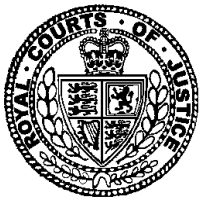

Neutral Citation Number: [2021] EWHC 502 (QB)

Case No: QB-2020-002320

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/03/2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE DBE

- -

Between :

LANCE DORIAN RANGER	**Claimant**
- and -	
CHARLES PYCRAFT	**Defendant**

- -
- -

Ms Felicity McMahon (instructed by Boyes Turner LLP) for the **Claimant**
Mr David Hirst (instructed on a direct access basis) for the **Defendant**

Hearing date: 19th January 2021

- -

Approved Judgment

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THE HONOURABLE MRS JUSTICE COLLINS RICE DBE

Mrs Justice Collins Rice:

Introduction

1. The Claimant, Mr Ranger, is a practising solicitor in England & Wales, and the owner and Managing Director of Attendus Trust Company AG, a global fiduciary company providing professional trust, legal and business services, based in Switzerland. The Defendant, Mr Pycraft, is a former photo-journalist, with 15 years' NUJ-accredited experience and high-profile celebrity stories to his name. In recent years his life has taken a new turn, and his professional world is now in gardens.

2. After his father's death in 2013, Mr Pycraft became convinced there were serious irregularities in the management and distribution of assets relating to the estate. The focus of his concerns was a trust managed by Attendus. He sought to enter into correspondence with Attendus but, as they took the view that he was not himself a beneficiary of the trust, Attendus declined to engage with him. So Mr Pycraft took matters further. He reported Mr Ranger to regulatory and law enforcement agencies in the UK, Switzerland and Mauritius, suggesting they should investigate his management of the trust as improper, unprofessional and unlawful. None of the bodies he approached agreed to investigate. Mr Pycraft tried publicity. He approached MPs. He went online with allegations against Mr Ranger of the most serious professional and criminal wrongdoing.

3. When Mr Ranger became aware of the online activity, he instructed solicitors to protect his personal and business reputation and prevent harassment, on the basis that he strenuously denied the allegations. The solicitors asked Mr Pycraft to remove the material of which they had become aware, and to sign an undertaking about his future behaviour, or face defamation proceedings. Mr Pycraft signed. This is now Mr Ranger's claim that Mr Pycraft has breached his undertakings.

The Undertakings

4. These were the undertakings Mr Pycraft signed on 16th March 2018:

> In consideration of Lance Ranger refraining from bringing legal proceedings against me for the defamatory material published or circulated by me as set out in letters to me from Boyes Turner LLP dated 13 June 2017, 9 January 2018 and 15 March 2018, I undertake to:
>
> 1. Not now or in the future to publish any further defamatory statements of the same or similar nature to the posts complained of in the letters referred to above either myself or acting by an agent.
>
> 2. To immediately delete all publications and posts identified in the letters referred to above together with any and all similar posts.

3. Where a post is not under my control due to cached or historic information, to use my best endeavours to contact the organisation with control of the post and require that they assist in its deletion.

4. To pay the legal costs incurred by Mr Ranger in connection with the defamatory publications to be assessed on an indemnity basis if not agreed if I breach any of the undertakings 1 to 3 above.

5. The undertakings mention three solicitors' letters. The first, dated 13th June 2017, identified five online posts by Mr Pycraft about Mr Ranger, together with *links on your Google+ account or any other social media account that link back to any articles about Lance Ranger*. It complained of defamation and harassment, and threatened a formal letter of claim. It described the material complained of in the following terms:

> "The general thrust of your posts is that our client has stolen from you, carries out fraudulent activity including running a charitable foundation as a fraudulent front, acts in breach of trust and is untrustworthy. These are wild, unsubstantiated allegations that above all are entirely false and go to the core of our client's professional work as well as impinging on the labour of love that is our client's charitable foundation in an egregious manner."

It required permanent deletion of all the items identified, in their entirety, together with "any colourably similar publications", and asked him to stop harassing Mr Ranger. It noted that Mr Pycraft had been asked to remove 'such posts' by Mr Ranger's Swiss lawyers by a letter of 9th May 2017 but had not done so.

6. Correspondence ensued, in which Mr Pycraft confirmed that he had removed the material complained about. Some of his regulatory and law enforcement complaints were also discussed.

7. The second letter, dated 9th January 2018, said that although Mr Pycraft had taken down posts in response to the 13th June 2017 letter, he had since created new defamatory posts. Two were identified, together with links set out in the same terms as the previous letter. Again, the material was described, action required, and a formal letter of claim indicated, in more or less identical terms as before. Mr Pycraft replied on 19th January that he had taken down the material specified. He described this as a goodwill gesture with a view to a 'positive resolution'.

8. The third letter (15th March 2018) was a response to this. It had come to the solicitors' attention that *further posts of the same and/or similar allegations have been published by you online via your social media accounts*. The letter also said Mr Pycraft was continuing to publish a statement on the 'links' section of his website containing allegations of criminality, despite having been asked to delete it permanently. It required permanent deletion of a number of specified posts, along with any references and/or links to such posts (including by way of his Google+ account); and of any other online posts of the same and/or similar allegations, along with any references and/or links to such posts.

9. The material specified included a number of Mr Pycraft's Facebook posts; each and every tweet published by him under the account name 'cryptothermite' and with the hashtag #LanceRanger or the words "Lance Ranger"; and four Instagram posts. The material appears to span a period running from 21st March to 4th December 2017. The letter required removal of the material, together this time with signed undertakings as to deletion and future

conduct, within 7 days, otherwise indicating instructions to commence proceedings. It encouraged Mr Pycraft to take legal advice. Mr Pycraft signed and returned the undertakings, set out above, the next day.

10. The material specifically identified in the three solicitors' letters cumulatively amounted to some 40 or 50 items they had come across. This material is in emphatic terms. It accuses Mr Ranger of systematic international fraud, theft, money laundering (including drugs money), tax evasion and other dishonesty, including using a charitable foundation as a front for these activities, and in particular misappropriating trust funds and cheating and defrauding Mr Pycraft and his family. They memorably describe Mr Ranger, referencing the administration of his father's estate, as a 'modern day grave robber'.

The Alleged Breaches

11. Mr Ranger alleges two distinct breaches of the undertakings. He says, first, that Mr Pycraft published 'further defamatory statements of the same or similar nature to the posts complained of', contrary to paragraph 1, in the form of a briefing Mr Pycraft sent on 28th November 2018 to a US investigative journalist, Ms Komisar (attached at Annex A to this judgment). After discussion, and with his encouragement, she in turn on 5th December 2018 posted his story on a listserv (emailing list) subscribed to by a couple of hundred other investigative journalists (attached at Annex B).

12. Mr Ranger also says, secondly, there are three tweets falling within the terms of paragraph 2 of the undertakings that Mr Pycraft failed to delete.

13. On the basis of these alleged breaches, Mr Ranger now seeks a remedy by way of enforcement of paragraph 4 of the undertakings (reimbursement of costs), and a permanent injunction to enforce the undertakings and restrain further breaches.

14. Mr Pycraft says he has not breached the undertakings at all. He says the briefing he sent to Ms Komisar and the listserv posting do not count as 'publishing' for the purposes of the first undertaking and/or are not 'of the same or similar nature' to the postings to which the undertakings refer. Alternatively, he says there are good reasons in law why the undertakings should not be applied so as to lead to a finding that these briefings constitute a breach. As regards the three tweets, he says there is no real proof he failed to delete them.

Legal Framework

15. This claim is brought in contract law, for remedies for breach of contract. It is not a defamation action. But it is about a contract to compromise threatened defamation proceedings. It is not disputed that the signed undertakings constitute a binding legal contract which is in principle enforceable as such, or that, as a general principle, there is clear public interest in enforcing agreements to settle live or threatened litigation.

16. The general approach I should take to interpreting the undertakings is not in dispute either, and I have been directed to helpful summaries in the authorities (*Rainy Sky SA v Kookmin Bank* [2011] 1 WLR 2900 at paragraphs 19-21 and 29-30; *Lukoil Asia Pacific PTE Limited v Ocean Tankers (PTE) Limited* [2018] EWHC 163 Comm at paragraph 8). I have to make an objective assessment of the ordinary meaning of the words used - what a reasonable

person, with all the background knowledge reasonably available to the parties at the time, and having regard to all the relevant context, would understand them to have meant. I have to look at the agreement as a whole. In case of any ambiguity, I am to prefer the meaning which makes the best business common sense. In an appropriate context, that may require being aware of any technical or legal meaning of terms used.

17. These undertakings compromised potential defamation proceedings. (They did so at an early stage. No proceedings were further threatened or issued until now.) The undertakings use terms which have technical meanings in that context. The word 'defamatory' itself is one such. In general legal (or 'common law') terms, material is defamatory if its natural and ordinary meaning would substantially affect in an adverse manner the attitude of other people towards the person written about, or has a tendency to do so. 'Substantially' is a test of gravity or seriousness. The Defamation Act 2013 makes further provision, importing a threshold of serious reputational harm to be established by a claimant, and providing a number of possible defences, including the truth of factual allegations.

18. 'Publish' has a technical meaning in defamation law. It means much more than to make public or to place in the public domain. It includes simply communicating material to another person.

19. Undertaking 'not to publish any further defamatory statements of the same or similar nature to the posts complained of' is a formula in common currency in defamation litigation: judicially observed to be of 'long and hallowed usage' but with a caution against being 'interpreted too widely' (*Bentinck v Associated Newspapers* [1999] EMLR 556 at 568-569).

Analysis

(i) "further defamatory statements of the same or similar nature to the posts complained of"

20. The first question is whether the briefing postings of November/December 2018 constitute *further defamatory statements of the same or similar nature to the posts complained of* in the three solicitors' letters mentioned in the undertakings.

21. Mr Pycraft's initial email to Ms Komisar sets out the gist of his allegations against Mr Ranger in terms which are entirely recognisable from the material previously objected to – 'modern day grave robber' included. Although the edited version Ms Komisar posted is much toned down, that turn of phrase is retained, as are allegations about defrauding his family and others, and actual or attempted misappropriation of trust funds. Ms Komisar adds her own observation that it is a story about "how offshore companies cheat the heirs of people whose assets they control", and links it to the issue of Swiss banks wrongly trying to keep the assets of Holocaust victims. It is clear that these statements are the same or similar in *content* to those originally complained of, and *defamatory* to the same extent.

22. Mr Hirst, Counsel for Mr Pycraft, argued that the briefing postings are nevertheless not within the terms of the undertaking because they are not 'of the same or similar *nature'*: they are not personal tweets, blogs or other postings in public or social media fora, they are private or semi-private briefings.

23. This is put in the first place as a point of interpretation. I remind myself to look at the agreement as a whole, not to consider selected phrases in the abstract. I am not theorising

about ‘same or similar nature’; I am considering whether the briefings are *further defamatory statements of the same or similar nature to the posts complained of*. I do not find any ambiguity on the face of this. This is an agreement compromising a threatened defamation action. What Mr Pycraft agreed not to do was publish *defamatory statements*. The scope of the undertaking is explained by reference to the previous complaints. It is the *content* of the (previous) posts which is complained of, not the format, and I see no basis either to be uncertain about that or to read in any limitation of format.

24. If I *had* felt any doubt, it would have been quickly resolved. The agreement incorporates the three solicitors’ letters by express reference, to identify the defamatory *statements* not to be published. The letters identify the defamatory statements not to be published in a number of ways, all of which go to content: by the ‘general thrust’ descriptions of content set out, by reference to the ‘same and/or similar *allegations*’, and by using the inclusive expression ‘colourably similar’. There is no basis in this for any residual ambiguity, or for reading in limitation as to form.

25. Had there been any ambiguity, it would be answered by ordinary principles of interpretation. It is inconsistent with business common sense to read limitations of form into a defamation settlement which does not specify any. No reasonable person would think, reading these undertakings, that the parties agreed that Mr Pycraft was free to publish his allegations so long as he did not use his own website and avoided social media. He was obviously not, for example, free to take to hard-copy mailshot instead.

26. To be fair, I did not understand Mr Hirst to be arguing for implied limitation of form or medium by itself, but rather for limitation of audience or purpose. He drew attention to the point that Mr Ranger did not seek to limit Mr Pycraft’s correspondence with the enforcement bodies – and that it would equally make no business sense to read the undertakings as *unlimited* other than by content: Mr Pycraft was obviously not, for example, restrained from discussion at the kitchen table or within his family.

27. A settlement of defamation proceedings may well be understood in the normal course to exclude privileged correspondence with legal advisers, regulators, law enforcement bodies and MPs, without that having to be spelled out. It may be that questions would also arise about conversations or correspondence which had a quality of confidentiality or privacy. Mr Hirst did not suggest that the briefings in this case were privileged, and they did not take place in the domestic domain. But Mr Hirst argued that they nevertheless should be read as falling outside the terms of the undertaking because they were not intended to be, and were not, public. This was put in a number of ways.

28. First, as a matter of *interpretation* of the agreement, it is said that the references to ‘same or similar’ should be understood to be limited not just by reference to content (and form) but also by reference to audience and purpose. For the same reasons that I cannot find ambiguity in the expression *further defamatory statements of the same or similar nature to the posts complained of* so as to limit its scope to certain forms only (or, if there is ambiguity, it is swiftly resolved), I am satisfied that a limitation to public-domain postings cannot be inferred from the fact that only specific postings of that kind were identified in the solicitors’ letters. Naturally, the postings specifically complained of were those Mr Ranger and his solicitors had encountered in open-access domains. But, as explained, I consider that the class of statements captured by the incorporation of the solicitors’ letters into the undertakings is captured by reference to the content – the allegations. (Mr Hirst has a separate, but related, argument about the meaning of ‘publish’ in these undertakings, which I consider below).

29. Mr Hirst had a further angle on this issue, however, which might be put as a proposition that the briefings belonged in the same legal and public policy sphere as privileged or private communication. It was the evidence of both Mr Pycraft and Ms Komisar that they were working on the basis that her post could be accessed only on a subscription basis by a closed category of viewers, and that any journalist who did show an interest would revert to Mr Pycraft before taking any further step. Mr Pycraft said his principal interest was not in the further dissemination of his allegations by journalists, but in one of them taking enough interest to research his concerns thoroughly and perhaps get evidence that would help him prove his point (no-one did).

30. Mr Pycraft had approached Ms Komisar at a conference (which he had attended for the purpose of pursuing his interest in having Mr Ranger investigated by law enforcement authorities and regulators, or others). He discussed his views about Mr Ranger with her frankly. He followed this up in his 28th November 2018 email and subsequently. Ms Komisar was not interested in pursuing the story herself, but introduced the idea of the listserv posting to see if any other investigative journalist wanted to. He encouraged her to do that, preparing a version of his story for that purpose which, after some editorial to and fro, she duly posted. It was not disputed before me that she acted as his agent in doing so. It is apparent from the exchange between them that she did.

31. Neither Mr Pycraft nor Ms Komisar knew for sure, or was able to demonstrate themselves, that the listserv was closed and that viewing access (as opposed to posting access) was password protected. Both candidly accepted they were not especially knowledgeable about the technicalities of how the listserv worked. There was some evidence that viewing access was not in fact closed *at the time of the postings* although may have become so later, including in exchanges Ms Komisar subsequently had with the list administrator and from indications on the face of Ms Komisar's postings that *some* items were 'masked' (requiring login access) suggesting that the rest was not. I was invited to contemplate theories that the listserv had been hacked or otherwise technically violated but there was no evidence on which I could place weight that these were anything other than that: theories.

32. It is also significant that there is no evidence that either Mr Pycraft or Ms Komisar had any concern at the time to protect this information, or was otherwise treating it as private or confidential. Their concern was for the allegations to reach a wide journalistic audience. While anyone interested would no doubt have reverted to Mr Pycraft for further information, it was not suggested that he would have had any sort of editorial control over what happened next: he was trying to engage journalists, not private investigators, and journalists want stories to sell, as Ms Komisar fairly accepted. This was to be an exercise in researching a story, in which journalists would have their own interests (or not, as it turned out). Her evidence was that Mr Pycraft had not even told her about the undertakings.

33. I do not find a basis in these facts for discerning a pull towards the classes of case with which the undertakings may not have been concerned – privileged, private or confidential communications. I test the proposition by asking whether, if there is any doubt about the matter, it makes objective business common sense to conclude that the compromise of Mr Ranger's defamation claim was made on the basis that Mr Pycraft was free to pursue his allegations not just through formal legal, regulatory and law enforcement channels but with the assistance of, and potentially in the alternative through, a substantial class of professional journalists on an open-ended basis. I am not satisfied that it does.

34. Mr Hirst suggested that the journalistic dimension itself assisted Mr Pycraft – that he should be regarded as Ms Komisar's confidential source. I cannot see that the law on journalists'

sources fits the facts of this matter. What Mr Pycraft wanted Ms Komisar to do, and what she did, was to *publicise* his name among her journalist contacts, not shield it. It is that activity I am focusing on here, not any conceivable future publication by a journalist seeking to protect him as their source. Perhaps that is what Mr Pycraft hoped to achieve in the long run, but it is not what the listserv exercise in itself was about.

35. Mr Hirst's final argument for excluding the postings from the ambit of the undertakings, as a matter of interpretation, is that the undertakings are themselves oppressive to Mr Pycraft in their uncertainty and breadth. They describe the prohibited postings according only to the contours of the law of defamation and by reference to whatever the common denominators are of a large class of specific examples cited. How is Mr Pycraft to be expected to carry that class around in his head? He is not a defamation lawyer. Unlike some of the authorities we looked at, this is not a case where reference back to pleadings provides a clear articulation of what he is and is not permitted to do. The undertakings are simply too informal, brief, allusive and vague to be properly capable of enforcement.

36. I disagree. Mr Pycraft was in no doubt that formal legal relations were intended by these undertakings and that if he breached them there would be legal consequences. On his own evidence he was clear about the nature of the allegations that they bit on, and accepted that, as to content at any rate, the briefings did contain the prohibited allegations; he accepted that if he had put them on his website that would have breached the undertakings. The multiple examples cited in the solicitors' letters were all of the same sort of allegations, and I reject the argument that the sheer number of examples given dilutes the enforceability of the undertakings. That would mean that the more extensive and multiplied the previous publications, the less enforceable the undertakings, which is simply not business common sense at all. My task is not to construe the undertakings comprehensively or to speculate about possible examples of ambiguity. It is to apply these undertakings to the content of these briefings. They are clearly *further defamatory statements of the same or similar nature to the posts complained of in the letters referred to*.

37. For all these reasons, I conclude that the postings fell squarely within the ambit of the undertakings by reference to their content, and that no other sustainable basis appears in all the circumstances for excluding them. The next question is whether they were 'published'.

(ii) "publish"

38. There is no indication that Mr Pycraft sent his email to anyone other than Ms Komisar in the first instance, but as already noted it is also clear that she was acting at his behest in posting it on the journalists' listserv. Both actions undoubtedly count as 'publishing' by Mr Pycraft as that term is understood in defamation law. But Mr Pycraft says that he did not think it was inconsistent with his undertakings. And Mr Hirst says he was right.

39. Mr Hirst's argument is that, *even if* the briefings were further defamatory statements of the same or similar nature to earlier postings complained of, it is neither accurate nor fair that 'publish' be given its technical defamation meaning. Notwithstanding that they compromise a threatened defamation action, the undertakings were not professionally negotiated: they were delivered as an ultimatum and Mr Pycraft, a layman, unwilling to submit at that point to a defamation trial as the proper forum for determining the substance of his allegations and the future course of his pursuit of them, signed immediately. He would naturally have understood 'publish' to mean to make public or to place into the public domain. And a reasonable, objective reading of the agreement at the time, bearing in mind

that all the previous posts complained of were personal advertisement of the allegations in the public domain, would give Mr Pycraft the benefit of any doubt.

40. I have reflected on this point. There is some evidence that Mr Pycraft was informally legally assisted at at least some relevant stages in these proceedings, and he was explicitly invited by Mr Ranger's solicitors to take legal advice. I do not, however, place conclusive weight on that: there was some inequality of legal arms at the time of the signing. I also take into account that, although formal, these undertakings are brief and do to some degree rely simply on the contours of the law of defamation for the understanding of their ambit. However, I think the better view is that that probably makes it more, rather than less, likely that the technical meaning of 'publish' is to be preferred.

41. Where defamation proceedings are settled on the basis of restraining the publication of defamatory material of a certain description, it seems to me that if there *is* any doubt about the meaning of 'publish' then at least the starting point is the meaning of that word in defamation law – just as the meaning of 'defamatory statements' must ultimately be referred to the same source of law. This is not a case, like some of the authorities we looked at, where the undertakings purport to go *wider* than defamation law in the restrictions they impose (cf *Mionis v Democratic Press SA* [2014] EWHC 4014 (QB); [2018] QB 662). The undertakings here appear simply to track defamation law.

42. What conclusion does that lead to about their meaning and enforceability? Defamation law is complex and contestable. Of course, as Mr Hirst says, none of Mr Pycraft's allegations had been conclusively ruled to be 'defamatory', but that is the nature of agreements to settle defamation proceedings. The earlier they are settled the more untested is *either* party's legal position – and the more valuable it may be to *both* parties to compromise rather than be put to the (burdensome) task of establishing all the aspects of a claim or defence. Early settlements are no less enforceable in law or encouraged as a matter of public policy than late settlements where specificity may be at a higher premium for both parties. 'Defamatory' in a context like this can be understood in the common law sense of being of defamatory tendency – not in the sense of being unanswerable in the terms of the 2013 Act. On Mr Pycraft's own account, he did not (and does not) accept that his allegations are indefensible, simply that he was not at the relevant time in possession of enough evidence to defend them in a defamation action. That is why he enlisted Ms Komisar's help. But the undertakings must acknowledge that they were prima facie of defamatory tendency – the settlement can hardly mean anything else.

43. This set of undertakings, viewed objectively, places the responsibility on Mr Pycraft to take care about where he takes his allegations, unless and until he is able and willing to defend them in a defamation action. But it does not do so indiscriminately. It places the full burden on him where the material is under his control, but merely requires best endeavours where it is not. This is a balance of risk as to the ultimate unlawfulness of his actions which is well within the ambit of business common sense. Whether or not he would be found to have 'published' something in the technical sense is part of that overall balance of risk.

44. I accept the technical meaning of 'publish' is just a starting point, and if good reason for a meaning restricted to placing in the public domain appeared in all the circumstances then a case for preferring that meaning should be considered. But in this case, I do not see a good reason for departing from the defamation law meaning, since defamation law otherwise entirely defines the balance of legal risk agreed between the parties. Indeed, to depart from the technical meaning would increase, not reduce, the uncertainty of the agreement.

45. But even if Mr Pycraft's email to Ms Komisar had not counted as 'publishing', then her action on his behalf in posting it to a listserv accessible to journalists numbered in the hundreds still has to be considered. I do not consider it sustainable from a business common sense point of view to read the undertaking as restraining only wholly unconfined publication to the entire world. Somewhere on the line between an intimate whisper and a public tweet, a point of sufficiency is reached for even the most informal understanding of the meaning of 'publish' in this agreement. In my view that point is reached where material is made available to two hundred investigative journalists on an unconditional basis.

46. In any event, my conclusion on the evidence in this case is that is it more likely than not that the listserv posting was at least for some time publicly accessible. It was Mr Ranger's evidence that he came across Ms Komisar's post on 2nd August 2019 when his then partner googled his name and that of his charitable foundation, and Ms Komisar's posting came up. His partner sent him a screenshot showing the result of her search and the link to the item. He took his own screenshot. He sent it to his solicitors. They opened the link, saw Ms Komisar's posting and took screenshots. This evidence is not materially challenged on any factual basis, and I accept it. I am satisfied that it indicates that this material was straightforwardly publicly accessible in August 2019.

47. I have already indicated why I do not place weight on the theories offered as to how this might have happened despite the best endeavours of Mr Pycraft and Ms Komisar. There is no supporting evidence as to best endeavours in any event. Mr Pycraft's undertakings were not in Ms Komisar's mind because she did not know about them, and Mr Pycraft was eager to reach a wide audience of possibly helpful journalists. I did not see persuasive signs of the exercise of due diligence in the protection of this material at any point in this process. There is no positive evidence that the material was password-protected (and some that it was not) or that it was or 'must have been' hacked or otherwise rendered accessible by means which were wrongful or beyond Mr Pycraft's or Ms Komisar's control. *Even if* (contrary to my view) the undertakings were intended to refer only to the placing of material into the public domain, they placed the burden on Mr Pycraft to take care (assume the risk) as to that, and the least that can be said on the evidence I have accepted is that that risk was realised.

48. In all of these circumstances, it is my conclusion that Mr Pycraft's conduct leading up to and including Ms Komisar's briefing post constituted a breach of his first undertaking.

(iii) non-deletion

49. Although that conclusion disposes of the case on the issue of liability, I turn to the matter of the three tweets.

50. The solicitors' letter of 15th March 2018, referred to in the undertakings, included the following among the tweets it specifically asked Mr Pycraft to remove:

> Cryptothermite @yiquai • 11 Aug 2017 #moneylaundering
> #lanceranger #attendus #Switzerland #Liechtenstein - at The Park
> Tower Knightsbridge
>
> Cryptothermite @yiquai • 12 Aug 2017 @InfiltratorMov
> #Undercover in the World of #DrugBarons & #DirtyBanks
> #lanceranger #attendus @ICIJorg @f_obermaier

amazon.co.uk/dp/0552172111/... - at Hunger Cure Fish &Chips Kebab

Cryptothermite @yiquai ~ 12 Aug 2017 #Banks #Cartels #MoneyLaundering #lanceranger #attendus @Jay_D007 ~ @corbettreport @ICIJorg @f_obermaier @b_obermayer - at Nightjar

51. It is the clear evidence of Mr Ranger and his solicitors that they came across these three tweets, and took screenshots of them, by an ordinary internet search in August 2019, which they undertook following their discovery of Ms Komisar's briefing. The tweets now appeared under the username 'Charlie Pycraft' instead of 'Cryptothermite'. Mr Pycraft confirms that in the intervening period he had made this change of username on his @yiquai account. This suggests that the tweets were live when they were discovered – and so had not been deleted.

52. Mr Hirst seeks, however, to dissuade me from that last inference. He says that the solicitors were plainly monitoring compliance with the undertakings. They did not complain in March 2018 or in the intervening period that these tweets had not been deleted. He says that any search conducted using the search terms 'lanceranger' or 'attendus', for the purposes of making the deletions required by the undertakings and/or for the purposes of verification subsequently, would have turned up these tweets had they been live at the time. He says that suggests the tweets had in fact been deleted. He also says that there is a credible explanation for the later discovery of the tweets. He says the screenshot taken by the solicitors suggests that the tweets were not live on Mr Pycraft's own account but on a Twitter page that indexes hashtags, which had picked up the '#lanceranger' hashtag in a cached version of the tweets *after* they had been deleted (of course, had the tweets already appeared on this Twitter page at the time of the undertakings they would then immediately have engaged the obligation to delete 'similar' material).

53. On one account therefore, Mr Pycraft failed to delete the tweets, and that was overlooked at the time by him and by the solicitors. On the other account, he did delete but they re-emerged later on another Twitter page. The first would be a clear breach of the undertakings; the second would raise the issue of the obligation to use best endeavours to secure deletion by the organisation with control. The parties did not give me any very distinct picture of what best endeavours would look like in such circumstances. The solicitors had made clear at the time that it was Mr Pycraft's responsibility and not theirs to check for and secure the deletion of the material specified and 'similar' material. Before me, Mr Ranger argued it was not his job to police the undertakings by making periodic searches for defamatory material when Mr Pycraft was responsible for his own publications either because he controlled them or was best placed to take action over cached material.

54. I see force in an argument that the balance of the risk of persistent publication or non-deletion of earlier material was placed by the undertakings on Mr Pycraft, and that that is a practical or business common sense interpretation of the agreement. The mechanisms for checking, and for securing the outcome envisaged by the undertakings – deletion or engagement with a third party controller – were under his control. I also consider that, on the evidence, the balance of probability comes down in favour of a conclusion that Mr Pycraft (and the solicitors) failed to spot that the tweets had not been deleted: their appearance under the later 'Charlie Pycraft' username suggests that they remained live rather than reappearing in a pre-March 2018 cached form. If I am wrong about that, then I

accept that the undertakings placed the burden on Mr Pycraft to check for the persistence or re-emergence of deleted material and act on anything discoverable. On any of the factual bases put to me, therefore, it appears to me that the balance comes down in favour of a conclusion that there was probably a breach of the undertakings in this respect. I accept that that conclusion is consistent with a considerable degree of doubt remaining about what happened. However, as I have said, the issue is not determinative of liability in this case.

Conclusion on liability

55. For the reasons given, I am satisfied that Mr Pycraft breached the undertakings he signed on 16th March 2018.

Remedy

56. The agreement provides for a remedy for breach in the form of an agreement to pay Mr Ranger's legal costs. It was not argued before me that that was not enforceable.

57. Mr Ranger also seeks a permanent injunction against Mr Pycraft, to enforce the undertakings by adding the considerable sanction of contempt of court in the event of further breach. Mr Hirst drew my attention in this context to section 12 of the Human Rights Act 1998, which applies if a court is considering whether to grant any relief which might affect the exercise of the Article 10 ECHR right to freedom of expression. Section 12(4) directs the court to have particular regard to the importance of the right to freedom of expression, and, where journalistic material is concerned, to the extent to which it is or will become available to the public or publication would be in the public interest. Section 12(3) provides that a court is not to prevent publication before a trial of the lawfulness of publication unless satisfied it is likely that the publication will be found unlawful at trial.

58. I am not being asked in this case to injunct a specific publication, before trial of the status of that publication as defamatory. I am being asked for a permanent restraint on the publication of a class of material, defined by content, of the kind which would be sought at the end of a defamation trial. I remind myself that the underlying cause of action in this case is for breach of contract, not for defamation. I also remind myself that the abridgment of Mr Pycraft's freedom of expression in this case has two sources in law. The first is the voluntary restriction undertaken in the contract itself, for which Mr Ranger has given good consideration in foregoing his cause of action. The second is the law of defamation itself, since the agreement is defined by direct reference to the contours of that law (and, as has already been noted, is in that respect distinguishable from cases such as ***Mionis***). In those circumstances, I do not understand there to be a separate argument from Section 12 or Article 10 to inhibit injunctive relief: Mr Pycraft's freedoms to give and receive information do not include freedoms to breach defamation law.

59. Nevertheless, defamation law does not give Mr Ranger an absolute right to restrain these allegations permanently. This is not an application based on a final judicial determination of the merits of the parties' respective positions. Injunctive relief is a discretionary remedy, and I have to look attentively at the case for it here.

60. An injunction is a preventative measure, and so one of the most important factors I have to consider is whether there is a real and substantial risk of continuing or further publication in the future if I do not grant an injunction now.

61. Mr Ranger's concerns are that, prior to the undertakings, Mr Pycraft was clearly engaged in an extensive and vehement campaign of allegations against him which on his account were not only outrageous but were cynically motivated by a desire for money to which he had no entitlement, and which constituted distressing personal harassment. Mr Pycraft agreed to desist, but the November 2018 briefings to and by Ms Komisar are a clear indication of his continuing intention to pursue his campaign, including by proxy means. Mr Pycraft has never resiled from his allegations. Although he has, alongside defending this present claim, made what he describes as an 'open offer' to undertake *not to make any further statement in any medium, and whether in private or in the public domain, to any third party (save as required by any legal requirement)* reflecting the allegations complained of, Mr Ranger says this is not to be relied on as Mr Pycroft is not to be trusted.

62. On the other hand I have before me two single instances of breach of the undertakings: the briefings of November 2018 and discovery in August 2019 of the three tweets from August 2017. Mr Pycraft says that, these matters aside, he immediately removed all the material specifically complained of and anything else he could think of. The burden of the undertakings was considerable, and he was not a technical expert; the process of cleansing the internet was understood from the outset to be likely to be a complicated one involving 'unknown unknowns', and the possibility that traces would linger here and there, or that cached historical material would find its way back, was expressly acknowledged. And he did otherwise desist: he stopped the public commentary and restricted his activities to the pursuit of redress through proper and permitted channels. His evidence before me was that his life is now taking a new direction and he has drawn a line under his past activity.

63. I take all of this into account. I accept that, notwithstanding that Mr Ranger's solicitors had written informally on more than one occasion in the couple of years previously without achieving the desired effect, the undertakings did mark a clear switch to restraint in Mr Pycraft's conduct and that he took them seriously. The two breaches before me are the only examples discovered since, and are not directly related to each other. I accept Mr Pycraft's evidence that the reason he approached Ms Komisar and might have thought it consistent with his undertakings was that he was seeking help with pursuing legitimate lines of inquiry and redress – a failed attempt to enlist investigative resources. He was wrong about the undertakings, and this was a mistake, but I accept it may have been no more than that. The three stray tweets from 2017 are more likely explained by oversight than as a deliberate part of a continuing campaign. Mr Pycraft appears otherwise to have ensured removal of the material constituting the breaches and does not appear to be in continuing breach of his undertakings. It is not complained that any defamatory material continues to be published.

64. In all these circumstances I am not persuaded on the materials before me that the risk of future breach is sufficiently high to indicate the granting of injunctive relief at this stage. If, on the other hand, Mr Pycraft gives any further cause for concern about this, any judge considering a future application for a restraining injunction will then have an additional perspective.

Annex A

From: **Charlie Pycraft** pictures@ydphotos.co.uk
Subject: El Cuyo-Switzerland
Date: 18 November 2018 at 21:29
To: lk@lucykomisar.com

Dear Lucy,

Great to meet you at the Offshore Alert Conference. Here are the basics of my story I was talking to you about with my German friend Gido at the Sky Bar reception.

I ran my case by a Grant Thornton auditor and my Oxford University friend Fionnuala Lynch at McCarthy Denning https://mccarthydenning.com/team/fionnuala-lynch/ from a tax perspective who said it could be possibly taken on for with litigation funding.

I gave the excellent book Treasure Islands: Tax Havens and the Men who Stole the World to my lawyer friend Tim Lawson-Cruttenden to read and Moneyland: Why Thieves And Crooks Now Rule The World And How To Take It Back Panama Papers and The Spider's Web: Britain's Second Empire. Tim has been helping me prepare a workable brief regarding Offshore money trapped in Switzerland/Mexico by Lance Ranger, Attendus a criminally negligent English lawyer. I want to bring the money back onshore from my deceased father's Swiss Trust. My father died in February 2013.

I put the kind of responses I am getting from different agencies like the Swiss VNF, Mauritius FSC, Serious Fraud Office, Tom Tugendhat MBE MP and the Legal Ombudsman at the end of the email. My story is an interesting inside story of how Offshore Trustees ultimately tax evade with their clients money on behalf of themselves. What could be termed Modern Day Grave Robbing. Lance's fraud is very subtle and the YouTube video commentary by Marc Hurner Founder & CEO, Financial Intelligence & Processing illustrates how Modern Grave Robbing works Modern Day Grave Robbers: Evidence that some Trustees steal assets when settlers die

I have a file on the my situation and have run everything by the HMRC, SRA, Mauritius FSC, FBI, NCA, FINMA and Swiss SRO(VNF), (As a financial intermediary in the nonbanking sector, ATTENDUS Trust Company AG is affiliated to an SRO. This SRO is VQF. Switzerland This is similar to going down the conspiracy rabbit hole but just the financial version of it, as I'm sure you know.Just to give you an example of how Lance Ranger operates here is the £ multi million case that https://www.eccourts.org/storca-intertranscorp-et-al-v-norval Mishcon de Reya won against Lance on behalf of their client Evgeny Mulyukov The Man Who Blew a Whistle on Basneft Before Everyone

Mishcon de Reya lead the multi-jurisdictional team of lawyers acting for clients Storca Intertrans Corp and Evgeny Mulyukov in various proceedings, including substantial proceedings before the BVI Commercial Court and the Court of Appeal of the Eastern Caribbean Supreme Court against Lance Ranger, Attendus that I was told was $350 million.

Lance Ranger also defrauded Niket Mehta from the Indian Diamond dynasty for £10's millions.

Lance squandered money that was in my father's account when he died and still holds property on trust in El Cuyo, Mexico via the Panamanian company Silvercliffe International Inc When Lance Ranger was investigated by the Legal Ombudsman he said "the trust you have a concern about is being administered by a company in Switzerland called Attendus. The trustee of the trust is Curatus Trust Company (Mauritius) Limited. We are told you are not a beneficiary of the trust." He has "Waterfall," "Russian Doll/Layered" company structures and Trusts within Trusts.

In the Evgeny case this looks like his basic work structure:-

[4] Ian Smith, [5] Ruma Devi Anuradha Kissoondharry, [6] Attendus Trust Company AG, [7] Curatus Trust Company (Mauritius) Limited, [8] Curatus Nominee Services One Limited

In a recent case Curatus Trust Company (Mauritius) Limited was up against the The London Borough Of Wandsworth

If any of this sounds of any interest please drop me a line or any recommendations of how to pursue this much appreciated.

Kind Regards,

Charlie Pycraft

www.charliepycraft.co.uk

m: 0796 7224385

VQF response:-11/9//2018

Dear Mr. Pycraft.

We refer to your e-mail regarding your complaints about our member Attendus Trust Company AG.

As an independent, integrated centre of competence for compliance, VQF is in its function as a self-regulatory organization "SRO" pursuant to the Swiss Anti-Money Laundering Act (AMLA) on the combating of money laundering and the prevention of the financing of terrorism in the financial sector, supervises its members about their compliance concerning their duties in accordance with the AMLA. In addition to this the VQF is also an Industry Organization for independent Asset Managers with "rules of professional conduct for the practice of asset management" officially recognized by the Federal Financial Market Supervisory Authority (FINMA) and offers a corresponding supervisory service.

However it must be said that according to our obligation of secrecy, we are not allowed to inform you about any measures that can or will be applied by the VQF based on your complaint. Please note, that Attendus Trust Company AG is a SRO-member of ours and therefore we supervise Attendus Trust Company AG only about its compliance in accordance with the AMLA.

In the end it will be up to you to decide what legal steps should be taken to solve the problems you are having with Attendus Trust Company AG.

We hope that this information will be nevertheless of any use to you.

Kind regards,

Monika Hunkeler, lic.iur., MAS ECI

Legal & Compliance

VQF - Verein zur Qualitätssicherung von Finanzdienstleistungen

General-Guisan-Strasse 6, CH - 6300 Zug, Tel +41 41 763 28 2

FSC Mauritius response:- 27/9/2018

Dear Sir,

We acknowledge receipt of your mail below and are looking into the matter.

Kind Regards,

Jawaira Subratty
SENIOR ANALYST
Investment & Entities

Financial Services Commission
FSC House,
54 Cybercity, Ebene 72201,
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Serious Fraud Office Response:-9/9/2018

Dear Mr Pycraft,

Thank you for your further email in relation to this issue.

The SFO has carefully reviewed all of the information relating to this matter. I must inform you, however, that the SFO will not be launching an investigation into this matter as it is not a matter that falls within the Director's Statement of Principle. Accordingly, no further action will be taken by us.

We must stress that this is not the same as making a determination on whether there is a criminal case to answer, but rather that the SFO is not the appropriate agency to pursue this.

In this instance, you have already reported the matter to the appropriate agency, Solicitors Regulation Authority (SRA), and we recommend that you continue to liaise with this body.

As you have also alluded to the withholding of tax, you may also wish to report this matter to HM Revenue and Customs (HMRC). HMRC is responsible for ensuring that all individuals and entities pay applicable UK taxes, and they are the lead agency for investigating all instances of tax evasion affecting the UK You can report this issue to them online here. Alternatively, you can speak to an advisor on 0800 788 887.

We would like to thank you, once again, for bringing this issue to our attention.

Yours sincerely,

The Intelligence Unit
Serious Fraud Office

Tom Tugendhat MBE MP response: 27/9/2018

Dear Mr Pycraft

Thank you for your email to Tom. He has asked me to respond on his behalf and is grateful to you for your detailed email, which he has read with interest.

You would be welcome to pass on details should you wish, but I am afraid Tom's diary is so pressed that he cannot offer you a meeting.

I wish you luck with your ongoing task to resolve what sounds like a fiendishly complex matter.

With best wishes,

Janet

Janet Walker
Office of Tom Tugendhat MBE MP
Member of Parliament for Tonbridge and Malling
House of Commons
London SW1A 0AA
E: janet.walker@parliament.uk

[Document 1 of bundle attached to the email]

Annex B

In November I attended the Offshore Alert Conference in London as a speaker. (Offshore Alert, based in Miami, deals with the offshore tax haven system.) https://v,ww.offshorealert.com/conference/london/

I met someone there with an interesting story which I do not have time to dig into.

But it might be useful to another journalist either as a story itself or as pa1i of a larger story about how offshore companies cheat tl1e heirs of people whose assets they control. Remember the late 90s story of the Swiss banks attempting to keep the assets of people who stashed them there and then survived or died in the Holocaust? Still going on.

I asked him to write a summary of his story, which is below. If you are interested, contact **him** at Charlie Pycraft **<[log in to unmask)>**

My name is **Charles Pycraft** and I have an Offshore Story the moral of which is that if you wish to bring money onshore as a regular taxpayer , it is virtually impossible! Even when pursuing every legal, political, journalistic, investigative and financial angle available to you.

As a London based press card carrying National Union of Journalists media photographer and member of the Frontline Club I am theoretically well suited to pursuing this kind of investigation. From running a photographic studio in Shoreditch until 2000, before becoming a renowned paparazzi photographer from 1999-2013, including working for the News of the World. Starting work at the Big Pictures at the end of the 1990's and media boom and setting up our own agency YD Image. My pictures include the early chronicling of Prince Harry's rise to notoriety as the drinking, raving, womanising and street fighting Prince, Sienna Miller and Orlando Bloom's intimate moment at a polo match, Mickey Rourke stealing another man's girlfriend, footballer Kieron Dyer's rape alibi, the comedy terrorist's security breach at Prince William's 21st at Windsor Castle, Timberlake's errant lady, the king of spin Alastair Campbell's date with Saddam and Lindsay Lohan's internet viral meme exposure.

My father, Carl Pycraft, who died in 2013 was a UK based property developer. He left a regular will with an equitable split between 4 siblings. What was less regular was my father's Swiss Riswal Trust in Switzerland that held money at the Luzerner Kantonalbank bank and property assets in El Cuyo, Yucatan, Mexico. "Modern Day Grave Robber" Lance Dorian Ranger, an English registered lawyer and Attendus Trustee based in Zug, Switzerland was his Trustee. Lance Ranger comes up in a Panama Paper search and the property holding company Silvercliffe International Inc was set up by Mossack Fonseca in Panama. On 2nd August 2005 Mr Ranger wrote to my father stating "It might well be that it would be best for your family's part of Desarrolos Carlos to be held by Silvercliffe and the rest to be held by Attendus as nominees for the various parties. This of course would further insulate your own family's involvement." Why would he advise and say this to my father other than to make it easy to defraud his children at a later date? This is an extract from a letter for probate for the HMRC tax office, "The shares of Silvercliffe were previously held by Carl Pycraft, partly for himself and partly for several third parties. Mr Pycraft transferred all of the Silvercliffe shares to which he was beneficially entitled on the 11th December 2012, to the trustees of a multi-family trust. The trustees thereof have subsequent ly transferred the **beneficial ownership of those shares to the trustees of a single family trust-The Riswal Trust ("Riswal"). It is expected** that the discretionary beneficiaries of Riswal will include the issue of Mr Pycraft." Very opaque language!

Lance **Ranger** has avoided any form of communication with me and not payed out money held on account from the sale of a property called San Miguel near Tulum in Mexico. There is also approximately $12 million in El Cuyo, Yucatan, Mexican land assets help on Trust of which I have a beneficial interest. Mr Ranger has the Share Certificates and Trust Deed. My father was introduced to Mr Ranger around 2000 by Harry Ball a chartered accountant who was based in Guernsey who died in December 2016. There are no investment restrictions on foreign-owned Mexican corporations aimed at buying and developing property. Mexican corporations require a minimum of two associates or shareholders. Both shareholders can be foreigners, and there is no need to have a Mexican partner. My father also wrote a letter in 1998 giving me a 2% net commission for helping sell both the properties. Our probate lawyer Michael Tulloch at Monro Wright & Wasbrough stated, "As to the commission agreement, this appears to be binding on your father's estate; see the words "I or the trustee of my Estate".

After my brother and brother-in-law got nowhere after 4 years dealing with the Mexican property side or with Lance Ranger, even after instructing a London based Mexican lawyer to ask for a definitive update. I decided to do a blog in spring 2017. This blog exposed Lance Ran ger's wrongdoings and through this an Indian businessman contacted me who has also been defrauded for $10's millions. In typical style Offshore style Lance plays divide and rule with family members or business partners to find the weakest moral link to further enrich himself. In 2015, Mishcon de Reya has been lead a multi-jurisdictional team of lawyers acting for clients Storca Intertran s Corp and Evgeny Mulyukov in various proceedings,

including substantial proceedings before the BVI Commercial Court and the Court of Appeal of the Eastern Caribbean Supreme Court against Lance Ranger, Attendus and recovered $350 million that he tried to misappropriate.

Xabier De Beristain Humphrey is the lawyer dealing with the land in Mexico and on retainer to get compensation for the land situation in Mexico. Tim Lawson-Cruttenden is on retainer to close the Trust agreement with my family and assist the SRA with any questions regarding Lance Ranger. There is a file on my situation that has been run by HMRC, the SRA, Mauritius FSC, the FBI, NCA, Swiss FINMA and Swiss SRO(VNF), (As a financial intermediary in the non°banking sector, ATTENDUS Trust Company AG is affiliated to an SRO. This SRO is VQF. Reporting the situation to the Luzerner Kantonalbank just reverts you back to the Swiss secrecy get out clause and back to the Trustee.

There's a lot more, but I thought this would be enough to get the interest of anyone wanting to look into this.
Lucy