



Neutral Citation Number: [2021] EWHC 269 (QB)

Case No: QB-2020-002120

**IN THE HIGH COURT OF JUSTICE**

**QUEEN'S BENCH DIVISION**

**MEDIA AND COMMUNICATIONS LIST**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 16/02/2021

**Before :**

**THE HONOURABLE MRS JUSTICE TIPPLES**

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**Between :**

**CHOWDHURY MUEEN-UDDIN**

**Claimant**

**- and -**

**SECRETARY OF STATE FOR THE HOME  
DEPARTMENT**

**Defendant**

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**Mr Jacob Dean** (instructed by **Carter-Ruck Solicitors**) for the **Claimant**  
**Mr Ben Silverstone** (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 10<sup>th</sup> December 2020  
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**Approved Judgment**

**Covid 19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives and the Press Association by email and release to Bailii. The date for hand down will be Tuesday 16 February 2021.**

## **The Honourable Mrs Justice Tipples DBE:**

### **Introduction**

1. This is a libel action, coupled with a data protection claim.
2. The claims arise out of the report entitled “Challenging Hateful Extremism” (“**the Report**”) which was published in hard copy and online on or about 7 October 2019 by the Commission for Countering Extremism (“**the Commission**”). In this judgment the two forms in which the Report was published are referred to as “**the Hard Copy Report**” and “**the Online Report**”. The Report is 143 pages long.
3. The claim form was issued on 19 June 2020.
4. The Claimant is described in the Particulars of Claim as a British citizen, originally from Bangladesh (at that time East Pakistan), who is a senior and prominent member of the Muslim community in the UK and who helped to set up the Muslim Council of Britain and served as the vice chairman of the East London Mosque.
5. The Commission is, according to the Particulars of Claim, a non-statutory expert committee of the Home Office, formed to study, report and advise government on the threat of extremist behaviour. The Claimant maintains that the Defendant is vicariously liable for the actions and defaults of the employees and officers of the Commission, and is the data controller of personal data processed by the Commission.
6. The Claimant complains about a passage contained on page 54 of the Report, together with the contents of footnote 158. These are pleaded at paragraph 5 of the Particulars of Claim:

#### **“Ideological and Sectarian Violence**

....

We also heard about violence towards secular people from those of a similar faith background. Muslim bloggers described being physically attacked during a protest in East London [footnote 157]. The protest was to show support for the conviction of a senior Jamaat-e-Islami leader for war crimes committed during the 1971 War of Independence [footnote 158]. Some of those we spoke to are in hiding.

#### **Footnote 158**

Links between those responsible for the violence in 1971 and JI in the UK including community leadership in East London are well established. Chowdhury Mueen Uddin, former vice chair of the East London Mosque and who helped found the Muslim Council of Great Britain was found guilty of crimes against humanity following a trial in absentia: See Channel 4. 2013. ‘British Muslim leader sentenced to death for war crimes’ 3 November 2013, (accessed: 4 September 2019) <https://www.channel4.com/Chowdhury-mueen-uddin-war-crimes-london-muslim>.”

7. The Claimant’s case is that, in their natural and ordinary meaning, the words complained of mean and were understood to mean that the Claimant was responsible for serious

criminal violence, including the commission of war crimes and crimes against humanity, during a war of independence in South Asia in 1971. He maintains that that meaning is defamatory at common law, and seriously so.

8. Further, the Claimant maintains that, under the General Data Protection Regulation (“**GDPR**”), the Report contains the following items of the Claimant’s personal data, namely:
  - a. the Claimant was found guilty of war crimes and crimes against humanity following a trial in absentia;
  - b. the Claimant committed war crimes and crimes against humanity during a War of Independence in 1971;
  - c. the Claimant was responsible for serious criminal violence during a War of Independence in 1971;
  - d. the Claimant is a senior leader of the group known as Jamaat-e-Islami; and
  - e. the Claimant provides a link between those responsible for serious criminal violence during a War of Independence in 1971 and the leadership of Jamaat-e-Islami in the UK.
9. The Defendant’s position was set out in a letter from the Government Legal Department (“**the GLD**”) to the Claimant’s solicitors dated 10 September 2020 which stated that the words complained of, in their proper context, bear the following ordinary and natural meaning:

“The Claimant was found guilty by a Bangladeshi War Crimes tribunal, following a trial in absentia, of crimes against humanity in 1971 but the Claimant strongly denies responsibility for such crimes and there are serious doubts about the fairness of the trial, the legitimacy of the Tribunal and the safety of the conviction, as a result of numerous allegations of witness abduction, witness coercion and falsification of evidence in relation to the trial and accusations that it amounted to a show trial.”
10. The Defendant maintains that this meaning is not defamatory at common law. Further, for the purposes of the claim under the GDPR, the Defendant’s position is that the Report conveys the information set out above, as well as the following:

“The Claimant was a member of Jamaat-e-Islami.”

“There are links between those held responsible for the violence in 1971 and Jamaat-e-Islami in the UK in the claimant was found guilty, following a trial in absentia, of crimes against humanity during the Bangladeshi War of Independence in 1971, although the Claimant strongly denies responsibility for such crimes and there are serious doubts about the fairness of the trial, the legitimacy of the Tribunal and the safety of the conviction, as a result of numerous allegations of witness abduction, witness coercion and falsification of evidence in relation to the trial and accusations that it amounted to a show trial.”

11. By a consent order made on 30 September 2020 it was ordered that there be a preliminary trial of the issues of meaning and whether the Report conveys the information alleged for the purposes of the data protection. The parties also agreed that the preliminary trial should determine whether that meaning, as found by the Court, is defamatory of the Claimant at common law (although, by oversight, this issue was not specifically identified in the consent order).
12. The Defendant has not served a Defence and, by agreement between the parties, the time for doing so has been extended until 28 days after the determination of the trial of the preliminary issues.
13. On 4 December 2020 the GLD informed the Claimant’s solicitors that the Defendant had revised her position in relation to the Hard Copy Report. The GLD’s letter explained that:

“[The Defendant’s] revised position is that the words complained of in the Hard Copy Report, in their proper context, bear the following natural and ordinary meaning: “the Claimant has committed crimes against humanity.” It is accepted that that meaning is defamatory at common law.

For the purposes of the claim under the [GDPR], our client’s position is that the Hard Copy Report conveys the following information:

“The Claimant was a member of Jamaat-e-Islami.”

“The Claimant has committed crimes against humanity.”

“The Claimant was found guilty of crimes against humanity following a trial in absentia.”

“The Claimant provides a link between those responsible for the violence in 1971 and Jamaat-e-Islami in the UK.”

For the avoidance of doubt, our client maintains the position set out in our letter of 10 September 2020 in respect of the [Online Report].”
14. The Claimant maintains that words the complained of mean the same in the Hard Copy Report and in the Online Report.
15. The Defendant maintains that the words have a different meaning in the Online Report (as set out at paragraph 10 above), and are not defamatory at common law. This is because the ordinary reader would read and view the Channel 4 website article to which there was a hyperlink provided in the Online Report (“**the Webpage**”), together with the video embedded within that Webpage (“**the Video**”). I was provided with an electronic file containing the video, which I have watched. The parties also provided me with an agreed transcript of the Video, which set out in the right-hand column in the images which can be seen on screen when the words in the left-hand column can be seen.
16. The issues between the parties have therefore narrowed, and the Court is invited to determine the following issues, namely:

- a. What is the natural and ordinary meaning of the Hard Copy Report?
  - b. What is the natural and ordinary meaning of the Online Report?
  - c. Is the meaning determined pursuant to (b) above defamatory of the Claimant at common law?
  - d. What information relating to the Claimant is conveyed by the Hard Copy Report?
  - e. What information relating to the Claimant is conveyed by the Online Report?
17. In order to determine these issues, I should record that, in order to capture my initial reaction as a reader, I first read the Report in full in order to read the words complained of, in context, and I did so without reference to the parties' contentions or submissions. I adopted the same approach to the Webpage and the Video. That is, of course, the accepted general practice in relation to trials of this nature: see, for example, *Tinkler v Ferguson* [2019] EWCA Civ 819 at paras [9] and [37].
18. Before turning to the relevant background, and the parties' submissions, I should summarise the relevant legal principles.

### **Relevant legal principles**

19. Both Counsel summarised the relevant law in their helpful skeleton arguments. There was no real dispute between them and they made the following points.
20. First, the principles to be followed by the Court when determining the single meaning of a publication complained of are now set out in *Koutsogiannis v The Random House Group Ltd* [2020] 4 WLR 25, Nicklin J ("*Koutsogiannis*") at [11]-[12]. These principles are very well known, and I do not need to set them out again here.
21. Second, the context of the words and the medium of the publication is all important when assessing meaning: *Stocker v Stocker* [2020] AC 593, SC at [40]-[45] and *Tinkler v Ferguson* [2019] EWCA Civ 819 at [15]-[18].
22. Third, the ordinary reasonable reader must be taken to read the whole publication which contains defamatory words and any "bane and antidote" taken together. This well settled principle (set out at (viii) in *Koutsogiannis*) derives partly from the practical requirement to derive a single meaning from a piece of text for the purposes of assessing whether it contains a libel or not, and partly from the principle that those who only read the defamatory elements of a publication are not ordinary, reasonable and fair-minded readers: *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65 ("*Charleston*"), esp.[71]-[73].
23. Fourth, context is particularly important when the words complained of are part of a book. The ordinary reasonable reader is taken to have read the whole book and, in relation to ascertaining the meaning of words sued on in the context of a book, "the exercise is essentially one of ascertaining the broad impression made on the hypothetical

reader by the book taken as a whole”: see *Charman v Orion Publishing Co Ltd* [2005] EWHC 2187 (QB), Gray J at [11], cited in *Koutsogiannis* at [14].

24. Fifth, when words are contained in two separate articles in the same hard copy newspaper, the question as to whether they should be read together for the purposes of meaning is whether they “were sufficiently closely connected as to be regarded as a single publication”: *Dee v Telegraph Media Group Limited* [2010] EMLR 20 at [29] per Sharp J quoting from the speech of Lord Bridge in *Charleston* at 70H-71A. The test identified by Lord Bridge in *Charleston* at 70H-71A applies also to online material: *Hourani v Thomson & others* [2017] EWHC 432 (QB), Warby J at [119]. However, the extent to which hyperlinked material in a piece of text complained of would be read by the ordinary reader does not admit of a hard and fast rule; it is a matter to be judged on the facts of each case and “context is everything”: *Monroe v Hopkins* [2017] 4 WLR 68, Warby J (“*Monroe*”) at [34]-[38]; *Falter v Alzmon* [2018] EWHC 1728 (QB), Nicklin J (“*Falter*”) at [11]-[16]; *Poulter v Times Newspapers Limited* [2018] EWHC 3900 (QB), Nicklin J (“*Poulter*”) at [14]-[27]; *Greenstein v Campaign Against Antisemitism* [2019] EWHC 281 (QB), Nicklin J (“*Greenstein*”) at [17], [40]. I return to these authorities in relation to hyperlinked material in more detail below.
25. Sixth, a meaning will be defamatory of the Claimant at common law if it tends to have a substantially adverse effect on the way that right-thinking members of society generally would treat him or her: see, for example, *Monroe* at [23(2)].

### **Context and hyperlinks embedded in an article**

26. Given the issues in this claim in relation to the Online Report, it is helpful to look at the approach taken by the court in *Falter* and *Poulter* as to whether the ordinary reasonable reader will read hyperlinked material embedded in an article.
27. In *Falter* the claim for libel arose from an article published on a website. The first sentence of the article referred to an interview on Sky News, a clip of which was apparently embedded in the article. Counsel for the defendant in that case argued that, having regard to all the circumstances, it was to be inferred that the reasonable reader of the article would also have watched the interview on Sky News. He relied on the fact that the article contained a prominent link to the Sky interview; the article invited readers to watch the interview in the very first paragraph; and readers would have wanted to watch the interview to understand what the article was about. There was debate at the hearing about what approach the court should adopt in relation to whether an ordinary reasonable reader would follow the hyperlink to the interview on Sky News. Counsel for the defendant relied on *Charleston* in support of his argument that the interview on Sky News provided context, and should be taken into account when determining meaning: [10].
28. Nicklin J explained that, in counsel’s argument, he had observed:

“[11.] ... that *Charleston* comes from a different era where print copies of newspapers were essentially the main medium through which people were defamed. In such cases it was relatively straightforward, given that the totality of what was provided to the reader was readily available, to treat the ordinary reasonable reader as having read the entirety of an article including its text, headline, text, furniture and things like that.”

29. Nicklin J then explained how this orthodoxy has been challenged to a degree by the internet:

“[12.] ... because it is possible to set out in on-line publications many hyperlinks to external material. It is perhaps unrealistic to proceed on the basis that every reader will follow all the hyperlinks, but everything depends upon its context. For example, if in a single tweet there is a single statement that says, “X is a liar” and then a hyperlink is given, it is almost an irresistible inference to conclude that the ordinary reasonable reader would have to follow the hyperlink in order to make sense of what was being said. At the other end of the spectrum, a very long article could contain a very large number of hyperlinks. Only the most tenacious or diligent reader could be expected to follow every single one of those hyperlinks. Such a reader could hardly be described as the ordinary reasonable reader. How many links any individual reader would follow would depend on an individual’s interest in or knowledge of the subject matter or perhaps other particular reasons for investigating each of the hyperlinks in question.”

30. Nicklin J concluded that:

“[13.] It therefore does not seem to me to be possible to put forward a hard and fast rule that hyperlinks embedded in an article that is complained of should be treated as having been read by the ordinary reasonable reader.”

31. Further, if it is a matter of dispute, Nicklin J said:

“[16.] ... the court is going to have to take a view as to what [the] hypothetical reasonable reader is likely to do when presented by an online publication and the extent to which s/he would follow the hyperlinks presented to him/her.”

32. However, in *Falter* the judge concluded that he did not need to decide the point in that case as “having read the article and watched the video, it has not ... in my judgment, altered the view I take as to the meaning of the article as a whole” ([18]).

33. In *Poulter* the claim arose from the publication of two articles, both in the print edition of a Sunday newspaper and online. The two articles appeared on the same page of the newspaper, and the judge referred to them as “the Wheeler Article” and “the Bridgen Article”. At the foot of the online Wheeler Article was a section entitled “Related Links” and two articles were featured. One was a link to the Bridgen Article but the reader was not otherwise directed towards the Bridgen Article. Likewise, at the foot of the Bridgen Article, the Wheeler Article was included under “related links”, but the reader was not specifically directed to that article. In relation to the online articles, counsel for the newspaper argued that the two online articles should be read together, and that the court should attribute a meaning to the two articles when read together. Nicklin J rejected the newspaper’s argument for the reasons set out at paragraphs [24] to [28] of his judgment.

34. Nicklin J explained:

“[24.] Here, there was no exhortation, direction or even encouragement given to readers of either the Wheeler or the Bridgen Articles to read the other article, the availability of which was advertised under the heading “Related Links” at the foot of the relevant article. Equally, it is not immediately obvious from the link to the Bridgen

Article how it relates to the Wheeler Article. Whether readers follow links provided like this is influenced by a number of factors, including:

- (1) their familiarity with the story or subject matter and whether they consider they already know [what] they are offered by way of further reading;
- (2) their level of interest in the particular article and whether that drives them to wish to learn more;
- (3) particular directions given to read other material in the article;
- (4) if the reader considers that he or she cannot understand what is being said without clicking through to the hyperlink.

It might be reasonable to attribute items (3) and (4) to the hypothetical ordinary, reasonable reader, but (1) and (2) will vary reader by reader.”

35. Nicklin J then concluded:

“[26.] Applying the principle from *Dee*, it seems to me that the “Related Links” were not sufficiently closely connected as to be regarded as a single publication. It would not have been obvious to readers of one of the online articles that if read alone, it did not constitute or purport to be the full story. On the contrary, the Bridgen Article could easily have appeared to readers to be self-contained and the Wheeler Article itself summarised the Bridgen Article. The “Related Links” offered further reading, but did not suggest that it was *required* reading. Not following a “related link” would not make the reader “unreasonable””.

36. Therefore, for the court to decide what the hypothetical reasonable reader is likely to do when presented with an online publication with hyperlinked material, relevant considerations will include the nature of the online publication, any directions in the online publication to read the hyperlinked material and whether the publication makes sense without the hyperlinked material.

37. There is a further example of the court’s approach to hyperlinked material in *Greenstein*: see [40].

### **Meaning in accuracy claims under the GDPR**

38. The relevant legal principles in relation to GDPR were not in dispute between the parties. The question of how a court should decide whether personal data is in breach of the accuracy principle in a data protection claim has been considered by Warby J in the cases of *NTI v Google LLC* [2019] QB 344 (“*NTI*”) and *Aven v Orbis Business Intelligence Ltd* [2020] EWHC 1812 (QB) (“*Aven*”). The parties agree that the reasoning in those cases should apply in the present context, even though they were brought under the earlier Data Protection Act 1998.

39. In *NTI* Warby J referred to the principle from *Charleston* and explained that in a libel claim “the court must identify the single meaning of a publication by reference to the



response of the ordinary reader to the entire publication” ([80]). He rejected a submission that, in a data protection accuracy claim, the Court “looks not at the ‘natural and ordinary meaning’ of the article read as a whole, but at each discrete ‘item of information’ which it contains”. Warby J preferred the contention that “any factual statement contained in the articles or book extract must be read in its proper context and that any complaint of inaccuracy must be assessed in the light of the ordinary and natural meaning of the article or book extract of which the offending statement is part” ([82]-[83]). Later in the judgment, Warby J considered that, in an accuracy case, the question of whether personal data related to the claimant should be determined by reference to whether “the words complained of would be taken by the reasonable reader of the article or item as a whole to refer to the claimant” ([189]; which was re-affirmed by Warby J in *Aven* see [29], [31]-[33]).

40. I now turn to the relevant background to this claim.

### **Relevant background**

#### *The Report*

41. The Report explains that the purpose of the Commission is to assist the Government, civil society organisations and society in general to counter extremism in all its forms, by engaging in research and evidence-gathering, and providing impartial policy advice and recommendations, in that field. The Commission is governed by a charter agreed with the Home Office which sets out the functions of the Commission and its relationship with, and independence from, the Home Office.
42. The Report is a study of extremism in England and Wales. Its aim is to build public understanding of the harms and impact of extremism as well as to inform the Commission’s recommendations to the Home Secretary about the Commission’s future role and work programme. Its contents are based on information received in response to an open call for evidence, research derived from several specially commissioned academic papers, analysis of data from Government and regulators and literature from academic bodies and thinktanks (pages 18-20 of the Report).
43. The first page of the report contains the following statement:

“Our vision for Challenging Hateful Extremism. Our vision is one where together we uphold our democratic way of life in a peaceful, plural and inclusive society that opposes intolerance; where people exercise individual liberty and take personal responsibility for promoting equal citizenship, recognising the harm extremist behaviours cause to everyone; and where our communities and institutions robustly challenge and resist hateful extremism and support those affected by it.”
44. The index to the contents of the Report is on page 16. The Report is made up of the following sections:
  - a. Foreword by the Lead Commissioner, Sara Khan (page 1).
  - b. Executive Summary (page 5).

- c. Summary of Recommendations (page 10).
  - d. Timeline of Key Events Referenced in our Report, 2003-2019 (page 14).
  - e. Who we are (page 18).
  - f. Part One: What Extremism Looks Like in England and Wales (page 24).
  - g. Part Two: Case Studies of Hateful Extremism (page 64).
  - h. Part Three: Assessing the Current Response (page 78).
  - i. Part Four: Introducing A Human Rights-Based Approach to Countering Extremism (page 116).
  - j. Part Five: Recommendations for Challenging Hateful Extremism (page 124).
45. The words sued on are contained in Part One of the Report. This part is made up of the following sections:
- a. Our Approach to Classifying Extremism (page 25);
  - b. Public Understanding of Extremism (page 27);
  - c. Introducing Hateful Extremism (page 33);
  - d. Hateful Extremism (page 35);
  - e. Scale of Hateful Extremism (page 46);
  - f. Terrorism and Violent Extremism (page 51);
  - g. Restriction of Rights and Freedoms (page 55);
  - h. Boundaries between Categories (page 59); and
  - i. Drivers of Extremism (page 61).

46. In the section “Hateful Extremism” there is an orange coloured box on page 42 of the Report, entitled “Islamism”. The text in this box includes the following explanation:

“Like many faiths, Islam is the overarching term for a plurality of denominations with their own distinct beliefs and practices...

Islamism in the UK started with two Twentieth Century movements – the Muslim Brotherhood in the Middle East and the Jamaat-e-Islami in South Asia...

Islamist groups range from non-violent movements to overtly violent groups [footnote 80]. Some extremist groups (al-Qaeda, Daesh) are clearly beyond the pale, because

their Salafi-Islamist ideology is predicated on an understanding that violent *jihad* between Islam and unbelief, between Muslims and non-Muslims, is necessary [footnote 81]. In this extreme understanding, the Islamist concept of loyalty and enmity (*al-wala' wal-bara'*) requires followers to repudiate and destroy unbelievers and the 'wrong' Muslims [footnote 82]....”

Footnote 82 says this:

“The founder of Jamaat-e-Islami, Abdul Ala Maududi, popularised the idea that Muslims who are not helping to establish an Islamic state are deficient in their faith and are eternal enemies. For a discussion of this concept and Maududi’s influence on Islamist thinking see Matthew Wilkinson. 2019. *The Genealogy of Terror*, London: Routledge, chapter 6”.

47. The words complained of are in the next section of the report entitled “Terrorism and Violent Extremism”. The opening paragraph of this section states:

“This category encompasses (1) terrorism attacks and offences, including activities that are not directly violent such as facilitating or encouraging terrorism, (2) ideological or sectarian violence, and (3) credible threats of serious violence.”

48. Then, under the heading, “Ideological and Sectarian Violence” the Report provides (and the words complained of are *italicised*):

“This category includes engaging in or inciting ideological and sectarian violence that are not typically considered terrorism.

Violence associated with the Far Right can arise spontaneously and manifest as hate crime. Such violence commonly occurs during protests (including against counter demonstrators), and can explicitly target minorities and political opponents. It may be triggered by high-profile events such as Islamist terrorism offences and the EU referendum [footnote 153].

Sectarian violence includes events like the religiously motivated murders of Ahmadiyya shopkeeper Asad Shah and Imam Jalal Uddin. Shah was murdered by Bradford-based Tanveer Ahmed, who saw Shah’s claim to be a prophet as blasphemous [footnote 154]. Imam Uddin’s killer viewed his practice of taweez faith healing as black magic [footnote 155]. The perpetrators in both cases could not accept the legitimacy of their co-religionists’ beliefs or practices and resorted to lethal violence to punish them. The Ahmadiyya community also told us about literature in mosques and in shop windows calling for Ahmadis to be killed [footnote 156].

*We also heard about violence towards secular people from those of a similar faith background. Muslim bloggers described being physically attacked during a protest in East London [footnote 157]. The protest was to show support for the conviction of a senior Jamaat-e-Islami leader for war crimes committed during the 1971 War of Independence [footnote 158]. Some of those we spoke to are in hiding.*

49. Footnotes 153 to 158 provide as follows (and the words complained of are *italicised*):

“153. Benjamin Lee. 2019. ‘Overview of the Far-Right’, p.10, (accessed: 20 August 2019) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/816692/Ben Lee - Overview of the far right.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/816692/Ben_Lee_-_Overview_of_the_far_right.pdf)>

154. HM Advocate v Tanveer Ahmed (High Court in Glasgow, 9 August 2016). (accessed: 20 August 2019) <<http://www.scotland-judiciary.org.uk/8/1639/HMA-v-Tanveer-Ahmed>>

155. BBC. 2016. Jalal Uddin murder: Syeedy guilty over Rochdale imam death’, 16 September 2016, (accessed: 20 August 2019) <<https://www.bbc.co.uk/news/uk-england-manchester-37388073>>

156. Call for Evidence

157. Call for Evidence

*158. Links between those responsible for the violence in 1971 and JI in the UK including community leadership in East London are well established. Chowdhury Mueen Uddin, former vice chair of the East London Mosque and who helped found the Muslim Council of Britain was found guilty of crimes against humanity following a trial in absentia. See: Channel 4. 2013. ‘British Muslim leader sentenced to death for war crimes’ 3 November 2013, (accessed: 4 September 2019) <<https://www.channel4.com/news/chowdhury-mueen-uddin-war-crimes-london-muslim>>”*

*The hyperlinked material*

50. The Webpage - referred to in footnote 158 - is hosted on the Channel 4 News website. There was a reproduction of the Webpage provided in the bundle.
51. The Webpage reports on the death sentence imposed by a special war crimes tribunal in Bangladesh (“**the War Crimes Tribunal**”) on the Claimant and another individual, following a trial in absentia, for crimes against humanity during Bangladesh’s war of independence against Pakistan in 1971. Background information relating to the Claimant, the war of independence and the War Crimes Tribunal are set out.
52. The Video is embedded within the Webpage. At the start of the Video, the presenter refers to the Claimant’s trial in absentia before “a war crimes court in Dhaka” and the fact that “his lawyers have denounced the proceedings as a show trial”. There then follows a brief sequence showing background material relating to the war and the Claimant, a statement by a prosecutor at the War Crimes Tribunal and a comment that “[t]he Tribunal’s actions have caused unrest within the country. More than 100 people have been killed in clashes and the Bangladeshi Government has been accused of falsifying evidence.”
53. The Video then returns to the studio where the presenter introduces Toby Cadman, “a barrister and expert in international criminal law” who has been “representing Mr Mueen-Uddin for the past 3 years”. The remainder of the Video consists of an interview with Mr

Cadman. The presenter's final question is whether the Claimant was "prepared to come out and confront all the allegations in detail". Mr Cadman responds:

"Yes, he will be confronting these allegations in due course. It's understandable that this has come as somewhat of a shock after this process of being tried in his absence a death sentence awarded by a very flawed tribunal. He's understandably shocked today but of course in due course he will be answering these allegations."

54. The Video concludes with the presenter thanking Mr Cadman and expressing the sentiment that the programme looks forward to the Claimant joining them in due course.

## **Libel claim: the parties' submissions**

### *The Claimant's submissions: meaning*

55. The Claimant does not accept that the Defendant's concession, made in the GLD's letter dated 4 December 2020, goes far enough. This is because the Claimant's pleaded meaning contains two further substantive matters:

- a. The Claimant "was responsible for ... the commission of war crimes ... during a war of independence in South Asia in 1971". Mr Dean, counsel for the Claimant, submits that this phrase is taken almost directly from the words complained of in the main text of the Report (p. 54) and, in the main text, the "senior Jamaat-e-Islami" leader referred to is plainly identified to the ordinary reader as the Claimant by the words in the footnote.
- b. The Claimant "was responsible for serious criminal violence ... during a war of independence in South Asia in 1971". Mr Dean submits that this element of the meaning arises from the words in the footnote which identify the Claimant as one of "those responsible for the violence in 1971". In context, where the violence which is referred to is said to have included war crimes and crimes against humanity, the ordinary reasonable reader would understand that violence for which the Claimant is alleged to have been responsible and was both serious and criminal.

56. The Claimant submits that the Online Report means the same as the Hard Copy Report as the ordinary reasonable reader of the Online Report would not have followed the hyperlink in footnote 158, or have read the underlying hyperlinked material. In particular, the Online Report is over 140 pages long, contains 401 footnotes in total and many of these footnotes provide hyperlinked references to other works and, when they do, the hyperlink is often introduced by the word "see" (which is the case in footnotes 13, 49, 52, 62, 89 (6 times), 131 (4 times), 135, 257, 258 and 264).

57. If the Online Report does not mean the same as the Hard Copy Report, then the Claimant submits that the Webpage does nothing to diminish the seriousness of the allegations against the Claimant.

### *Defendant's submissions: meaning*

58. The Defendant accepts that the words complained of in the Hard Copy Report which refer to the Claimant's conviction, taken in isolation from the Webpage and Video, convey an allegation of guilt of crimes against humanity. However, when those words are read in the Online Report in the context of the Webpage and Video, their meaning takes on a substantially different complexion.

59. Mr Silverstone, counsel for the Defendant, submits that the ordinary reasonable reader would not have derived from the words complained of in the Hard Copy Report the additional components introduced by the Claimant's pleaded meaning. In particular, the reference to the "senior Jamaat-e-Islami leader for war crimes committed during the 1971 War of Independence" in the main body of the text would not be identified as the

Claimant, who is referred to in footnote 158. The footnote does not purport to identify that “leader”. Rather it introduces a new topic, namely links between “those responsible for the violence in 1971 and JI in the UK including community leadership in East London”. It is only in that context that the Claimant is identified.

60. As to the Online Report, Mr Silverstone submits that the ordinary reasonable reader would have clicked on the hyperlink to the Webpage contained in footnote 158 and would have viewed the Video embedded within the Webpage. On that basis the Webpage and the Video form part of the context within which the meaning of the words complained of is to be ascertained, for the purposes of the claim in libel and the claim under the GDPR.

61. The Defendant relies on the following factors in support of this argument:

- a. The passage containing the words complained of is in highly compressed and in elliptical terms. The reasonable reader would appreciate that the information provided there is significantly incomplete and far less than “the whole story”. For example, the following matters are unclear from a review of the Online Report: which “1971 War of Independence” is referred to; what the reference to “violence in 1971” relates to; what “crimes against humanity” the Claimant was convicted of; which court imposed the conviction; and who the “senior Jamaat-e-Islami leader” is.
- b. The Online Report positively invites the reader to view the link to the Website, by its use of the formulation “See ...”. In the circumstances a reasonable reader would understand that form of words as meaning that it is necessary to “[s]ee” the Webpage in order to gain a proper and full understanding of the relevant passage of the Online Report. Mr Silverstone submits this is familiar shorthand in a research-type paper, of which the Report is an example.
- c. The Webpage is the only source identified in the Online Report for the allegation relating to the Claimant. The reader would understand that, in order properly to understand that allegation, it is necessary to click on the link to that Webpage.
- d. The Court can properly proceed on the basis that the hypothetical reader of the Online Report is likely to have a strong interest in the detail of the issues addressed by the Online Report and a high degree of motivation to gain a well-grounded understanding of those issues: see *Koutsogiannis*, principle (xi). This follows from the lengthy and academic nature of the Online Report, and its aim of addressing important and complex social issues.
- e. By application of the conventional approach in *Charleston* that the Video should be taken to be part of the Webpage the Court can properly proceed on the basis that the hypothetical reader of the Webpage also viewed the Video.

62. The Defendant’s case is that the “bane” of the reference to the Claimant’s conviction in the Online Report is wholly neutralised by the “antidote” of the Video. The reasonable reader would not interpret the words complained of, understood in their proper context, to convey that the Claimant had committed the offences of which he was convicted.





## Decision

### Issue 1 - Meaning: The Hard Copy Report

63. I have to be careful not to allow consideration of the parties' submissions to cause me to "drift away" from the impression the Report would have on a reader and towards the meaning ascribed by lawyers after prolonged analysis. It is "the former, not the latter, which governs the assessment of the natural and ordinary meaning of words in defamation actions": *Greenstein* at [37].
64. The Defendant now accepts that the words complained of in the Hard Copy Report, in their proper context, bear the following natural and ordinary meaning: "the Claimant has committed crimes against humanity". The issue I have to decide is whether the words complained of mean more than that.
65. The first point made by Mr Dean is that the text in footnote 158 identifies the Claimant as the senior Jamaat-e-Islami leader referred to in the text on page 54. My initial impression on reading the Report for the first time, and before hearing submissions from the parties, was that it did not. This was because:
- a. The protest in East London referred to in the main text was to show support for the conviction of "a" senior Jamaat-e-Islami leader, who is not named in the main body of the text and no information is provided in relation to the date of that person's conviction or the date of the protest relating to it.
  - b. Footnote 158 to that text provides the reader with information about a different topic, namely "links between those responsible for the violence in 1971 and JI in the UK including community leadership in East London are well established" and it is in the context of that topic that the Claimant is identified. The footnote does not provide information to the reader in order to identify, by name, the person referred to as "a senior Jamaat-e-Islami leader" in the main text.
66. My initial view was not changed on hearing submissions from counsel.
67. In particular, I do not agree with Mr Dean's argument that the senior Jamaat-e-Islami leader referred to in the main text is "plainly identified" to the reasonable reader as the Claimant by the words in the footnote. It seems to me that only a reader avid for scandal could reach this conclusion, as it overlooks (i) the very general way in which the leader is described in the main text; (ii) the fact there is no information about the date of the conviction or the date of the protest; and (iii) the different topic introduced in the first line of footnote 158. It is in the context of this different topic, namely "links between those responsible for the violence in 1971 and JI in the UK including community leadership in East London are well established", that the Claimant is identified and the article - "British Muslim leader sentenced to death for war crimes" 3 November 2013 – from Channel 4, 2013 is cited. I agree with Mr Silverstone, a reasonable reader would not, from the information in the footnote, identify the Claimant as a senior Jamaat-e-Islami leader convicted of war crimes.
68. The next point is that the hypothetical reasonable reader will know from page 42 of the Report that Jamaat-e-Islami was a Twentieth Century movement in South Asia. Reading

between the lines, the hypothetical reasonable reader will understand that the 1971 War of Independence referred to in the main text was in South Asia, although the reader will not know where or in which country that war took place. The reasonable reader will also understand that, in footnote 158, “the violence in 1971” is the violence described in the main text to which the footnote is attached, namely war crimes committed during a 1971 War of Independence. That was the impression I formed on reading the Report for the first time. That view has not changed on hearing submissions from Counsel and, for the reasons just explained, I do not agree with Mr Silverstone that a hypothetical reasonable reader would be unclear as to what the “violence in 1971” means.

69. There was no real dispute between the parties that the footnote identified the Claimant as a member of Jamaat-e-Islami in the UK, as he is one of the “links”, described as well established, between “those responsible for the violence in 1971” and “JI in the UK including community leadership in East London”. The Claimant is identified in the footnote as being found guilty of crimes against humanity, which the Defendant accepts, but the reasonable reader will also understand from the footnote that the Claimant is identified as one of those responsible for the violence in 1971, being war crimes committed during a 1971 War of Independence. The reasonable reader will also understand this from the reference to the title of the Channel 4 article at the end of the footnote “British Muslim leader sentenced to death for war crimes” which is cited in support of the statement that the Claimant has been found guilty of crimes against humanity following a trial in absentia.
70. The Hard Copy Report does not provide any details of the crimes against humanity that the Claimant was found guilty of following a trial in absentia. I accept, as Mr Dean pointed out, that an accusation of guilt of crimes against humanity is plainly very grave. However, as Mr Dean also pointed out, crimes against humanity could, although would not necessarily, include serious criminal violence. In these circumstances, it is potentially inaccurate to attribute this meaning to the words complained of in the manner suggested by the Claimant, and I do not consider that a reasonable reader would do so.
71. For these reasons, I determine, as a preliminary issue, that the Hard Copy Report means:
- a. The Claimant:
    - i. was one of those responsible for war crimes committed during a 1971 War of Independence in South Asia; and
    - ii. has committed crimes against humanity during a 1971 War of Independence in South Asia.
  - b. Meanings (i) and (ii) are allegations of fact, which are defamatory of the Claimant at common law.

*Issues 2 & 3 - Meaning: The Online Report*

72. Mr Silverstone, on behalf of the Defendant, advanced very skilful arguments in support of the Defendant’s submission that the words complained of have a different meaning in the

Online Report, and why the reasonable reader would click through to the Webpage and the Video embedded in it. However, I am not persuaded by them.

73. My initial view, on reading the Report, which is an extensive document with a multitude of footnotes, is that the reasonable reader would read footnote 158, but would not then click on the hyperlink at the very end of the footnote. This hyperlink is provided as a citation for the facts set out in the preceding sentence in the footnote, which identifies the Claimant as having been found guilty of crimes against humanity.
74. The Report is, as I have explained above, a study of extremism in England and Wales which was commissioned by the Government. Its contents are based on information from a number of different sources, including responses to an open call for evidence and academic papers. The main body of the Report runs to 138 pages (excluding the Acknowledgments). It is a detailed and extensive document and, as Mr Dean pointed out, it has 401 footnotes. In the main, these footnotes contain supporting references, from a wide range of source material, to information provided to the reader in the main text.
75. In my view there is nothing in footnote 158 which suggests to the reader that the hyperlinked material, which is set out in the text at the end of that footnote, was required reading. Further, I do not consider that the word “See”, which appears before the hyperlinked material, is a direction to the reader to read the hyperlinked material. Rather, that word is, in my view, informing the reader that the hyperlinked material is the citation in support of the text contained in the last sentence of the footnote, namely “[the Claimant], former vice chair of the East London Mosque and who helped found the Muslim Council of Great Britain was found guilty of crimes against humanity following a trial in absentia”. Indeed, the word “see” is used in numerous other footnotes in the Report for exactly the same purpose.
76. Further, the information contained in footnote 158 is entirely self-contained and makes sense. The reader is informed about the well-established links “between those responsible for the violence in 1971 and JI in the UK”, and provided with information showing that the Claimant provides such a link. There is nothing to suggest to readers that they were not getting the full story about these “links” or in relation to the information provided about the Claimant.
77. In these circumstances, whilst some readers, with a particular interest in challenging hateful extremism, may have clicked on the hyperlink, not all readers would have done so. In the context in which this hyperlink appeared in footnote 158 on page 54 of the Online Report I am quite clear that, if a reader did not follow the hyperlink to the Webpage and Video, that does not make that reader unreasonable.
78. In my view, the words complained of in the Online Report mean the same as in the Hard Copy Report (which I have set out at paragraph 71 above), and that meaning is defamatory of the Claimant at common law. The Defendant’s submissions in relation to the Webpage and the Video do not therefore arise, and I do not need to consider them further.

79. The parties were agreed that, having regard to the principles from *NTI* and *Aven* set out above, the Court should adopt a materially identical approach in ascertaining the information conveyed by the words complained of for the purposes of the claim under the GDPR to that taken in assessing meaning in the context of the libel claim. In these circumstances, the meaning of the words complained of, for the purposes of the GDPR claim, should incorporate the meanings to which the libel claim gives rise.
80. There was much common ground between the parties' contentions as to the Claimant's personal data contained in the Hard Copy Report. The main points of difference are whether the personal data included an allegation that the Claimant was guilty of war crimes and whether the violence which the Claimant was said to be responsible for is properly to be described as serious and criminal. In the light of the conclusions I have expressed above the personal data did not include these two allegations. Rather, the allegation is that the Claimant was one of those responsible for war crimes committed in the 1971 War of Independence and, for the reasons identified above, the words "serious criminal violence" are potentially inaccurate.
81. Therefore, in the light of the conclusions I have reached in the libel claim (and the concessions made by the Defendant), the personal data contained in the Hard Copy Report (which is the same as the Online Report) is:
- a. the Claimant was a member of Jamaat-e-Islami;
  - b. the Claimant was one of those responsible for war crimes committed during a 1971 War of Independence in South Asia;
  - c. the Claimant committed crimes against humanity during a 1971 War of Independence in South Asia;
  - d. the Claimant was found guilty of crimes against humanity following a trial in absentia; and
  - e. the Claimant provides a link between those responsible for war crimes committed during a 1971 War of Independence in South Asia and Jamaat-e-Islami in the UK.
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