Neutral Citation Number: [2020] EWHC 1848 (QB)

Case No: QB-2019-002079

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/07/2020

Before :

THE HONOURABLE MR JUSTICE SAINI

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Between :

RICHARD MILLETT	**Claimant**
- and -	
THE RIGHT HONOURABLE JEREMY CORBYN MP	**Defendant**

- -
- -

William Bennett QC and **John Stables** (instructed by **Patron Law**) for the **Claimant**
Anthony Hudson QC and **Mark Henderson** (instructed by **Howe & Co. Solicitors**) for the **Defendant**

Hearing date: 23 June 2020

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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.

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MR JUSTICE SAINI

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10am on 10 July 2020.

MR JUSTICE SAINI :

This judgment is in 9 parts as follows:

I. Overview

1. This is a claim for defamation arising out of a statement ("the Statement") made by the Defendant, The Right Honourable Jeremy Corbyn MP ("Mr. Corbyn") during an interview on the *Andrew Marr Show* ("the Programme") on 23 September 2018. The Programme was thereafter made available on BBC iPlayer and can still be viewed on that platform.

2. At the time the Statement was made Mr. Corbyn was the leader of the Labour Party and led the Opposition.

3. The Claimant, Mr. Richard Millett ("Mr. Millett"), is a "blogger" and commentator who regularly writes on a number of subjects including anti-Semitism and Israel. Over a number of years, Mr. Millett has attended meetings and events that concern the broad issues of Israel, its policies on Palestine and the Palestinian people. His blog posts often discuss such meetings and events, and he has become a well-known observer and reporter in this area.

4. Mr. Corbyn's interview with Andrew Marr concerned, amongst other subjects, allegations that Mr Corbyn was an anti-Semite. At the time of the interview, there was substantial and vigorous debate in the media and in other circles on the subject of claimed anti-Semitism within the Labour Party. Mr. Corbyn made the Statement in response to questions from Mr. Marr in relation to a speech which Mr. Corbyn had made some years earlier, on 15 January 2013.

5. The relevant parts of the speech and the Statement made on the *Andrew Marr Show* to Mr Corbyn (in advance of his questioning by Mr Marr) are set out below. I have taken the text from the verbatim transcript of the Programme. "AM" is Mr. Marr and "JC" is Mr. Corbyn. The words complained of are underlined and I have included Mr. Marr's questions to provide the context.

6. The relevant part of the Programme extract begins with the words "Recorded in 2013" appearing on screen before the video of Mr. Corbyn in 2013 is played to him during the live studio recording. In that video, Mr. Corbyn is shown saying the following in 2013:

"The other evening we had a meeting in parliament in which Manuel made an incredibly powerful and passionate and effective speech about the history of Palestine, the rights of the Palestinian people. This was dutifully recorded by the thankfully silent Zionists who were in the audience on that occasion and then came up and berated him afterwards for what he had said. They clearly have two problems. One is they don't want to study history and secondly, having lived in this country for a very long time, and probably all their lives, they don't understand English irony either."

[Mr. Marr then picks up his questions straight after the video has been played]

AM: A strange thing to say.

JC: Well, I was at a meeting in the House of Commons and the two people I referred to had been incredibly disruptive, indeed the police wanted to throw them out of the meeting. I didn't. I said they should remain in the meeting. They had been disruptive at a number of meetings. At the later meeting when Manuel spoke they were quiet, but they came up and were really, really strong on him afterwards and he was quite upset by it. I know Manuel Hassassian quite well. And I was speaking in his defence. Manuel of course is the Palestinian Ambassador of this country.

AM: But why did you say, 'English irony?'

JC: Well, because of the way that Manuel, whose first language is not English has an incredible command of English and made a number of ironic remarks towards them during the interchange that I had with them. This did happen some years ago, by the way.

AM: And you also said that these people who might have been in this country for a very long time. What's relevant about that?

JC: That Manuel had come recently to this country and fully understands English humour and irony and the use of language. They were both British born people who clearly obviously had been here all their lives.

AM: But we've just agreed that the people who can identify antisemitism best are Jewish people. Many Jewish people thought that was anti-Semitic.

JC: They were very, very abusive to Manuel. Very abusive. And I was upset on his behalf from what he'd - he'd

> spoken obviously at the meeting but also the way he was treated by them at the end of it. And so I felt I should say something in his support. And I did.
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> AM: Given what Jewish comrades, Jewish members of the Labour Party have said about this, do you now accept that what you said was anti-Semitic?
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> JC: Well, it was not intended to be anti-Semitic in any way and I have no intention and have absolute opposition in every way to anti-Semitism though I can see where it leads to. I can see where it leads to now in Poland, in Hungary, in Central Europe, I can see where it led to in the past. We have to oppose racism in any form and I do…"

7. By this claim, issued on 10 June 2020, Mr. Millett alleges that the words spoken by Mr. Corbyn in the Programme (as underlined above) were defamatory of him and their publication caused and is likely to cause serious harm to his reputation.

8. As will be immediately apparent, Mr. Millett was not identified by name in the Statement by Mr. Corbyn (he was not named as one of the "two people" or "they"). That has given rise to one of the major issues before me, the issue of reference.

9. By Order dated 26 March 2020, Master Cook directed a trial of three preliminary issues in this claim as follows:

   (a) the natural and ordinary meaning of the statement complained of, including whether it refers to Mr Millett, and any reference innuendo;
   (b) whether that meaning conveys a statement of fact or opinion, or else in part a statement of fact and in part of opinion; and
   (c) whether the meaning conveys a defamatory tendency at common law.

10. Master Cook refused however to order a trial of the issue of serious harm to reputation (section 1 of the Defamation Act 2013).

11. The trial of preliminary issues was conducted before me by way of a remote Skype hearing on 23 June 2020. Both parties submitted witness statements by way of evidence but oral evidence was not called. It did not seem to me that the principal facts were in dispute and I confirmed this with Leading Counsel for each of the parties.

12. The substantive issues argued before me were principally in relation to matters of law and inferences to be drawn, and assessments to be made, on the basis of evidential material which consisted (originally) of 5 articles preceding the Statement. It was not in dispute that this material was only relevant to the issue of reference. That is, were the words used by Mr. Corbyn such as reasonably in the circumstances would lead persons acquainted with Mr. Millett to believe he was the person referred to in the Statement?

13. However, in addition to the originally pleaded 5 articles ("the original articles") in support of Mr. Millett's case on reference, on the morning of the hearing of the trial he

sought permission to amend his Particulars of Claim to rely upon 5 additional articles ("the new articles"). Although a draft amended pleading had been sent to Mr. Corbyn's solicitors on 16 June 2020 (to which there was no response), an application notice seeking permission to amend was not issued by Mr. Millett until the day before the trial.

14. Mr. Corbyn did not consent to the amendment. The parties however invited me to decide the preliminary issues taking into account the new articles and to leave the issue of amendment to another day. I was not happy with that course. It seemed to me that I should not embark upon the trial without clarity as to the exact nature of the pleaded case which the Claimant was to be permitted to pursue. To allow the new articles to be relied upon in relation to the issue of reference (and to give a judgment including these articles) but to defer the issue of amendment to a time after judgment was not logical. Either the new articles were "in" or they were "out" for all purposes. They could not be "in" for the purpose of a decision on the issue of reference (which would give rise to new causes of action) but then be the subject of some opposition if they were relied upon in support for example of Mr. Millett's case on serious harm or damage.

15. Having expressed this provisional view at the outset, I allowed detailed submissions to be made by both parties in relation to the new articles (assuming they were included as part of the Claimant's case). By the time the oral hearing concluded, and after some reflection, the parties agreed with me that the issue of amendment had to be addressed and could not be deferred to a later date.

16. In these circumstances, Leading Counsel for Mr. Corbyn opposed the amendment. He relied (amongst other points) upon its lateness and the lack of evidence justifying the delay. However, given the nature of the arguments which were made on his behalf (some of which raised points of law on limitation which had not been foreshadowed) I directed that the parties should have a short period to provide written submissions on the issue of amendment. As a matter of case management and fairness to Mr. Corbyn, I directed that Mr. Millett could not provide further evidence in support of his application. I deal with the amendment application in **Section IV** of this judgment and for the reasons there stated, I have refused Mr. Millett's application to amend to include reference to the new articles.

17. I have determined the preliminary issues on the basis of the original Particulars of Claim by reference only to the original articles. I have also considered, for completeness, each of the new articles but they do not form part of the claim.

II. The Facts

18. On 15 January 2013, Mr. Millett attended a meeting in Parliament at which Manuel Hassassian, who was described as the "Palestinian Authority's Ambassador", gave an oral address ("the 2013 meeting").

19. On 16 January 2013, Mr. Millett wrote on his blog an account of what occurred at the 2013 meeting. The article was entitled *Palestinian Ambassador to the UK: "I've started to believe that the Jews are the only children of God"*.

20. A few days later, on 19 January 2013, Mr. Corbyn spoke at a conference, organised by the Palestinian Return Centre, called *Britain's Legacy in Palestine*. In his speech, Mr. Corbyn referred to the 2013 meeting and said that "the Zionists" who had attended that meeting had gone up to Mr Hassassian and "berated" him after he spoke. Mr. Corbyn stated that these "Zionists . . . had two problems. One is they don't want to study history and secondly, having lived in this country for a very long time, and probably all their lives, they don't understand English irony either". For ease of reference, I will refer to this below as “the Irony Speech”.

21. There was then a gap of some 5 years until August 2018. By that time, Mr. Corbyn had risen to prominence as the Leader of the Labour Party. A video of the Irony Speech appears to have been made public for the first time around this time and was in wide circulation.

22. The Irony Speech received significant attention in the media because claims of the existence of anti-Semitism within the Labour Party were already the subject of widespread media coverage and discussion.

23. Once the video of the Irony Speech emerged, the media sought to identify the "Zionists" against whom Mr. Corbyn’s statements had been directed.

24. On 24 August 2018, Dominic Kennedy, a journalist employed by *The Times*, emailed Mr. Millett. He was writing a piece about the Irony Speech. He stated that Labour had said that Mr. Corbyn had been referring to "a particular group of pro-Israel activists” and “I think they probably are including you in that description since you were at the Manuel Hassassian event and wrote a detailed blog about it”.

25. In due course, Mr. Millett was named as the subject of the Irony Speech in *The Times* print edition (25 August 2018), on *The Times* website (from 25 August 2018), in *The Guardian* (print and online from 24 August 2018), on *MailOnline* (25 August 2018) and on the BBC website (from 25 August 2018). Mr. Millett was also identified as the subject in *The Guardian* online (from 27 August 2018) and *The Guardian* print edition on 27 August 2018). I will consider these articles in more detail below. They include (but are not all of) the new articles which were the subject of the amendment application.

26. On 23 September 2018, Mr. Corbyn was interviewed on the Programme. The relevant part of the Programme concerning anti-Semitism started 9 minutes 5 seconds into the broadcast and finished at 13 minutes 30 seconds (as a reference for those who wish to view the entire relevant section on BBC iPlayer).

27. As I have described above, Mr. Marr introduced the topic of anti-Semitism: "Jeremy Corbyn, are you an anti-Semite?" An extract from the Irony Speech was played to him and the viewers.

28. Mr. Corbyn then said that what he had said had not been anti-Semitic. He expressed the view that "the two people" he had referred to had been "incredibly disruptive" and that he had accused them of not understanding English irony etc. because he wanted to defend Mr Hassassian ("I was speaking in his defence"), against those people who had been "incredibly disruptive".

29. These people were described as having been:

(i) "incredibly disruptive", such that "the police wanted to throw them out";

(ii) "really, really strong on" Mr Hassassian after one meeting, causing him to be upset; and

(iii) "very, very abusive to Manuel. Very abusive."

30. This behaviour had caused Mr. Corbyn to be upset on Mr Hassasian's behalf and to conclude that he needed to say something in his support.

31. This leads to the first preliminary issue. Mr. Millett says that that those people who had read one or more of the publications pleaded in his original Particulars of Claim (to which he wishes to add the new articles) would have realised that when Mr. Corbyn referred to the "two people" who had been "incredibly disruptive" and so on, he was referring to Mr. Millett.

III. Reference

32. A legal innuendo meaning arises where the reasonable reader ascertains meaning from two facts: (i) the publication complained of (here, the Statement) and (ii) his or her knowledge of information *external* to it. The type of innuendo in issue in this trial is a reference innuendo: it depends upon a reasonable reader having knowledge of extrinsic facts which cause him to realise that the subject of the defamation is the claimant. In this case, to realise that the statements about the persons who attended the 2013 meeting and were "incredibly disruptive" etc. included Mr. Millett.

33. In *Duncan & Neill on Defamation* (4th ed.), the test for reference is summarised as follows at [7.03]:

> ". . . the claimant is required to plead and prove the extrinsic facts on which he relies to establish identification and, if those facts are proved, the question becomes: would reasonable people knowing these facts or some of them reasonably believe the statement referred to the claimant?"

See Morgan v Odhams Press Ltd [1971] 1 WLR 1239 per Lord Donovan at 1264.

34. In Lachaux v Independent Print Ltd [2016] QB 402, at a preliminary issue trial concerning, among other things, reference, Warby J summarised the position as follows

> **"15.** The common law principles applicable to the process I have identified are clearly established, and not the subject of any major dispute. They can therefore be quite shortly summarised, without the need for extensive citation. The nature of the parties' arguments makes it convenient to set out some of the common law principles as to damage at the same time.

> **Reference**
>
> **(1)** "It is an essential element of the cause of action for defamation that the words complained of should be published 'of the [claimant]'": Knupffer v London Express Newspaper Ltd [1944] AC 116 , 118. This does not mean the claimant must be named. The question is whether reasonable people would understand the words to refer to the claimant:
>
> "The test of whether words that do not specifically name the [claimant] refer to him or not is this: Are they such as reasonably in the circumstances would lead persons acquainted with the claimant to believe that he was the person referred to?": David Syme & Co v Canavan (1918) 25 CLR 234 , 238, per Isaacs J.
>
> **(2)** This is an objective test. If the words would be so understood by such people it is not necessary for the claimant to prove that there were in fact such people, who read the offending words; so an individual defamed by name in Cornwall has a cause of action even if he was unknown in that county at the time of publication: see Gatley on Libel and Slander , 12th ed (2013), para 7.3; Multigroup Bulgaria Holdings AD v Oxford Analytica Ltd [2001] EMLR 28 , para 22, per Eady J cited with approval in Jameel [2005] QB 946 , para 28.
>
> To this extent, I do not accept Mr Price's submission for IPL and ESL that it is an essential element of this claim for the claimant to prove that at least one person understood the words complained of to refer to him. That is not an essential element of the cause of action at common law. Whether such proof is necessary to satisfy the serious harm requirement, or to overcome a Jameel application, or both, is a separate matter."

35. I have cited these observations because the parties were not agreed as to the nature of the matters for determination in relation to the preliminary issue concerning reference.

36. Leading Counsel for Mr. Corbyn argued that there were 4 issues for resolution:

(a) Would reasonable people (without special knowledge) understand the Statement complained of as referring to Mr. Millett;

(b) Would reasonable people, with special knowledge (ie., they had read 1, some, or all of the articles relied on by Mr. Millett) understand the statement complained of as referring to Mr. Millett; if yes, then

(c) Did anyone to whom the statement complained of was published have the 'special knowledge';

(d) Did anyone to whom the statement complained of was published and who had the 'special knowledge' in fact understand the statement complained of to refer to Mr. Millett.

37. Leading Counsel for Mr. Corbyn also referred to certain observations made by Warby J in his Order of 22 May 2020 directing a remote hearing of this trial. He argued that Mr. Millett could not succeed on issues (c) and (d) because of a lack of evidence.

38. Leading Counsel for Mr. Millett argued that only issue (b) arises for resolution now. I agree. Turning to the Defendant's 4 issues, (a) can be ignored: it was never part of Mr. Millett's case. I do not however consider (c) and (d) are issues for resolution at this stage essentially for the reasons Warby J identified in the Lachaux case and which I have set out above.

39. In my judgment, the Court should only determine what meaning a reasonable person with the relevant extrinsic knowledge would find the words complained of to bear. The existence of *actual* people who viewed the programme with the requisite knowledge will be considered by the Court on the issues of whether publication caused serious harm to Mr. Millett's reputation (as required by s.1 of the Defamation Act 2013).

40. I was helpfully referred by Leading Counsel for Mr. Millett to certain observations in relation to a preliminary issue regarding an innuendo meaning in Fox v Boulter [2013] EWHC 1435 (QB) at para. [20]. It might be suggested that a different approach was there being adopted to that in Lachaux.

41. Insofar as there is a difference, the approach in Lachaux seems to me to reflect the correct approach as a matter of principle, for the reasons Warby J gave. However, had it been necessary for me to find that at least one person had knowledge and recollection of the extrinsic facts, I would have readily inferred that (without the need for direct evidence) on the basis of the material before me. Leading Counsel for Mr. Corbyn did not suggest this was impermissible.

42. I now turn to the evidence on the issue of reference but must begin with the proposed amendment which seeks to add to the extrinsic evidence.

IV. Amendment

43. The draft amendments to the Particulars of Claim to add additional extrinsic facts in relation to Mr. Millett's case on reference seek to introduce a number of new articles. It is now accepted on Mr. Millett's behalf that the proposed amendments would add new causes of action.

44. That concession is plainly correct, and I refer in this regard to Grubb v Bristol United Press Ltd [1963] 1 QB 309 per Holroyd Pearce LJ at 327:

> " . . . Thus, there is one cause of action for the libel itself, based on whatever imputations or implications can reasonably be derived from the words themselves, and there is another different cause of action, namely, the innuendo, based not merely on the

> libel itself but on an extended meaning created by a conjunction of the words with something outside them. The latter cause of action cannot come into existence unless there is some extrinsic fact to create the extended meaning. This view is simple and accords with common sense…"

45. Putting matters more simply, one can say that a cause of action is not pleaded until the reference facts are set out in the Particulars of Claim. Each cause of action in issue is comprised of the publication of the programme to a specified sub-set of viewers who possessed the relevant extrinsic knowledge.

46. Here, Mr. Millett is seeking to plead the extrinsic facts (and hence new causes of action) outside the limitation period. Accordingly, if Mr. Millett had started a fresh action pleading reliance upon the new articles, he would be met with a limitation defence.

47. In seeking permission to amend, Mr. Millett relies upon CPR 17.4(2) but one needs to begin with the Limitation Act 1980. Section 35(1) of that Act prescribes the effect of adding new claims. It provides, so far as is relevant: "For the purposes of this Act, any new claim made in the course of any action shall be deemed to be a separate action and to have been commenced— (b) …on the same date as the original action".

48. A "new claim" is defined by s.35(2)(a) of the 1980 Act, and includes any claim involving the addition of a new cause of action.

49. Sections 35(3) to (5) of the 1980 Act set limits on the court's power to "allow a new claim … to be made in the course of an action after the expiry of any time limit under this Act which would affect a new action to enforce that claim". The court may not allow this to be done "except as provided by … rules of court", and a new claim involving a new cause of action can only be allowed, "if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action."

50. The relevant rule of court is CPR 17.4(2). This provides that the court "may" allow an amendment whose effect will be to add a "new claim" but "… only if the new claim arises out of the same facts or substantially the same facts as a claim in respect of which the party applying for permission has already claimed a remedy in the proceedings. That is a threshold hurdle. The relevant principles are set out in Lokhova v Longmuir [2016] EWHC 2579 (QB) [2017] EMLR 7 and Economou v De Freitas [2016] EWHC 1218 (QB), to which both parties made reference.

51. Mr Millett argues that he can meet this test. It is said on his behalf that the existing publications in issue are comprised of two elements: (1) the publication of the Programme to the world at large; and (2) the publication of the reference information to the viewers via the extrinsic publications. Element (1), the Programme itself, is the same for the existing and the new causes of action. It is said that this is the fact upon which the claim hinges. Element (2) is comprised of two facts: the information imparted and the means by which it was imparted. The information imparted by the new reference publications is argued to be either the same or substantially the same as that contained in the existing reference publications: it is information which identifies Mr.

Millett as being one of the Zionists who was present at the Hassassian meeting and does not understand English irony and so on.

52. In opposition, it was argued for Mr. Corbyn that Mr. Millett is relying on each extraneous matter to establish defamatory publication to a class of readers who, *ex hypothesi*, are not within any of the categories of viewers who fall within the existing causes of action. This is not therefore about a new cause of action arising from the existing pleaded facts. It would give rise to further matters to be investigated and determined, including whether the new publishees (a) watched the programme; and (b) had knowledge of the extraneous facts relied on by Mr. Millett. It was also argued that it is not sufficient that the new causes of action involve the same defamatory meaning.

53. In my judgment, the new claims relying upon the articles do arise out of facts or substantially the same facts as the claims in respect of which Mr. Millett has already claimed a remedy in the proceedings. I have considered each of the new articles below and I prefer Mr. Millett's submissions on this issue. It will be noted that some of the articles are in the same publications as those already relied upon.

54. However, this only gets Mr. Millett over the threshold hurdle. Mr. Millett still needs to persuade me to exercise the CPR 17.4 discretion in his favour. I refer here to the helpful summary in Lokhova at paras. [52]-[55] as to the general principles governing the discretion and those that have particular relevance in the defamation context. I have also considered the observations of Sharp LJ in Bewry v Reed Elsevier [2014] EWCA Civ 1411, [2015] 1 WLR 2565. As Sharp LJ explained at [70], there is a uniquely short limitation period of one year which applies to libel claims and the disapplication of the limitation period in libel actions is often described as "exceptional". I was also referred to the observations in of Warby J in Economou at paras. [54]-[56] and of Nicol J in Starr v Ward [2015] EWHC 1987 (QB).

55. The onus is on Mr. Millett to make out a case for disapplication and it is established that unexplained or inadequately explained delay deprives the court of the material that it needs to determine the reasons for the delay and to arrive at a conclusion that is fair to both sides in the litigation. In my judgment, it would be unlikely that a court will look favourably upon an application to amend absent direct evidence, by witness statement, from a claimant giving a full and frank explanation for the delay.

56. As stated above, the limitation period for these causes of action expired on 23 September 2019. The application to introduce these causes of action was made 9 months after the 12 month limitation period expired. I consider Mr. Millett's explanation for the delay to be unsatisfactory.

57. Insofar as there is an explanation, it consists of no more than a submission from Counsel who have said in writing that "The C cannot give an explanation for not pleading the new publications at an earlier date other than that the C was not aware of them at that time".

58. There is no witness statement from Mr. Millett and it is not hard to see why this explanation is, to say the least, an odd one in circumstances where one of the new articles is Mr. Millett's own blog and others appear in different pages of existing pleaded publications which he had no difficulty identifying and pleading in time.

59. In short, Mr. Millett has failed to discharge the burden on him to show why his time barred causes of action should be permitted to proceed. To the extent that he requires vindication, he has an existing claim. There is no exceptional (or equitable) reason why he should recover in defamation for publication to what he must consider to be substantial new categories of viewers, by way of causes of action for which the only explanation he gives for delay is highly unsatisfactory.

60. I accordingly refuse permission to amend but for completeness, and in the event this matter goes further, below I have addressed the new articles on the assumption that I had permitted an amendment.

V. The Extrinsic Facts

61. In relation to each of the five original publications pleaded in the Particulars of Claim, it was common ground that I have to consider each extrinsic publication separately and ask the following question: would the reasonable reader in possession of the knowledge gleaned from that particular publication find that Mr. Corbyn's words referred to Mr. Millett? Some viewers of the Programme are likely to have read more than one of the pleaded publications but I will proceed on the basis of each in isolation. I also bear in mind the period which will have elapsed between each publication and the date of the Programme, 23 September 2018. Counsel for Mr. Corbyn emphasised what the parties called the "fade factor".

62. The first document relied upon is from *Labour Briefing* (available from 14 September 2018). The title is "*The text of that speech by Jeremy on the Palestinian Ambassador to the UK, English irony and certain Zionist critics"*. In its second paragraph this online article names Mr. Millett as having been present at the 2013 meeting. In its third paragraph it says:

> "As you can see from this transcript, Corbyn clearly wasn't referring to all Jews but rather to Zionists among the political leadership of the Jewish community – and, in particular, to the Zionist activist, Richard Millett, and his colleagues. This was confirmed when Millett himself told the Daily Mail that Corbyn was referring to him, saying that "three days after [the Hassassian] (sic) event in Parliament, Jeremy Corbyn said I have no sense of irony." Millett then reconfirmed this in the Jewish Chronicle (27/9/18)."

63. I proceed on the basis that the last sentence was an update added on 27 September 2018. In my judgment, a reasonable reader having knowledge of this article would readily identify Mr. Millett as having been one of the persons referred to in the Programme, which was broadcast just 9 days later.

64. The second matter relied on consists of articles in *The Times* print and online editions (from 25 August 2018). The title is *We are all scared, says Richard Millett, blogger in Corbyn "Zionist" row*. These articles, which contain identical text, identify Mr. Millett

by name repeatedly, describe him as the man "who prompted Jeremy Corbyn's attack on Zionists as unable to understand English irony", picture him, describe his background and say that he was the only blogger covering the event in 2013 (which must be the 2013 meeting). It is clear that the very purpose of these articles in print and online was to identify, explain and show the person, Mr. Millett, who was the subject of the Irony Speech. Again, a reasonable reader having knowledge of these articles would readily identify Mr. Millett as having been one of the persons referred to in the Programme. I do not consider that passage of about a month between the articles and the Programme would lead to a memory fade, as argued on behalf of Mr. Corbyn.

65. The third document relied upon is *The Guardian* online (available from 24 August 2018). The article has the title *Jeremy Corbyn: I used the term "Zionist" in accurate political sense.* This article relates to the serious debate caused by the Irony Speech which had been revealed at the height of the discussions concerning claimed anti-Semitism within the Labour Party. The strapline reads: "*Labour party leader responds to "English irony" video after it reignites antisemitism furore*". The 4th paragraph states: "One of the activists Corbyn apparently referred to in his remarks, Richard Millett, told the Times . . . ". It is clear to me that Mr. Millett is identified as one of the "Zionists" who is said, among other things, to have no sense of irony and berated Mr Hassassian at the end of the relevant meeting. In my judgment, a reasonable reader in possession of this knowledge would reasonably have concluded when watching the Programme that Mr. Millett was one of "the two people" accused by Mr. Corbyn. I do not consider memories would have faded.

66. The fourth document relied upon is *MailOnline* (available from 25 August 2018). The article has the title *Blogger targeted by Jeremy Corbyn's claim that "Zionists have no sense of history or English irony" demands an apology and says British Jews fear for their safety***.** This article publicises Mr. Millett as the person "targeted" by Mr. Corbyn in the Irony Speech. Specifically, the article's headline and the first bullet point beneath it identify Mr. Millett by name as one of the "Zionists" referred to in the Irony Speech. A prominent photograph of Mr. Millett accompanies these statements. Later in the copy it is stated that "Mr Millett was the only blogger covering the event.". In my judgment, a reasonable reader in possession of this knowledge would reasonably have concluded when watching the Programme that Mr. Millett was one of "the two people" accused by Mr. Corbyn. I do not consider memories would have faded.

67. The fifth and final document relied upon is a BBC News online article (available from 25 August 2018). The title is *Jeremy Corbyn defends "British Zionist" comments***.** The 7th and 8th paragraphs identify Mr. Millett by name as present at the 2013 meeting and as the target of the Irony Speech:"Richard Millett, who believes he is one of the people Mr Corbyn was referring to, said the Labour leader's comments were racist and "deeply antisemitic", calling for him to apologise. The blogger, who was at the event Mr Corbyn referenced in the speech, said suggesting he did not understand English irony "implies that I'm not from here, not from the United Kingdom. To highlight that, I find very offensive. It was unnecessary to do it, and racist". Again, in my judgment, a reasonable reader in possession of this knowledge would reasonably have concluded when watching the Programme that Mr. Millett was one of "the two people" accused by Mr. Corbyn. I do not consider memories would have faded.

68. Overall, I conclude that Mr. Millett's case on reference has been made out on the basis of the original articles before me.

69. My conclusions on the new articles (had I permitted the amendment) would have been as follows.

70. The first new article is from Mr. Millett's blog of 16 January 2013. It is entitled *Palestinian Ambassador to the UK: "I've started to believe that the Jews are the only children of God"*. This piece relates his attendance at the then recent Hassassian meeting. It is a first person report, and I note that the penultimate paragraph begins: "We then heard…". It therefore identified him as both attending and reporting upon the meeting. However, there was a substantial passage of time (well over 5 years) since this posting and I consider it unlikely a reasonable viewer of the Programme would recall this blog. It does not meet the requisite test.

71. The second new article is on the front page of one of the publications already relied upon (see para. [64] above). This is *The Times* print and online versions of 25 August 2018 (online from that date). The title is *Far right comes out for Corbyn.* Mr. Millett is identified in the lead article on the front page. The 4th paragraph records that Mr. Corbyn's statement that "British Zionists were different from other Britons" was a reference to "Richard Millett, a British blogger". The last paragraph of the front page quotes the Irony Speech. Mr. Corbyn is reported to have said that "thankfully silent Zionists" had "dutifully recorded" a speech at the Hassassian meeting. Mr. Millett is described as Jewish and the only blogger at the event on page 2, where the second part of the article is found. The online edition of this article contains the same statements in the first paragraph at and the fourth paragraph at respectively. These articles meet the requisite test.

72. The second and third articles are both dated 27 August 2018 and they are from *The Guardian*. One is from Matthew d'Ancona in the print edition entitled *Just when we needed it, irony has deserted our politics.* The same article was published on the paper's website but headed *Jeremy Corbyn is to irony what Donald Trump is to feminism*. They are substantively the same. Both report that one of the "Zionists" Mr. Corbyn was referring to as not understanding English irony was Mr. Millett: "In response to the objections of unnamed "Zionists" - apparently the blogger Richard Millett was among those he was referring to…". These articles meet the requisite test.

73. The fourth of the new articles is Tony Greenstein's Blog from 28 August 2018. The title is *Banned by Amnesty International for Harassment - How the BBC turned Zionist Thug Richard Millett from a Zero into a Hero.* This blog post states of Mr. Millett: "At a Palestine meeting in Parliament in 2013, which he tried to disrupt, Millett was told by Jeremy Corbyn that he should study some history and for good measure get a grip on English irony." Although somewhat muddled in its presentation of the circumstances and timing of the Irony Speech, this is clearly a statement as to the Irony Speech being about Mr. Millett. It meets the requisite test.

VI. Meaning

74. There was no dispute as to the basic principles that govern the court's approach in relation to this exercise. I have had regard to Koutsogiannis v The Random House Group Ltd [2019] EWHC 48 (QB); [2020] 4 WLR 25 at [11-12] and there is no need to reproduce Nicklin J's helpful summary which can be consulted on the hyperlink.

75. I approached this issue (in the now conventional way) by viewing the Programme and forming a provisional view without reference to the transcript and the submissions of the parties. I put myself in the position of the ordinary reasonable viewer. I had in mind that the comments made by Mr. Corbyn were in the context of an interview during a serious political programme. This was not the case of rapid or "off the cuff" Twitter or social media exchanges, and a reasonable viewer would readily identify that Mr. Corbyn was measured and careful in his answers to Mr. Marr's difficult and probing questions in relation to the Irony Speech.

76. That said, I have sought to avoid an over-elaborate analysis and any attempt at a textual analysis of the transcript, to which I was taken in some detail in oral argument. That exercise only removes one from the perspective of the reasonable viewer who will probably only watch the Programme once.

77. Although I found the submissions of both parties of assistance, I ultimately found the final meaning of the Statement to be that which had originally struck me as a matter of immediate impression. Before expressing my conclusion, I will set out the rival meanings. My own conclusion as to meaning reflects certain of the positions taken by the parties, but was ultimately different in some important respects.

78. Mr. Millett's case on meaning was:

> "Mr. Millett attends meetings in order to cause such a disturbance that the meetings are frustrated and/or cannot proceed in an orderly and fair manner. He thereby prevents people from putting forward their point of view. At one meeting his use of this type of behaviour was so bad that it caused the police to want to throw him out. On another occasion, he was very, very abusive towards the Palestinian Ambassador after the meeting to such a degree that the Ambassador became upset."

79. Mr. Corbyn's case on meaning was:

> "At a meeting in Parliament in 2013, at which Manuel Hassassian spoke, people had behaved in a very abusive manner towards Mr Hassassian and he was quite upset by their behaviour. The same people had behaved in a highly disruptive manner at a previous meeting in the House of Commons; and had behaved in a disruptive manner at a number of meetings."

80. In my judgment, the natural and ordinary meaning of the Statement about the Claimant was as follows (omitting reference to the other individual):

> The Claimant attended a meeting at the House of Commons. He behaved in so disruptive a way at this meeting that the police wished to remove him from the premises. Mr. Corbyn however asked that the Claimant be allowed to remain. The Claimant had acted in a disruptive way at other meetings. At a further meeting at which Mr. Hassassian was a speaker, the Claimant was

> extremely abusive in his treatment of Mr. Hassassian after his speech. Such was the nature of this abuse that Mr. Hassassian was caused distress by the Claimant's behaviour. These actions of the Claimant so concerned Mr. Corbyn that he felt the need to speak to support Mr. Hassassian. This conduct of the Claimant towards Mr. Hassassian was based on what Mr. Hassassian had said and the views he was expressing.

81. I reject the Claimant's suggested meaning because I consider it seeks to draw general conclusions as to the Claimant's motives and wider aims in general concerning meetings which are not warranted by the words used. As regards the Defendant's position, it seems to me that it underplays the serious nature of the description Mr. Corbyn was giving of the conduct to which he made reference. It also downplays the repetition by Mr. Corbyn 3 times of the words "very" abusive to describe the behaviour.

82. I also consider that the clear impression given by Mr. Corbyn's words in context is that the disruptive behaviour and abuse of which he accused the Claimant was based on what Mr. Hassassian had said. So, this was not random bad behaviour, but the reasonable viewer would understand the actions of the Claimant were being said to be based on a form of disagreement with the views that had been expressed by Mr. Hassassian. That is an essential part of the meaning which is not fully captured in the rival versions before me (but I accepted in some respects it is reflected in the Claimant's case on meaning).

VII. Fact or Opinion

83. As summarised in Koutsogiannis by Nicklin J (cited above), the Court will be guided by the following principles in determining whether the words complained of should be regarded as containing allegations of fact or opinion:

i) The statement must be recognisable as comment, as distinct from an imputation of fact.

ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, or observation.

iii) The ultimate question is how the word would strike the ordinary reasonable reader.

iv) The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

v) Some statements which are - by their nature and appearance - opinion are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is (i.e. the statement is a bare comment).

vi) Whether an allegation that someone has acted 'dishonestly' or 'criminally' is an allegation of fact or expression of opinion will very much depend upon context.

There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.

vii) In deciding whether the words complained of are comment, it is permissible to look only at the publication itself, although the context of the words complained of within the publication is to be taken into account.

84. I have also had regard to the recent and comprehensive review of the case law in this area (including the law in relation to the common law fair comment defence) by Sharp LJ in Butt v Secretary of State [2019] EWCA Civ 933; [2019] EMLR 23 at [25]-[50]. Particular reliance was placed on this case by Counsel for Mr. Corbyn.

85. By reference to their own rival meanings, the Claimant argued that the allegations were factual, while the Defendant submitted that the words conveyed a statement of opinion. I have arrived at my own meaning but the submissions of the parties on that issue (and defamatory tendency) remain relevant, in certain respects.

86. It was argued on Mr. Corbyn's behalf that he was commenting on the behaviour of the people he referred to at earlier meetings. It was said that the statement of fact is that the people referred to were present at a meeting in the House of Commons and at a number of meetings. The statement of opinion is about their behaviour whilst at those meetings viz., that they were 'disruptive' or 'incredibly disruptive'. It was said that to describe someone's behaviour as 'disruptive' and/or 'incredibly disruptive' is to express an opinion about that person's behaviour. I was reminded that different people may well take a different view as to how to characterise that behaviour. Some might regard it as being disruptive whereas others might consider it to be simply irritating or annoying or rude. But, it was argued, these are all expressions of opinion about the behaviour of the person concerned. Leading Counsel emphasised that they are evaluations of the person's behaviour. Reliance was placed by Counsel for Mr. Corbyn on Tinkler v Ferguson [2019] EWCA Civ 819.

87. I did not find the Tinkler case to be of assistance. One cannot draw assistance from what a court has understood words in a different case, in a different context, to mean and whether they are a statement of fact or opinion.

88. In my judgment, it is clear that Mr. Corbyn was making factual allegations in the Statement as to Mr. Millett's behaviour on more than one occasion. As to the submission that Mr. Corbyn was merely expressing a view on conduct, in my judgment this is a classic case of a statement which in context implies that a claimant has done something but does not indicate what that something is (a type of bare comment in Nicklin J's summary above). The Claimant succeeds on this issue.

VIII. Defamatory Tendency/Seriousness

89. Based on his proposed meaning, it was submitted by Leading Counsel for Mr. Millett that to accuse someone of being disruptive and abusive to the degree in issue must have caused him to have been defamed at common law.

90. In relation to his proffered meaning, on behalf of Mr. Corbyn it was forcefully argued by his Leading Counsel that the Statement did not lower Mr. Millett in the estimation

of right thinking people and, separately, that it fell below the common law threshold of seriousness (relying on Thornton v Telegraph Media Group Limited [2010] EWHC 1414 (QB); [2011] 1 WLT 1985). These submissions were made in some detail, particularly in the skeleton argument of Leading and Junior Counsel and I will seek to summarise them below. Although I have come to a different conclusion on meaning to that advanced on behalf of Mr. Corbyn, these submissions remain relevant even on my meaning.

91. As to defamatory tendency, the principal point made on behalf of Mr. Corbyn was that a viewer of the interview as a whole, including questions and answers, would not gain an impression from the exchanges between Mr. Corbyn and Mr. Marr that the point of the discussion was that the attendees' conduct was criminal or immoral or the like, as opposed to, in Mr. Corbyn's view, conduct that merited him "*say[ing]" something in support*" of Mr. Hassassian (which was the extent of his response to it). It was said that in terms of the police wanting to remove them from a meeting, Mr. Corbyn's point was that he had stated that they should be permitted to remain, again suggesting that Mr. Corbyn was not imputing disruptiveness of a sort that could prevent the meeting continuing.

92. A broad argument was made for Mr. Corbyn that in a political context generally, statements about being "*disruptive of [some] meetings*" (silent in others) and being "*really, really strong/very, very abusive*" to Mr. Hassassian, who was "*quite upset*" in discussion after the meeting are not defamatory. He argued that it is hard to see how the view that someone's contribution to a political meeting was disruptive could be 'immoral' applying the 'ordinary reasonable viewer' test, which the Court must apply independently of whether that viewer supported, opposed, or had no view on the controversy of the meeting.

93. It was also submitted to me that many on a different part of the spectrum would applaud disruptive contributions at pro-Palestine meetings. It was said that the point applies to heated disputes generally, not just the antisemitism and Israel/Palestine disputes. In this regard, reference was made to another very public dispute in the country and in the Labour Party over trans rights. I was told that meetings regularly involve claims that trans rights activists on one side or radical feminists on the other are being disruptive. Whether someone applauds or condemns these 'disruptive' interventions usually depends on their standpoint on this hot controversy. Overall it was therefore submitted that there would be no generally held view of society across the political spectrum that the conduct in issue was "*by the standards of society as a whole, immoral*", shorn of the ordinary reader's own political beliefs about the situation. I was referred in this regard to Brown v Bower No. 2 [2017] EWHC 2637 (QB) [2017] 4 WLR 197 at [46].

94. As to the Thornton threshold, it was argued that an allegation of being disruptive in political meetings and being "very, very abusive" to a political opponent falls "well below" the common law threshold of seriousness. It was emphasised on Mr. Corbyn's behalf that these were meetings about the Israel/Palestine conflict, about which it is general knowledge that very strong, and strongly opposed, views are held, both outside the Labour Party and in connection with "a very public dispute about alleged anti-Semitism in the Labour Party" (Greenstein v Campaign Against Antisemitism [2019] EWHC 281 (QB) at [41]).

95. Counsel for Mr. Corbyn submitted that the viewer would understand the highly political context of the dispute over antisemitism because the exchange about the video of the 2013 meeting falls within a sustained 11:11 minutes of questioning on the antisemitism dispute, virtually half of the centrepiece interview with the Leader of the Opposition. It was further argued that the highly political context of the dispute and the allegations against Mr. Corbyn could not have gone unappreciated by the viewer. In support of the submission that the Thornton threshold of seriousness was not satisfied, reliance was again placed on Tinkler v Ferguson [2019] EWCA Civ 819 at [28] where an allegation of being disruptive in a company was considered to be "very much at the lower end of the scale".

96. Before turning to my conclusions, I should record that was I was referred by both parties to the various working definitions provided in *Gatley on Libel & Slander* 12th Edition at page 32. Some of those definitions are rather dated and unhelpful in the modern context. I also consider importation of notions of "immoral" behaviour (referred to at points in the Defendant's submissions) are not of assistance. That is not an easily applicable judicial standard in modern times.

97. I consider the best modern working rule is one of those expressed in Warby J in Monroe v Hopkins [2017] EWHC 2637 (QB); [2017] 4 WLR 68 at [50]-[51]. In particular, I find assistance in the concept of behaviour which is "contrary to shared values in our society".

98. That modern approach is reflected in part of the American Law Institute's definition in the Second Restatement of Torts at § 559 where it is said that a communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community. In terms of a modern and practical test, I find the notion of a community and its shared values of more assistance than "estimations" of what "right-thinking people" might think.

99. So standing back, I have asked whether the type of conduct attributed by Mr. Corbyn to Mr. Millett would be contrary to the common or shared values of our society and modern community.

100. In my judgment, it is clear that this test is met. Mr. Millett was being accused of abusive behaviour in relation to a public speaker on a controversial topic. This is an accusation of a type of conduct which is contrary to the values of a modern democracy where freedom of speech is a cherished value. Further, the behaviour of which he was accused was of such a level of seriousness (at the first meeting to which Mr. Corbyn made reference) as to involve the police in potentially ejecting Mr. Millett and the other individual (suggesting criminal misconduct). Again, this suggests conduct falling below the standards expected of citizens in modern British society.

101. I also consider that in this case there is both a personal defamation as to Mr. Millett's character and a professional form of defamation in relation to how he was said to behave in his profession as a person attending and reporting on meetings of the type in issue (which are regularly the subject of his "blog").

102. Finally, as to the issue of seriousness and the Thornton threshold, again this is a straightforward case when applying the multi-factorial approach summarised in *Gatley* at para.22.4. Mr. Corbyn, one of the most prominent politicians at the time, accused

Mr. Millett of seriously abusive behaviour towards a speaker, in the terms I have found above. Mr. Corbyn did this in careful language in an interview with a political journalist on what is arguably *the* major weekly national political programme, and which is free to air on the BBC, recorded live and aired during a prime time viewing period. The Statement was not a trivial matter and readily meets the Thornton standard at common law.

IX. Conclusion

103. To summarise my rulings on the preliminary issues, I find that the words complained of referred to Mr. Millett; that they bore a meaning defamatory of Mr. Millett as identified above; and I find that the allegations were factual.

104. My decision on the issue of reference is based on what I have referred to as the five articles, and I refuse permission to amend to plead reliance on the new articles.