Neutral Citation Number: [2022] EWHC 1763 (QB)

Case No: QB-2019-002482

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/07/2022

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

- -

Between :

WALTER TZVI SORIANO

Claimant/ Respondent

- and -

(1) SOCIETE D'EXPLOITATION DE L'HEBDOMADAIRE *LE POINT* SA

(2) MARC LEPLONGEON

Defendants/ Applicants

- -
- -

Mr David Sherborne & Mr Ben Hamer (instructed by Rechtschaffen Law) for the **Claimant/Respondent**
Mr Jonathan Price (instructed by Ince Gordon Dadds LLP) for the **Defendants/Applicants**

Hearing date: 9th June 2022

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Approved Judgment

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

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 10:30 on 8 July 2022

Mrs Justice Collins Rice:

Introduction

1. The Claimant, Mr Soriano, is a British-Israeli businessman, a British citizen domiciled in England. He says the preponderance of his assets, business and investments are here.

2. *Le Point* is a weekly French-language current affairs magazine, published in Paris and online by the First Defendant, 'SEBDO', a French company. The Second Defendant, M Leplongeon, is a French journalist employed by SEBDO. The Defendants are domiciled in France.

3. Mr Soriano brings a libel action complaining of an article written by M Leplongeon and published (in French) in the online edition of *Le Point* on 21st June 2019. After a preliminary issues trial in November 2020, Nicol J ruled that the correct English translation, and natural and ordinary meaning, of the words complained of in that article, in so far as it relates to Mr Soriano, is:

> *The Claimant is a spy or a spook and there are grounds to investigate whether he has directly or indirectly used surveillance, military methods or data interception technology in his work; whether he was involved in the surveillance of police officers investigating President Netanyahu; and whether he was involved in Russia's attempt to interfere in the 2016 election in the USA.*

4. This, however, is the Defendants' application for a terminating ruling. They say this case should go no further, because of the unsatisfactory state of, and prospects for, the Claimant's pleadings and evidence on the issue of 'serious harm'.

Legal Framework

5. The applicable legal framework is not materially disputed.

(i) Serious Harm

6. By section 1(1) of the Defamation Act 2013:

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

This is a distinct factor for libel claimants to establish, additional to the common law requirement to demonstrate the inherently defamatory tendency of a publication. It focuses on the actual *impact* of that publication, not just the meaning of the words.

7. The leading authority on section 1(1) is the decision of the Supreme Court in ***Lachaux v Independent Print Ltd*** *[2019] 3 WLR 253.* The 'harm' of defamation is the reputational damage caused in the mind of publishees, rather than any action they may take as a result. Nevertheless the existence, and seriousness, of the harm are factual questions, and facts must be established.

8. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be. Particularly where a general readership rather than identified publishees are involved, the test may also be satisfied by general inferences of fact, drawn from a combination of the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication within the jurisdiction; whether the statements have come to the attention of at least one identifiable person in the UK who knew the claimant; whether they were likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.

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

10. Section 1(1) uses the language of causation prominently (*caused or is likely to cause*). The 'serious harm' component of libel therefore contains an important causation element. The starting point, as with any other tort, is that an individual defendant is responsible only for harm to the claimant's reputation caused by its *own* publication - that is, the effect of the specific *statement* complained of in the minds of the readership of *that* statement. A claimant therefore has to establish a causal link between the item he sues on and serious harm to his reputation, actual or likely.

11. But at the same time, *if* a causal link is established, including inferentially, it is not possible for a defendant to diminish the seriousness of the harm (or the magnitude of the damage) caused simply by pointing to the publication of the same or similar allegations by different publishers or in different publications and claiming only a marginal exacerbation. This is the so-called 'rule in *Dingle*', the logic of which is to save claimants from falling between multiple stools, by stopping publishers blaming each other, or other publications, for the extent of the cumulative harm of their publications and so making it impossible in practice for the s.1(1) test to be established against any of them. It is a pragmatic solution to a problem of proving incremental degree, the fullest modern statement of which is found in *Wright v McCormack [2021] EWHC 2671* in paragraphs 149 to 168.

12. The rule in *Dingle* has to be borne in mind in approaching the *general* inferential exercise of establishing causation of serious harm. If, however, a claimant seeks to meet the s.1 test by ascribing *specific* consequences to a particular publication, as evidence of serious harm caused, then those consequences must be ascribed *in full* to the effects of reading *that* publication alone (see *Wright v McCormack* at paragraph 163).

(ii) Terminating Rulings

13. The Defendants' application is brought for strike-out of pleadings or summary judgment in the alternative.

14. By Civil Procedure Rule 3.4(2):

> The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.

15. A court will strike out a claim under the first subparagraph if it is 'certain' that it is bound to fail, for example because pleadings set out no coherent statement of facts, or where the facts set out could not, even if true, amount in law to a cause of action. That calls for an analysis of the pleadings without reference to evidence; the primary facts alleged are assumed to be true. It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and if so whether an opportunity should be given to do so (*HRH the Duchess of Sussex v Associate Newspapers Ltd [2021] 4 WLR 35 at [11]*; *Collins Stewart v Financial Times [2005] EMLR 5 at [24]*; *Richards v Hughes [2004] PKLR 35*).

16. Pleadings may be struck out under the second subparagraph as an abuse of process if their effect is to seek to relitigate matters already determined against a party in the course of litigation.

17. The Defendants in the present case rely on both subparagraphs: they object that serious harm is inadequately pleaded; and that it is pleaded inconsistently with the determination of meaning by Nicol J.

18. By Civil Procedure Rule 24.2:

> The court may give summary judgment against a claimant or defendant on the whole of a claim or on a particular issue if –
>
> (a) it considers that –
>
> (i) that claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) that defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

19. The proper approach of a court on an application for summary judgment was summarised in *Easyair v Opal [2009] EWHC 339 (Ch)* at [15] as follows:

> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial';
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;
>
> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to

> a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

20. In considering the test of 'real prospect of success' the criterion is not one of probability, it is absence of reality. The test will be passed if, for example, the factual basis for a claim is entirely without substance, or if it is clear that the statement of facts is contradicted by all the material on which it is based. On the other hand, if reasonable grounds exist for believing a fuller investigation into the facts would add to or alter the evidence available to a trial judge, or if a factual dispute is unlikely to be able to be resolved without reference to further (and especially oral) evidence, then a case should be permitted to proceed to trial (*Three Rivers DC v Bank of England [2003] AC 1*; *Doncaster Pharmaceuticals v Bolton [2007] FSR 63* at [18]).

Litigation History

(a) Particulars of Claim (July 2019)

21. The Claimant's Particulars of Claim in July 2019 pleaded a 'natural and ordinary meaning' of the words complained of as they 'were read and would have been understood by French-speaking readers in this jurisdiction', and an English translation of those words. That pleaded meaning was as follows:

> The Claimant is a dangerous and unscrupulous secret agent, with close connections to both Donald Trump and his circle of advisers and the KGB, who knowingly uses illegal and 'offensive' information gathering techniques (such as mobile data interception) and was responsible for spying on the Israeli police who were investigating charges against Prime Minister Benjamin Netanyahu.

22. In reliance on that meaning, serious harm and damages were pleaded cumulatively at [9] as follows:

> (1) The allegation that he is a ruthless secret agent who uses illegal practices is self-evidently highly defamatory and damaging to the Claimant, both personally and professionally.
>
> (2) The Claimant will refer in support of this contention to the deliberately sensational and provocative nature of the Article, for example the inclusion of references to his supposed connection to former KGB agents, and to the notorious poisoning of Sergei Skripal in Salisbury by Russian agents in 2018, as well as to discredited members of the Trump administration.
>
> (3) In the circumstances, it is entirely foreseeable (as was no doubt intended by the Defendants) that the allegation would be picked up and disseminated as well as widely read,

> especially within the financial and business sectors, as in fact happened and was brought to the Claimant's attention.
>
> (4) This attack on both his personal and professional reputation made by a prominent and influential news and political magazine has also caused the Claimant considerable distress and embarrassment.

(b) Nicol J's ruling (November 2020)

23. Nicol J's ruling on meaning in November 2020 did not endorse the full extent of the Claimant's pleaded meaning. His determination was of meaning alone; he had not been asked to and did not rule on 'defamatory tendency at common law' as such. But in reaching his decision on the limited meaning set out above, he excluded from its scope a number of issues as being 'not legally significant'. His ruling accordingly determined the following points (*Soriano v SEBDO [2020] EWHC 3121 (QB)* at [31]):

> ii) I consider that the reference to Donald Trump and his circle of advisers is not arguably defamatory. Even if the words complained of did include the allegation that the Claimant had such a connection, it would not therefore be legally significant.
>
> iii) I also consider that it was not legally significant for the article to say (as it did) that the Claimant had attended meetings with a former KGB agent…
>
> iv) I do not accept Mr Sherborne's 'Rogues Gallery' argument. In my judgment none of those with whom the Claimant is said to be associated (at least what is said of the nature of the associations) significantly changes the meaning from what I have held it to be.
>
> v) I agree with Mr Price that the article was at *Chase* level 3. The natural and ordinary meaning is that there were grounds to investigate, but, I find, the natural and ordinary meaning is not more than that. …
>
> vi) I do not accept that the [French] word '*offensives*' imported a meaning of illegality or aggressivity. … I do not accept that the ordinary reader would understand the author to be saying that the Claimant had been involved in illegal activity.
>
> …
>
> viii) Beyond what I have already said, I do not accept that the words complained of had the meaning contended for by the Claimant or any of its elements.

(c) Defence (January 2021)

24. The Defendants' Defence (filed in January 2021) accepted that the article was of defamatory tendency to the extent that it alleged 'that there were grounds to investigate whether the Claimant was involved in the surveillance of police officers investigating President Netanyahu, and whether he was involved in Russia's attempt to interfere in the 2016 election in the USA', but not otherwise.

25. The Defence objected that the Particulars of Claim did not set out a sufficient plea of serious harm; that it relied on a 'meaning' which had since been rejected by Nicol J; that it relied on a context (KGB, Skripal, Trump) which had been ruled to be of no legal significance; and that it irrelevantly relied on the Defendants' intentions, which were themselves wrongly characterised.

26. The Defence also objected that the Claimant had provided no factual basis for the inference of serious harm he invited, because the (***Chase*** level 3) meaning was insufficiently grave, the extent of publication in the UK was too slight, and no sufficient further basis for any such inference appeared.

(d) Claimant's Reply (March 2021)

27. The Claimant did not seek to amend his Particulars of Claim in response to Nicol J's ruling. But in March 2021 he filed a Reply to the Defendants' Defence. This addressed the issue of serious harm at [11] as follows:

> (1) The Article was found to bear the meaning that the Claimant is a spy or spook and there are grounds to investigate whether he has directly or indirectly used surveillance, military methods or data interception technology in his work; whether he was involved in the surveillance of police officers investigating President Netanyahu; and whether he was involved in Russia's attempt to interfere in the 2016 election in the USA. As stated above, these are very serious allegations, encompassing highly defamatory and damaging accusations (even at ***Chase*** level 3) of electoral interference, improper monitoring of police officers, and the application of illegal data technology. This meaning is damaging to the Claimant in both a personal and professional context.
>
> (2) While the references in the Article to the Claimant's supposed connection to former KGB agents, the Skripal poisoning and discredited members of the Trump administration were not held to significantly change the meaning of the words complained of, the impact and serious harm of the defamatory imputation is further amplified by the context in which it is published and such references would have such an impact here.
>
> (3) As is set out in paragraph 9(3) of the Particulars of Claim, it was foreseeable that the allegations would be disseminated widely and especially within the financial and business

> sectors. In support of this averment (and in support of the Claimant's plea of serious harm and general damages) the Claimant relies on the following:
>
> i. The allegations were brought to the Claimant's attention shortly after their publication;
>
> ii. The Claimant has been required by bank compliance departments to rebut the false and defamatory allegations made in the Article;
>
> iii. These false allegations have contributed to the Claimant's classification as a 'politically exposed person' and as a result has caused banks to request the closure of his bank accounts and the rejection of credit applications. It is only by bringing these proceedings that the Claimant is able to show these bank accounts that the allegations are untrue and rebut the allegations to their satisfaction.
>
> iv. The Claimant has had to present explanations to family members, business partners and companies who have sought reassurance in relation to the allegations.
>
> v. The Claimant will rely on the fact that it can be readily inferred that the allegations complained of have inevitably spread amongst others.

(e) Defendants' Application (February 2022)

28. The Defendants applied for a terminating ruling in February 2022. The application was supported by a witness statement dated 23rd February from their solicitor, Mr Jones (GDJ 2nd). According to this:

> The basis of the application is that the Claimant's case on serious harm is insufficient in two respects. In summary:
>
> a. The Claimant's pleaded case on serious harm is impermissibly vague and unparticularised; and/or in any event
>
> b. To the extent that the Claimant's pleaded case on serious harm posits that he has suffered interference in his relations with financial institutions (essentially the only evidence of harm relied upon by him) the Claimant's disclosure has revealed that any such harm potentially attributable to the statement complained of occurred outside the jurisdiction of England and Wales.

29. The detailed objections made by this application include the following. First, to the extent that the Claimant seeks to establish serious harm by *general inferential* means,

his pleadings are insufficient because (a) the (legally relevant / defamatory) meaning is insufficiently grave, (b) the extent of publication *in the UK* is too small, and (c) the Claimant has not said or evidenced that the article was read *in the UK* by anyone he knew or did business with.

30. Second, to the extent that the Claimant seeks to establish serious harm by reference to *specific adverse consequences* his case is insufficient because (a) he does not identify any particular publishees *in the UK*, (b) he does not specify the particular provenance or outcomes of any alleged demands to rebut the allegations, or which allegations he has been asked about, (c) there is no sufficient basis that he has any relevant banking or business relationships *in the UK*, and (d) he does not otherwise plead any sufficient basis that serious harm has been caused to his reputation *in the UK*.

31. Third, the claim does not grapple adequately with the causation issues raised by the fact that a substantial number of other publications, including a previous *Le Point* article not sued on, and items in the mainstream UK press, have made the same or similar allegations.

(f) Claimant's evidence (March 2022 and subsequently)

32. The Claimant responded to the application by seeking to substantiate his evidential base for serious harm, albeit on a provisional basis bearing in mind the interlocutory stage. He filed witness statements in March from (a) the Claimant (WS 1st), (b) his solicitor (SR 3rd), (c) Mr Doron Cohen, principal of a company providing consultancy services to the Claimant and his companies (DC 1st), and (d) Mr Wolfgang Klien, partner in a wealth management firm of which the Claimant is a client (WK 1st).

33. This material was responded to shortly afterwards by way of a further witness statement from Mr Jones (GDJ 4th). The Claimant also filed a second witness statement from his solicitor (SR 5th) on the issue of serious harm, a few days before the hearing of the present application, ostensibly responsive to Mr Jones. The Defendants object to his being permitted to rely on it.

Analysis

(i) The Claimant's Pleadings

34. The first step is to consider the Claimant's pleadings on their own terms.

35. The Defendants make two challenges. They say the claim is an abuse of process because the pleadings do not properly respect the determination of Nicol J and/or impermissibly seek to reintroduce issues definitively excluded by that determination. And they say the pleadings disclose no reasonable grounds for bringing the claim, because they set out no sufficiently clear and coherent statement of facts which, even if true, could add up something meeting the requirements of section 1(1), namely publication (in the UK) which has caused or is likely to cause serious harm to the reputation of the Claimant (in the UK).

(a) Abuse of Process

36. Nicol J substantially rejected the case on meaning advanced in the Particulars of Claim. He narrowed its scope by excluding the legal significance of the Claimant's associations. He reduced it from *Chase* level 1 (allegation that a claimant is guilty of specified acts) to *Chase* level 3 (allegation of grounds to investigate whether a claimant has committed certain acts). And he rejected the implication of illegality or aggression.

37. The whole point of preliminary rulings in defamation actions is so the parties can reassess and refocus the litigation between them accordingly, including where appropriate by amendment of pleadings. The only such step the Claimant took was in his Reply. So as the Particulars themselves stand, unamended, they plead serious harm in a number of respects which are inconsistent with Nicol J's ruling.

38. First, they say 'the allegation that [the Claimant] is a ruthless secret agent who uses illegal practices is self-evidently highly defamatory and damaging', when Nicol J has ruled the Defendants have made no such allegation.

39. Second, they rely on the publication complained of being (deliberately) 'sensational and provocative' *because*, among other things, of 'the inclusion of references to his supposed connection to former KGB agents and to the notorious poisoning of Sergei Skripal in Salisbury by Russian agents in 2018, as well as to discredited members of the Trump administration'. Those matters have, however, been ruled by Nicol J to be no part of the meaning of the publication complained of, not arguably defamatory, and indeed 'not legally significant'. Section 1(1) requires *the statement* complained of to be causative of serious harm. The statement as specified by Nicol J includes nothing about these matters.

40. Third, both of these 'not legally significant' matters – allegations of illegal practices and of notorious associations – are further referenced as being 'circumstances' supporting the foreseeability of extensive dissemination and readership, part of the inferential basis of the case for serious harm. The proposition that 'legally irrelevant' matters so firmly excluded from the meaning of the statement complained of may properly be reintroduced as circumstantial 'factual context' for understanding the *impact* of the statement was not put to me by reference to any authority or with any degree of development on the facts of this case. I would need more than I was given to persuade me of it here.

41. The Claimant's subsequent Reply to Defence does acknowledge Nicol J's ruling and sets out his meaning in full. But it describes the allegations (in 'this meaning') as 'encompassing highly defamatory and damaging accusations (even at *Chase* level 3) of electoral interference, improper monitoring of police officers, and the application of illegal data technology'. I am not persuaded that the reference to illegality can be satisfactorily reconciled with Nicol J's ruling, nor the continuing reliance in the Reply (paragraph 11(2)) on the Claimant's alleged connections (to former KGB agents, the Skripal poisoning and discredited members of the Trump administration) as being legally significant 'context', if not to meaning then to harm. The Reply does not otherwise retract or qualify the pleading of the Particulars on serious harm (although, as discussed below, it does add to them).

42. I agree therefore with the Defendants that the Claimant's pleadings are defective and unsatisfactory because they are inconsistent with Nicol J's ruling. As such, they engage issues of abuse of process and obstruction of just disposal, since the only case on section

> 1(1) the Claimant can properly and fairly ask the Defendants to meet is one of serious harm caused or likely to be caused by the statement in the natural and ordinary meaning found by Nicol J.

(b) Pleaded Grounds for bringing the case

43. The remaining pleading in the Particulars is extremely condensed and allusive. It says the allegations contained in the publication complained of were 'in fact' picked up and disseminated, as well as being widely read, especially within the financial and business sectors, and brought to the Claimant's attention. No detail is given and no specific consequences are pleaded (the allegation of the Claimant's being caused 'considerable distress and embarrassment' is not the language of s.1(1) and appears to be directed to quantum of damages). What *is* pleaded, therefore, amounts to a bare reference to a general inferential case of serious harm from (a) the gravity of the allegations, (b) the scale of publication, including by foreseeable republication, and (c) the nature of the publishees, including some who knew the Claimant. The Particulars do not otherwise deal with causation or jurisdictional issues.

44. In the Reply, the Claimant repeats and expands on his reliance on wide dissemination or percolation, especially within the business and financial sectors and to people who know him. He also introduces a new and specific basis for evidencing serious harm, namely that reading the publication complained of has caused the closure of his bank accounts and the rejection of credit applications.

45. The Defendants now make a range of objections to the sufficiency of these pleadings, taken together, in setting up a factual case for serious harm which is complete, intelligible and fair for them to be expected to respond to. They say they are too vague and unparticularised. They say, for example, that the pleadings do not get a proper inferential case on serious harm off the ground because they talk about matters being 'brought to the attention' of the Claimant without saying when, by whom, or to what effect. They do not identify *what* is to be inferred by way of serious harm. They do not deal with what the Defendants say are the obvious issues on the facts of the case of distinguishing between publication, readership, and hence serious harm *in the UK* as opposed to in France (where the overwhelming preponderance of the readership of *Le Point* is to be found) or indeed anywhere else that the Claimant has a business reputation and interests. They do not deal with the causation issues raised by the new allegations of *specific* consequences in a context in which many other publications have carried the same or similar allegations.

46. Paragraph 4 of Practice Direction 53B requires a Claimant's Particulars of Claim in a defamation action to set out, amongst other things:

> (2) when, how and to whom the statement was published. If the claimant does not know to whom the statement was published or it is impracticable to set out all such persons, then the particulars of claim must include all facts and matters relied upon to show (a) that such publication took place, and (b) the extent of such publication;
>
> (3) the facts and matters relied upon in order to satisfy the requirement of section 1 of the Defamation Act 2013 that the

> publication of the statement complained of has caused or is likely to cause serious harm to the reputation of the claimant…

47. Since publication (readership) anywhere other than in the UK is irrelevant to a defamation claim, and the causation of serious harm to the reputation of a claimant anywhere other than in the UK is similarly irrelevant, the PD has to be read accordingly. From first principles, therefore, the Claimant's pleadings needed to set out a case on the causation or likely causation of serious harm to the Claimant's reputation, by the publication of the statement complained of in the meaning as found, setting out *all* the facts and matters relied on. That needed to be either a general inferential factual case, with the matters relied on and the inferences invited sufficiently particularised, or a case based on specific consequences with details of publishees accordingly, or some combination of the two.

48. The pleadings as they stand could fairly be criticised as lacking sufficiency, clarity and particularity in these respects. They are vague and allusive where the PD indicates a need for completeness, and where the international context of the case indicates a need for a degree of specificity about what is relied on to establish a completed tort within the jurisdiction.

49. The test of whether the pleadings disclose *reasonable grounds* for bringing the claim is of course no higher than that. Pleadings can always be critiqued, and, no doubt, improved. But particularly on extent of UK publication and causation of serious harm in the UK as a result of that publication, I am persuaded on balance that the Claimant's pleadings leave the Defendants to an appreciably unfair degree having to infer the case they have to meet from generalities. So I agree with the Defendants they are unsatisfactory on this score.

(c) Remediability

50. Before contemplating striking out pleadings on such grounds, however, I have to consider whether the defects identified are remediable.

51. So far as the inconsistencies with Nicol J's ruling are concerned, I am satisfied they are. If the point of preliminary rulings is precisely to give an opportunity to reframe pleadings, then that would be only to be expected. And since the Reply already sets out the meaning as found, this is largely a matter of dealing with the remaining internal inconsistencies.

52. So far as the deficiencies in the drafting of the statement of case more generally are concerned, while they are material, I do not consider them so fundamental as to be irremediable. It seems to me that the basic building blocks of a statable case on serious harm are sufficiently discernible from the pleadings to date, in the form of a proposition as to general inference from the basic factual matrix of the case, together with allegations of specific consequences. If these are regarded as necessarily and implicitly alleging and referencing harm caused in the UK as a result of UK publication, since as a matter of law they can be no other, then their deficiencies are on the face of it all capable of being remedied by further particularity.

53. If the defects of inconsistency with the preliminary ruling, and lack of particularity, were remedied, I could not be *certain* in these circumstances that the claim would be

bound to fail as stating no sufficient or coherent cause of action. Considering the pleadings from a drafting point of view, therefore, rather than terminating the case, it seems an opportunity could properly be given to amend the pleadings (a) to bring them into line with Nicol J's ruling and (b) to improve the clarity and particularity of the pleading of serious harm, on both the general and specific bases.

54. However, the Defendants' challenge to the Claimant's statement of case as disclosing 'no reasonable grounds for bringing the claim' extends beyond drafting the details of the cause of action. On their view, the opportunity to amend should not be given, and the case is incurably defective, because it discloses no reasonable *factual* basis for serious harm, or, therefore, for bringing the claim.

55. With the focus moving on to the *underlying* factual basis, the Defendants' challenge enters the area of overlap between an application for strike-out and an application for summary judgment. The Defendants say that the Claimant has no reasonable grounds for bringing this claim, *and* has no real prospect of succeeding on this claim, however much his pleadings may be improved on amendment, because his pleadings and evidence do not set out a sufficient factual basis for a finding of serious harm, and no such factual basis can be shown to exist.

(ii) The Claimant's Factual Basis

56. We spent some time at the hearing looking at the evidence and disclosures the Claimant has produced to date, and the Defendants urged on me the need to take a rigorous (if not sceptical) approach both to the sufficiency of the factual basis put forward at this interlocutory stage and to the prospects for anything more emerging before trial.

57. The authorities require me to do so, to make the necessary determination of whether this claim has a real, as opposed to fanciful, prospect of success. The claim must be more than just statable or arguable. I am not simply to take everything the Claimant says at face value; I am to analyse what he says to see whether or not there is any real substance to the factual assertions he makes, taking into account such contemporaneous documents as are before me. And I need to think about whether there are reasonable grounds for believing that fuller investigation of the facts would add to or alter the picture before trial and potentially affect the outcome.

58. But I must not conduct a 'mini-trial' of the *strength* of the evidence. The 'serious harm' test is about establishing the facts of the impact of publication, by one evidential means or another – a form of fact-finding process in other words. This is not therefore a case which is said to turn on a (pure) point of law which can and should be grasped now. So when it is said on behalf of the Defendants that I need to look at the factual basis apparent at this stage with some care, I do at the same time need to be careful not to go so far as effectively to usurp the proper function of a trial judge.

59. The factual basis put forward by the Claimant, to date, on the issue of serious harm caused to his reputation (in the UK) by publication (in the UK) of the material complained of (the online article of June 2021), in the meaning found by Nicol J, is as follows.

(a) Witness Statements

60. The Claimant's general inferential case, and his case on specific consequences, necessarily rest in the first place on a factual basis for publication *in the UK*. As is accepted by the Defendants, there is evidence that the article was accessed by 94 subscribers in the UK. That is not a huge number, but neither is it negligible, or inevitably inconsistent with the causation of serious harm.

61. The potential scale of further onward dissemination in the UK is a matter of inference. It may be relevant that the article sat behind a paywall. But the Claimant's own evidence (WS 1st) is that distribution of the article in the UK was 'much wider', and more impactful, than the bare numbers suggest. He says *Le Point* is an important and influential magazine, read by many of his contacts in the UK, including his banks in the UK. That is not, of course, the same as evidence that *the article* was so read, but the article may be thought to be typical of *Le Point*'s coverage and hence of its consumption – dealing as it does with the conduct of individuals with international business and/or political profiles and inviting judgment on their activities and standing.

62. The likely nature of the readership is also potentially relevant – both to scale of publication and to the seriousness of the reputational damage in the minds of those readers. The Claimant's evidence is that M Leplongeon, the author of the article, had himself sent it to 'important' people in the UK, inviting reaction, in the course of his journalistic endeavours. The Claimant says he received several phone calls from people in the UK who knew him, including his accountant and 'various banks', almost immediately after the article was published; he understood from these that the article had already been spread by email and WhatsApp. He says he himself had received it in downloaded PDF format from a few sources in the UK, including Barclays Bank. He was shown the article by the manager of Safra Bank in London, and as a result Safra Bank closed his and his family's accounts in London and elsewhere.

63. The Claimant's evidence sets out a number of specific consequences he says occurred in the UK as a result: (a) 'severe damage' caused by the closure of his Safra bank account in London; (b) the cancellation of a loan, causing loss estimated in six figures; (c) London banks refusing loans on a London property deal, causing the Claimant opportunity costs and loss of profit; (d) financial services firm Aegon refusing to provide life insurance in England.

64. Mr Cohen, the Claimant's business associate, also testifies to the closure of bank accounts and the refusal of loans, and their consequences for the Claimant's business ventures, in the UK. He gives more detail about the instances of specific consequences itemised in the Claimant's own evidence. In relation to the London property deal, for example, he particularises four UK banks who 'soon after the article was published' refused financing. He says he was told in conversations that the reason for not agreeing to finance the deal was '*the articles*' published about the Claimant, and that provisional financing arrangements had been cancelled after due diligence searches. He gives evidence about the importance of reputation in the business sectors in which the Claimant operated and that the allegations in the *Le Point* article caused severe reputational damage.

65. Dr Klein, a partner in a Swiss-based financial services firm of which the Claimant was a client, testifies that '*All dealings with him had never been challenged by any party until after the publication which appeared in* Le Point *on June 21, 2019.*'. He describes that as a '*watershed event*', after which banks' behaviour to the Claimant changed

markedly. He explains his understanding that that was because of due diligence procedures – 'know your client' checks. He sets out how Barclays Bank learned about the *Le Point* article in this way, and informed him, four days after publication, that it was aborting a finance offer because of concerns about reputational risks '*in the press last Friday*'. He gives further detail about the closure of the Safra Bank accounts in London, and the refusal of loan for the London property deal. He explains that the Claimant's business interests are mostly located in the UK and his real estate portfolio almost entirely so. He describes the interconnected world of reputational information relied on in the financial services sector, where the *Le Point* article is accessed and causes reputational damage with severe consequences.

66. The Claimant's solicitor explains further (SR 3rd) that the witness evidence before me was produced in short order, before the general exchange of witness statements, for the purpose of the interlocutory hearing, and that the Claimant intends to call further witnesses at trial on the issue of serious harm.

67. The Defendants mount a root and branch critique of this factual basis put forward as underpinning the Claimant's case, as (a) failing to set out facts *capable* of raising a general inference of serious harm and (b) failing to establish the causation of any specific consequences in the UK by readership in the UK of the article complained of.

68. As to general inference, I start by bearing in mind that that is a multifactorial and evaluative matter. It begins with meaning. Here, the gravity of the allegations may not speak for itself. But a factual basis is put forward to support a proposition that the *Chase* level 3 imputation of 'grounds to investigate' complicity or instrumentality in international political destabilisation intrigues is capable of generating serious reputational impact in the financial and business sector within which the Claimant says he operates.

69. That factual proposition includes an account of due diligence systems operating within that sector, relying on the sharing of 'reputational' data drawn from a wide range of public and other sources, including serious news and current affairs media, drawn together and analysed on an international basis. That is not said itself to be a fanciful proposition.

70. On the materials available to date, then, a combination of (a) the apparent status of *Le Point* as a serious and influential current affairs magazine with edited content of potential relevance to such a due diligence system, (b) the proposition that the allegations about the Claimant themselves fall into that category even at *Chase* level 3, (c) the case he raises and evidences for being a UK-based businessman with UK-based interests capable of being impacted by an international due diligence system of this sort, (d) the evidence of wider UK dissemination, in particular via the financial sector's due diligence network, and to specific publishees capable of seriously recalibrating the Claimant's reputation and acting on that to his detriment, and (e) publication to 94 paying UK subscribers probably including corporate subscribers – all together form a *basis* or starting-point for an inferential case for serious harm to reputation which it is not easy to dismiss as obviously unreal. Evidence is given also, from more than one source, of specific serious consequences of such reputational damage: substantial business and financial loss to the Claimant's UK interests, said to be referable to publication of the article complained of in the UK.

71. Taking all of this together, it appears to me that the undisputed context, and the witness evidence available at this interlocutory stage, set out a factual basis for a case of serious harm which, if established, is realistically capable of discharging the s.1(1) test. But that is just a starting point, since I must not take everything said by or on behalf of the Claimant at face value. While I must not conduct a mini-trial of the weight and persuasiveness of the evidence before me, or of all the gaps in it and questions raised by it, I am required to accept the Defendants' invitation to consider the state of the underlying documentation and consider whether that must be regarded as fatally undermining the Claimant's claimed factual base – either because of its insufficiency or because it positively contradicts that factual base.

(b) Claimant's Disclosure

72. The Claimant's standard disclosure in December 2021 resulted in inspection being given of a total of 17 documents totalling fewer than 60 pages. I have read all of it with the care invited. Not all of it is arguably relevant to the issue of serious harm related to the article complained of at all – for example third-party press publications about the Claimant which predate the article complained of. Some of it is email exchanges and correspondence emanating from outside the UK which, while not positively contradictory of a case based on an article read, and harm caused, in the UK, nevertheless does not positively support such a case to any obvious degree. There are few, if any, references which are incontestably and solely to the specific article complained of rather than, for example, to earlier or later media publications.

73. Of the material capable of positively supporting the Claimant's case, there is an email with a UK address from the 'Protection Development Manager' at Aegon, in September 2019, which says '*Aegon doesn't want to insure Mr and Mrs Soriano because of long standing and recent publicly available information. That being he appears to have had connections with Vladimir Putin and other Russian oligarchs in addition to various Worldwide Secret Services.*' That is *capable* of supporting the general case that financial services firms took action against the Claimant because of reputational concerns connected with the press. It is also *capable* of being linked to the article complained of in time (even two months after publication) and content (at any rate so far as concerns international 'secret services' activity, which is arguably referable to Nicol J's determined meaning). But many questions arise, of course, in relation to the attribution of the refusal of insurance to reading the *specific* statement complained of, in the meaning determined, bearing in mind both the intervening press stories and the reference to Russian links.

74. I do not find the Claimant's disclosed documents positively contradictory of the factual basis of his claimed case or his evidence to date, in the sense of being logically irreconcilable with it. But his disclosure of contemporaneous documentation is strikingly scant. The Claimant's business and financial milieu is plainly international, albeit his specific interests are said to be UK-based. To succeed on his factual case of serious harm, whether by general inference or specific consequences, he needs to establish not just the nature of the claimed serious reputational harm, but also its causation by *the article* being complained of being *read in the UK* and having a *reputational impact in the UK* – that is, *publishees in the UK* changing their attitudes and/or their behaviour towards the Claimant in a manner seriously damaging to his interests here. The materials disclosed are, at best, ambiguous about all of that. They raise many more questions for the Claimant than they answer. And the Defendants

suggest that their ambiguity, and indeed their silences, are consistent only with a conclusion that his case is after all unrealistic, unsupportable and fanciful.

75. The Claimant comes back at this challenge from a number of directions. He makes the point (registered in ***Lachaux*** itself) that a paper trail linking a particular statement to serious harm is a rare thing in defamation litigation – at any rate where as-yet unidentified publishees are concerned, and perhaps particularly in the financial/business context relevant here – because those who react to or act on reputational rumour very rarely go on record in any form to say so. That is of the essence of *reputational* harm – it is insidious and ambient. It is Dr Klien's evidence that it takes a real degree of insider knowledge and access, such as he claims for himself, to yield even such information as has been secured to date to explain the actions of financial services providers – and it is almost entirely oral. That is not easy to dismiss.

76. The Claimant also points out that the ambiguity of the underlying documentation is eminently capable of resolution by the examination of the witnesses he has already identified and/or intends to call at trial, and indeed by way of documentation to which *they* may have access but which has not to date become apparent to *him*. They can be asked about the causation/jurisdiction issues which arise – whether, when and where they read the article or became aware of others having done so, what else particular publishees might have read to the same or similar effect before or since, when and where any decisions and/or actions were taken. Indeed, he says, examination in the witness box is realistically the *only* way such ambiguities can be resolved. That too is not easy to dismiss.

77. The Claimant further expects to be able to give a full and detailed documentary account of his own UK business interests, and of all the adverse decisions taken by others in relation to them – and says the examples of specific consequences are just that – examples of a wider phenomenon.

78. The Parties have also apparently been engaging with each other over the possibility of identifying some or all of the UK subscribers to *Le Point* – a conversation which it appears has yet fully to run its course. That has some potential to yield information of real significance to the inferential case for serious harm.

79. The question in the final analysis, therefore, is whether the Defendants persuade me in all these circumstances that there is nevertheless not enough at present, or to be expected in future, for the Claimant to have any reasonable factual basis for bringing this claim or any real prospect of succeeding on it.

Consideration and Conclusions

80. It is not altogether surprising to see an application for a terminating ruling in the present circumstances. The unsatisfactory state of the Claimant's pleadings (post preliminary issues ruling), together with the scantiness – the Defendants say absence – of disclosed underlying documentary material connecting readership of the specific article in the UK to serious harm (by general inference or specific consequence) in the UK, raise a genuine question about the viability of this claim.

81. The Defendants' application, of course, requires not only acknowledgement of that question, but an answer to it. Approaching that, I remind myself of the drastic nature

of a terminating ruling, and the sheer height of the barrier to be overcome before making one. I have already explained that I was minded to consider the drafting defects of the Claimant's pleadings remediable on their own merits. I would have to be satisfied therefore that, even so, the claim would lack reasonable grounds or a real prospect of success, essentially because its claimed factual basis is groundless and fanciful.

82. I find, on balance, that I cannot go quite that far, for the following reasons.

83. First, I bear in mind the insight of ***Lachaux*** and the subsequent authorities into the inherent elusiveness of hard (that is, contemporaneous documentary) evidence of the causation of serious harm by publication. It is because of that characteristic of defamation proceedings that the inferential route to establishing the causation of serious harm was recognised and developed in the first place. Witness evidence, tested orally, characteristically plays a significant part in fact-finding in serious harm trials. I see no reason to expect this case to be any different.

84. Second, the inferential route is multifactorial, requiring an overall evaluation of a range of considerations, to arrive at an impressionistic and to a degree imprecise conclusion. That is an exercise exceptionally difficult to calibrate on an interlocutory basis – it cries out for trial procedure. That may be one explanation for the apparent rarity of successful applications for interlocutory terminating rulings on the issue of serious harm. I was not taken to examples in the authorities. The Claimant says there are none of which he is aware.

85. Third, there is already before the Court: (a) the (probably) defamatory tendency of the words, and the imputation of grounds to investigate the Claimant's involvement in instances of international political destabilisation; that is not a trivial allegation, and seems relevant to his reputation in the business/financial world; (b) an established non-negligible UK subscription readership and some evidence of wider dissemination in the UK, including to some who know the Claimant and have reacted to it – and acted or may act on it - to his serious detriment; (c) evidence that the Claimant has valuable reputational capital in the UK capable of being seriously harmed; (d) evidence that the business and financial sectors in the UK, which are relevant to the Claimant's interests, operate due diligence procedures which are sensitive to the sorts of allegations published in the article, and monitor serious national and international current affairs media, including *Le Point*, for those purposes; and (e) evidence of sample instances of serious consequences capable of linkage to the article complained of. These do not make it easy properly to consign an inferential case for the causation of serious harm to the realms of the unreal and fanciful, notwithstanding the scantiness of the available documentation to date.

86. Fourth, I bear in mind the prospects for further evidence capable of adding to the inferential case for serious harm, particularly in the form of detailed substantiation of the Claimant's business interests and reputation in the UK and by way of oral examination of the witnesses who have already provided statements. The existing witnesses testify that the evidence they have set out so far amounts to samples only, and that they have more evidence to give. The Claimant's solicitor has provided sworn evidence that the Claimant will call additional witnesses on the issue of serious harm. I am persuaded in these circumstances, on the materials before me at this interlocutory stage, that the prospects of further evidence with a bearing on the Claimant's case for

inferential harm are more real than Micawberish (unsubstantiated hopes that something of assistance may turn up).

87. Fifth, there is the evidence already before the Court, from the Claimant and his financial/business advisers, of specific and serious damage, in the UK and to UK-based interests, which they attribute (with more or less particularity, it is fair to say) to the article complained of. I do not lightly (or at all) dismiss what the Defendants say about the scantiness of the underpinning documentation, but I do acknowledge the force of the Claimant's point that that is not so unexpected, and that the balance between documentary and witness evidence of serious harm is characteristically dominated by the latter, both generally and in this case.

88. Sixth, I do agree with the Defendants that, as things stand, the Claimant faces a formidable challenge on the causation component of the serious harm test on any basis, because of the jurisdictional issues they raise with some cogency, because of the multiplicity of other publications of the same or a similar nature to that sued on, and because of the extent to which the Claimant may be continuing to seek to rely on the causation of harm by matters ruled by Nicol J to be no part of the statement complained of (see for example WS 1st at [7]).

89. But I also bear in mind that the law of causation in this area can be relatively complex to apply, particularly in international libel contexts. It is fact sensitive, and sensitive to the distinction between the general inferential process of establishing serious harm to reputation, and attempts to evidence it by the attribution of specific consequences. Both of these are in play on the Claimant's case. And a causal proposition which is difficult – even formidably difficult – to make good is not the same as one which is fanciful. On the contrary, the difficulty and complexity of the task may in an appropriate case be a sign of an issue that can only be resolved properly at trial. I am persuaded on balance that this is such a case.

90. The Claimant's case on (intra-jurisdictional) causation is not at present highly developed in his pleadings and evidence. But I am persuaded that it advances sufficiently beyond the merely statable to carry *some* degree of conviction, and I accept he has made out reasonable grounds for further investigation of his case.

91. It is not proper, or possible, to go any further in the evaluation of the material before me in an attempt to assess the Claimant's prospects. That would be to enter mini-trial territory and usurp the function of a trial judge. I do not need to, and do not, express any view on the present, or future, strengths and weaknesses of the Claimant's case beyond what is necessary to explain my decision on this application for a terminating ruling.

92. The application was cogently and attractively made and argued with some force. But I cannot lose sight of the high hurdle that must be cleared to persuade a Court to terminate a claim without an opportunity for a proper trial, and for the reasons given I am not satisfied the Defendants have cleared it in this case. The Claimant's pleaded case, if amended as indicated, appears sufficiently cogent and real for it to be fair to require the Defendants to meet it, at trial (of the issue, or of the whole claim) if that proves necessary.

Decision

93. The Claimant's pleading of serious harm, as it stands, is defective to the extent that it is inconsistent with the ruling of Nicol J. This is a remediable defect. The Claimant should now be given an opportunity to amend his Particulars of Claim in order to remedy it, and at the same time to improve the clarity and particularity of the case on the causation of serious harm in the UK by publication in the UK (by general inference and/or by reference to specific identified consequences) he is asking the Defendants to meet.

94. But subject to that, and for the reasons given, I decline the Defendants' invitation to strike out his claim or to give summary judgment on it in their favour.