Orbis, a company database. Almost all of their parent companies are offshore in the Isle of Man, Gibraltar and the British Virgin Islands, affording them privacy. His interests worldwide include insurance, banking, diamond mining and political consultancy.

... In 2015, the most recent accounts available, Southern Rock posted a loss of nearly £28m on its core business.

But it turned an overall profit by selling renewal rights for £73m to ICS Risk Solutions, an Isle of Man company that is majority owned by Mr Banks. ...

Eldon operates the motor insurance brand GoSkippy, and prominently advertises on the website of Leave.EU, Mr Banks' pro-Brexit campaign group. The company's profitability is difficult to assess because of its high administrative expenses, which closely track turnover.

In 2015, it achieved a profit of just £284,000 on a turnover of £33.6m while paying £33.4m in administrative expenses. It received a £3,000 UK tax credit.

...

The FT has contacted Mr Banks' holding companies in the Isle of Man, to obtain its annual accounts, but had not had a response at the time of publication."

233. Ms Cadwalladr met Ms O'Murchu twice, in 2017 and 2018. She stated in evidence that Ms O'Murchu expressed the view that "*the Claimant's finances simply did not stack up and that he did not have anywhere near the amount of money he purported to have*".
234. OpenDemocracy published a series of "*Dark Money Investigations*" articles which Ms Cadwalladr read. The first in the series, "*The 'dark money' that paid for Brexit*", by Adam Ramsay and Peter Geoghegan, published on 15 February 2017, addressed what was said to be "*a loophole in UK electoral law that allows dark money to flow through Northern Irish politics, and into the British system*".
235. Three other articles in the openDemocracy series directly addressed Mr Banks' finances. The first of these, bearing the headline "*How did Arron Banks afford Brexit?*", by Alastair Sloan and Iain Campbell, was published on 19 October 2017. This 15-page article details an "*in-depth review of Banks's business dealings since he first started out in business in the early 2000s*". The article raised the question how the financial worries that Mr Banks had had in September 2013, having been required by financial regulators in Gibraltar to put £60 million into his insurance under-writer, Southern Rock, having "*already provided £40 million to plug the hole*", completely evaporated by 2015. The article stated that the "*amount Banks made from the sale of Brightside is crucial to understanding whether Banks is really as rich as he says he is*"; and found that company

documents showed he had made £22 million from share sales of that company. The article states:

“Banks’ present financial status is then somewhat unclear, and sometimes dependent on buying assets from one company, in order to shore up another company he himself holds a stake in. But it does seem clear that his claimed worth of £100 million is hard to justify. In the letter sent to openDemocracy, Banks claimed his worth could be even higher than £100 million, saying that he would ‘broadly agree’ with an analysis made by the Sunday Times Rich Times list [sic] that his net worth could instead be some £250 million. When asked to explain how he accounts for all this extra wealth, Banks declined to comment.”

236. In the House of Commons on 19 October 2018, Ben Bradshaw MP said:

“Has the Leader of the House seen the very worrying series of openDemocracy reports this week on the role of dark money in the EU referendum, including revelations of donations to the Democratic Unionist party and new questions today over the real wealth of Arron Banks, the main financial backer of Leave.EU? Given the widespread public concern about foreign, particularly Russian, interference in western democracies, will she assure the House that the Government and the Electoral Commission will examine these reports very carefully, and reassure our country that all the resources spent during the referendum were from permissible sources?”

237. Then Leader of the House, Andrea Leadsom MP responded:

“The right hon. Gentleman raises an incredibly important point. Of course, any specific information should always be raised with the Electoral Commission to ensure that any wrongdoing is caught. I absolutely share his concern that we need to make sure that all donations are indeed permissible and legal.”

238. OpenDemocracy published a further article on 12 April 2018, bearing the headline “*Arron Banks and Brexit’s offshore secrets*”, by Leigh Baldwin and Marcus Leroux. The piece refers to

“a bailout of Banks’s Gibraltar-based insurance business Southern Rock that began in 2015, just months before Banks began bankrolling the Leave.EU referendum campaign.

The mystery cash injection was critical to the survival of Banks’s insurance empire, the foundation of his wealth. Without it, it is hard to see how he could have funded his political donations while keeping the business afloat.

Banks has declined to answer questions about the origin of the bailout funds...

Andrew Wigmore, a spokesman for Banks, said our emailed questions were ‘baseless’ and evidence of a ‘biased hatchet job’ but declined to go into further detail. He said in an interview with Byline in March that Banks paid for his Brexit campaign with proceeds of the sale of NewLaw Group, a law firm Banks partly owned. Wigmore did not elaborate on how Banks was able to bail out Southern Rock.

...

By 2015, as the Brexit referendum neared and Banks’s political fortunes went from strength to strength, Southern Rock was teetering on the edge. The rescue, when it came, was dramatic.

ICS Risk Solutions, a holding company on the Isle of Man, agreed to pump £77.7 million into Southern Rock to save it from collapse. In return, ICS would take a slice of the Gibraltar company’s future income.

...

Because Banks owned both ICS and Southern Rock, it is not clear where the new money came from.”

As part of her investigation, Ms Cadwalladr met with one of the journalists, Mr Leroux, in March 2018.

239. When questioned by the DCMS Committee about Mr Wigmore’s statement to the press that Mr Banks had funded his political donations from the proceeds of the sale of NewLaw Group, Mr Banks acknowledged that he was not a shareholder of NewLaw when it was sold to Helphire. Mr Wigmore said:

“What would I know about where he came into money? It was a suggestion. I said, ‘Well, he did sell a law firm.’ ...

It would have been as an idea. You talk about Arron Banks’s wealth. I don’t know his true wealth, but if you were asking me, ‘Does he have any money?’, one of my responses would have been, ‘Well, he just sold a law firm for X’.”

240. Mr Banks was also asked by the DCMS Committee, “*Is it true that ICS Risk Solutions paid over £77 million since 2015 to prop up another of your companies called Southern Rock, which is an underwriting arm in Gibraltar?*” He said, “*It was money that went from one company I own to another company I owned*”. There was no lump sum payment, it was a structured deal over four years. Eldon Insurance sold some of its forward income on the sale of policies back to the insurance company. He denied that Southern Rock had been trading while technically insolvent for three years. Mr Banks said the entire motor industry suffered about a £2.5 billion loss at the time. The company was not insolvent but the loss ratio between claims paid out and premiums paid in was reassessed resulting in the need for an injection of money. “*We injected*

money in from our holding company and we carried on". When asked further questions about his finances Mr Banks said:

"No, I am now not going to answer any more questions on the insurance business. I have covered it with – is it Rebecca? You can read what you like from that, but I have given the explanation to a pretty full list of questions.

...

I have answered the questions on my financial affairs. I am not going to answer any more questions."

241. In the *New Yorker* article Mr Caesar reported:

"In 2013 and 2014, Banks bought major stakes in four diamond mines in South Africa and a license for exploration in Lesotho. The South African mines were small and largely exhausted. Two of the mines required millions of dollars of investment simply to resume operations. One is still dormant.

Banks told me that the mines had been bought cheaply. I asked several industry experts about Banks's claim, in 'The Bad Boys of Brexit,' that the mines were so profitable that they helped prompt his sizable donation to UKIP in 2014. The experts told me that there's scant chance of his having accrued any legitimate profits from the mines by the time he made his million-pound pledge."

242. Ms Cadwalladr acknowledged in cross-examination that she did not appreciate the difference between a diamond mine and a prospecting site, and that she did not understand that in Lesotho Mr Banks had a diamond prospecting site rather than a diamond mine.

243. On 29 March 2018, OpenDemocracy published an article about this diamond prospecting site, "*Not everyone agrees with Arron Banks about the value of his diamond mines*", by Mr Baldwin, Mr Geoghegan, Billy Ntaote and Mr Leroux. The article states that in September 2017 Mr Banks "*announced a 'significant find' at his diamond prospecting concessions in the tiny kingdom of Lesotho*", suggesting the claim may be "*considerably overstated*". The article stated that Lesotho, with its "*diamond-bearing rock known as kimberlite*" in its mountains, "*is home to some of the world's richest diamond deposits*". The article reported:

"But there is no kimberlite where Banks is digging. Instead, he is exploring Lesotho's rivers for alluvial diamonds – gems washed downstream from the big mine sites over millions of years of erosion. ...

A document seen by SourceMaterial and openDemocracy shows that between 1960 and 1979, at a site near to where Banks is exploring, just three tiny stones were found after more than 1,000

cubic metres of earth were moved. Their total weight was 0.7 carats, giving them a value of only a few hundred dollars.

It is geologically impossible for Banks to find gems in commercial quantities, says Keith Whitelock, a geologist and expert on Lesotho diamonds who developed the Letseng mine.

Lesotho's unique geology means alluvial diamonds are only usually found within two or three kilometres of the diamond-bearing rock, according to Whitelock. But Banks is prospecting near Lesotho's South African border, around 200 kilometres downstream.

'Anyone who thinks they can find diamonds there is delusional,' Whitelock said.

Banks has hired his own geologist, who disputes this view.

'Whitelock is the authority on diamonds in Lesotho so everything he says is pretty much gospel but what can I tell you, we've recovered diamonds there,' said Hunter Kennedy, the expert employed by Banks. 'In my mind it's very logical.'

...

'He may find the odd one just by chance,' said Whitelock. 'But he's going to have to mine thousands of tonnes to find one diamond and unless you can count your diamonds per tonne or per hundred tonnes you've got nothing.'

'I think they should keep digging,' Kennedy said."

244. The BBC reported on 24 July 2018 that, when it visited Mr Banks's mining site on the Senqu River in Lesotho, "*its manager Dirk Veldtman said it was now closing because of a lack of diamonds. In fact, only six diamonds were found in three years, at an estimated value of £28,000*".

245. As I have said, Ms Cadwalladr was contacted by Mr Kimber – his former business partner and a man who was engaged in litigation against Mr Banks in South Africa – and heard his account. Amongst other matters, Mr Kimber said that Mr Banks had negotiations with Russian businessmen about investing in the diamond mines and this had included soliciting investment from Russian state-owned firms. Ms Cadwalladr believed that some his allegations supported research and reporting from other sources, particularly around the viability or otherwise of the diamond mines. On 20 July 2018, Channel 4 News, which had obtained court documents from Mr Kimber, reported:

"The court documents paint a picture of alleged financial issues at the three mines near Kimberley in South Africa in 2014 and 2015. Newlands mine, thought to be the most productive, appears to have failed to hit its production target, while the other

two mines, Blaauwbosch and New Elands required significant investment in order to reach full capacity.

An email dated 13 April 2015 and sent to Mr Banks from his business partner reveals the mines were losing money and struggling to pay wages.

...

Mr Banks told Channel 4 News...

‘The notion that Brexit was funded by the Russian’s is risible and just part of the continuing attacks on anyone involved with Brexit ...

The other evidence Channel 4 have provided is from a court filing by a former business partner responding to our claim of damages.

We deny in full all of his allegations & would comment that since he is being sued for considerable damages he is hardly a reliable witness.

I have had no business dealings with any Russian investors through any of my businesses...”

246. Mr James Pryor, a business partner of Mr Banks, who, according to “*a friend of James Pryor*” who contacted Ms Cadwalladr in June 2018, was “*running the Claimant’s four mines in southern Africa*”, told the BBC that the Russian ambassador had introduced Mr Banks to a business opportunity in southern Africa, but then later denied it.
247. On 4 November 2018, Mr Banks said repeatedly on the Andrew Marr Show that the source of his donations to the Brexit campaign came from Rock Services (see paragraph 220 above). Mr Marr said the BBC had looked at Rock Services’ accounts in Companies House; it was a shell company which does not generate money. On 5 December 2018, BBC Newsnight reported that its attempts to view the accounts of Rock Services had been obstructed and Rock Holdings lacked a registered address as the one given to the Isle of Man registry a month earlier was not its address.

(f) Katya Banks and the ‘spy scandal’ press reports

248. Following her meeting with Mr Wigmore, when researching Mr Wigmore online, Ms Cadwalladr read a brief article in *The Spectator*, bearing the headline “*X MI5 SPY: Do Mr and Mrs Banks have something to tell us?*”, published on 13 April 2016. The article was prompted by a tweet posted by Mr Wigmore of a photograph of the bumper of Ms Banks’s car, showing a “*23rd June Independence Day*” sticker and the number plate “*X MI5 SPY*”.
249. The piece notes that in 2010 Mr Banks’s “*Russian wife Katya*” (born Ekaterina Paderina) “*made headlines when she was dragged into Mike Hancock’s ‘Russian spy’ scandal*”. Mr Hancock MP was the member of Parliament for Portsmouth South. The Home Secretary had sought to deport Mr Hancock MP’s Russian parliamentary aide,

Ms Katia Zatuliveter, on the grounds her presence was not conducive to the public good for reasons of national security. The Security Service (MI5) assessed that Ms Zatuliveter was an agent of the Russian Intelligence Services. The Special Immigration Appeals Commission ('SIAC') allowed Ms Zatuliveter's appeal in 2011.

250. Press reports, in *The Daily Mail* in 2010, had drawn Ms Banks into the story essentially on the basis that (before she married Mr Banks in 2001) she had sought Mr Hancock's help to remain in the UK when she had experienced visa issues, she was Russian, and her (former) husband, Eric Butler, had alleged that she had an affair with Mr Hancock, and officers from Special Branch had questioned him about her activities.
251. In about late February or early March 2017, Ms Cadwalladr "*read into the background on the Claimant's wife*". The Zatuliveter hearing before SIAC had "*garnered a lot of press attention*" and, in the middle of it, the allegations regarding Ms Banks had been published. In addition to reading the press reports, Ms Cadwalladr read the judgment of SIAC in the Zatuliveter case and noted that "*Ms Zatuliveter had won the right to stay in the UK, but it was clear that the security services had assessed her to be an intelligence asset of the Russian government*"; and an article in *The Daily Mail* published after SIAC gave judgment "*included a quote from a prominent Russian defector, Oleg Gordievsky, who had once run the KGB's bureau in London*", who "*described Ms Zatuliveter as 'the best Russian spy for 30 years'*".
252. In her witness statement, Ms Cadwalladr said:

"During Ms Zatuliveter's hearing, it was revealed that MI5 officers had warned Mr Hancock that he was a target for 'honeytraps' involving young women Russian and Eastern European spies who posed as sexually interested in him to gather information. It was reported that MI5 intelligence officers believed that Mr Hancock was a target because of the large naval base in Portsmouth and his role on two parliamentary committees, the Defence Select Committee and one on Russia.

...

The suggestion that the Claimant's wife could have been used by Russian intelligence seemed immediately important. The tangential links between Russia and the Claimant through his wife were striking given the increasing concerns over the integrity of the US election. I thought at this stage that if the Claimant's wife had potential Russian connections, and the Claimant was a financier of Leave.EU, he could potentially have been on the radar for Russia to potentially groom as part of their campaign of foreign influence."

253. When Ms Cadwalladr interviewed Mr Banks on 25 March 2017, Mr Banks volunteered the information that his wife was Russian, and that "*The Daily Mail put her on the front page ... and said, you know, 'Russian Spy'*", in response to Ms Cadwalladr's question about "*links which are coming out: Trump to Russia*". Ms Cadwalladr then questioned Mr Banks about what, if anything, he had known of that story before the article

appeared in the press (see paragraph 39 above). Mr Banks told Ms Cadwalladr directly, speaking of his (then) wife, “*she is not a Russian spy*”.

254. On 19 October 2017, openDemocracy published the article “*How did Arron Banks afford Brexit?*” (see paragraph 235 above). Ms Cadwalladr read the article and one of the points she noted was that the journalists had “*uncovered new details about [Mr Banks’s] wife who had kept possession of a council flat in Portsmouth overlooking the naval base*”.
255. Ms Cadwalladr referred to the “*spy scandal*” reports in the Interview article and the NYRB article. She did not make any further reference to the “*spy scandal*” in the many articles that she wrote about Mr Banks, although in one of her articles, published on 4 November 2017, she referred to “*his Russian wife, Katya*” as one among a number of reasons for the “*suspicion that has encircled Banks*” (see paragraph 175 above).
256. Shortly before giving the TED Talk, Ms Cadwalladr read the *New Yorker* article (see paragraph 212 above). It can be seen from the article that the journalist had interviewed (amongst others) Mr Banks, Ms Banks’s ex-husband, Eric Butler, and Boris Volodarsky, who is described as a former undercover operative for the GRU, Russia’s military intelligence agency, and an academic authority on Russian espionage. The article includes a substantial segment regarding Ms Banks, including Mr Volodarsky’s opinion that “*Russian intelligence services – most likely SVR – ‘were in this or that way involved in the life and further career development’ of Paderina [i.e. Ms Banks] and Zatuliveter*” and that Alexander Udod was “*the SVR agent who had met with Ekaterina Zatuliveter in London*”. The article included Mr Banks’s assertion that it was “*preposterous*”, and Mr Wigmore’s that it was “*laughable*”, to suggest that Ms Banks had any connection with Russian intelligence.
257. In evidence, Ms Cadwalladr acknowledged that there is no evidence that Ms Banks was a Russian spy. It is not a matter Ms Cadwalladr referred to in the TED Talk and I accept her evidence that, prior to giving that talk, Ms Cadwalladr sought to avoid overplaying its significance.
258. It is likely that it was referred to by Ms Cadwalladr in the published articles to which I have referred as a “*colourful footnote*”, just as it was referred to in articles by other journalists in, amongst other newspapers, *The Times* on 2 November 2017, *The Sunday Times* on 10 June 2018 and *The New York Times* on 29 June 2018, rather than because Ms Cadwalladr gave weight to *The Daily Mail*’s suggestion that Ms Banks was a Russian spy in considering Mr Banks’s links with Russia. Indeed, in Mr Banks’s own memoir, the “*cast of characters*” includes the entry:
- “**Katya Banks:** Arron’s Russian wife, daughter of a local government official and a teacher in Ekaterinburg. Speaks six languages and studied French at the Sorbonne. A larger-than-life extrovert who was caught up in a spy scandal in 2010. The number plate on the family Range Rover is X MI5 SPY.”
259. In my judgment, prior to the TED Talk, the fact that Mr Banks’s wife was Russian was no more than one of many reasons why Ms Cadwalladr thought it likely that Mr Banks would have been “*on the radar of Russian intelligence*”, and she did not place any real weight on the suggestion that his wife had any connection with Russian intelligence.

260. In her statement, Ms Cadwalladr refers to an ex-Foreign and Commonwealth Office official who worked at an agency that was contracted to undertake work countering Russian disinformation in Europe on behalf of a government agency to whom she spoke on an off-the-record basis about Mr Banks. He gave Ms Cadwalladr “*two intelligence files*”, one concerning Mr Banks. However, Ms Cadwalladr’s evidence on this is in a section of her statement that spans the period from July 2018 to December 2019. There is no evidence that she spoke to this source, or received the files, before she gave the TED Talk; and the defendant’s closing submissions refer to these discussions as having taken place after the TED Talk. Accordingly, I leave that evidence out of account at this stage.

(g) Mr Banks’s statements regarding his relationship with the Russian government and his donations to the Brexit campaign

261. The first statement that Mr Banks made regarding any meetings or communications with Russian officials appeared in BBOB when it was published on 31 October 2016. Prior to then, including in the period prior to the EU Referendum, Mr Banks had regularly posted tweets supporting the action Russia was taking in Syria, Crimea and eastern Ukraine.
262. BBOB included the following:

“PART 2: OCTOBER-DECEMBER 2015

12 OCTOBER

...

Meanwhile, our own operation is attracting international attention. Alexander Yakovenko, the Russian ambassador, has invited me, Wiggy and Katya to lunch on 6 November. He wants to know what we’re up to. Intriguing!

...

6 NOVEMBER

Sampling Stalin’s vodka

... He [‘Wiggy’/Mr Wigmore] rocked up at the office brandishing a bottle of rum from Belize: a gift for Alexander Yakovenko, the Russian ambassador, with whom we were due to have lunch.

Katya decided not to come, which was a shame as they could have had some good Russian banter. ...

We set off for the ambassador’s private residence on Kensington Palace Gardens feeling a little nervous. We’d been invited by a shady character called Oleg we met in Doncaster at UKIP’s conference. He was introduced to us as the First Secretary at the Embassy – in other words, the KGB’s man in London. We

approached him with due caution. It was a one-hour appointment, but from the word go we hit it off.

Wiggy started regaling Alexander with tales of his father's work the Soviets at the Berlin Air Safety Centre in the 1980s, and we were off. One hour swiftly turned into two, and then four, and finally more like six. It was everything you'd hope for in a meeting with the Russians.

Our host wanted the inside track on the Brexit campaign and grilled us on the potential implications of an Out vote for Europe. We chose our words carefully but we didn't mind telling him we think everyone's in for a shock.

The conversation was rattling along nicely and diplomatic relations only improved when our new friend produced a special surprise. It was a bottle of vodka which he claimed was 'one of only three in a batch made for Stalin personally'.

'Try it!' he urged. 'Only because I'm enjoying your company so much!'

...

By mid-afternoon, everyone was quite merry and diplomatic protocols were rapidly falling by the wayside. It transpired that Alexander had recently had a discussion with the Foreign Secretary which had left him deeply unimpressed. 'We talked about Syria,' he growled. 'I asked if he has a Plan B. You know what his answer was?'

We didn't.

'He just said, "No." Niet!' he spluttered indignantly.

Eventually, it was time to leave. We shook hands and promised to meet again. As we made our way out, our host had one final flourish. 'Unique ambassador's blend. Only for very special guests!' he said, thrusting a box of tea into my hand.

I hope it's not radioactive."

263. In BBOB, Mr Banks did not identify "*Oleg*", refer to the discussion of Mr Banks's business interests, or to any other communications or meetings with Russian officials or businessmen that occurred before the book was published. Ms Cadwalladr read BBOB before she interviewed Mr Banks on 25 March 2017. Ms Cadwalladr recognised that BBOB was written in a humorous style but, nonetheless, she considered that it was reasonable to treat it as a memoir that was intended to provide a "*relatively accurate*" account of Mr Banks's Brexit campaign.
264. On 11 December 2016, about a month after the Atlantic Council Report was published, Mr Banks tweeted:

“The Atlantic called me a Russian actor / agent – I hardly think they should be relied on when it comes to their research !”

265. On 11 January 2017, when allegations of coordination between the Trump team and Russia surfaced, Mr Banks tweeted:

“I had lunch with the Russian ambassador does that me make [sic] a Russian actor ! The media moved on to the next non story”.

266. Prior to being interviewed by Ms Cadwalladr on 25 March 2017, Mr Banks posted the following tweets:

“The Atlantic council declared me a Russian spy and a Russian actor, and that Brexit was funded by them! This is your source. Idiot”. (13 February 2017)

“The MSM hysteria is reaching peak Trump. A few months ago I was declared on CNN as a Russian agent and they funded Brexit!” (16 February 2017)

“Leave.eu campaign was funded by myself, Peter Hargreaves, and the public - £11m quid. The fake Russian news story is completely untrue.” (18 February 2017)

“I’ve had lunch with the Russian ambassador twice, the purpose of diplomats is to talk and learn !” (7 March 2017)

267. Mr Banks also continued to openly tweet messages supportive of Russia (see paragraph 162 above). It is probable that Ms Cadwalladr saw all these tweets, not when they were first posted but when she began researching Mr Banks prior to the interview on 25 March 2017 and, in any event, following receipt of the email cache in June 2018 when she trawled back through Mr Banks’s tweets, as demonstrated by the fact that at this stage she found his tweet of 17 July 2016 stating “*I’m buying gold at the moment & big mining stocks*”.

268. On 25 March 2017, when Ms Cadwalladr interviewed him, Mr Banks said:

“We had no Russian money into Brexit. I’ve had two very, very nice lunches with the Russian ambassador, where Andy and I got completely pissed. Had a great afternoon with him. ... Not a single penny of Russian money has been put into Brexit. I watched CNN saying some guy saying, ‘Well, Arron Banks is a Russian actor. And Russian money funded Brexit.’ I wish it had! Save me some money! (laughs)”

“Putin is actually for his country rather than for everybody else, and actually inherited a horrendous situation in Russia after Yeltsin. The country is collapsing in on itself. I’ve been a frequent visitor to Russia. ... It’s not possible to run that entire country as a pure democracy. It’s not possible. The whole history

of Russia is one of there has to be someone in control of it or it breaks up. So that means I'm not pro-Putin, but what I would say is the European Union has gone out of its way to poke the backside of the Russian bear. You look at Ukraine, you look at Crimea, these are basically Russian-speaking bits, mainly Crimea, and the EU deliberately tried to confront Russia on its borders. I don't think that's very clever."

"Of course, Russian oligarchs are pedalling their influence in London, but like I would say, we're the cleaner of the clean. I would say I've had lunch twice with the Russian ambassador. He's a top bloke."

"when we met the ambassador we spent six hours talking about east Germany and Russian spy transfers." (Emphasis added.)

269. Asked how much money he put into the Brexit campaign, Mr Banks said, "*It was roughly £11 million*". When Ms Cadwalladr put to him that the source of his wealth is not transparent, Mr Banks said:

"It's from the insurance industry! I've listed and floated an insurance business."

"Well, actually, to be perfectly honest, we do know where the money has come from. It came from insurance. I'm a great insurance entrepreneur. I built a listed company, I sold that, and it's all on public record."

270. In relation to a CNN report, in which Mr Banks was identified as one of several politicians in Europe who had documented links to Russia, he and Ms Cadwalladr had the following conversation:

"AB: ...I threatened to sue CNN because they called me a Russian actor. And I've got no feelings other than having a Russian wife, one way or the other. I felt that was just wrong. They said that Brexit was funded by the Russians. That's a bit rich.

CC: But I think to ask the question isn't rich.

AB: They said that Brexit was funded by the Russians –

CC: So you don't mind if I say the question is –

AB: If you lied and said Russians funded Brexit I would be pretty annoyed.

CC: But if I say, 'Arron, the questions is, are you a Russian actor?

AB: I wouldn't care in the least. They said I was a Russian actor and that Russian money had funded Brexit and it was wrong, and there has to be a point where you draw a line in the sand."

271. Ms Cadwalladr's evidence was that her conversation with Mr Banks continued in his car after the interview. Mr Wigmore joined in the conversation by telephone. During this part of the conversation, which was not recorded, Ms Cadwalladr understood Mr Wigmore to be saying there was only one lunch with the Russian Ambassador, although Mr Banks had told her twice that there were two lunches, and had earlier posted a tweet to the same effect.
272. It was also during the conversation in the car that Ms Cadwalladr asked if Mr Banks had a diplomatic passport. In the Interview article, published a week after the interview, this conversation is recorded as follows:

"Later, he gives me a lift to the station, and Andy Wigmore – they call each other Wiggy and Banksy – is on speakerphone. Wigmore has family links to Belize, and he was that country's trade envoy to the UK until January, when the foreign office stripped him of his diplomatic status because of his political activity. And Banks lost his status too: he was Belize's special envoy to Wales. It's all a terrific joke. 'But what?' I say. 'You're telling me you have a diplomatic passport?'

'Yes,' he says. 'We both do.'"

It is clear from the next line ("*[t]hen Wiggy pipes up*") that "*he*" in the above sentence is Mr Banks. However, in evidence, Ms Cadwalladr said that Mr Banks had told her he had been the special envoy for Wales "*and did not dispute that this entailed having a diplomatic passport*" (emphasis added).

273. On 10 May 2017, in response to a tweet from Ms Cadwalladr, Mr Banks tweeted:
- "Again, the Russians did not give our campaign any money, gifts or assistant [sic]!"
274. On 1 August 2017, in response to a tweet from Ms Cadwalladr, Mr Wigmore wrote "*we know the Ambassador @RussianEmbassy he's a good man*"; and Mr Banks replied: "*Yes agreed, Russian ambassador is a fine fellow @RussianEmbassy*".
275. On 1 November 2017, following the announcement of the EC's second investigation (see paragraph 218 above), Mr Banks put out a press release which stated:

"...The Leave.EU campaign was funded by myself, Peter Hargreaves and the general public.

The Guardian allegations of Brexit being funded by the Russians and propagated by Ben Bradshaw are complete bollocks from beginning to end.

My sole involvement with 'the Russians' was a boozy 6 hour lunch with the Ambassador where we drank the place dry (they

have some cracking vodka and brandy!) and then wrote the account of the lunch in my book, ‘The Bad Boys of Brexit’. Hardly top secret stuff!

Ben Bradshaw, working with Open Democracy created a work of fiction. He asked a question in Parliament and today got the Electoral Commission to leak the news of the inquiry and then hit the airwaves. Yawn...

Turning to the investigation, we believe that a judge led inquiry reporting to Parliament that investigates the main campaign groups, Vote Leave, Britain Stronger in Europe and Leave.EU would be the best way to clear this nonsense up once and for all. ...” (Emphasis added.)

276. Mr Banks rang Ms Cadwalladr on the day the EC’s second investigation was announced and “*repeatedly said it was ‘his’ money and there was no mystery to it*”. He also told her he wanted a judge-led inquiry into Russian interference in UK democracy. Ms Cadwalladr had not read his press release before he phoned her, but she did so shortly afterwards.
277. On receipt of Ms Cadwalladr’s first email on 8 June 2018 (see paragraph 185 above), Mr Banks spent many hours that Friday and Saturday being interviewed for the Kremlin connection articles and, on his behalf, Mr Wigmore provided Ms Wheeler with a 2000-word account suggesting “*all you will hopefully need to do is make it sound right*”, as well as copies of emails. The first of the Kremlin connection articles (see paragraph 190 above) includes the following statements by Mr Banks, or Mr Wigmore on his behalf:

“Last night, Banks admitted he handed over phone numbers for members of Trump’s transition team to Russian officials. ...

Banks admitted visiting Moscow in February 2016, as the referendum campaign raged ...

Confronted about the discrepancies in his public statements, Banks said; ‘I had two boozy lunches with the Russian ambassador and another cup of tea with him. Bite me. It’s a convenient witch-hunt, both over Brexit and Trump.’ ...

Wigmore said: ‘We never offered any information to him [i.e. the Russian Ambassador] or any Russian any details of our [Brexit] campaign. We did discuss Trump and [the ambassador] dismissed him immediately, “Not a chance he would win”. I remember clearly him stating this.’ ...

After that meeting [with Mr Povarenkin], Wigmore says the pair were invited to three cultural events hosted by the Russian embassy. Banks went to none while Wigmore attended two. ...

They then claim Guthrie put them in touch with Hambro, chairman of the largest Russian goldmining group on the London Stock Exchange, before deciding the deal was not for them and calling off the trip to Moscow. ‘We didn’t profit from any business deals because I never pursued anything,’ Banks said.

However, two more emails, from Wigmore to Sky News and the BBC in February 2016 suggest Banks was ‘delayed in Russia’. Banks explained: ‘My wife is Russian and we went on a family trip to Moscow, no meetings were had with anyone, we visited the Hermitage museum and went on a river cruise.’ The Hermitage is in St Petersburg.

Another lunch between Banks and Yakovenko was scheduled for August 2016 but Wigmore says it did not go ahead. However, after Banks and Wigmore joined Farage to become the first Britons to visit the new president-elect, Donald Trump, Yakovenko called them in again. That meeting took place on November 15, 2016. Wigmore said: ‘The ambassador was obviously keen to know how our meeting [with Trump] went.’

Last night, Banks downplayed the significance of the meetings, denied that Russian officials sought to influence his referendum campaign and claimed that he revealed the details of his contacts to American spies.

‘We actually saw the suits from the American embassy who introduced us to the State Department to explain what had happened and then we briefed the Americans on our meetings with the Russians,’ he said.” (Emphasis added.)

278. The second of the Kremlin connection articles includes the following statements by or on behalf of Mr Banks:

“Shown the emails last week, Banks confirmed that he had met Yakovenko again only three days after his return to London in November 2016. He claimed he had never attempted to conceal the second lunch and it was perfectly normal for the ambassador to seek details of the Trump meeting. The only thing he found surprising, Banks added, was that Yakovenko asked him for the telephone numbers of Trump’s transition team.

‘The key interesting fact of all this is the Russian ambassador asking us for Trump’s ... telephone numbers,’ he said. ‘When we have those photos taken [with Trump] and it hits the press, literally within very short order we are seeing the Russian ambassador, who says he can’t believe Trump won, will you give me his number?’ ...

Banks acknowledged that he had other previously undisclosed contacts with the Russian embassy, including business

introductions and ‘a few cultural events’. But he insists that the relationship amounted to no more than ‘general friendliness’ and dismissed apparent discrepancies in his accounts of past meetings with the ambassador.

His initial admission of a single ‘boozy’ lunch with Yakovenko was ‘a throwaway line’ he said yesterday. ‘I had two boozy lunches with the Russian ambassador and another cup of tea with him. Bite me.’ ...

Wigmore recalled last week that Ukip’s aim in its first contact with the Russian ambassador was ‘to brief him on how we saw the potential Brexit campaign’ (which at that point had not been formally launched by the then prime minister David Cameron).
...

Wigmore, who was also present, insisted that ‘we never offered any information to [the ambassador] or any Russian any details of our campaign. He never once offered help of any kind and certainly was not of the opinion that [Brexit] would ever happen. He was certain that Cameron would get a deal.’

Wigmore added, however, that Banks had mentioned his business interest in diamonds in South Africa and goldmines in Russia: ‘The ambassador mentioned he did know someone we should talk to and kindly suggested he should arrange a meeting. He also may help with my Belize request.’

Banks was duly introduced to Siman Povarenkin, a Russian mining tycoon, who was attempting to consolidate half a dozen privately owned Russian goldmines ‘into one entity involve a quoted UK company’, said Wigmore. A chain of introductions led to Peter Hambro, an Eton-educated member of the banking family who at the time had extensive goldmining interests in Russia, earning him the nickname Goldfinger.

‘So I met with Goldfinger ... and he said, it’s problematic, it’s difficult, you need to get the Russian bank onside and at that point it just fizzled out - nothing actually happened,’ said Banks.

... ‘The difficulties of pulling all this together quickly became apparent and it would only work if we were prepared to visit Moscow,’ said Wigmore. He ‘reached out’ to Yakovenko for guidance on preparing a visit but it became ‘a low priority and we did not pursue the project. We did not go to Moscow.’

Yet one email seen by The Sunday Times indicates that Banks had to cancel an interview in Britain because he had been delayed in Moscow. Did he visit Russia or didn’t he? Last night he confirmed that he accompanied his Russian wife to Moscow on a ‘family’ trip. ‘No meetings were had with anyone, we

visited the Hermitage Museum and went on a river cruise,' he said. (The Hermitage Museum is in St Petersburg.)

Banks shrugged off any suggestion that his Russian contacts had led to anything of any significance. 'Once we had met the Russian ambassador he started to invite us to stuff, which I never went to,' he said. 'Andy [Wigmore] went to one with a string quartet and all sorts of people started to invite us to stuff. We didn't profit from any business deals because I never pursued anything.' ...” (Emphasis added.)

279. On 11 June 2018, Mr Banks and Mr Wigmore were interviewed by Mr Farage on his radio programme. Asked by Mr Farage, in relation to their lunch with the Russia Ambassador on 6 November 2015, *“why were you there? What was he after?”*, Mr Banks said:

“I'll tell you what happened. We were at the UKIP conference in Doncaster, and we were approached by a Russian observer. And he said, would you like lunch with the Russian ambassador? So we said, of course.”

280. Mr Banks was questioned by Mr Farage about why he had disclosed one lunch in BBOB and not mentioned the other meetings:

“AB: Well it's a strange sort of conspiracy when you wrote about it in your own book, isn't it? I mean if you were trying to keep a ... some sort of James Bond conspiracy with a Russian secret -

NF: Well you wrote about one lunch, yes?

AB: Because the book's timeline finishes with us in Mississippi, you might remember, you did a big speech -

NF: I did -

AB: At the Republican rally there and eventually, if you remember, the book finishes at that point. So actually, the second meeting with the Russian ambassador was after that, and it was after our meeting with Donald Trump.

NF: So how many meetings with the Russian ambassador, in total, were there?

AB: There were two lunches, and one cup of tea, where I was introduced to the businessman with the project to consolidate the Russian goldmines.” (Emphasis added.)

281. Mr Farage questioned Mr Banks about whether he was reporting back directly to the Russian Ambassador on the meeting with President-elect Trump:

“AB: Well it's nonsense.

NF: Is it?

AB: I don't know what to say, I mean we had two lunches and a cup of tea.

...

NF: The Sunday Times said that you'd admitted to giving telephone numbers, of the transition team, to the Russian administration.

AB: Correct. Yes."

282. Mr Farage also asked whether Russian money had funded Leave.EU:

"NF: ... Was there at any point, Russian, or Russian individuals or Russian businesses, that gave money to Leave.EU?

AW: No, not one penny or rouble.

NF: Not one? And Arron the same?

AB: Absolutely.

...

AB: But where is the evidence, that we took Russian money, there's no evidence."

283. On 12 June 2018, Mr Banks and Mr Wigmore gave evidence to the DCMS Committee. Ms Cadwalladr attended the session. Mr Wigmore described himself as an "*agent provocateur*", saying "*My job is to spin*". Mr Banks said, "*We certainly were not above leading journalists up the country path, making fun of them, and the same with politicians.*" Mr Banks was asked questions about his finances (see paragraphs 239-240 above). The evidence session continued:

"Ian C. Lucas: What do you think first attracted the Russian Embassy to Arron Banks, the biggest political donor in political history? Do you think it was anything to do with the fact that you were involved in the referendum campaign?

...

Andy Wigmore: Why do we think the Kremlin were interested in us?

Ian C. Lucas: I asked why the Russian Embassy was interested in you.

Andy Wigmore: I will tell you why they were, because I asked to meet them. We met them at a UKIP conference. I was a diplomat and we thought it would be quite a nice thing to go and

chat to them. Why? Because his wife is Russian. ... I had met him and his people in the diplomatic community many times. That is what you do, so it was not unusual when you meet somebody and say, 'We would like to come and have a chat with the ambassador. It would be nice to see him.' There was no other reason. In fact, we instigated, not the other way round.

...

Andy Wigmore: Can I tell you why we wanted to see him? I was a diplomat for a small country called Belize. We had a couple of issues in relation to –

Ian C. Lucas: Probably bananas and sugars.

Andy Wigmore: No. ... I was trying to find investors to look at perhaps buying a banana farm... There was a myriad of things we wanted to talk about. It was not anything to do with politics.

...

Arron Banks: I do think Ian is correct in the sense that, if we had not been involved in Brexit, we would obviously not have been invited for lunch.”

284. Mr Banks was asked whether at the meetings with the Russian Ambassador there was any exchange of political information. He said the only information “*we gave in the second meeting was the telephone number of the transition team, because the Russians wanted to get hold of the transition team*”. In relation to the meeting with the Russian Ambassador in November 2016, a few days after meeting President-elect Trump, the session continued:

“Giles Watling: You do appreciate that, from the outside point of view, it does look extraordinary that you went to meet these two very powerful, influential people and that was all that happened?

Andy Wigmore: Of course.

Arron Banks: What do you mean, ‘all’? We gave them the telephone number. That is what they asked for.”

285. Later in the evidence session the Chair asked:

“Chair: Did you discuss George Cottrell’s arrest with the Russian Embassy?

Andy Wigmore: It never came up. While at the time it probably seemed a big thing, there was so much else going on at the time it just was not an issue. It never came up.

Chair: You did not share any information with them about it?

Andy Wigmore: We didn't know anything, was the other thing. All we had seen was exactly what was in the press about George Cottrell. That was it."

286. They were asked, "*Did you ever accept money from the Russian government to run the referendum?*" to which both Mr Banks and Mr Wigmore replied, "No". Mr Banks told the DCMS Committee, "*I have no business interest in Russia and I have done no business deals in Russia*". In relation to his contact with Russia, Mr Banks said "*I gave the emails that were stolen from Isabel Oakeshott, I gave all this information in there, if I was intent on hiding my involvement with the Russians I did a pretty bad job of it*".

287. Mr Banks told the DCMS Committee:

"Arron Banks: ... It is about the level of contact with the Russians and The Sunday Times story that is quite an extravaganza. They say I went to Moscow in February following the meeting. When they contacted me I was struggling with dates and times. They were throwing everything at me.

I have subsequently gone back through my two passports and looked up what Russian visas I have in the passports. If someone wants to photocopy the passports, they are quite welcome to do so. ... There are two Russian visas – so effectively, the first one was March 2015 and the second was October 2014. I was not in Moscow in February 2016, so The Sunday Times article that said I travelled to Moscow in February 2016, I have fairly definitive proof here that I did not and there we are.

...

Giles Watling: Are they the only two passports you have?

Arron Banks: I knew you were going to say that. These are the only two passports I have.

...

Andy Wigmore: Just so you know because I can remember teasing many journalists when they asked, "Where is Arron?" I would often say, "He's in Moscow. He's in Russia" because the variety of stuff that had just come out about Arron being an agent from a document that is called the Atlantic Council document accusing him of being absolutely all of those things. We teased people about it.

...

Christian Matheson: Mr Banks, do you have a Belize passport?

Arron Banks: No. I was at one point the Belizean honorary consular to Cardiff –

...

Arron Banks: You do not get a passport for honorary consular.

Andy Wigmore: No, you don't, you are not a citizen." (Emphasis added.)

288. Mr Banks was interviewed for *The New York Times* article (see paragraphs 198-199 above). The article states:

"But in his testimony [to the DCMS Committee], Mr Banks did not mention the two other potentially lucrative opportunities detailed in the broader record of his electronic communications.

One involved a state-controlled Russian diamond mining giant, Alrosa. The other involved a Russian businessman – described in an email to Mr Banks as 'a mini oligarch' – and a gold mine in Conakry, Guinea.

In an interview on Friday, Mr Banks acknowledged that these other business deals were proposed to him, but he said that he never acted on them. He denied any wrongdoing, noting that his opposition to the European Union long predated his meeting with the Russian ambassador.

He argued that any business discussions that emerged from those meetings were insignificant because he had never 'done any Russian deals,' so 'after the wholesale theft of my emails, there is still no smoking gun there.'

...

In the Friday interview, Mr Banks eventually admitted to a fourth meeting with the Russian ambassador, though he described the earlier account he gave to Parliament of two lunches and a cup of tea as 'relatively accurate'.

He said his emails might have created the impression of more extensive contacts because of the many exchanges that his media adviser, Andrew Wigmore, had conducted with Russian diplomats to set up meetings, or about attending embassy events.

'I have not denied that we had a friendly relationship' with the ambassador, Mr Banks said.

He added: 'It is completely natural that a diplomat would put you in touch with another businessman. That is how trade works.'

...

In the interview, Mr Banks said he and Mr Wigmore had asked Mr Udod if they could meet the ambassador, ‘because we thought it would be interesting.’

...

In the interview, Mr Banks said that at the lunch, he had volunteered that he owned diamond mines in South Africa. The ambassador then invited him for another meeting later that month to introduce him to a Russian businessman who was offering a chance to invest in a proposed consolidation of six Russian gold mines.

...

Mr Banks said he never participated in that gold deal.

But it appears that Mr Povarenkin offered him a different Russian opportunity – with the diamond company Alrosa.

The Russian government, the largest shareholder in the company, was preparing to sell off a 10 percent stake. On Jan.16, 2016, an investment adviser working for Mr Banks wrote Mr Povarenkin that Mr Banks’s team had ‘not forgotten about your Alrosa project,’ according to people who have reviewed records of the emails.

A few days later, Mr van den Brul, the same investment banker that Mr Banks had consulted to discuss the gold deal, emailed him separately about the diamond opportunity.

In interviews earlier this week, Mr Banks initially said he knew nothing about the Alrosa project. Then he later said he remembered hearing about it from the investment banker but did not pursue it.

...

The third Russian investment opportunity surfaced in April 2016, as the Brexit campaign was heating up.

Another investment banker with connections in Russia wrote to Mr Banks about the possible sale of a gold mine in Conakry, Guinea. The owner was a Russian ‘mini-oligarch’ who ‘shares your passion for the yellow metal,’ the banker wrote, according to people who have reviewed a record of the email.

In the Friday interview, Mr Banks initially said that he had no memory of such a discussion but later called back to acknowledge a meeting on May 10, 2016, that appears to have included a discussion of the Guinean mine.

Mr Banks said he did not invest in that mine either.

...

In August, Mr Banks had lunch with the Russian ambassador and discussed the Trump campaign. At their lunch after Mr Trump's victory in November, the two men discussed what role Jeff Sessions, then a senator, might play in the cabinet, according to people who have reviewed the records of his emails.

Mr Banks, though, said he doubted that the Russians had cultivated him for reasons other than routine trade promotion.

'The idea that things were dangled as some sort of carrots for me to be involved with the Russians is very far-fetched,' he said. 'I wonder what the Russians wanted from me?'" (Emphasis added.)

289. The Post article (see paragraph 198 above) states that "*Banks spoke with The Washington Post twice this week*", once at his insurance company headquarters and once at Old Down. The Post article states:

"Banks told The Washington Post he did indeed meet with the Russian ambassador in London at least four times. They got drunk together. They texted. First names.

The ambassador tried to hook Banks up with a deal to consolidate Russian gold mines. Later the Russians dangled a diamond deal.

'So what?' Banks shrugged. He took a look, he said. He's a businessman, after all. He has a stake in diamond mines in South Africa and a uranium mine in Niger. But, he insists, he didn't do any deals with the Russians – no gold, no diamonds.

...

The book's ghost writer, British political journalist Isabel Oakeshott (whose emails were the ones that went missing), concluded that Banks and Wigmore 'were shamelessly used by the Russians' in a classic Russian fishing expedition".

We asked Banks about that. He called the assessment 'harsh' and explained that he and Farage and Wigmore were worried enough about the accusation that they briefed American diplomats on their Russian contacts – so as not to embarrass Trump." (Emphasis added.)

290. Channel 4 News broadcast on 5 March 2019:

“In an interview with ITV News, Mr Banks was asked: ‘Did you ever invest in Russia? Did you go further and have more meetings about this?’

He replied: ‘No. Flat. Zero. Nothing. In fact, I wouldn’t do. Because I know it is a complicated placed to do business.’

...

Arron Banks told Channel 4 News: ‘Channel 4 allege that business deals done with Russia funded our Brexit campaign, either directly or indirectly. I have repeatedly stated that was not the case and that potential investment opportunities were assessed and rejected at the time.

‘The so-called Russian “sweetheart” gold consolidation play was referred to Lord Guthrie, former head of the British Army, who referred us to a Russian gold expert – otherwise known as “Goldfinger”.

We had one short meeting about the potential project and then rejected it. The funding of our Brexit campaign came from myself and other UK-based donors. I look forward to the NCA report in due course.’”

291. Mr Banks and Mr Wigmore were interviewed for the *New Yorker* article (see paragraph 212 above). The article states:

“Banks writes in his book that Udod invited him and Wigmore to lunch with the Russian Ambassador, Alexander Yakovenko, on November 6, 2015. They readily accepted. ‘You get invited by the Ambassador, of course you go!’ Banks told me. ‘Maybe it was a mistake.’

‘They weren’t perceived as bad back then,’ Wigmore added. At the time, he said, British politicians were ‘actively trying to get people to invest in Russia.’

Wigmore later texted me to say that ‘The Bad Boys of Brexit’ contained an error: he, not Udod, had suggested the embassy lunch. Another member of Banks’s circle, however, told me that the meeting was indeed arranged by Udod.

...

Two months before the referendum, a third opportunity to work with Russians was presented to Banks: a gold-mining project in Guinea, in West Africa, owned by Ilya Karas, a London-based Russian businessman with a Belizean passport. ...

Wigmore recently told me that Banks and Karas never met, saying, ‘When we checked it out, we decided not to proceed

further.’ Karas, however, told me that he met Banks in May, 2016, in Bristol. In the end, he said, Banks decided not to invest in the Guinean project.

‘The whole point is that as a businessman you entertain and look at everything,’ Banks told me. ‘You shouldn’t be judged on what you *don’t* do.’”

(h) Other evidence regarding Mr Banks’s relationship with the Russian government

292. In BBOB, Mr Banks described the first contact with a Russian official as taking place at the UKIP conference in Doncaster on 25 September 2015. Emails show that the Russian official was Alexander Udod. In BBOB, the interviews for the Kremlin connection articles and on the Nigel Farage Show, Mr Banks said that Oleg/Mr Udod extended an invitation to lunch at the embassy during that meeting. Giving evidence to the DCMS Committee, Mr Wigmore suggested for the first time that he had initiated the invitation.

293. On 30 September 2015, Mr Wigmore sent the following email to Mr Udod:

“Absolute pleasure to meet you last Friday in Doncaster.

Mr Arron Banks and I would like to extend an invitation to lunch to the Ambassador and yourself at No 5 Hertford Street at a time that is convenient.

If this is not appropriate then we would still welcome a chat with the Ambassador at the embassy or a venue of your choice.

I have cc’d Mr Banks on this email.”

294. Ms Cadwalladr probably did not see the above email prior to the TED Talk. It was disclosed in these proceedings by the claimant. It does not appear in the email cache. Nor was it published by *The Sunday Times*. Nor is it in the document entitled “*Emails Discovered in an Attic*” (“the Attic document”) which sets out the content of various emails in the form of a play script; and which appears to be information Ms Cadwalladr had as the document was disclosed by the defendant and it includes a comment - “ANYTHING ELSE SIGNIFICANT AROUND THIS TIME – PJ?” – which is likely to indicate the comment was from (or perhaps to) Peter Jukes, with whom she worked.

295. It seems likely, given Mr Banks’s earlier recollection that the invitation was initiated by Mr Udod at the UKIP conference and the use of the word “*still*” in the third paragraph of Mr Wigmore’s email above, that the first mention of a chat with the Russian ambassador was proposed by Mr Udod at the conference, and then swiftly followed up by Mr Wigmore’s email. In any event, on 10 October 2015, Mr Udod sent Mr Banks an invitation to lunch with the Russian Ambassador at his residence on 5 or 6 November. Mr Banks accepted the invitation, writing

“Andy and myself will be delighted to attend lunch to brief the Ambassador on the 6th November. There is massive interest in this referendum in the USA as well, and we are shortly visiting

Washington to brief key [sic] on the campaign” (emphasis added).

As stated in BBOB, they attended lunch with the Russian ambassador on 6 November 2015. (The content of Mr Udod’s email and Mr Banks’s reply is in the email cache and Attic document, and was referred to in the Kremlin connection articles.)

296. According to the Post article, Mr Banks sent the Russian ambassador a text the following day, 7 November, thanking him for his hospitality and inviting him to Old Down, Mr Banks’s manor home in the countryside. The Attic document suggests the Russian ambassador texted Mr Banks the same day proposing a meeting with Mr Povarenkin at 6pm on 16 November 2015, and Mr Banks accepted the invitation. On 9 November 2015, an email was sent by the Russian Embassy Secretariat to Mr Wigmore attaching a formal invitation from “*the Ambassador of the Russian Federation Dr Alexander Yakovenko*” requesting “*the pleasure of the company of Mr Arron Banks at a meeting on Monday, 16th November 2015 at 18.00*” at the Russian ambassador’s residence. (This invitation was not in the email cache, but it was in the Attic document and has been disclosed by the claimant.)
297. On the assumption there was only one meeting with Mr Povarenkin, the date of it appears to have been pushed back a day. The Kremlin connection articles state that this meeting, at which the Russian ambassador introduced Mr Banks to Mr Povarenkin, took place on 17 November 2015. That is, the day before the launch of Leave.EU’s campaign on 18 November 2015. This is also consistent with an email from Mr Banks to Mr Povarenkin on 18 November 2015 referring to having met Mr Povarenkin with the Russian ambassador “*yesterday*”.
298. In his email to Mr Povarenkin, dated 18 November 2015 (copied to Andrew Umbers and Jim Mellon, and forwarded to Mr Udod and Mr Wigmore), with the subject “*Gold Play*”, Mr Banks wrote:

“Dear Siman,

Very nice to meet yesterday with the Russian ambassador.

I have passed the presentation onto Andrew Umbers of Oakwell Capital, a company that I own a substantial stake in.

I’ve chatted to Jim Mellon who is my partner in the bank and we are both interested at looking how we could help. Jim has extensive interests in commodities.

Andrew will be in contact to start discussions

I’m very bullish on gold so keen to have a look !

Best

Arron

Jim knows the Russian ambassador as well !” (emphasis added).

This email was in the email cache, the Attic document and a copy with some email addresses redacted was published in the Kremlin connection articles.

299. The presentation that was given to Mr Banks by Mr Povarenkin at the meeting on 17 November 2015 is entitled “*Russian gold sector consolidation play*”. It is a seven-page document that appears to have had its comb-binding removed, to enable it to be scanned and emailed. This is the document that was first described in an article published in *The Guardian* on 9 August 2018 (see paragraph 203 above). The first page shows a picture of gold bars stamped with the word “*Russia*” in Cyrillic, bears the title of the presentation and a picture of the Russian flag. Background regarding gold production in Russia is presented on the second and third pages. On the fourth page a chart shows the “*Top 10 Russian gold miners*”. The largest is “*Polyus Gold*”, accounting for 33% of Russian gold production. “*GeoProMining*” is shown as the eighth largest, accounting for 4% of Russian gold production.

300. The fifth page of the presentation states:

“The idea

- The idea is to buyout some Russian gold miners from Top 10 and create a company similar to the largest Russian gold producer Polyus Gold
- Russia is the third global gold producer and it has second largest gold ore resources so it is a significant player of the global gold market. Russian gold miners benefit from weak local currency that leads to lower than ever cash costs.
- Given that fact that Russian gold miners are linked to gold prices nominated in American dollars, Russian companies can easily borrow and pay US\$ nominated loans.”

301. The sixth page identifies the “*potential targets for the play*” as being 6-7 of the 4th to 10th companies in the “*Top 10*”. The seventh page addresses “*GeoProMining’s Role*”. The third reason provided in support of the statement that “*GeoProMining is a perfect platform to start the consolidation process*” is that:

“Sberbank Capital (subsidiary of Sberbank which is N1 bank is [sic] Russia) is a shareholder of GeoProMining and it leads to certain opportunities not available to others.”

302. On 24 November 2015, Mr Wigmore sent an email to Mr Udod, stating “*Arron and I wondered if we could have a chat with you face to face about our plans to go to Moscow in the next few weeks. We are both back on November 30th and wondered if you had any time that week for a cup of tea.*” Mr Udod responded that his schedule was extremely busy for the next two weeks, but offering “*any date at your convenience after 16 December*”. A copy of Mr Wigmore’s email, but not of Mr Udod’s reply, was disclosed in the Kremlin connection articles. Ms Cadwalladr probably did not see Mr Udod’s reply (which has been disclosed by the claimant in these proceedings) as it was not in the email cache or Attic document. The documents do not reveal how Mr Banks and Mr Wigmore responded, whether a further meeting was arranged, or whether the planned visit “*to Moscow in the next few weeks*” took place.

303. On 12 January 2016, Mr Umbers sent an email to Mr Povarenkin and Mr Sergey Kuznetsov of GeoProMining, copied to Mr Banks and two others from Oakwell Capital. The subject of the email is “*Russian Gold Consolidation*”. Mr Umbers’s email states:

“Dear Siman,

A belated Happy New Year !

\$ strong, Oil weak, Chinese deflation on the horizon, a flight to quality. All points to gold as the default currency.

Please see my helicopter view ‘consolidation of Russian Gold’ doc.

Haven’t forgotten about your Alrosa project either.

Let me know what you wish to do.

Best regards,

Andrew”

The content of this email appears in the email cache and the Attic document, and the email has been disclosed by the claimant.

304. It is evident that there must have been other communications prior to Mr Umbers’s email of 12 January 2016, first, because Mr Umbers has obtained an email address of one of Mr Povarenkin’s colleagues at GeoProMining and, secondly, because the reference to “*your Alrosa project*” shows that at some earlier point Mr Povarenkin must have referred to that project.
305. The “*Consolidation of Russian Gold*” document prepared by Mr Umbers is a four-page Word document bearing that title. It is the document first revealed by Channel 4 on 5 March 2019 (see paragraph 211 above). The first paragraph stated:

“The consolidation of 6 potential companies in to 1 corporate entity requires significant private and public markets expertise. After a thorough investigation into the feasibility of the project, Oakwell Capital, through its corporate finance arm, would be extremely interested in overseeing the entire project on behalf of its prospective client GeoProMining.”

306. Under the heading “*Practical Considerations*”, Mr Umbers wrote:

“...7/Sberbank would have to agree to the recommended and broad strategy of consolidation of all 6 companies given their own assumed debt roll over and extensions and a new financial position in the consolidation vehicle (New co/GeoProMining). We believe that the leverage of Sberbank has with all of the 6 potential target acquisitions could very materially alter the valuation, type of approach and structure of the new company

post consolidation of all acquisitions. We would therefore recommend a confidential meeting with Sberbank at the earliest possible convenience to understand their strategy and motive.

8/One assumes that a cash pile of circa \$4bn would be made available (to the consolidating vehicle (GeoProMining)) to complete the market transactions. The source of this cash is as yet unclear but it is assumed that this would be made available through friends of GeoProMining and provided in concert with Sberbank's bank debt support.” (Emphasis added.)

307. On 18 January 2016, Mr Umbers re-forwarded his email of 12 January to Mr Povarenkin and Mr Kuznetsov (copied to Mr Banks and Mr Wigmore), with the subject title “*Request please*”, attaching again his “*Consolidation of Russian Gold*” document and a scanned copy of Mr Povarenkin’s “*Russian gold sector consolidation play*” presentation. Mr Umbers wrote:

“Hi Siman,

To move the plan forward and in order of priority, both Arron and I were wondering whether you could arrange for us (Arron and I) to meet the appropriate Sberbank decision maker and perhaps in Moscow if it is appropriate? Our thought process centres on 1) knowing the scope of co-operation from Sberbank given this bank holds many of the cards in the pack (they are the major lenders to all six Russian gold companies set for consolidation in the plan), and then 2) identifying the financial muscle (person/institution). In other words we need to know whether they are willing to help/facilitate the plan.

(Our word doc (attached again) outlines what needs to be done).

Best regards,
Andrew” (emphasis added).

The content of this email is in the email cache and Attic document, and the email has been disclosed by the claimant.

308. The email cache and Attic document show that Mr Povarenkin responded to Mr Umbers the same day (copied to Mr Banks, Mr Wigmore and Mr Kuznetsov):

“Thank you for your view on the consolidation play. In order to present this idea to Sberbank we have to make sure that we have funds available. Please provide details of anchor investors you presented this idea to and who expressed interest in participating in this project”.

309. The email cache and Attic document also show that Mr Umbers responded on 18 January 2016 to Mr Povarenkin (copied to Mr Banks and Mr Wigmore):

“Thanks Siman

Message understood. This does predispose that Sberbank would be willing if there was a cash investor

As I have said in the document, a consolidated vehicle would be, even by paying 25% premiums to acquire the public companies, be 50% cheaper in value than Polyus Gold but equal in MT of gold produced”.

310. Mr Umbers also then wrote to Mr Banks and Mr Wigmore “*Over to you boys*”. Mr Banks sent an email the same day to Mr Povarenkin, Mr Umbers, Mr Wigmore and Mr Kuznetsov:

“Andy contact knows the bank well, so let’s have the discussion with them first”.

Mr Umbers responded to Mr Banks and Mr Wigmore, on 18 January 2016, “*Will leave with you and Andy then. Let me know*”.

311. On 19 January 2016, Mr Banks sent an email to Nick van den Brul (copied to Mr Udod and Mr Wigmore) saying:

“I’m in RSA [i.e. South Africa] back next week, any chance Andrew Umbers and myself can see you about the Russian Gold Play. I intend to pop in and see the ambassador as well.” (emphasis added).

312. Mr van den Brul replied that he would be happy to, proposing “*Thursday evening*”. The content of these emails is referred to in the email cache and Attic document, and Mr Banks’s email is referred to in the *New York Times* article. The documents do not reveal whether Mr Banks saw the Russian ambassador, as intended.

313. The email cache and Attic document also show that on 29 January 2016, Mr Umbers sent an email to Mr Banks, Mr Wigmore and a colleague from Oakwell Capital regarding a “*Meeting on Gold*” at 4pm that afternoon, to be attended by the four of them and Dominic Dreyfus. On 2 February 2016, Mr Umbers wrote to Mr Wigmore,

“How do you see this working? Did you see the Ambassador today? Is there a trip to Moscow and am I invited?”

The documents do not include any reply to Mr Umbers’s questions.

314. The email cache and Attic document also show that on 2 February 2016, Mr van den Bruhl emailed Mr Wigmore:

“You may have seen that Alrosa, the Russian diamond monopoly, may have been touted as one of the companies which could be privatised. In my view there won’t be full privatisation but it could open up some opportunities for Arron through ‘partial’ privatisation.”

315. The email cache and Attic document show that on Wednesday 10 February 2016 Mr Wigmore sent the following email to Lucinda Day at BBC Newsnight:

“Slight change of plan re Arron’s arrival in the UK – I don’t think he will have landed in time for the programme on Friday – he’s now due in at 11 am on Friday which is clearly not in time for the show. At the moment I’m not even sure if he will arrive on Friday as he’s in Russia then Switzerland then back in Bristol on his plane. Sorry”. (Emphasis added.)

316. Similarly, Mr Wigmore sent an email to John Dowden at Sky News:

“Just had word from Arron that he has been delayed in Russia and won’t be back on Friday for the planned interview – can we rearrange – sorry for the short notice.” (Emphasis added.)

317. On 12 June 2018, an individual who said they admired Ms Cadwalladr’s investigative work sent her an email with what were said to be the locations of Mr Banks ascertained from his tweets from December 2015 until 28 February 2016 when Mr Banks turned off his geolocation on Twitter. They placed Mr Banks in Pretoria, South Africa, from 3 to 10 February 2016, not in Russia, returning to Bristol on the morning of 12 February 2016. His tweets did not show that Mr Banks had been in Russia in the three months to 28 February 2016, although there were some periods in December and January (but not February) when he had not posted tweets and so his location could not be determined.

318. On 11 March 2016, the Russian Embassy put out a press release taking exception to a speech given by the (then) Secretary of State for Foreign and Commonwealth Affairs, Philip Hammond MP, in which he had suggested that “*the only country who would like us to leave the EU is Russia*”. The email cache shows that the same day Mr Banks agreed that Leave.EU should “*draft a press release in response to the Russian letter*” and Mr Wigmore responded, “*Suggest we send a note of support to the Ambassador*”. Ms Cadwalladr referred to these messages in her article in *The Observer* published on 16 June 2018.

319. The email cache shows that on 17 March 2016 the Russian Embassy invited Mr Banks to “*a private concert*” at the Russian ambassador’s residence. Mr Wigmore replied the following day, “*I would like to confirm that Mr Arron Banks and Mr Andrew Wigmore would both like to attend*”.

320. On 28 April 2016, Dominic Dreyfus wrote to Mr Banks that he had been

“approached by an adventurous Russian ... who shares your passion for the yellow metal. To that end he has ... spent much of the last three years in Guinea Conakry, West Africa exploring six sites under government licence. He could be described as a ‘mini oligarch’... He ... came by seeking a minimum \$3.5 million investment to finance the mining licences as well as sufficient equipment/infrastructure to take the company through to first production on his two most potential sites. ... when I mentioned your own interests he was very keen that I effect an onward introduction despite having several interested parties in the offing. ... If your interest is piqued and your timetable permits I will then arrange a meeting at a place of your choosing.”

Mr Banks responded, “*I’m off to Washington tomorrow on Britex [sic] matters back next week (Thursday). How about a meeting the following week in Bristol with this chap?*”

321. On 20 July 2016, Mr Wigmore sent an email to Mr Udod stating, “*Arron Banks and I would like to invite you and the Ambassador to 2 events if your [sic] free*”. Both events were on the day of the EU referendum, a drinks event, hosted by Jim Mellon and Mr Banks, at the Bombardier pub in Notting Hill, followed by a party in Millbank “*to watch the results of the referendum come in*”. Mr Udod responded that the ambassador would be in Moscow but that he, Mr Udod, would be happy to attend both events. On the day of the EU referendum, Mr Udod informed Mr Wigmore that he would not be able to attend the party at Millbank, but hoped to attend the drinks at the pub. Mr Wigmore subsequently informed Mr Udod that the drinks at the Bombardier had been cancelled, writing “*Sorry for the late update but I hope we can meet for lunch after the referendum*”. These invitations are referred to in the Kremlin connection articles.
322. On 8 July 2016, the Russian Embassy invited Mr Banks to attend a presentation regarding the Kaluga region on 15 July. There is no evidence to suggest Mr Banks accepted this invitation. The invitation is referred to in the email cache and contained in the claimant’s disclosure.
323. On 5 August 2016, Sergey Fedichkin sent an email to Mr Wigmore:

“Let me first introduce myself. My name is Sergey Fedichkin, I’m currently holding the position of Deputy Head of the Bilateral and Political Section in the Russian Embassy in London and work together with Mr Alexander Udod whom you certainly have met on several occasions (at the moment he is enjoying his holiday and sends you his warmest regards).

I’m writing you on behalf of my Ambassador Alexander Yakovenko who would like to invite Mr Arron Banks to lunch in his residence at Kensington Palace Gardens 13 sometime in August.

In case Mr Banks accepts this invitation I believe it would be better if he sets out the possible dates so that we will look in Ambassador's working schedule to find out the best possible options. ...” (Emphasis added.)

324. Mr Wigmore responded the same day:

“Greetings from Rio and firstly let me say how pleased I am that some Russian athletes will be competing at the Olympics. I am currently with the Belize Olympic team as an athlete (shooting) and with our Sports Minister.

I am sure that Mr Banks will be happy to attend lunch with the Ambassador, he returns to the UK with me on 14th August so I will get some dates ASAP and forward these to you. If it is OK with the Ambassador I will be with Mr Banks.

I will go and visit the Russian delegation at their hospitality house on Copacabana beach to extend my greetings from Belize.

Warm wishes and I hope to speak soon. Wish Belize luck and I wish the Russian athletes good luck to [sic].” (Emphasis added.)

325. Mr Fedichkin responded that was fine and thanked Mr Wigmore for “*the kind words about our Olympic team*”. Mr Wigmore then sought contact details to enable the Sports Minister for Belize to “*visit Russia House in Rio*”. On 10 August 2016, Mr Wigmore offered two dates for the proposed lunch with the Russian ambassador, 19 or 22 August 2016. On 11 August 2016, Mr Fedichkin wrote:

“I’ve spoken to my Ambassador earlier this morning. He will be happy to welcome both of you for lunch at his residence on Friday, 19 August at 13.00. I will be accompanying him.”

On 15 August 2016, Mr Fedichkin and Mr Wigmore exchanged emails regarding dietary requirements.

326. Copies of the emails regarding the lunch on 19 August 2016 have been disclosed by the claimant. The contents of the emails, save those on 15 August 2016, are contained in the email cache, and Mr Fedichkin’s initial email and Mr Wigmore’s response were published in the Kremlin connection articles. There is also a screenshot of the menu that would have been at each place setting, which is headed:

“LUNCHEON
in honour of Mr Arron Banks
and Mr Andy Wigmore
19 August 2016

...

Residence of the Russian Ambassador”

327. On the day of this lunch, at 2.26pm, Mr Wigmore forwarded an email to Mr Fedichkin. Mr Wigmore had received the email on 12 August 2016. The subject was “*Fwd: Cottrell Docs – Eyes only*” and the only words in the email were “*Eyes Only*”. Mr Wigmore’s email attached the “*Cottrell indictment*” and five other “*Cottrell*” documents. Mr Wigmore’s email to Mr Fedichkin said, “*Have fun with this read*”.
328. A few days later, Mr Banks was in Jackson Mississippi with Mr Farage to support the Trump campaign.
329. The email cache includes the content of an email from Mr Wigmore to Ms Oakeshott (and others) on 24 August 2016 which indicates that he was providing “*11,425 emails that have been filtered from the 43,000*”. The email cache includes emails between 21 November 2016 and 1 June 2017 which post-date the publication of BBOB. Ms Cadwalladr said in evidence that she had not noticed this.

(i) Verification via enquiries of Mr Banks

330. Ms Cadwalladr interviewed Mr Wigmore and then Mr Banks in February and March 2017, as I have said. She also had lunch with Mr Wigmore later in the year. Subsequently, Ms Cadwalladr put questions to Mr Banks by email.
331. The email that Ms Cadwalladr sent to Mr Banks and Mr Wigmore on 8 June 2018 at 11.57am, following receipt of the email cache, stated:

“Dear Arron & Andy,

I am considering publishing a story that will suggest that you had numerous meetings with Russian government officials during the Brexit campaign and that this raises serious public interest questions about your relationship with the Russian government and whether you profited from Russian business deals.

I understand that in the months leading up to the referendum you both had multiple, undisclosed meetings with Russian embassy officials, including Alexander Udod and Ambassador Yakovenko.

I understand that an initial introduction to the Russian ambassador, as detailed in the Bad Boys of Brexit, was on November 6, 2015.

I understand two further invitations were extended to you for the w/c November 16 and that at the second of these, Alexander Yakovenko, the Russian ambassador, introduced you to businessman Siman Povarenkin, who proposed a deal in which you would invest in a scheme to buy six gold mines with funds for it coming from Sberbank.

I understand that further invitations from the embassy continued through 2016 and 2017. In addition, you had multiple meetings about the business deal proposed by Povarenkin, including meeting key contacts in Moscow in February 2016.

I understand that details of the deal with Siman Povarenkin, Sberbank and GeoPromining were being finalised through June 2016.

This information appears to conflict with you[r] previous denials of having Russian contacts or that the Brexit campaign profited from Russian sources. You have both denied any such contacts took place. Arron responded to the Electoral Commission investigation into his finances with a statement that said that his contacts with ‘the Russians’ consisted of ‘one boozy lunch’ at the Russian embassy.

I also understand that you reciprocated the Russian embassy’s hospitality with invitations to meet key business contacts in a London pub, that you invited the Russian Ambassador to attend

the Leave.EU headquarters in Millbank for a party on the night of the referendum and that while Mr Yakovenko was unable to make it, another diplomat, Alexander Udod, accepted.

I understand that there was a further meeting a few days before you [sic] and Nigel Farage travelled to Mississippi to meet the then presidential candidate, Donald Trump.

And that there [were] multiple other invitations and meetings.

I would like to clarify:

1) Did Arron profit from business deals that arose from introductions effected by Russian embassy officials?

2) Was there any attempt or offer by the Russians during those meeting to influence or assist with the Leave.EU campaign, either directly or indirectly?

3) Were you aware that Ambassador Yakovenko was interested in developing relations between the Russian government and the Trump campaign as revealed when the FBI's indictment of George Papadopolous was unsealed on October 30, 2017?

4) Did you supply any information about the Trump campaign, or people involved with it, to Russian embassy officials? Did you convey any information from Russian government officials to the Trump campaign?

5) Did you at any point send confidential documents to the Russian embassy?

6) Did you, at any time, assist the Russian government by promoting pro-Russian messages?

7) Did Russia have any involvement with the Brexit campaign, or help finance it in any way, directly or indirectly?

I would appreciate it if I could have a response by 5.30pm today.

Carole”.

332. Having received no substantive response, on the evening of 8 June 2018 Ms Cadwalladr extended the deadline to 12pm on 9 June 2018 (see paragraphs 185-186 above). On 9 June 2018, at 8.33am Ms Cadwalladr asked Mr Banks further questions:

“So to be clear: you can't remember if you had more than one meeting with the Russian ambassador? Or if he introduced you to a businessman offering you a multi-billion dollar deal? You need to check your diary and office computer to establish that? And Andy? You have no comment to make?”

333. She followed this up at 8.50am on 9 June 2018 with an email stating:

“To clarify:

Our policy is to try and be as fair as possible in giving people time to respond but it is just not credible that:

– neither of you picked this up until last night. I have never known you both to not check messages. You have always responded promptly.

– that you cannot recall whether you had a) one or b) multiple meetings with the Russian ambassador.

– that you cannot recall spending months negotiating a multi-billion dollar business deal.

– that you cannot recall that this deal was with a Russian oligarch and a sanctioned bank as you campaigned for Brexit.

– that you cannot recall if you made significant sums of money from this deal?

You cannot recall any of the above?

That is your response? That you cannot recall and need to check your records?” (Emphasis added.)

334. Mr Banks replied that in that statement “*there are glaring errors*” without identifying what he suggested they were, again reiterating that he would review it on Monday morning.

335. At 10.29am on 9 June 2018 Ms Cadwalladr wrote to Mr Banks (and Mr Wigmore and Mr Julius):

“You have said repeatedly you met the ambassador only once at one ‘boozy lunch’. You issued an official statement saying this when the Electoral Commission started its investigation that this constituted the sum of your dealings with ‘the Russians’.

We have seen evidence that neither of these statements are true and urgently needs to be in the public domain.

There is an overwhelming public interest in publishing this material.

It is up to you whether you choose to address the substance of the allegations below and provide comment by 12pm.

Andy, I am confirming from your silence that you are declining to comment.

We note that you both cancelled your appearance before the select committee after you received our email yesterday.”
(Emphasis added.)

336. Mr Banks did not respond to the questions Ms Cadwalladr put to him on 8 and 9 June 2018.

337. On 23 June 2018, Ms Cadwalladr wrote to Mr Banks and Mr Wigmore that she was proposing running a story and putting several questions to him to which she sought a response. The last set of questions asked:

“Have you exchanged text messages with the Russian ambassador? Over what period of time? Offering what sort of information?”

Neither Mr Banks nor Mr Wigmore provided any substantive response to any of these questions. Mr Banks’s reply stated that he had reported Ms Cadwalladr to the police in relation to the email cache.

338. On 30 June 2018, Ms Cadwalladr wrote to Mr Banks and Mr Wigmore asking the following further questions:

“[1] So how many meetings with Russian embassy officials are you know [sic] acknowledging? Arron – you are saying 4? Andy – 5 or 6?

[2] Can you confirm Arron, if the ambassador’s visit to Old Down went ahead?

[3] Can you confirm if you were a beneficiary in any way from Alrosa or associated deals?

[4] Can you confirm that you were in Lauterbrunnen on Feb 12?

[5] Can you confirm how much money Jim Mellon donated to the campaign?

[6] Can you confirm that you have used LeaveEU to advertise Mellon’s businesses?

[7] Can we ask again about your trip to Moscow in early February? Are you still saying that didn’t take place?

...” (numbering and emphasis added).

339. Mr Banks responded (numbering added):

“...My only comment on the other stuff ;

[3] I was not a beneficiary of the Alrosa privatisation

[2] The ambassador did not visit Old down

[4] Where is Lauterbrunnen?

[5] Jim Mellon donation to leave.eu was disclosed to the EC & before the short money rules legally

[6] Leave.eu has never advertised any of Jim Mellons businesses

[7] I did not visit Moscow in 2016 as reported in the Sunday times

And finally, are you totally nuts !”

Mr Banks did not respond to Ms Cadwalladr’s first question.

340. Also on 30 June 2018 Ms Cadwalladr asked Mr Banks:

“I just want to confirm that it was the Russian ambassador who alerted you and Mellon to the Alrosa deal that you knew of in January 2016”.

He replied, “*Nope, nic van De bruhl [sic], a finance broker. Bad luck*”.

341. On 3 July 2018, Ms Cadwalladr sent a press inquiry to Mr Banks and Mr Wigmore stating:

“We have records of 11 meetings with you and Russian ambassador/officials of [sic] vice versa, with another 5 invitations extended that we’re unclear if accepted/declined.

This is considerably more than previously disclosed.

Do you have any observations/comment?”

Mr Banks and Mr Wigmore did not respond. Mr Banks subsequently tweeted, after the article was published, “@carolecadwallada *story complete rubbish I met the ambassador twice for lunch (jolly good time was had by all) and a cup of tea. 11 times is just Observer fantasy land... Carole can’t stop lying...*”

342. On 6 July 2018, Ms Cadwalladr wrote to Mr Banks and Mr Wigmore:

“Nick Van Den Bruhl [sic] said that Andy contacted him and asked him to advise on the gold & Alrosa deals, not vice versa, in Jan 2016. This was before Alrosa privatisation was publicised in the Russian press, do you recall where you learned of it?”

Neither Mr Banks nor Mr Wigmore responded.

343. On 31 July 2018 Ms Cadwalladr asked Mr Banks and Mr Wigmore if they would release “*Vote Leave ads and targeting ads*” that had been placed on Facebook, or permit Facebook to do so, as Vote Leave had done. Mr Banks’s initial response was that “*All our Adverts are on our facebook page, knock yourself out...*” Ms Cadwalladr repeated

her request for permission, copying in “*Lena, who’s at Facebook*”. Mr Banks responded:

“I have no idea who Lena is and frankly given the lies you tell I wouldn’t give you the time of day Codswallop!”

344. On 27 August 2018 Ms Cadwalladr wrote to Mr Banks and Mr Wigmore:

“Tom Watson is demanding the government confirm whether NCA is investigating possible Russian interference in the referendum and if they’re not calling for a public inquiry. Do you have any comment?”

They did not respond.

345. On 2 November 2018, Ms Cadwalladr sent a press inquiry Mr Banks and Ms Bilney containing a series of questions regarding the use of data by Leave.EU and Eldon Insurance. Ms Cadwalladr followed this up with an email stating:

“I’ve had no response from your [sic] nor any request for any extension to the deadline so my assumption is that you do not wish to respond. If that’s not the case, and you would like to, could you please let me know?”

They did not respond.

346. On 17 November 2018, Ms Cadwalladr sent a further press inquiry to Mr Banks and Mr Wigmore. Having set out a summary of what she said that new email evidence handed to Parliament showed, including that “*It states that you will be holding three meetings, including with potential donors on November 17 and 18*”, Ms Cadwalladr asked:

“Can you please tell us:

Did you try to raise money in the US for the Leave campaign?

Did Robert Mercer or other donors give you donations or donations in kind?

We know from previous correspondence that you met with the Russian ambassador on November 18. Was that one of the three fundraising meetings?

Did you use UKIP data in the Leave.EU campaign?

What role did Steve Bannon play in Leave.EU’s campaign?”
(Emphasis added.)

Ms Cadwalladr forwarded this email to Mr Banks again, stating “*I’m re-upping this. The deadline has now passed. If you’d like further time to consider your response or have any other queries please get in touch*”. Mr Banks’s only response to Ms Cadwalladr’s questions was: “*Dial C for crazy*”.

347. Ms Cadwalladr states in her witness statement:

“On November 27, 2018 the Claimant’s lawyers, Kingsley Napley, wrote to the Observer complaining about references to the Claimant in an article I had written about Nigel Farage. It disputed the accuracy of two references to the Claimant and requested a correction. It did not complain about any of the public statements I had made previously in which I claimed the Claimant lied about his visits to the Russian Embassy.”

The article (see paragraph 209 above) states that it was “*amended on 6 December 2018 to clarify a date and to remove an implication, mistakenly introduced during editing, that Arron Banks was present at the incident at O’Hare airport in Chicago. His ghostwriter was present*”.

348. On 19 December 2018, Ms Cadwalladr wrote to Mr Banks and Mr Wigmore:

“I have a question about material that you posted online earlier this year. You published a right-to-reply email that Channel 4 News sent you on July 25 that included a question about an email that you sent Chris Kimber in April 2014. In it, you said:

“Chris, can you bring over a certificate for the diamond I took back – have you got any blanks!!! Was looking at getting it cut but need the paper...A”

Can you tell me what your explanation of what you wrote in that email? [sic] I’m thinking of writing about it this weekend. Are you able to clarify what it is that you meant?”

On 20 December 2018, Ms Cadwalladr sent a further email: “*Just checking. You’ve no intention of answering this?*” Mr Banks and Mr Wigmore did not respond to Ms Cadwalladr’s emails.

349. Ms Cadwalladr did not ask any further questions of Mr Banks prior to giving the TED Talk.

(j) The drafting and editorial process for the TED Talk

350. On 28 June 2018, Ms Cadwalladr received an initial enquiry from Ms Cyndi Stivers asking whether she would be interested in giving a talk at the TED Conference in Vancouver in April 2019. Ms Stivers’ initial email gives her title as “*Director, TED Residency, Special Events Curator*”. Ms Cadwalladr states, and I accept, that Ms Stivers was “*an editor and curator for the TED organisation and conference*”; she is “*a highly experienced journalist and editor who has worked for multiple news organisations*”. Ms Cadwalladr and Ms Stivers spoke about the proposal on 26 July 2018. On 30 August 2018, Ms Cadwalladr was officially invited by Ms Stivers to give a talk at the TED Conference on 15-19 April 2019 and Ms Cadwalladr accepted the invitation the same day.

351. On 8 January 2019, Ms Stivers sent an email to Ms Cadwalladr suggesting that as her “*story continues to unfold*”, she should send “*some bullet points of what you THINK you’ll talk about, which I can share with Chris and Helen*”. Ms Cadwalladr responded the same day that she had started writing it, although it was “*a bit dated & incomplete*”. On 21 January 2019, Ms Cadwalladr sent Ms Stivers a draft, which she described in an email to Mr John Mulholland, the editor of *The Guardian US*, on 21 February 2019, as “*a first very different draft*”. As this is the first draft that was shared with anyone, and the first draft that is available, I shall refer to it as the ‘first draft’. (I note the index describes it as the “*2nd draft*” because Ms Cadwalladr amended whatever she had already written before 8 January 2019 before sending it to Ms Stivers later that month.) There is no reference to Mr Banks in the first draft.
352. Ms Stivers discussed the first draft with “*Chris and Helen*”, editors and curators at TED, on 25 January 2019. Ms Stivers gave Ms Cadwalladr feedback on the first draft on about 31 January or early February 2019. The feedback was given orally, during a video call. Ms Cadwalladr told Mr Mulholland about three weeks later that “*the feedback*” on the first draft “*was that it needed to be framed by looking forward and not back. And, it was actually suggested that I think about doing it as an open letter to Zuck...and that it should say what needs to happen*”.
353. TED arranged a first rehearsal to take place on 20 February 2019. The day before the rehearsal, Mr Patrick Alberty, the Rehearsal Coordinator for the TED Conference, sent Ms Cadwalladr an email seeking the most recent draft of her script and any presentation materials she might have ready. The same day, 19 February 2019, Ms Cadwalladr sent Ms Stivers what she described as “*a second (very rough) draft*” (‘the second draft’). In her email Ms Cadwalladr wrote:
- “I thought about everything you said, and the need to frame it looking forward, and the point about needing hope, and I’ve come up with this.
- It’s more locally specific than before in that I include more details of what happened in Britain. But with the idea that the specific is universal...and that we were the canary in the coal mine.
- I’m sure I can refine it but see what you think about general idea/shape. I think it plays to my strengths in that I really believe this very powerfully. [...]
- And I’ve addressed a lot of it directly to Facebook, which was one of your suggestions...
- Anyway, see what you think. [...]

354. The second draft included the following words:

“Another Leave campaign, Leave.EU, was led by this man:

[Farage & Trump]

... Nigel Farage. And this campaign *also* broke the law. It *also* overspent. It is also being investigated by the police.

It broke electoral laws. And it broke British data laws. And those have also been referred to the police.

And this campaign was funded by this man

[Arron Banks with Donald Trump]

Who's also been referred to the police. He's now being investigated by the NCA, our version of the FBI. Because we have no idea where his money came from. He was the biggest political donor of the referendum. He was the biggest political donor in Britain, of all time. And after a year-long investigation, the EC concluded they didn't know where his money came from. Or if it was even British.

But we do know he asked this man to help him raise money from American billionaires. We published an email in which he said it.

[Steve Bannon]

And we do know that in the same week he launched the official Leave.EU campaign, he was meeting with this man. We published an email in which he said it.

[The Russian ambassador with Putin]

It's the Russian Ambassador to London. Who we know introduced him to a Russian businessman who offered him lucrative gold and diamond deals.

Banks was there in the Russian Embassy on the same day that Leave.EU launched its campaign.

And we know that with this dark money from an unknown source, he bought hundreds of thousands of Facebook ads." (Square brackets and italics in the original.)

355. Ms Stivers responded to Ms Cadwalladr the same day that she was "*in the middle of another edit right now but will be back to you ASAP (before tomorrow!)*". Ms Cadwalladr sent Ms Stivers "*a slightly revised draft*" on 20 February 2019 ('the third draft') before going ahead with the rehearsal that day. Ms Stivers commented that she thought the script was "*powerful*" and that she had shared it (with others in the TED organisation).
356. In the third draft, Ms Cadwalladr amended the passage in the second draft that I have quoted above (paragraph 354 above) as follows:

"...And this campaign was funded by this man

[Arron Banks with Donald Trump]

Arron Banks. He's a businessman. Who's also been referred to the police. He's now being investigated by the National Crime Agency, our version of the FBI. ~~Because we have no idea where his money came from.~~ He was the biggest political donor of the referendum. He was the biggest political donor in Britain, of all time. And ~~after a year long investigation, the~~ our Electoral Commission has concluded they ~~didn't~~ don't know where his money came from. Or if it was even British.

But we do know he asked this man to help him raise money from American billionaires. There was an email in which he said it in the US. Which if it happened would be illegal.

[Steve Bannon]

And we ~~do~~ know that in the same week he launched the official Leave.EU campaign, he was meeting with this man. We ~~published an email in which he said it.~~

[The Russian ambassador with Putin]

It's the Russian Ambassador to London. Who we know introduced him to a Russian businessman who offered him lucrative gold and diamond deals. ~~Banks was there in the Russian Embassy on the same day that Leave.EU launched its campaign.~~ And we know that with this dark money which came from an unknown source, he Banks also bought hundreds of thousands of Facebook ads."

(Struck out passages and underlining added.)

357. On 21 February 2019, Ms Cadwalladr sent the third draft to Mr Mulholland asking if he would read it and send feedback. As noted above, Mr Mulholland was the editor of *Guardian US* and, until March 2018, he had been the editor of *The Observer*. The following day, Mr Mulholland responded with some detailed and some more general points. He did not comment on the passage regarding Mr Banks. Mr Mulholland was not reviewing the draft as a responsible editor, nevertheless, I note that he did not suggest Ms Cadwalladr should send Mr Banks a new right-to-reply message or that the draft should be subject to legal review. His suggestions included advice to refer to a statement made by Mr Collins MP that: "*Democracy is at risk from malicious and relentless targeting of citizens with disinformation and personalised 'dark adverts' from unidentifiable sources, delivered through the major social media platforms we use every day. Much of this is directed from agencies working in foreign countries, including Russia. ...*" Mr Mulholland said, "*the good part of that is that allows you (and I think you should) explicitly reference Russia and the US so that it feels as though what you are saying has implications beyond UK and is central to attacks on the US system too*".

358. Separately, Ms Cadwalladr also sent the third draft on 21 February 2019 to Ms Sarah Donaldson (an editor with *The Observer* who had been Ms Cadwalladr's main editor on the story), asking if she would read it and seeking feedback. Ms Donaldson agreed to do so. They arranged to meet at 3pm on 22 February 2019 and about 90 minutes before they met Ms Cadwalladr sent Ms Donaldson her fourth draft ('the fourth draft'). Ms Cadwalladr gave evidence that:

"I trusted her judgement as an editor absolutely. She knew all about the intricacies and the pitfalls of reporting on the Claimant. She was not responsible for the talk nor was it published on the Guardian's platform, but she did not suggest I submit new right to replies or seek legal advice."

359. In the fourth draft, Ms Cadwalladr made the following amendments to the passage quoted in paragraph 356 above:

"...And this campaign also broke the law. It also overspent. It is also being investigated by the police.

It broke electoral laws. And it broke British data laws. And ~~this campaign~~ it was funded by the man standing on the other side of Trump:~~this man~~

[photo of Arron Banks with Donald Trump]

Arron Banks. He's a businessman. Who's also been referred to the police. He's now being investigated by the NCA, our version of the FBI. He ~~was~~ wasn't just the biggest political donor of the referendum. ~~He was the millions he gave to the campaign made him~~ the biggest political donor in Britain, of all time. And our Electoral Commission has concluded they don't know where his money came from. Or if it was even British.

~~But we do know he asked this man to help him raise money in the US. Which if it happened would be illegal.~~

And that's to not even go into Arron Banks' covert relationship with the Russian government. Which is a whole other story that we published.

~~And we do know that in the same week he launched the official Leave.EU campaign, he was meeting with this man. It's the Russian Ambassador to London. Who we know introduced him to a Russian business man who offered him lucrative gold and diamond deals.~~

~~And we know that~~ But with this dark money ~~which came from an unknown source,~~ Banks also bought hundreds of thousands of Facebook ads."

360. Ms Cadwalladr sent Mr Mulholland a further email with extracts of her draft script prior to her meeting on 22 February 2019 with Ms Donaldson and then, later the same day, sent him a further draft. Although labelled “*draft4-feb22.docx*” this appears to have been a fifth draft (‘the fifth draft’). The passage quoted in paragraph 359 above remained unchanged in the fifth draft, save for the addition of the word “*British*” before “*electoral laws*”. Mr Mulholland responded with comments the same day, making none on the passage that referred to Mr Banks.
361. On 28 February 2019, Ms Cadwalladr sent the fifth draft to Ms Stivers, saying that she had “*just timed it at 16.15*” and that she thought the “*second half needs to be rejigged/cut*”. Ms Stivers sent a track-changed version back later that evening. She stated, “*I really gave it a good whack to try and get you to time*”, and that they would “*need to send Chris and Helen another draft as soon [as] you feel comfortable and at 12 minutes*”. Among other suggestions, Ms Stivers amended the “*covert relationship*” sentence to read, “*And let’s not go into Arron Banks’ covert relationship with the Russian government*”.
362. On the same day, another member of the TED team, Mr Crawford Hunt wrote to Ms Cadwalladr:

“As you continue to work on your talking points, please be sure you have fact checked your statements before you include them in your talk. The TED team will then fact check your talk to help ensure your ideas are presented with the strongest possible evidence. To improve the secondary fact check process, please include footnotes and direct links to papers or articles you cite ...”

363. On 4 March 2019, Ms Cadwalladr sent Ms Stivers a further draft (‘the sixth draft, albeit it is labelled “*Cadwalladr.draft5.docx*”). The following amendments were made to the passage relating to Mr Banks:

“...Arron Banks. He’s a businessman. Who’s also being investigated by ~~been referred to~~ the police. ~~He’s now being investigated by the NCA, our version of the FBI.~~ He wasn’t just the biggest political donor of the referendum, the millions he gave to the campaign made him the biggest political donor in Britain, of all time. And our Electoral Commission has concluded they don’t know where his money came from. Or if it was even British.

And let’s ~~that’s to~~ not even go into Arron Banks’ covert relationship with the Russian government. Which is a whole other story that we published.

We don’t know what Arron Banks di [sic] ~~But~~ with this dark money from an unknown source. But this was what he was posting on Facebook: ~~; Banks also bought hundreds of thousands of Facebook ads.”~~

364. Ms Stivers responded on 5 March 2019, informing Ms Cadwalladr that she had shared the draft with Chris and Helen. It appears from the content of her email that she probably provided a further track-changed version with notes and comments, although I have not seen that version.
365. On 11 March 2019, Ms Cadwalladr sent the sixth draft to Mr Brendan O’Grady, the Director of Communications at Guardian Media Group, and, separately, to Ms Jane Ferguson, Editor of the Observer News Review, who has been one of Ms Cadwalladr’s main editors at *The Observer* for the past 16 years, seeking feedback. Both indicated that they would and Ms Cadwalladr states that they did not spot any issues or suggest that she should have it legally reviewed.
366. On 25 March 2019, Ms Cadwalladr sent Ms Stivers a further draft (‘the seventh draft’, albeit still labelled “*Cadwalladr.draft5.docx*”), which Ms Stivers shared with Chris and Helen. Ms Cadwalladr had made the following amendments to the passage relating to Mr Banks:
- “Arron Banks. He’s a businessman. Who in a separate case is’s also being investigated by the police. He became ~~wasn’t just the biggest political donor of the referendum, the millions he gave to the campaign made him the~~ biggest political donor in British history but ~~Britain, of all time.~~ And our Electoral Commission has concluded they don’t know where his money came from. Or if it was even British.
- And let’s not even go into Arron Banks’ covert relationship with the Russian government. Which is a whole other story that we published.
- We don’t know what he did ~~Arron Banks did~~ with this dark money from an unknown source. But this was what he was posting on Facebook:”
367. On 10, 20 and 25 March 2019, Ms Stivers sent friendly reminders to Ms Cadwalladr to provide a version of her script “*with links to your pieces for the fact checkers*”. She said, “*I know you broke most of this story yourself, so I don’t anticipate any problems!*” On 1 April 2019, Ms Stivers reiterated this request, saying that it was “*now getting rather pressing*”. Ms Cadwalladr sent a version with links the same day, although due to problems downloading it she sent a further version on 7 April 2019.
368. By 3 April 2019, Ms Cadwalladr had produced a further draft (‘the eighth draft’) on which she had received comments (such as “*EXPLAIN*” and “*POWERFUL*”) from someone. The changes to the section referring to Mr Banks are minimal (deleting “*even*” in the “*covert relationship*” sentence and adding “*And*” at the beginning of the “*dark money*” sentence).
369. Ms Cadwalladr sent a further draft (‘the ninth draft’, labelled “*draft7-factcheck.docx*”) to Ms Stivers, and for the factcheckers at TED, on 7 April 2019. The section of the script regarding Mr Banks was amended as follows:

“There was another ~~a second unofficial~~ Leave campaign, Leave.EU, that was led by this man, Donald Trump’s close friend, Nigel Farage.

[photo of Farage and Trump]

And this campaign *also* broke the law. It also overspent. ~~It is also being investigated by the police.~~ [[hyperlink to an article published in *The Guardian* on 11 May 2018, “Leave.EU fined £70,000 over breaches of electoral law”](#)]

~~It broke British electoral laws. And it broke British data laws. And it was funded by this man. the man standing on the other side of Trump:~~

[photo of Arron Banks with Donald Trump]

Arron Banks. ~~He’s a businessman.~~ Who in a separate case is also being investigated by the police. ~~He became~~ He’s the biggest political donor in British history but and our Electoral Commission has concluded they don’t know where his money came from. Or if it was even British. [[hyperlink to an article published in *The Guardian* on 1 November 2018, “Arron Banks faces criminal inquiry over Brexit campaign”](#)]

And let’s not even get ~~go~~ into Arron Banks’ covert relationship with the Russian government. Which he lied about. And Wwhich is a whole other story that we published. [[hyperlink to the article by Ms Cadwalladr and Mr Jukes published in *The Observer* and on *The Guardian* website on 9 June 2018, “Arron Banks ‘met Russian officials multiple times before Brexit vote”](#)]

And we don’t know what he did with this dark money ~~from an unknown source.~~ But this was what he was posting on Facebook”

Notably, the ninth draft is the first to include the statement that Mr Banks “*lied*”.

370. On 8 April 2019, Ms Cadwalladr sent Ms Stivers a further draft (‘the tenth draft’, labelled “*draft8.docx*”). In this draft, Ms Cadwalladr removed the words “*we don’t know what he did with this dark money but*” (and so removed the reference to “*dark money*” that had first appeared in the second draft). The same day, Ms Stivers sent an email to Ms Cadwalladr noting, “*I see you decided not to use that one shot with both Banks and Farage... Legal reasons? It was just so chilling that they were both there with Trump in the middle!*” Ms Cadwalladr explained that her hesitation was that she believed Mr Wigmore owned the rights to the photograph. Following further encouragement from Ms Stivers, on 9 April 2019 Ms Cadwalladr asked for permission to use the “*golden lift photo*” in a presentation and Mr Wigmore immediately responded:

“Of course – you have my full permission – btw congrats on yet another award – when we all look back on 2016/19 at least it’s a bit of made history – try and be nice in your presentation”.

371. It appears from her contemporaneous emails with Ms Stivers that Ms Cadwalladr first met her in Vancouver on Wednesday, 10 April 2019. Ms Cadwalladr states:

“When I arrived in Vancouver for the conference, legal checks, compliance, and fact checking were carried out on the talk. I know, for example, on permissions for the photographs I used. I also delivered the speech at a rehearsal in front of TED’s senior leadership. Again, no-one suggested there might be further editorial or legal checks required.”

372. Ms Cadwalladr gave the TED Talk on the first day of the TED Conference, Monday 15 April 2019. While she was in Vancouver the draft had been further amended. The amendments made to the passage which refers to Mr Banks, compared to the last draft that was sent by email, one week earlier, were as follows:

“There was another campaign group, Leave.EU, that which was headed led by this man, Donald Trump’s friend, Nigel Farage, the one to the right of Trump. [golden lift photo – Mr Farage circled] And his group, “Leave.EU” this campaign - it also broke the law. It broke British electoral laws and British data laws, and it’s also being referred to the police. It also overspent.

And it was funded by this man: [golden lift photo – Mr Banks circled] And this man, Arron Banks, he funded this campaign. And Who in a completely separate case, he is also being referred to our National Crime Agency, our equivalent of the FBI, because investigated by the police. He’s the biggest political donor in history and our Electoral Commission has concluded they don’t know where his money came from. Or if it was even British.

And let’s I’m not even going to go get into the lies that Arron Banks has told about his Arron Banks’ covert relationship with the Russian government. Which he lied about. And which is a whole other story that we published.

Or the weird timing of Nigel Farage’s meetings with Julian Assange and with Trump’s buddy, Roger Stone, now indicted, immediately before two massive WikiLeaks dumps, both of which happened to benefit Donald Trump. But I will tell you that Brexit and Trump were intimately entwined. [golden lift photo – Mr Wigmore circled] This man told me that Brexit was the petri dish for Trump. And we know it was the same people, the same companies, the same data, the same techniques, the same use of hate and fear. This is what they were And this is what he was posting on Facebook...”

(k) Ms Cadwalladr's intended meaning

373. Ms Cadwalladr initially asserted that in saying “*And I am not even going to get into the lies that Arron Banks has told about his covert relationship with the Russian Government*”, she intended to convey no more than the literal meaning. However, she readily acknowledged that she meant to say not only that Mr Banks had lied about the number of meetings he had had with Russian officials, but also to convey that there are questions to be asked about whether the source of the political donations that Mr Banks made was legitimate or not. She agreed that throughout the period of drafting, she was formulating a talk which was designed to raise questions about the legitimacy of Mr Banks's money.
374. Ms Cadwalladr did not intend to say, and was sure she had never said, that Mr Banks had *accepted* Russian (or other foreign) funding. Although she did not expressly say in her reporting that there was no evidence that he had accepted any of the Russian deals he was offered, or otherwise received money from Russia (directly or indirectly), I accept that Ms Cadwalladr kept at the forefront of her mind that that was the position; and she did not intend to suggest otherwise.
375. In cross-examination Ms Cadwalladr also denied that she was intending to raise the impression in people's minds that the relationship concerned illegal electoral funding. She said that the relationship might have had other purposes, pointing out that the movement of, and meetings between, people can be a significant way to convey information. I accept that Ms Cadwalladr had in mind such other purposes. The articles she wrote during the course of the investigation show that she had in mind that such a relationship could be for the purpose of conveying information (e.g. about Cottrell or Brexit) or co-ordinating action (e.g. in the tweets by Leave.EU supporting statements by the Russian Embassy or RT). However, in conveying that there are questions to be asked about whether the source of the political donations that Mr Banks made was legitimate or not, Ms Cadwalladr was plainly also intending to convey the meaning that there is a question whether that funding was given in breach of the law on electoral funding.
376. I find that the meanings Ms Cadwalladr intended to convey were that (i) the claimant lied on more than one occasion about a secret relationship he had with the Russian government; and (ii) there are questions to be asked (i.e. grounds to investigate) whether the source of his donations was foreign funding, accepted in breach of the law on the funding of electoral campaigns.

L. Reasonable belief: discussion and conclusions

377. Threaded throughout the claimant's submissions on this issue were references to the standard to be expected of a “*responsible*” journalist. However, as I have said, the test of “*responsible journalism*” has been replaced by the requirements of s.4 of the 2013 Act. The focus of this section is on whether Ms Cadwalladr has demonstrated that her (subjective) belief that publishing the statement complained of was (objectively) reasonable in all the circumstances.
378. In assessing the reasonableness of her belief, the court must respect the fact that it is the TED Talk as a whole that Ms Cadwalladr presented to the public. In the TED Talk Ms Cadwalladr made a serious contribution to the discussion of a subject that was of real

and abiding public interest at the time of publication. Moreover, the words complained of were themselves on an important matter of public interest. It was reasonable for Ms Cadwalladr to regard those words as forming part of the story that she was telling about the potential for targeted political advertising on social media to undermine democracy. In this regard, I bear in mind that it is appropriate to make proper allowance for editorial judgment, as the claimant acknowledges.

379. In this case, the editorial judgment was Ms Cadwalladr's own, informed by the advice she received both from those at TED with direct responsibility, and from her long-time, trusted editors at *The Observer* (albeit they were not responsible for the talk). It is true that there is no evidence that the latter saw any draft after the fifth, and so they did not see a version that included the allegation that Mr Banks had told lies. But the reference to his "*covert relationship with the Russian government*" and use of "*dark money from an unknown source*" to fund political advertising was in the drafts they saw and, in my view, was markedly more explicit in suggesting he had received illegal funding than the TED Talk Ms Cadwalladr delivered. Notably, Mr Mulholland advised Ms Cadwalladr to make explicit reference to Russia, Ms Stivers was keen on Ms Cadwalladr using the golden lift photograph and she drew Ms Cadwalladr's attention to the *New Yorker* article about Mr Banks.
380. In my judgment, Ms Cadwalladr genuinely did not appreciate that the words she spoke could carry the single meaning found by Saini J. The TED Talk was, of course, drafted over a lengthy period of time, and so Ms Cadwalladr had time to consider the imputation of her words. But in this regard, I bear in mind:
- i) When the claimant's solicitors wrote a letter of claim on 24 June 2019, more than two months after the TED Talk was given, they asserted that the meaning of the words complained of was: "*Mr Banks has lied about the nature and/or extent of his relationship with the Russian Government*";
 - ii) The claimant's pleaded case prior to the meaning trial was that the words complained of mean: "*that the Claimant has repeatedly lied about the nature and/or extent of his relationship with the Russian Government*";
 - iii) It was only after the hearing of the preliminary issue as to meaning that the claimant pleaded an alternative formulation: "*that the Claimant has repeatedly lied about the nature and/or extent of his relationship with the Russian Government in relation to whether that relationship involved acceptance of Russian funding in breach of the law on funding referendum campaigns*".
381. Even the claimant's final formulation following a hearing on the issue did not straightforwardly assert that a meaning conveyed by the words complained of was that the claimant *had accepted* Russian funding in breach of the law on funding referendum campaigns. In my judgment, this aspect of the single meaning was not so obvious that it was unreasonable for Ms Cadwalladr to have failed to appreciate it.
382. It follows, in my view, that the public interest defence falls to be assessed having regard to the less damaging meaning that Ms Cadwalladr intended to convey (see paragraph 376 above). Although less damaging, I bear in mind that it was still a serious allegation. In particular, she alleged outright that he had told lies about a covert relationship with

the Russian government, as well as raising the question whether the source of his political donations was unlawful foreign funding.

383. A key factor, in my judgment, is whether Ms Cadwalladr had reasonable grounds to believe that her intended meaning was true. For the reasons which follow, I consider that when she gave the TED Talk, she did.
384. First, I address the lies Mr Banks is alleged to have told about his relationship with the Russian government. Prior to the disclosure of the email cache, Mr Banks had (a) disclosed meeting “*Oleg*” at the UKIP conference on 25 September 2015 and attending lunch with the Russian ambassador, on 6 November 2015, in BBOB; (b) disclosed two lunches with the Russian ambassador (on 6 November 2015 and 18 November 2016) in a tweet and when interviewed by Ms Cadwalladr; and (c) issued a press release on 1 November 2017 in which he said his “*sole involvement with ‘the Russians’*” was the lunch he had written about in BBOB.
385. Ms Cadwalladr had reasonable grounds for believing that:
- i) Mr Banks had met the Russian ambassador again, and been introduced to Mr Povarenkin, on 16 or 17 November 2015. This meeting was acknowledged by Mr Banks, but had not been disclosed before Ms Cadwalladr obtained the email cache.
 - ii) Mr Banks had lunch with the Russian ambassador on 19 August 2016, a few days before joining Mr Trump’s campaign in Mississippi. It was clear from the email cache that this lunch had been arranged and a few days beforehand nothing had occurred to alter the plan. Mr Banks acknowledged in interviews with *The New York Times* and *The Washington Post* that he had been to this lunch. Although in evidence Mr Banks has said he does not recall this lunch, that was not information Ms Cadwalladr had, and in any event the fact that Mr Banks has been able to disclose the menu card - showing the lunch was specifically held in his honour - is a strong indication that he attended. This meeting had not been disclosed by Mr Banks.
 - iii) Mr Banks shared information with Russian officials, most notably, (a) documents marked “*Eyes Only*” relating to Mr Cottrell were sent by Mr Wigmore to Mr Fedichkin at 2.26pm on the day Mr Banks and Mr Wigmore were having lunch with the Russian ambassador and Mr Fedichkin; and (b) the contact number for the Trump administration was provided to the Russian ambassador by Mr Banks.
 - iv) Mr Banks had been offered ‘sweetheart’ deals. First, and most clearly, the Russian Gold Consolidation Play to which Mr Banks was introduced at a meeting hosted by the Russian ambassador, and which the email cache showed had been seriously pursued for a matter of months. Secondly, the privatisation of Alrosa to which the email cache suggests Mr Banks had been alerted by Mr Povarenkin before it was mentioned by Mr van den Brul. Thirdly, the Guinea gold mine which Mr Banks had pursued to the limited extent of meeting with Mr Karas. None of these matters had been disclosed by Mr Banks.

- v) The four meetings on 6 November 2015, 17 November 2015, 19 August 2016 and 18 November 2016 were probably not the full extent Mr Banks’s meetings with Russian officials. This could be surmised from the following: (a) on 24 November 2015 Mr Wigmore was seeking to set up a meeting involving himself, Mr Banks and Mr Udod; (b) on 18 January 2016 Mr Banks and Mr Wigmore were intending to have a discussion with Sberbank about the Russian Gold Consolidation Play (a bank Mr Wigmore was said to know well); (c) on 19 January 2016 Mr Banks intended “*to pop in and see the ambassador as well*”, terminology which is suggestive of a relationship in which he could visit the Russian ambassador with ease; (d) Mr Umbers appears to have understood on 2 February 2016 that Mr Banks hoped or intended to see the Russian ambassador that day; (e) although it is unclear whether he did so, particularly having regard to the geolocation data (see paragraph 317 above), in December 2015 and again in February 2016 emails suggest that Mr Banks intended to visit Moscow in relation to the Russian Gold Consolidation Play, Mr Wigmore informed two journalists on 10 February 2016 that Mr Banks was in Russia, and the reason he gave to the DCMS Committee for having done so was not credible; (f) on 18 March 2016 Mr Wigmore had confirmed that he and Mr Banks would both like to attend a private concert at the Russian ambassador’s residence to which they had been invited; (g) on 5 August 2016 Mr Fedichkin referred to the fact that Mr Wigmore had certainly met Mr Udod on “*several occasions*”; and (h) Mr Banks did not answer Ms Cadwalladr’s questions as to how many meetings there had been.
- vi) Mr Banks had disseminated pro-Russian views not only publicly but also “*less openly*” during the referendum campaign, in a way that Ms Oakeshott, a friend of Mr Banks who was privy to far more material than Ms Cadwalladr, considered must have delighted the Kremlin.
- vii) The *Post* article stated that Mr Banks and the Russian ambassador exchanged text messages, and Mr Banks did not answer Ms Cadwalladr’s questions about this.
- viii) Mr Banks knew that “*Oleg*” was Alexander Udod but had not disclosed his name.
386. Ms Cadwalladr was also aware that Ms Oakeshott had written that what she found (in the more extensive material to which she was privy) was very surprising and “*conflicted with the public accounts of the relationship with the Russian embassy that Banks and Wigmore had given*”.
387. On any view, Mr Banks’s press statement of 1 November 2017 was wholly inaccurate. At the very least, and even assuming his statement should be taken as referring to the period prior to the EU referendum only, although it did not say so, Mr Banks’s “*involvement with ‘the Russians’*” extended beyond a single lunch to the meeting with the Russian ambassador and Mr Povarenkin, and to communications with Mr Povarenkin and Mr Udod over a period of months regarding the Russian Gold Consolidation Play.
388. Ms Cadwalladr regarded this as the pre-eminent lie, but it was also reasonable for her to believe that other statements Mr Banks made regarding his relationship with the

Russian government were inaccurate. He had tweeted, and told her, that he had had lunch with the Russian ambassador twice, at a time when (according to the evidence Ms Cadwalladr subsequently obtained) he had had at least four meetings, including three lunches. Even after the email cache was disclosed, and there was a focus on the precise extent of his contact, he repeatedly said there had been two lunches and “*a cup of tea*”, before acknowledging a fourth meeting.

389. Mr McCormick submitted that there was a failure of analysis on Ms Cadwalladr’s part in jumping from the fact that a statement was inaccurate to a conclusion that it was a lie, without considering other possibilities, such as that Mr Banks may have forgotten about the meeting with Mr Povarenkin or the lunch on 19 August 2016. In my judgment, given the wider limits of acceptable criticism that apply to an important public figure such as Mr Banks (to whom Lord Cooke’s comment cited in paragraph 132 above clearly applies) it would be wrong to expect a journalist to refrain from identifying such an inaccurate statement, particularly one given in writing in response to the announcement of an Electoral Commission investigation, as a lie unless the deliberate nature of the inaccuracy has first been proved to a standard that would satisfy a court.
390. Moreover, Ms Cadwalladr specifically put to Mr Banks that it was not credible that he could not recall whether he had had one or multiple meetings, and that his press statement in response to the EC’s second investigation was untrue. He chose not to comment. Ms Cadwalladr then stated repeatedly in her Russia connection article (see paragraph 197 above), that he had lied about his relationship with the Russian government, which she described as partly covert and hidden, expressly raising the question whether the gold deal went ahead. Mr Banks did not comment on that article.
391. Secondly, I address the alleged “*covert*” nature of his relationship with the Russian government. Mr McCormick points to the fact that the claimant’s (and Leave.EU’s) pro-Russia and pro-Putin tweets were public. His lunch with the Russian ambassador on 6 November 2015 was information that he volunteered in his book (BBOB), openly stating that they “*promised to meet again*”. The fact that he had had two lunches with the Russian ambassador had also been publicly stated by Mr Banks before Ms Cadwalladr first interviewed him. In addition, he had provided about 11,000 emails and text messages to a journalist, Ms Oakeshott, and he had not put conditions on their use.
392. It is true that, to a degree, the relationship was overt. But as identified above there were many aspects of it that were undisclosed. It is evident that, in describing the relationship as covert, Ms Cadwalladr was conscious that some aspects of the relationship had been made public (see paragraph 197 above).
393. As regards the fact that Mr Banks provided material to Ms Oakeshott, Ms Cadwalladr said in evidence that she believed that in doing so he was being “*reckless and a bit foolish*”. Although it took Ms Cadwalladr a long time to give that answer, in my judgment it was an honest answer. It is consistent with her assessment of him in the Interview article (for example, with respect to what he told her about his use of data) and in her witness statement (e.g. paragraphs 53, 58, 66 and 87-89). Moreover, Ms Cadwalladr was aware from the Oakeshott article that the relationship between Mr Banks and Ms Oakeshott was one of friendship and trust, in which Ms Oakeshott was privy to “*a great many secrets*”.

394. Thirdly, I address the question whether Ms Cadwalladr had reasonable grounds to believe there were grounds to investigate whether the source of Mr Banks's donations was foreign funding, accepted in breach of the law on the funding of electoral campaigns.
395. Based on her investigation, Ms Cadwalladr had reasonable grounds to believe that (i) Mr Banks had been offered 'sweetheart' deals by the Russian government in the period running up to the EU Referendum, although she had seen no evidence he had entered into any such deals; and (ii) Mr Banks's financial affairs, and the source of his ability to make the biggest political donations in UK history, were opaque. Most importantly, when Ms Cadwalladr gave the TED Talk the Electoral Commission had announced, following a one-year investigation, that it had reasonable grounds to suspect that Mr Banks was not the true source of the £8 million loans/donations, but rather the source was a non-qualifying company, Rock Holdings, which is based in an off-shore, non-transparent, jurisdiction. In addition, when she gave the TED Talk, the matter had been referred to the NCA and that organisation was investigating.
396. Ms Cadwalladr did not give Mr Banks an opportunity to comment immediately prior to the TED Talk. However, she had sent right-to-reply enquiries earlier, before the articles on which her TED Talk (and in particular the words complained of) was based had been published. Her Russia connection article had conveyed essentially the same allegations, and a very similar meaning to that which she intended to convey in the TED Talk. The primary difference was that the TED Talk was given at a time when Ms Cadwalladr could place reliance on the Electoral Commission's statement of 1 November 2018, and on the ongoing NCA investigation, whereas the Russia connection article pre-dated that statement.
397. Mr McCormick submits that Ms Cadwalladr's approach to her investigation, and in particular to reliance on the views or reports of third parties was one-eyed and flawed. For example, he pointed to her reliance on the openDemocracy report regarding Mr Banks's prospecting site in Lesotho (see paragraph 243 above), disregarding the reported views of Mr Banks's expert, and failing to understand the difference between such a prospecting site and a mine. In my judgment, it was not unreasonable to place more reliance on the view of Mr Whitelock, an expert who was described, even by the claimant's expert, as "*the authority on diamonds in Lesotho*" whose word on the topic was "*pretty much gospel*", especially given the geological grounds for his view was explained, whereas the logic underlying the claimant's expert's view was not. The report that "*we've recovered diamonds there*" was not inconsistent with Mr Whitelock's view that it was geologically impossible to find diamonds "*in commercial quantities*" at that site. While Ms Cadwalladr did not appreciate that this was only a prospecting site, that did not undermine the essential point that this was another of Mr Banks's interests which could not have been the source of the exceptionally large donations he made.
398. Although Ms Cadwalladr made clear that she did not understand off-shore structures, in essence, she drew the conclusion that his finances were opaque and it was unclear where he had derived sufficient funds to be able to donate as much as he had to the Brexit campaign. Those limited conclusions that she drew from the wide range of articles she read, and financial journalists and experts she spoke to on this topic, were reasonable.

399. In all the circumstances, I find that the defendant has established that her belief that publishing the TED Talk was in the public interest was reasonable. For the same reasons, if I had found that the serious harm threshold was met in relation to the Tweet, I would also have found that the defendant's belief that publishing the Tweet was in the public interest was reasonable.

M. Significant change in circumstances

400. The claimant contends that even if the defendant has established a public interest defence when the TED Talk was given (or the Tweet was posted), there has been a significant change of circumstances such that the defence falls away. The claimant identifies the following as significant changes:

i) The statement made on 24 September 2019 by the NCA ('the NCA's statement') that it had concluded:

"Mr Banks took a loan from Rock Holdings Ltd, a company of which he is the ultimate beneficial owner. He was legally entitled to do so.

Mr Banks was legally entitled, in his capacity as an individual, to release these funds to Better for the Country Ltd, by instructing another of his companies, Rock Services Ltd, to make the transactions on his behalf.

Rock Holdings Ltd was not involved in these transactions in a manner which contravened PPERA.

The NCA has found no evidence that any criminal offences have been committed under PPERA or company law by any of the individuals or organisations referred to it by the Electoral Commission. It will therefore take no further action against Mr Banks, Ms Bilney, Better for the Country Ltd or Leave.EU in respect of this specific matter.

...The NCA has not received any evidence to suggest that Mr Banks and his companies received funding from any third party to fund the loans, or that he acted as an agent on behalf of a third party."

ii) The handing down of Saini J's judgment on meaning on 12 December 2019.

iii) The joint statement by the Electoral Commission and Mr Banks (and others) on 29 April 2020 ('the Joint Statement') in which the Electoral Commission:

"confirms it accepts (a) the NCA's conclusions that it found no evidence that any criminal offences have been committed under PPERA or company law by Mr Banks or Ms Bilney; and (b) the NCA had not received any evidence to suggest that Mr Banks or his companies received funding from any third

party to fund the loans, or that he acted as an agent on behalf of a third party.”

- iv) The notification by the defendant’s (former) solicitors on 11 November 2020 that Ms Cadwalladr was abandoning reliance on the truth defence (‘the truth defence notification’).
 - v) The provision by Ms Cadwalladr of the letter to Mr Banks of 25 March 2021 in which she accepted that the single meaning was untrue, withdrew it, and confirmed she had no intention of making such an allegation in future (‘the 25 March letter’).
401. Mr Millar submits that the defendant’s intended meaning remains the reference point when assessing the reasonableness of her ongoing belief that it is in the public interest to publish the statements complained of. As a matter of logic, he submits, events post-dating publication cannot alter what the defendant intended to say.
402. In relation to the NCA’s statement (and the Joint Statement), the defendant submits that there is nothing in the NCA’s statement to suggest that it examined Mr Banks’s relationship with the Russian government or the accounts that he gave regarding that relationship. It therefore has no bearing on the defendant’s decision to continue to publish the statements.
403. In relation to Saini J’s judgment, the truth defence notification and the 25 March letter, the defendant makes the same simple submission: the single meaning is not relevant to the application of the public interest defence.
404. In my judgment, it is correct to say that none of the identified changes of circumstances have any impact on the first part of the defendant’s *intended* meaning, that is, that the claimant lied on more than one occasion about a secret relationship he had with the Russian government.
405. However, even in relation to the defendant’s intended meaning, the NCA’s statement and the Joint Statement potentially affect the second part of it, that is, that there are questions to be asked whether the source of Mr Banks’s donations was foreign funding, accepted in breach of the law on the funding of electoral campaigns.
406. The NCA’s investigation and decision demanded appropriate respect. But that is not the same as saying that it was beyond reasonable questioning, or criticism. On the face of it, when the NCA’s statement was made, there appeared to be a difference of view as to the law between the NCA and the Electoral Commission. The NCA acknowledged that Mr Banks had taken a loan from Rock Holdings, an off-shore company, which had then been channelled via Rock Services to fund the Brexit campaign. The Electoral Commission appeared to have regarded that as impermissible, whereas the NCA said Mr Banks was legally entitled to take such a loan. In these circumstances, I do not consider the NCA’s statement alone was such a significant change as to render the defendant’s continuing belief that publication of the TED Talk (without amendment or qualification) was in the public interest unreasonable.
407. Once the Joint Statement was made, it was clear that the two organisations with responsibility for determining whether Mr Banks’s donations had been made in breach

of the law on the funding of electoral campaigns had investigated, and the NCA had determined (and the Electoral Commission accepted) that there was no evidence that he had committed any such offence. Ms Cadwalladr acknowledges that she has no evidence that Mr Banks accepted foreign funding or breached PPERA. She merely points to the lack of transparency as to his sources of wealth, and the views expressed by financial journalists that he is not wealthy as he claims. Once the Joint Statement was made, in my view, it was no longer reasonable to believe that it was in the public interest to assert that there were grounds to investigate whether the source of Mr Banks's donations was foreign funding, accepted in breach of the law on the funding of electoral campaigns, at least, without any qualification referring to the NCA's statement and the Joint Statement. The investigation had taken place and Ms Cadwalladr has not put forward a basis for suggesting it should be reopened.

408. Accordingly, I consider that the public interest defence fell away on 29 April 2020.
409. Secondly, I do not accept that Saini J's judgment on meaning has no impact on whether the defendant continued to have a reasonable belief that publishing the statement complained of was in the public interest. The public interest defence is not determined by reference to the single meaning, but by reference to a range of meanings. Of course, no change of circumstances has the effect of changing the meaning the defendant *intended* to convey. But that is just one of a range of meanings. The single meaning could only be discounted in assessing the public interest defence at the point when the TED Talk was given because I accepted that meaning was not so obvious that it was unreasonable of the defendant not to have appreciated it.
410. Once the court has given judgment on the issue of meaning, it can no longer be said that the single meaning is not one that the defendant should have appreciated. However, unusually, in this case, the defendant initially maintained a defence of truth on the basis of a misunderstanding of the single meaning that had been determined by the court. The parties made a joint request for clarification of the single meaning, and a hearing took place on 23 October 2020. It was shortly after that hearing that the defendant notified the claimant she was abandoning her truth defence.
411. In the particular circumstances of this case, it seems to me that the single meaning was so obvious that it was unreasonable of the defendant not to have appreciated it at the point shortly after the clarification hearing when she abandoned the defence of truth, rather than when the meaning judgment was handed down. It was reasonable, before then, for her to act on the basis of her legal representatives' advice as to what had been decided.
412. If I had not found that there was a significant change of circumstances on 29 April 2020, I would have found such a change on 11 November 2020. Once the defendant should have appreciated that one of the meanings conveyed by the words complained of, indeed the natural and ordinary meaning, was a serious allegation that the defendant did not believe to be true, it was no longer reasonable to believe that publication of those words (without amendment or qualification) was in the public interest.
413. However, as I have indicated above, it is necessary to revisit the question whether the claimant has shown that the publication of the TED Talk has caused, or is likely to cause, serious harm to his reputation from the date of the first significant change that I have found.

N. Summary of conclusions on public interest defence

414. For the reasons, I have given, Ms Cadwalladr has succeeded in establishing a public interest defence in respect of the TED Talk from the original date of publication, 15 April 2019, until 29 April 2020. In relation to the Tweet, Mr Banks did not establish that the serious threshold was met and so the need for Ms Cadwalladr to establish a defence did not arise. However, if it had arisen, she would have succeeded in establishing a public interest defence from the original date of publication, 24 June 2019, until 29 April 2020.
415. I have concluded that there was a significant change of circumstances on 29 April 2020, and so Ms Cadwalladr failed to establish the public interest defence in respect of continuing publication of the TED Talk from that date. However, Mr Banks failed to establish that the serious harm condition was met in respect of publication of the TED Talk from 29 April 2020. In view of the conclusions I have reached, no question of awarding damages arises.

IV

O. Overall conclusions

416. For the reasons I have given, I conclude:
- i) The claimant has proved that the publication of the TED Talk has caused and/or is likely to cause serious harm to his reputation. The TED Talk is defamatory of Mr Banks for the purposes of s.1 of the 2013 Act.
 - ii) The claimant has failed to prove that publication of the Tweet caused or is likely to cause serious harm to his reputation. The claim in respect of the Tweet is therefore dismissed on the ground that the Tweet is not defamatory for the purposes of s.1 of the 2013 Act.
 - iii) The defendant has established a public interest defence in relation to the publication of the TED Talk pursuant to s.4 of the 2013 Act.
 - iv) There was a significant change of circumstances once both the NCA's statement and the Joint Statement had been published on 29 April 2020, such that the public interest defence in s.4 of the 2013 Act ceased to apply.
 - v) The claimant has failed to prove that the publication of the TED Talk from 29 April 2020 caused and/or is likely to cause serious harm to his reputation. In respect of that period, the TED Talk is not defamatory for the purposes of s.1 of the 2013 Act.
 - vi) Accordingly, the claim is dismissed.