Neutral Citation Number: [2020] EWHC 2912 (QB)

Case No: QB-2017-002808

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii on the date shown.

Date: 30 October 2020

Before:

MR JUSTICE WARBY

- -

Between:

(1) Aleksej Gubarev **(3) Webzilla Limited**	**Claimants**
- and -	
(1) Orbis Business Intelligence Limited **(2) Christopher Steele**	**Defendants**

- -
- -

Andrew Caldecott QC, Ian Helme and Chloe Strong
(instructed by **McDermott Will & Emery LLP**) for the **Claimants**
Gavin Millar QC and Edward Craven
(instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendants**

Hearing dates: 20-24 July 2020

- -

Approved Judgment

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

.....

MR JUSTICE WARBY

INDEX

Mr Justice Warby:

The claim

1. This is the second case to come before this Court as a result of an article published by BuzzFeed Inc on its news website on 10 January 2017, under the headline "These Reports Allege Trump Has Deep Ties To Russia" ("the BuzzFeed Article"). The first case was *Aven & Others v Orbis Business Intelligence Ltd,* ("the *Aven* case"), where the claims were for inaccuracy, under data protection law. I gave judgment on those claims earlier this year: [2020] EWHC 1812 (QB). The case I am dealing with now is a claim for libel.

2. The first claimant ("Mr Gubarev") is a businessman and entrepreneur, born and brought up in Russia, but currently resident in Cyprus. Mr Gubarev is the ultimate beneficial owner of approximately two thirds of the XBT Group of companies. The main business of the XBT Group is the provision of server capacity to individual and corporate customers. This is a worldwide business, carried on by a network of companies in Europe, America, and Asia. The corporate claimant ("Webzilla Ltd") is a member of the XBT Group. Webzilla Ltd was incorporated in Cyprus in 2005, as an enterprise hosting company.

3. Mr Gubarev and Webzilla Ltd seek damages and other remedies in respect of words contained in a document published alongside the BuzzFeed Article. The article referred to "A dossier, compiled by a person who has claimed to be a former British intelligence official, [which] alleges Russia has compromising information on Trump." The "dossier" of "reports" referred to was embedded in the article by means of a document viewer. The reports took the form of numbered Intelligence Memoranda. Sixteen of them pre-dated the Presidential election of 8 November 2016. These will be referred to as the pre-election memoranda or "PEM". The final memorandum, Number 2016/166, was produced between the election and the President's inauguration. It was dated 13 December 2016. It is this one that made reference to Mr Gubarev and to Webzilla Ltd, and which contains the words complained of in this case. I will refer to it as "the December Memorandum".

4. The full text of the BuzzFeed Article is set out in Appendix A to this judgment. The full text of the December Memorandum is set out in Appendix B. The words complained of are as follows:

> "[redacted] reported that over the period March-September 2016 a company called XBT/Webzilla and its affiliates had been using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct "altering operations" against the Democratic Party leadership. Entities linked to one Alexei GUBAROV were involved and he and another hacking expert, both recruited under duress by the FSB, Seva KAPSUGOVICH, were significant players in this operation. In Prague, COHEN agreed contingency plans for various scenarios to protect the operations, but in particular what was to be done in the event that Hillary CLINTON won the presidency. It was important in this event that all cash payments owed were made quickly and discreetly

> and that cyber and other operators were stood down / able to go effectively to ground to cover their traces."

5. Lawyers acting for the claimants promptly sent letters of claim to BuzzFeed, and on 3 February 2017, Mr Gubarev and two XBT Group companies brought defamation proceedings in the United States (Florida) against the operator of the BuzzFeed website, BuzzFeed Inc, and its editor, Benjamin Smith ("the Florida Proceedings"). Later the same day, BuzzFeed redacted references to Mr Gubarev and the XBT Group companies from the article, and made a public apology for including them. On 19 December 2018, the Court entered summary judgment for the defendants in the Florida Proceedings, on First Amendment grounds. On 13 March 2020, the US Court of Appeals, 11th circuit, remitted the case for a re-hearing, which is pending at the time of this judgment.

6. Letters of claim were also sent to the defendants in the present case, Orbis Business Intelligence Ltd ("Orbis"), and Christopher Steele ("Mr Steele"). The claim was issued on the same day as the Florida Proceedings, 3 February 2017. Originally, there were four claimants: Mr Gubarev, Webzilla Ltd, and two other XBT Group companies, XBT Holding SA and Webzilla BV. The other companies have since discontinued their claims in this Court. The claim is brought in respect of the publication of the BuzzFeed Article within the European Union. It is not against BuzzFeed or Mr Smith, but against Orbis and Mr Steele only.

7. Mr Steele is the person who created the memoranda in the "Dossier", which is why it has become known as "the Steele Dossier". Mr Steele is a former Crown servant, a British citizen, resident in England. In compiling the Dossier, he was acting in his capacity as a director and/or employee of Orbis, a company incorporated in England and Wales which provides corporate intelligence services. The PEM were created pursuant to a commission from a Washington DC consultancy called Fusion GPS ("Fusion"), which was acting on the instructions of a law firm, Perkins Coie LLP. The ultimate client was a person or body in the upper echelons of the Democratic Party. The December Memorandum was produced by Orbis outside the scope of that commission.

8. The case pleaded in paragraph 6 of the Particulars of Claim is that the defendants "published and/or caused to be published to the world at large, and thereby to vast (and unquantifiable) numbers of people across the European Union", the words set out above. The claimants' case is that those words bore the following natural and ordinary meaning:

> "that the Claimants had deliberately and without consent hacked into the IT systems of the leadership of the United States Democratic Party and had used such unlawful access to transmit viruses, plant bugs, steal data and alter files and programs."

9. The claimants allege that there was widespread publication in the EU of the words complained of, conveying this imputation, and causing each of them serious reputational harm. Mr Gubarev complains of hurt and distress. At one stage, Webzilla Ltd advanced a substantial claim for special damages. After four amendments of the Particulars of Claim, that is no longer pursued. Webzilla Ltd does however maintain a claim for general damages, reflecting what it contends is serious financial loss.

The issues

10. It is not in dispute that the words complained of referred to both claimants, bore meanings defamatory of both of them, and caused Mr Gubarev serious reputational harm. No issues of foreign law have arisen. (In principle, a claimant suing for libel in respect of words published abroad must establish that the offending words are civilly actionable in each foreign jurisdiction relied on; but the trial was sensibly conducted, and I proceed, on the common assumption that foreign law is no different from English law (reflecting the so-called "presumption")). The defendants do not advance any substantive defences to the claim: they do not maintain that any defamatory meaning which the offending words might convey about the claimants was true, or an expression of honest opinion, or a reasonable publication on a matter of public interest. At one stage a defence of qualified privilege was relied upon, but a change in the way the claimants put their case has led to that issue falling away.

11. By the end of the trial, there were only four main issues:

    (1) Liability for publication. Are the defendants legally responsible for the publication of the December Memorandum on the BuzzFeed website? This is staunchly denied by the defendants. This is the principal issue, and the one to which most of the evidence and argument have been devoted.

    (2) Meaning. What was the natural and ordinary meaning of the words complained of? The defendants contend for a lesser defamatory meaning than the one alleged by the Claimants.

    (3) Serious harm to Webzilla Ltd. As I have made clear, there is no dispute that the publication bore a meaning defamatory of both claimants, and seriously harmed Mr Gubarev's reputation. But there is an issue as to whether Webzilla Ltd has shown that the case meets the threshold requirement laid down by s 1(2) of the Defamation Act 2013; that publication caused or was likely to cause the company serious financial loss.

    (4) Remedies. What compensatory damages should be awarded, and should there be any injunction?

The evidence

12. I heard oral evidence from Mr Gubarev, and from two further witnesses for the claimants: Nikolay Dvas (CEO of XBT Holding SA, the parent company of Webzilla Ltd) and Roman Grinin (of Hilltop Ads Ltd, a customer of Webzilla Ltd ("Hilltop")). Messrs Gubarev and Dvas gave evidence in court, the former with an interpreter. Mr Grinin gave evidence by live link from St Petersburg, Russia, his home city. Again, he had the services of an interpreter. All three witnesses were cross-examined by Mr Millar QC, for the defendants.

13. Much of the factual background is common ground. The overall factual framework is reflected in an agreed joint chronology, a copy of which is at Appendix C to this judgment.

14. The claimants' case on responsibility for publication relies on some of these agreed facts, and on documents. It is the documents, relied on by the claimants for this purpose, that make up the majority of the voluminous trial paperwork. Most of the remaining documentation relates to the allegations of serious financial loss.

15. As required by CPR 33.2, the claimants served hearsay notices identifying statements in the documents that would be relied on as evidence of the truth of their contents, and explaining why the maker of the statement was not being called to give evidence (see CPR 33.2). There are four such notices. Some of the documents relied on are memoranda, notes, emails or other electronic messages. Some are media reports, or passages in books (for instance, "A Higher Loyalty – Truth, Lies and Leadership" by James Comey, former Director of the FBI). But prominent among the documents relied on are written transcripts of testimony, depositions and declarations made by witnesses who gave evidence in the US, to Congressional hearings or in the Florida Proceedings, in 2017 and 2018, on matters relevant to the issue of responsibility for publication.

16. There are thirteen such witnesses. Taking their testimony in date order, the witnesses, and the testimony they gave to other Courts or bodies that was adduced in this way, are:

    (1) Mr Comey: statements made in oral testimony, on 8 June 2017, before the Senate Select Committee on Intelligence.

    (2) James Clapper, former Director of National Intelligence: statements made in oral testimony, on 17 July 2017, to the House Permanent Select Committee on Intelligence Hearing on the Investigation into Russian Active Measures during the 2016 Election Campaign ("the Russia Committee Hearing").

    (3) Glenn Simpson, co-founder of Fusion: statements made in oral testimony, on 22 August 2017, before the US Senate Judiciary Committee.

    (4) Marc Elias, of Perkins Coie: statements made in oral testimony, on 1 December 2017, to the Russia Committee Hearing.

    (5) David Kramer, a former US State Department official: statements made in oral testimony in (a) his Deposition, dated 13 December 2017, in the Florida Proceedings and (b) his oral testimony, dated 19 December 2017, to the Russia Committee Hearing.

    (6) Andrew McCabe, then Deputy Director of the FBI: statements made in oral testimony, on 19 December 2017, to the Russia Committee Hearing.

    (7) An FBI Special Agent, who gave testimony anonymously, on 20 December 2017, to the Russia Committee Hearing.

    (8) Ken Bensinger, a reporter for BuzzFeed, who was co-author of the BuzzFeed Article: statements made in oral testimony in his Deposition, dated 7 February 2018, in the Florida Proceedings, and in a declaration in support of a motion to dismiss, dated 20 September 2018.

    (9) Bruce Ohr, an attorney at the US Department of Justice: statements made in oral testimony, on 28 August 2018, before the Executive Session of the House

Committee on the Judiciary joint with the House Committee on Government Reform and Oversight ("the Joint Committees").

(10) Peter Fritsch, a co-founder of Fusion: statements made in a Deposition, dated 30 August 2018, in the Florida Proceedings.

(11) Benjamin Smith, Editor in Chief of BuzzFeed: statements made in his Declaration, dated 19 September 2018, in the Florida Proceedings.

(12) James A Baker, former FBI General Counsel: statements made in oral testimony, on 3 October 2018, to the Joint Committees.

(13) Nellie Ohr, wife of Bruce Ohr and a sometime researcher for Fusion: statements made in her testimony to the Joint Committees, on 19 October 2018.

17. The reasons given by the claimants for not calling these witnesses at this trial are that their "memories are likely to have been more reliable" at the times when they gave their testimony in the contexts I have identified, and that it would be "disproportionate, in all probability unproductive and impracticable" to call them.

18. The claimants also rely on aspects of two documents in respect of which they have served no hearsay notice, the position being that this is not legally required, as these are formal published reports and/or judgments dealing with matters of a public nature and open to public inspection:

(1) The Order of the US District Court, South District of Florida, dated 19 December 2018, granting the Defendants' Motion for Summary Judgment in the Florida Proceedings.

(2) A formal report published by the Office of the Inspector General ("OIG") of the Department of Justice, on 9 December 2019, and known as the Horowitz Report. The report provides a chronology of relevant events and makes extensive reference to documents placed before Mr Horowitz, on which the claimants rely.

19. For the defendants, Mr Steele gave evidence in court and was cross-examined at length, and in detail, by Mr Caldecott QC. The defendants also called evidence from the former diplomat, Sir Andrew Wood. He gave his evidence by live link from his home in the Channel Islands (where he was "shielding" from the coronavirus) and was cross-examined.

Meaning

20. This is a short and relatively straightforward issue, which it is convenient to address first.

21. The defendants dispute the meaning advanced by the claimants. They submit that, read in context, the natural and ordinary meaning of the words complained of was that:

> "there were grounds to investigate whether the Claimants had been coerced by Russia into hacking the computers used by the Democratic Party leadership, transmitting viruses, planting bugs, stealing data and conducting altering operations."

22. There is therefore a common core to the rival meanings: both reflect the fact that the words complained of link both claimants to the activities of hacking, transmitting viruses, planting bugs, stealing data and conducting "altering operations". There are two main differences between the parties' meanings. The first is that the claimants' meaning is a "Chase Level One" meaning, whereas the defendants' meaning is at "Chase Level Three". The second main difference is that the defendants suggest the impression conveyed to the ordinary reasonable reader was that the claimants may have been "coerced by Russia" into the hacking and other misdeeds described in the offending words.

23. The nature of a "natural and ordinary meaning", and the well-established principles for identifying that meaning in a defamation claim, are explained in *Stocker v Stocker* [2019] UKSC 17 [2020] AC 593 [34-38] and the judgment of Nicklin J in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB) [2020] 4 WLR 25 [11-17]. The "Chase" levels and their significance are explained in *Brown v Bower* [2017] EWHC 2637 (QB) [2017] 4 WLR 197 [17] (Nicklin J). It is unnecessary to cite these well-known authorities in detail. The Court must place itself in the position of an ordinary, reasonable reader - someone who is neither naïve nor avid for scandal - and identify the meaning that reader would take from the words complained of, having read them in their full context.

24. Mr Millar QC has emphasised the importance of context in this case, reminding me of authority in the form of *Charleston v News Group Newspapers Ltd* [1995] 2 AC 65, and *Dee v Telegraph Media Group* [2010] EWHC 924 (QB) [2010] EMLR 20 [29-32] (Sharp J, DBE), as well as the discussion in Gatley on Libel and Slander 12th ed (2013), ¶3.33 – 34. He submits that the BuzzFeed Article and the December Memorandum are closely connected material published at the same time on two different web pages of a news website, and the ordinary reader must be assumed to have read both in their entirety. I agree.

25. Mr Millar's purpose in making this submission is to support his clients' case that the publication complained of bears a lower meaning than the one advanced by the claimants. The principle he relies on is clear. Where a document written by one person is republished by someone else, and the author is sued for the republication, the Court must determine the meaning of the entire publication, not just a part of it; the author is not liable for the meaning of his own contribution, if there is surrounding or contextual material that reduces the gravity of its sting: see *Economou v De Freitas* [2016] EWHC 1853 (QB) [2017] EMLR 4 [17], and *Monks v Warwick District Council* [2009] EWHC 959 (QB) [12-14] (Sharp J, DBE). These points were not in dispute between the parties. I therefore approach the issue of meaning on the basis that the ordinary reasonable reader would read the whole article, and would then move to the Memorandum, the whole of which would be read. The issue is what such a reader would take away from the words complained of, read in that context.

26. For the claimants, Mr Caldecott QC has made seven main points:

    (1) The allegation, as expressed in the December Memorandum, is unqualified. It is an allegation of guilt by someone said to be a former British intelligence official. To the ordinary reader, he would seem to be a "man in the know" with proven sources. The format is business-like.

(2) The article points out some errors in the reports, but these are "fairly minor" and have no bearing on the allegation against the claimants.

(3) The hacking of the Democrat computers was a matter of general knowledge and the allegation was therefore highly plausible on its face to the reader.

(4) In relation to other allegations, some of them more obviously sensational, denials are given – by the President elect and by Michael Cohen. A reader would reasonably assume that BuzzFeed has not put the allegations to the claimants, because there was no apparent reason to doubt them.

(5) The information is very specific – the reference to duress by the FSB suggests a striking degree of inside knowledge.

(6) Full copies are said to be with the FBI. The plausibility is enhanced by their circulation among elected officials, intelligence agents, and journalists; and perhaps as potently by it prompting Mr Reid, a former Democrat leader in the Senate, to write a "public letter" to the FBI.

(7) The paragraph in the article which is specific in relation to "unverified" claims focuses on the alleged dealings between Russians and the Trump campaign team, and the graphic claims of sexual acts. There is no suggestion that there is any challenge to, or reason to doubt, the allegations against the claimants.

27. For the defendants, Mr Millar makes the following main submissions:

(1) The article contained a number of indications that the December Memorandum did not contain verified facts, but rather unverified intelligence. The article stressed that the contents of the dossier were "unverified" and "unconfirmed" (sub-headline, [1-2] and [4]); it reported that BuzzFeed News reporters had been investigating the alleged facts "but have not verified or falsified them" ([2]); it also reported denials from Mr Cohen and the President-elect ([5-7]); and referred to "errors" and "some clear errors" in the Dossier (sub-headline and [4]).

(2) The ordinary reader would appreciate that those mentioned in the December Memorandum were unlikely to have been approached for comment; that many would be likely to deny the allegations in the "unverified" intelligence; and that the circumstances in which the intelligence was collected and the purposes of the investigation which produced it meant that the contents of the Memorandum needed to be viewed critically.

(3) The claimants' meaning is defective, by failing to reflect the reference in paragraph 3 of the Memorandum to the possibility that Mr Gubarev was "recruited under duress by the FSB", the Russian Federal Security Service.

28. In my judgment, the natural and ordinary meaning of the words complained of, in their overall context, is that:

> there were good reasons to suspect the claimants of having, under duress from the Russian Secret Service, taken part in hacking the computers used by the Democratic Party leadership,

> and using the access they unlawfully gained in that way to transmit virus, plant bugs, steal data and alter files and software.

This is a meaning at something slightly higher than Chase Level Two, but with the moderating addition of the point about coercion. I should give reasons for my conclusion. In doing so, I bear in mind the well-established rule that the assessment of meaning is a matter of impression, and that - just as the Judge's analysis should not be over-elaborate - the Judge's reasons should not be too complex or sophisticated.

29. Viewed in isolation, the December Memorandum would convey a Chase Level One meaning: that Mr Gubarev and Webzilla Ltd were – along with others - guilty of engaging in the conduct reportedly attributed to them by the unnamed source. This conclusion must follow from the unequivocal nature of the source's allegations as reported in the Memorandum, and the application of the repetition rule (the rule that reports of allegations made by a third party will generally bear the same meaning as the underlying allegations themselves: see *Brown v Bower* [19-32]). Put shortly, the Memorandum presents the source's allegations as fact, and that is how the ordinary reader would understand the position. The mere fact that the Memorandum is styled as an "Intelligence Report" does not affect this conclusion. The contents of the Memorandum itself do not suggest that there are any grounds for doubt about the veracity or reliability of the "intelligence" that is being reported. Rather the contrary. The December Memorandum, on its face, follows an earlier report on "secret meeting/s in Prague". It contains "Further details" of the "secret dialogue" including contacts with "associated hackers". The details are extensive, plausible on their face, and names are provided. Nothing is said to suggest that the source, or the information provided by the source, is or may be unreliable.

30. I do not believe that what I have said so far is controversial. But the reader through whose eyes I am looking at this material would come to the December Memorandum with a mind conditioned by the BuzzFeed Article. The article contains a mixture of information about the Dossier.

31. Some of that information would tend to portray the Dossier as a reliable source of information. The reader is told that the Dossier contains specific allegations made by someone who not only "has claimed to be" a former British intelligence official (sub-headline), but is also "understood to be" a former British intelligence agent ([4]) – in other words, a professional intelligence expert, who has served a major Western power. That status tends to confer an aura of reliability on the source information. The reader is also told that the allegations have been circulating among journalists, lawmakers and intelligence officials for months. On the face of it, the allegations are being taken seriously in those circles (for instance, by David Corn, Senator Harry Reid and Senator John McCain). There is nothing in the BuzzFeed Article to suggest that anyone in these categories had dismissed the Dossier as unreliable. Equally, there is nothing in the article to undermine or cast doubt on any of the specific factual assertions contained in the December Memorandum. The "errors" identified in the article are not mistakes in that Memorandum, but in other memoranda. The reader would see that. Moreover, as Mr Caldecott submits, the identified errors are not central but minor.

32. On the other hand, there are the quoted denials from the Trump transition team. These are a factor in any reasonable assessment. I doubt that the ordinary reader would place any great weight on these. They are sweeping and general denials that deploy cliché

("fake news"), and attacks on the motives of those who have commissioned and reported them, rather than addressing the allegations by way of detailed factual rebuttal. Even so, the denials would have some impact.

33. More significant is the article's odd and unusual mixture of sensationalism and caution, which would strike the ordinary reader. BuzzFeed was adopting a studiedly neutral stance in relation to the "explosive" allegations it was placing before its readers. It was plainly not setting out explicitly to endorse the veracity of any of those allegations. It was manifestly setting out to highlight factors that might cast some doubt on the allegations generally. BuzzFeed pointed out that the Dossier was commissioned by the President-elect's political opponents. Repeatedly, the article stresses the unverified nature of the information and the fact that the "report" (meaning the Dossier generally) contained errors. Readers are told that investigations into some allegations by BuzzFeed reporters on two continents had failed to establish whether they were true or false. It said some were "potentially unverifiable". It was expressly presenting the full document "so that Americans can make up their own minds about allegations … that have circulated at the highest levels."

34. This approach does seem inherently contradictory: if the allegations were unverifiable, or in any event unverified, and BuzzFeed's own investigations had failed to establish whether or not they were reliable, how were readers supposed to form a view? But that is another matter. My point here is that the article invited its readers to approach the Dossier with a degree of scepticism or at least caution, and gave them specific reasons for doing so; and that will have affected, by mitigating it, the defamatory meaning taken away from the article and the December Memorandum, read together.

35. Nobody could suggest, and Mr Millar has not argued, that this is a "bane and antidote" case – one where the poison of the defamatory allegations is wholly neutralised by other material in the same publication. But there are articles, and this is one of them, which report unequivocal allegations of wrongdoing in a context that casts enough doubt upon them to reduce the sting from one of guilt to something less. The submission that, in this case, the context reduces the meaning as far as Chase Level Three is, in my judgment, unrealistic. This is not an article that calls for an investigation – criminal or otherwise – or implies that one is needed. On the contrary, the article tells readers that BuzzFeed has carried out its own investigations, which have been inconclusive, and suggests there may be no way to verify at least some of the allegations. Readers are invited to draw their own conclusions. The information in the article and Memorandum, and the mode of its presentation, would lead the reasonable reader to view the December Memorandum as a document from an inherently reliable source, reporting detailed intelligence about named individuals and companies that may not be wholly accurate, but is unlikely to be invented, and affords good grounds for suspecting the claimants.

36. I should mention two further points, by way of explanation of my conclusion:

    (1) Mr Millar is right to submit that the Memorandum's suggestion (apparently emanating from the source), that the hacking and other conduct was undertaken as a result of duress, forms a significant component of the overall meaning. On any view, it reduces at least somewhat the gravity of the imputation, because it suggests a lower level of culpability on the part of the claimants.

(2) I have omitted the references to the conduct being "deliberate" and "without consent" that are to be found in the claimants' meaning because I regard them as surplusage. It is implicit in the notion of hacking that it is a deliberate, non-consensual activity; and the words provide the reader with no reason at all to think that this conduct might have been undertaken by accident, or negligently, or in any way other than deliberately.

Serious harm

The law

37. The law, since 1 January 2014, is that a libel claim cannot succeed unless the claimant establishes that the statement complained of satisfies each of three requirements: (a) the common law requirement, that the statement should have a defamatory tendency; (b) a requirement, emanating from statute, that the publication of the statement must have caused actual damage that is more than minimal; and (c) a further, and more demanding, statutory threshold for actual defamatory impact.

38. The common law requires that the offending statement should have a tendency to cause a substantial adverse effect on the attitude of other (right-thinking) people towards the claimant: *Thornton v Telegraph Media Group* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [94] (Tugendhat J). This is an objective test, depending on the extent to which the meaning of the words has an inherently harmful character. The requirement of more than minimal actual damage was recognised by the Court of Appeal in *Jameel (Yousef) v Dow Jones & Co Inc* [2005] EWCA Civ 75 [2005] QB 946, where the Court held that the Human Rights Act 1998 imposed on it a duty to dismiss a libel claim which was so trivial that its continuation would involve a disproportionate interference with freedom of expression.

39. The higher statutory threshold was laid down by s 1 of the Defamation Act 2013, which contains what I have called the serious harm requirement:

> "**1 Serious harm**
>
> (1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant.
>
> (2) For the purposes of this section, harm to the reputation of a body that trades for profit is not 'serious harm' unless it has caused or is likely to cause the body serious financial loss."

I am concerned only with this requirement, and only in relation to Webzilla Ltd. Otherwise, it is either conceded or I find that the requirements I have mentioned are satisfied.

40. The correct interpretation of s 1 has been litigated as far as the Supreme Court, which has now confirmed that section 1:

> "not only raises the threshold of seriousness above that envisaged in *Jameel (Yousef)* and *Thornton*, but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words."

Lachaux v Independent Print Ltd [2019] UKSC 27 [2020] AC 612 [12] (Lord Sumption, with whom the other Justices agreed). The burden of proof lies, of course, on the claimant. The issue for my decision is whether Webzilla Ltd has discharged that burden, to the civil standard.

41. There has been relatively little case-law on the meaning of s 1(2), but the following points made by Lord Sumption in *Lachaux* at [15] were an integral part of the chain of reasoning that led to the above conclusion:

> "The financial loss envisaged here is not the same as special damage, in the sense in which that term is used in the law of defamation. Section 1 is concerned with harm to reputation, whereas (as I have pointed out) special damage represents pecuniary loss to interests other than reputation. What is clear, however, is that section 1(2) must refer not to the harm done to the claimant's reputation, but to the loss which that harm has caused or is likely to cause. The financial loss is the measure of the harm and must exceed the threshold of seriousness. As applied to harm which the defamatory statement "has caused", this necessarily calls for an investigation of the actual impact of the statement. A given statement said to be defamatory may cause greater or lesser financial loss to the claimant, depending on his or her particular circumstances and the reaction of those to whom it is published. Whether that financial loss has occurred and whether it is "serious" are questions which cannot be answered by reference only to the inherent tendency of the words."

42. So, reputational harm that would otherwise be regarded as serious cannot be so regarded unless the claimant establishes, as a matter of fact, that the harm caused, or is likely to cause, serious financial loss. I do not think this means that proof of financial loss is the sole requirement in cases that fall within s 1(2). As Lord Sumption points out, there is a distinction between reputational harm, and financial loss that results from that harm. It is not hard to envisage cases in which a publication demonstrably causes a business serious financial loss, but the defamatory (or actionable) component of the publication is not serious, or cannot be shown to be causative of that loss. In principle, all cases that fall within s 1(2) require proof of serious reputational harm that results from the statement complained of *and* financial loss that is (a) serious, and (b) consequent on the reputational harm: see my observations in *Undre v London Borough of Harrow* [2016] EWHC 931 (QB) [2017] EMLR 3 [40].

43. In this case, what is complained of is publication within the EU. So, it is loss caused by that publication with which I am concerned. The company cannot rely on, or recover damages for, any loss it may have suffered as a result of publication in any other territory. Financial loss is not necessarily the same thing as loss of revenue; the Court must be concerned with the company's overall position, asking itself whether a loss of

profit has been established: see *Undre* [49]. The loss must be "serious". This is an ordinary English word which requires no elaboration here; whether loss is serious depends on context: *Brett Wilson LLP v Person(s) Unknown* [2015] EWHC 2628 (QB) [2016] 4 WLR 69 [30].

44. There is room for inference rather than strict proof. As ever, the Court is entitled - if not bound - to draw sensible conclusions from evidence which it accepts. If that conventional proposition needs support in authority, it can be found in *Lachaux*, and in *Brett Wilson.* In *Lachaux*, Lord Sumption said this at [21]:

> "The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind."

A similar process of inferential reasoning led to my conclusion in *Brett Wilson*, on a default judgment application, that the claimant had established serious financial loss as a result of allegations published on a website called solicitorsfromhell. The allegations were, by the common law standard, highly defamatory. The uncontradicted allegation was that they had been widely published. They had (on the claimant's uncontradicted case) demonstrably led to the loss of one prospective client. I accepted that on the face of the statement of case, the claimant had made out the inference that other clients had been lost to the firm.

45. But inference is not the same thing as speculation; there must be a sound evidential basis on which to infer that the publication is more likely than not to have caused serious financial loss. Proof that a statement with a seriously defamatory tendency was widely published in the relevant jurisdiction(s) is not likely to be enough. More evidence, and a more detailed examination of the context, will normally be required. The claimant also bears the burden of showing that any loss it proves is more likely than not to be a result of the publication complained of, rather than some other cause or causes.

The claim

46. Webzilla Ltd's pleaded claim, as it now stands, is that the publication complained of "will inevitably have caused [it] serious financial loss and is likely to do so in the future". In support of that contention, two specific matters are relied on: (a) a decision of January 2017, by a "substantial UK-based customer", not to proceed with a planned agreement significant to expand its dealings" with Webzilla Ltd; (b) messages received from "third parties in the marketplace" in December 2017 that are said to indicate "that the reputational damage caused by the publication … is continuing and has deprived it of profitable contracts", or at least the opportunity to secure them. The Court is invited to infer, from all of the circumstances, "that these two instances … are examples of a wider pattern in which the Third Claimant has failed to obtain business that it would otherwise have done, and thereby suffered serious financial loss."

47. This is not a claim for the recovery of damages for specific financial losses. As I have said, there was at one stage a special damage claim. Claims for special damages in defamation have an inglorious history. Many are brought, but few are established.

Some fail at trial. Others find themselves abandoned along the way. The reasons for this are many and various, but there can be difficulty in identifying with precision the changes in a company's financial position that followed a publication, and there is often insuperable difficulty in establishing causation. Even if a loss of revenue is established, there can be problems in assessing whether it led to a loss of profit, which was not made good by other means.

48. The difficulties can be compounded in cases where there is global business activity, using complex corporate structures. This is such a case, as will be evident from the corporate organogram produced by Mr Dvas, which is attached as Appendix D to this judgment. This (and Mr Dvas's explanatory evidence, which I accept) reveal that XBT Holding SA is not a trading company, but the ultimate holding company of the group. It is hard to see how it could ever have advanced a tenable claim for financial loss. Webzilla BV is not a trading company in the ordinary sense of the term, either. Its primary functions are to hold the tangible assets of the Webzilla companies, and to sub-lease servers to other group companies, including Webzilla Ltd. The evidence is that, of the original corporate claimants, it is Webzilla Ltd that is the customer-facing company in Europe, offering customers dedicated servers as well as datacentre space. The other two corporate claimants have, understandably in the circumstances, abandoned their claims altogether.

49. Webzilla Ltd's special damage claim was changed and reduced and then dropped. That happened in stages, culminating with the statement in the Re-re-re-Amended Particulars of Claim dated 19 June 2020 that "The Claimants no longer rely on the voluntary particulars of special damage served on 19th June 2018." The defendants point to some of the detail of this process, in support of their overall contention that Webzilla Ltd has failed, indeed is unable, to discharge the burden of proof that lies on it. I agree that a review of the history has value when interpreting and assessing what is left of the claim for financial loss, and when evaluating the evidence advanced in support of that claim.

50. It is not necessary to set out exhaustively the claims and allegations that have been made and then withdrawn, amended, or dropped. It is sufficient to list the following as contentions about the financial consequences of publication that were previously advanced on behalf of Webzilla Ltd but have now been abandoned.

(1) In the original Particulars of Claim:

(a) That "credit facilities have been frozen or withdrawn".

(b) That Webzillla Ltd had "lost clients" in this jurisdiction and "across the European Union".

(c) That the company had incurred significant expenditure "dealing with the fallout" of the publications complained of, and "significant expense on PR and marketing costs as a result".

(2) In the Amended Particulars of Claim:

(a) That Webzilla Ltd had experienced "a significant downturn in its revenue from customers within the EU".

(b) That "a substantial number of customers within the EU cancelled (or purported to cancel) contracts" at an unprecedented rate.

51. The abandonment of the special damages claims has been explained in the claimants' evidence. The claim by XBT Holdings SA was discontinued in December 2017. The evidence is that this resulted from advice from expert forensic accountants. It is trite law that a mere holding company cannot pursue a claim for loss of trading profits, or additional expenses of trading. But Mr Gubarev says, "We had not fully appreciated the position until the accountant began analysing the claim." At the same time, additional particulars were filed on behalf of the other corporate defendants, and further particulars in June 2018. Both Mr Gubarev and Mr Dvas acknowledge that the particulars of June 2018 contained a number of errors, discrepancies and assertions that could not be supported by the company's own documentation. Shortly before the deadline for disclosure, Webzilla BV's claim was discontinued and that of Webzilla Ltd, "refined". Later, it became apparent that even the refined version of the case for Webzilla Ltd could not be sustained, and the case mutated to take its present form. I shall come to the explanations provided for these changes of position. For present purposes they are of no great consequence.

52. What is material is that, looking at the residual claim in this historical context, it is clear that the pleaded claim does not now involve any assertion that the offending publication led to the loss of any existing customer, or caused any such customer to cancel any contract, or harmed the company's access to credit, or led to a downturn in revenue, or an increase in costs. The claimants' pleaded case is not that the publication complained of caused the company's financial position to be worse than it was before the publication complained of in these, or any other, respects. Rather, it contends that but for the publication it would have been better off than before, by gaining extra business.

The evidence

53. It follows from this analysis that some of the evidence of the claimants' witnesses on the issue of loss and damage has no relevance to the pleaded claims of Webzilla Ltd, as they now stand. For instance, although the claimants have abandoned any claim based on a downturn in revenue, the witness statement of Mr Dvas identifies that Webzilla Ltd's revenue, as reported in its accounts, dropped by approximately US$2m in 2017 and states that "there is no obvious reason for this … other than" the publication complained of. The statement of Mr Dvas contains other material going to other points that have been dropped. He asserts, for instance, that responses to the BuzzFeed Article diverted management from other tasks; that Webzilla BV's lease finance partners put the company's credit lines on hold; that "the companies' banks" did likewise; and that these factors "were bound to have an impact on the business in the short term, at the very least." None of this goes to the pleaded case.

54. Other aspects of the witness evidence have only indirect relevance. Mr Dvas's statement contains evidence that explicitly relates to group companies other than Webzilla Ltd. He describes dealing with all incoming messages from customers of servers.com, denying the allegations and reassuring the customers. Messrs Gubarev and Dvas both speak, more generally, of the firefighting they had to do in the immediate wake of the offending publication, dealing with nervous customers of XBT group companies who needed reassurance. But neither confines himself to points that bear

directly on the two specific allegations in support of the Webzilla Ltd claim. General evidence of the effects of publication on "companies within the XBT Group" or "the business", without identifying which companies are referred to, may not be a very reliable guide to the impact – and in particular the financial impact - on any specific company within a global group.

55. I accord due weight to the evidence of Messrs Gubarev and Dvas about events they had to deal with in the immediate aftermath of publication including – in particular – the way that XBT group customers responded. This evidence does provide some context, when attempting to assess the likely position in relation to the relevant "constituency", namely people who read the defamatory message about Webzilla Ltd in the EU at a time when they were or would otherwise have been minded to place additional business with the company. Servers.com, according to the evidence of Mr Dvas, is a Cyprus-registered company that "offers similar products to Webzilla Ltd … but more standardized services."

56. The value of this class of evidence for this purpose is, however, qualified, for two main reasons. First, there is the fact that the evidence does not expressly or impliedly tie any of this reaction to any customer of Webzilla Ltd, or even to publication in the EU. Secondly, the claimants have adduced no evidence that those who did express concern, and were reassured, went on to withhold business from any XBT Group company.

57. The law does recognise that those in whose eyes a claimant has been damaged are not likely to come forward and say so. Mr Dvas fairly makes the point that people who decide not to deal with a company do not generally explain their reasons. This is an area where the Court can and should be prepared to draw appropriate inferences, if the claimant shows a sound evidential basis for doing so. In this case, one customer has come forward and is relied on. In my judgment, the most important evidence on the issue of financial loss lies in the witness testimony about Hilltop, especially that of Mr Grinin; in the documentary evidence; and in the evidence given by Messrs Gubarev and Dvas about the company's accounts, accounting processes, and financial records.

58. There are some general points to make about these categories of evidence.

The documentary evidence

59. This has important limitations.

(1) The papers before me do not include certain categories of document that one would have expected to throw light on whether and if so why the claimant company lost new business in and after 2017.

I do not know why that is, and the claimants' disclosure was not criticised before trial. It is however a fact that there are no customer lists, business plans, management accounts, or corporate tax returns among the trial papers. Information from such documents would normally be likely to bear significantly on the existence, scale, and causation of any loss. The claimants' solicitors acknowledged as much in correspondence, early on.

(2) The evidential value of the accounting documents that have been disclosed has important limitations, acknowledged by Mr Dvas.

In his witness statement he explained that "Webzilla Ltd's customers are based both within and outside the EU, with the majority being outside of the EU". A total of 32 of 149 customers were said to be "based in the EU". The accounts do not distinguish revenues from these geographical areas. In cross-examination, he accepted that, contrary to his witness statement (above), there could be reasons for year-on-year revenue changes that were unrelated to the offending publication. For one thing, the company's revenue figures are not solely drawn from external customers; they are significantly affected by "intercompany revenues", which fluctuate considerably from year to year. Mr Dvas accepted that the revenue figures in the accounts do not allow one to quantify the losses that resulted from the publication complained of.

(3) The accuracy and reliability of the disclosed accounts is called into question by the evidence adduced to explain the twists and turns in the special damages claims.

This evidence focuses on the role of Rajesh Kumar Mishra, the then Chief Financial Officer of all three corporate claimants (and other group companies), known as "Raj". He it was that oversaw the preparation of the formal claims for damages in this action, and signed them off. His corporate role, according to the evidence, included not only "managing" the accounts and cashflows of Webzilla Ltd at the material times, but also certifying to the company's auditors that the figures for its sales, income, expenses, assets and liabilities had all been properly recorded. For the reasons that follow, his integrity, his competence, and his fitness to carry out those tasks at the relevant times are all questionable at best.

Witnesses

60. Mr Mishra, or Raj, might have been an important witness, and was at one stage expected to give evidence at the trial. He did not do so. The evidence of Messrs Gubarev and Dvas makes it easy to understand why. Their witness statements give some detail - though not a great deal – about the problems with the Webzilla companies' claims, how they emerged and why they led to the claims being dropped or amended. Broadly, Mr Gubarev and Mr Dvas both disclaim any responsibility. The explanation offered is that the task of working up these claims was given to Raj. Mr Gubarev had a light supervisory role only. He had no in-depth knowledge of the financial statements, and no reason to doubt the figures provided to him. Mr Dvas was not involved. Raj left the business in September 2018, before the process of collating all the relevant documents was complete. It was that process, carried out under the supervision of Mr Dvas and with the assistance of forensic accountants, that led to the emergence of the problems. Once the disclosure exercise was complete, it became apparent that Raj had (in Mr Gubarev's words) "lost his ability to focus on fundamental parts of his day to day job" including his analysis in support of the claims. The claimants' team concluded that even the refined special damages claim had to go.

61. In his witness statement, Mr Gubarev attributes Raj's "loss of focus" to unspecified family medical problems. But he also explains that Raj had "overstated his qualifications". That is a euphemistic way of putting it. In cross-examination, he confirmed that Raj had claimed to be an accountant, but agreed that Raj's CV contained a false claim to have acquired a CPA (a US accounting qualification), and a false or misleading claim to have gained an MBA (Raj himself deposed that this was "not a real

MBA"). On the evidence before me, the conclusion that the CV was a dishonest piece of misrepresentation is all but inescapable.

62. It is a notable feature of the history that the claimants only discovered any of this through the process of depositions in the Florida proceedings in 2018. In his witness statement, Mr Gubarev said that "we did not hire him based on his qualifications alone", but on the strength of proposals Raj had made to improve the profitability of the XBT Group. It would have been more accurate for Mr Gubarev to say that he did not rely on Raj's alleged qualifications at all. In cross-examination, he confirmed that he had not seen or asked for Raj's CV, or taken up any references, explaining:

> "We did not see his CV and I don't know what was written on his profile on LinkedIn. Maybe I just did not go there. … He came from an Indian billionaire who wanted to buy our company. We trusted him. We took him on for a trial period ... He has proven himself … and after that we offered him a job. … The only one person I spoke to was an Indian billionaire who wanted to buy us."

Mr Gubarev did not express or exhibit any shock at the news that his trusted CFO was an unqualified and dishonest individual. He suggested that the company's financial statements were reliable, on the basis that other personnel were involved in their preparation, and they were audited by KPMG. Others no doubt were involved, but audit is not the same thing as the preparation of financial statements, for which Raj was the man with principal responsibility. In my judgment, this evidence not only casts a shadow of doubt over the reliability of Webzilla Ltd's financial statements, it also indicates a lax attitude by Mr Gubarev towards the importance of accurate accounting by, or under the supervision of, professionals with established relevant expertise.

63. No evidence has been adduced from the expert forensic accountants who were evidently involved at an earlier stage. In the absence of any such evidence, and in the absence of the officer responsible for the implementation of proper accounting processes at the material time, Webzilla Ltd relies on evidence from Mr Gubarev and Mr Dvas.

64. As to the former, his own evidence is that he is not an accountant; that from 2016 onwards he had very little involvement with the financial aspects of any XBT Group company; and that he saw only general reports for the group as a whole, and would look at the overall revenue for the holding company, not the details of each company. "Even now I don't know what the revenue for … EU customers was", he told me. This would help explain his inability to identify the false and unsustainable assertions contained in the claimants' earlier statements of case, on the issue of damages. It necessarily means his evidence on this issue is of little value. Beyond this, there is the laxity I have identified, and his unabashed evidence that he deliberately deceived one customer. In cross-examination, he was shown an email he sent on 29 January 2017 to a Dutch-based representative of leasing companies, asserting that "We haven't lost any customers", and claiming that revenue had increased since the BuzzFeed Article. His evidence was that this was not true. He said it because this was an important customer, and "we wanted to look better than was actually the case." This was one of a number of emails sent at the time, making the same point.

65. Mr Dvas appears to have been brought into the witness team to replace Raj. He describes himself as a technology executive. He holds no finance or accounting qualifications. Although I assessed Mr Dvas as a conscientious and honest witness, who was doing his best to assist the Court, the value of his evidence is restricted. He is in a position to give reliable evidence of fact about the aftermath of the publication complained of, and to produce the financial statements and other accounting documents of Webzilla Ltd. He presented as a thoughtful individual, with a good understanding of corporate financial statements. But although he worked for Webzilla Ltd from April 2013 to late 2015, his role then was that of a project manager, and he was not at the company at the relevant times when – on his account - he had only "limited insight" into the company. He was not an expert witness. In particular, he is in no position to give any expert analytical evidence in support of the financial loss claim. As he concedes, "I am not an expert in quantification of damages".

66. Mr Grinin cannot give evidence as to the financial impact on the company of the offending publication, and he is not relied on for that purpose. His evidence is concerned with how he responded, on behalf of Hilltop.

Discussion and findings of fact

The substantial UK-based customer: Hilltop

67. The pleaded case has not been established. The evidence makes clear that, although Hilltop is incorporated in England and Wales, with a registered office in London, it has scant connection with this jurisdiction. It was controlled and managed at the material times by Mr Grinin, who was its 100% beneficial owner. Mr Grinin is Russian. He lives in St Petersburg, and has done for 30 years. The London address was for correspondence only, which was forwarded by London lawyers to Mr Grinin. Asked what physical presence the company had in the UK in January 2017, he answered "none".

68. The Particulars of Claim said that the claimants "cannot be certain" that the loss alleged under this head resulted from publication within the EU. In opening, Mr Caldecott rowed back from this, conceding that this could not be established to the civil standard. Mr Grinin's witness statement did not support any such allegation. It referred to the publication of "the dossier, alleging Webzilla's Aleksej personal involvement in criminal activity" (sic), but gave no information as to how Mr Grinin came to know this. His oral evidence undermined the pleaded claim. It was that "some of [his] acquaintances" had sent him a link to the BuzzFeed Article; that when that happened "I remember for sure I was in Russia"; and that he could not say where the acquaintances were.

69. There are difficulties, as well, with the claimants' pleaded case that publication led Hilltop to "decline to proceed" with a "planned agreement", proceeded "to deal with another company instead", and "the value of the business thereby lost to the Third Claimant was significant". Mr Gubarev's evidence is that Webzilla Ltd was Hilltop's primary server supplier from 2014, providing 73 servers in Amsterdam, with a contract value of about US$30,000 a month in 2016. In October 2016, he and Mr Grinin informally discussed a scheme to create a backup system for Hilltop by replicating its existing server provision, which would have roughly doubled Hilltop's spend. Mr Grinin's witness statement was in more general terms, but consistent with and to similar

effect to that of Mr Gubarev. He stated that having learned of the BuzzFeed story, on 19 January 2017, "…I decided not to deploy a backup location with Webzilla", but "to diversify our server supplier portfolio" by renting space from a company called Hetzner, whilst continuing the existing provision by Webzilla Ltd. He said that the decision was made "weighing all factors".

70. In cross-examination, he made clear there had been no contract for expansion. He said, "we had a preliminary agreement about … expansion" but there was nothing in writing. He was clear that he had not called a halt to the scheme after learning of the "scandalous story". He said, "I suggested we pause with this expansion for a while". He entered into a contract with Hetzner which cost only $233 a month at first, growing to US$3,600 per month in 2019. This was a cheap and basic service for "low capacity servers", not a substitute for the much more expensive backup scheme he had earlier discussed with Mr Gubarev.

71. No evidence has been adduced about the likely profit on this or any new business. The financial statements of Webzilla Ltd show total revenue for 2016-2018 of between US$14m and US$18.5m. After deducting the cost of sales, the gross profit margin was between about 35-50%. But administrative, selling, and other operating expenses reduced that to an operating profit of some 3-9%, before tax. The accounts barely provide a sufficient basis to infer that additional income of $30,000 a month would have translated into a profit, the loss of which would count as "serious", for this enterprise. But the evidence as a whole does not persuade me that the publication caused such a loss.

72. I approach Mr Gubarev's evidence on this issue with some caution, for the reasons already given, and because of his obvious lack of independence. But even Mr Gubarev does not suggest that Hilltop had made a firm commitment to doubling its spend with Webzilla Ltd. The discussions that took place are not documented in any way. Three months after they began, it seems that nothing had been put in writing. Mr Grinin was in the best position to give reliable evidence of what would have happened. He could have said, if that was the case, that he would otherwise have gone ahead with the backup plan which the parties had discussed. He did not say that. Hilltop was not contractually committed. It is far from clear that it was committed as a matter of business policy.

73. In the event, Hilltop did not sever its connections with Webzilla Ltd. It made a strategic decision, "weighing all factors", to pause and not to have a full backup, at least for the time being. It retained Webzilla Ltd's existing services, adding a modest supplementary arrangement with another enterprise, at a cost that was 10% or less of the price of the full backup service that had been discussed. Hilltop has evidently carried on business in that way to its own satisfaction for more than 3 ½ years, thereby saving itself some US$25,000 per month or $300,000 a year. On the balance of probabilities, my finding is that this strategic decision would have been taken anyway. If the sums spent with Hetzner, or the profit on such revenues, were the measure of what Webzilla Ltd lost that could not, in the context of the company's overall financial position, count as "serious" financial loss.

The December 2017 Skype messages

74. Webzilla Ltd relies on messages sent to Mr Dvas on 6 and 7 December 2017 by a business colleague, Isaac Douglas. He was a member of the sales team at one of

servers.com's rivals. The case pleaded in the Re-re-re-Amended Particulars of Claim is that "the Third Defendant was sent messages … indicating that the reputational damage caused by the publication complained of is continuing …" It is no longer said that the messages went to Webzilla Ltd. The messages are now said to indicate that an enterprise called PrivateInternetAccess was "not willing to do business with *the XBT group*" due to the publication. The reason for the change of position is that these messages were addressed to Mr Dvas in his capacity as incoming CEO at servers.com and XBT Group. It is accepted they "cannot be specifically linked" to Webzilla Ltd.

75. The claimants' case at trial was that the messages show "the likely long-term effects of publication in the industry generally". Even that broad proposition seems rather ambitious. The messages encouraged Mr Dvas to "really put some effort into repairing the damage done from the court cases and stuff that have been going on", and stated that Mr Douglas "would have had a 300 servers deal lined up for you … but the guy couldn't see passed that issue" (sic). Mr Douglas did not give evidence. The messages are not crystal clear about the "stuff" or the nature of the "issue" which is said to have blocked the 300-server deal. They certainly do not specify the publication of the December Memorandum. It is very hard to gauge how likely it is that any deal could have been done, but for the "issue". In cross-examination, Mr Dvas disclosed that he had earlier spoken to Mr Douglas about the court cases, and that he probably replied to the messages (the content of one of the messages supports this). Mr Douglas was not called to give evidence, nor is there any explanatory material from "the guy" at PrivateInternetAccess, or any other documentary evidence that might shed light on the matter. It is not clear who, if anyone, got the "300-server deal".

76. The matter goes beyond that, as there is no evidence from Mr Douglas (or anyone else) that the prospective customer was based in the EU, or responding to anything published there. Mr Dvas conceded that it might have been the US or Canada or Europe.

77. There is a feature of Mr Douglas's messages that serves to underscore this point. Mr Douglas was urging Mr Dvas to "really put some effort" into damage repair, "if I was you *and wanting to move into Western markets*…." (my emphasis). This is puzzling, and unhelpful to the claimants' case. It may indicate that PrivateInternetAccess was a "Western" company – at least, in Mr Douglas's estimation. But it clearly suggests that – in the estimation of a trusted business contact of Mr Dvas – the XBT Group was not yet "in" Western markets, which is an essential ingredient of its claim to have sustained serious financial loss. This would be consistent with my analysis of the position in respect of Hilltop. I note, also, that I have not been provided with any evidence about the identity of any of the other 31 EU-based customers to which Mr Dvas referred in his evidence, or the nature of their businesses. I am not clear that he possessed that information.

78. In all the circumstances, I could not find that Mr Douglas's messages are evidence that the publication in the EU that is complained of caused Webzilla Ltd to lose an opportunity to sell servers to PrivateInternetAccess. And I am not persuaded that the messages are evidence to which I should attach any significant weight when assessing whether publication in the EU caused the company serious financial loss.

The LinkedIn messages of May 2020

79. A third, unpleaded, matter was advanced as an "illustration" of the impact of publication. Messages on LinkedIn, from as recently as May 2020, appear to show a prospective employee making, and then pulling out of, a job application, citing "the article of BuzzFeed about the 2016 cyber-attack on the US Democratic party …". Again, this documentation does not relate to Webzilla Ltd. The job was with "Webzilla.com", seemingly a trading name of servers.com. It is conceded that this is not evidence of any actual financial loss. I have only the LinkedIn exchanges (in Russian, with a translation). There is no evidence from the job applicant, and no explanation of why there is no such evidence. His name and contact details are of course available to the claimants (and in the papers). I have failed to detect any evidence that he was responding to publication in the EU. The job applicant was Russian by name, wrote in Russian, and was applying for a job as an engineer in Dnipro.

Webzilla Ltd's inferential case

80. The claimants accept that proof of the damaging nature of the defamatory imputation, coupled with the extent of publication, is not of itself enough to satisfy the statutory threshold. But Mr Caldecott submits that, where those two factors are very potent (as he says they are here), the Court will need less persuading of the existence or likelihood of serious financial loss than it would where circulation is limited.

81. I can readily accept that the defamatory imputation conveyed by the words complained of is a grave one, with a seriously harmful tendency. Webzilla Ltd might have had little difficulty in establishing a claim under the common law rules, which presumed the existence of some damage. But the law is now considerably more exacting. Scrutiny of the evidence about this company's finances, and what actually happened, leaves me unpersuaded that I should infer that EU publication caused Webzilla Ltd serious financial loss. The company's residual claim has to be viewed in the light of its failed attempts to prove special damage, which the claimants concede are open to serious criticism. The evidence I now have about the company, its business, its customers and its finances, is limited and unsatisfactory. For the reasons I have given, the company has failed to prove its case as to each of the three specific factors relied on to support the inference of serious loss. Against this background, and in any event, I do not find the company's broader circumstantial case persuasive.

The extent of publication

82. The pleaded case is that the words complained of were published to "vast" or "very substantial" numbers of people "across the European Union" (paragraphs 6 and 8.3 of the Particulars of Claim) and that thereafter those words or "the allegation they conveyed" were further published on the internet "countless times", and read by "further very substantial numbers of people" across the EU (paragraph 8.4).

83. There is no presumption of law that material which has been published online has been read in this jurisdiction, or at all. Nor is there a presumption that every reader of a newspaper or news website reads everything it contains. Whether and by how many people words complained of as libellous have been read is a matter for evidence and, where appropriate, inference: *Al Amoudi v Brisard* [2006] EWHC 1062 (QB) [2007] 1 WLR 113 [32-36] (Gray J). Further, although the presumption that the ordinary reader

of a newspaper article reads the whole of that article is a long-established and key feature of the law of meaning, it has never been held to be an ingredient of the law of damages for defamation. As explained in *Charleston v News Group,* the presumption is a necessary consequence of the single meaning rule, but the reality is that

> "Everybody reads selectively, scanning the headlines and turning the pages. One reader whose interest has been quickened by an eye-catching headline or picture, will pause and read an article. Another, with different interests or less time, will read the headline and pass on, leaving the article unread."

(Lord Nicholls, 73E-F).

84. I have no direct evidence as to the scale of BuzzFeed's readership in the EU (or indeed generally). I can take judicial notice of the fact that it is a reasonably well-known news website, which publishes online and therefore internationally. I can infer from those facts, and the evidence adduced by the claimants, that the website's readership within the EU was substantial, not trivial or insignificant. But the words complained of are not prominent in the article. On the contrary, they are (or were, prior to the redaction undertaken by BuzzFeed) to be found in a document embedded in it. I can and do infer from the evidence as a whole that a number of readers will have read the words complained of, and that the reputations of Mr Gubarev and Webzilla Ltd, will have suffered serious injury as a result of that publication, and of the "percolation" effect which is recognised in the authorities, in the EU. But the pleaded contentions are not supported by the evidence.

85. As to republication, my conclusion is that there was some, from which reputational harm is to be inferred, but that the pleaded case is overstated.

(1) Speaking generally, the story of the Steele Dossier was a big one, that attracted a good deal of attention, and Mr Gubarev may be right to suspect that millions read about it. It is clear, and undisputed, that the BuzzFeed Article gained widespread international media coverage. For obvious reasons, there was a great deal of attention paid to it by the US media. Some of this is likely to have been read within the EU. The story was a big one in Europe as well.

(2) There is uncontradicted evidence that, after the BuzzFeed Article, Mr Gubarev was contacted by a number of journalists, some of whom plainly were in EU countries and likely to have read the words complained of, or their gist, via publication or republication in that territory. There is uncontradicted evidence, also, that many of the Gubarevs' friends in the UK and Cyprus spoke to them about the story. Mr Gubarev speaks of friends in "other countries", and I am prepared to infer that some of these were EU countries.

(3) But the evidence of widespread media republication of the words complained of, or their gist, within the EU is not strong. Where it is clear that something was reported about the allegations against Mr Gubarev and Webzilla Ltd, the thrust of the story – as far as can be determined from the evidence –includes the facts that the allegations were unverified, and denied by the claimants. The evidence makes clear that Mr Gubarev and the company mounted a spirited media campaign to counter the effect of the allegations, which plainly had some real impact.

(4) Mr Gubarev refers to various media articles published by the BBC, the Telegraph, the Guardian, and the Independent. It is notable, however, that none of these articles incorporated the words complained of, or their gist. The articles were not just rehashing the Dossier. Several – for instance, the Guardian and the BBC - focused on the ethics of BuzzFeed's conduct and other aspects of the story, emphasising the "unsubstantiated" nature of the Dossier. These articles republished the words complained of, or their gist, only in the sense that they alerted readers to the BuzzFeed Article or, at most, provided their readers with a hyperlink to that article. In context, such a hyperlink would not, in my judgment, count as an integral part of the principal publication, applying the *Dee* test. In any event, applying common sense, it is unlikely that more than a relatively few readers will have gone so far as to follow up by reading the BuzzFeed Article, and then following the further link to read the December Memorandum.

(5) There are three articles from the Dutch mainstream media of 11 January 2017 that refer to Webzilla Ltd (and Mr Gubarev) and the allegations in the December Memorandum: Volksrant ("Dutch company appears in 'secret' Trump memos"), NOS ("Trump report: link between Dutch company and FSB secret service"), and Data News ("A Dutch firm may have played a role in the pirates of the Democratic party" (sic)). These are likely to have been widely read within the Netherlands, and their gist is likely to have been passed on, in particular within the IT community. But these were not unvarnished republications of the allegation complained of. Volksrant reported that Webzilla Ltd's name had appeared in the Dossier, but underlined the unsubstantiated nature of the story. It said it had sought to investigate the allegations, but had not been able to do so, and was therefore not publishing information from the report. It appears that the Volksrant article was not based on the BuzzFeed Article but stemmed from a visit made on 24 December 2016 from a Wall Street Journal journalist. NOS appears to have relied on the Volksrant article, which it summarised. This article provided a hyperlink to the December Memorandum but, like Volksrant, NOS emphasised that experts had cast doubt on the credibility of the allegations, and reported the company's emphatic denial.

(6) Other evidence of media publication consists in the main of lists of articles and headlines, some of them plainly outside Europe. It is not possible to draw any firm conclusions from this material.

(7) Social media are said by Mr Gubarev to have "exacerbated the situation" such that hundreds of articles about him were circulated on Facebook and Twitter and being shared. No examples are in evidence. I accept that there was some such publication, as this is inherently likely. The scale and geographical location of such publications, and whether they stemmed from media publication in the EU are matters that it is impossible to assess.

Context

86. The most important aspect of the case for present purposes is not whether serious reputational harm was sustained, but whether it is more likely than not that the publication and/or republication within the EU of the words complained of or their gist led to Webzilla Ltd suffering financial loss of a serious nature, by causing one or more of its customers to hold back from placing additional business with the company, that would have been profitable. I do not consider the evidence justifies that inference.

87. The big picture does not help. The financial statements for the calendar year 2017 show a year-on-year reduction of some $2m in gross turnover, but in all the circumstances I do not consider I can place confidence in those figures as an accurate representation of the true position. The circumstances include Mr Gubarev's own evidence that Raj was not fit to perform his role as CFO at the material time; the cloud that hangs over Raj's integrity; the fact that the company concedes, despite this feature of the accounts, that it cannot establish a general downturn in business resulting from the publication complained of; and the striking rebound in the revenues for the year 2018, when the year-on-year revenue figures increased by $4m, and profits soared. No explanation for this has been offered. These features of the accounts make it as likely as not that the 2017 figures represent an accounting "blip", showing a falsely negative picture.

88. A narrower look does not make the claimants' task easier. The evidence is that only 10% of Webzilla Ltd's revenue is "European", derived from 32 customers. The company's own evidence is that its accounting methods do not enable it to present any analysis of what happened to the revenue or profitability of its "European" business. The only "European" customer, about which I have any substantial evidence, is Hilltop, in relation to which the claimants' case has failed. The difficulties of identifying "EU" business will be apparent from my analysis of that aspect of the case. Mr Gubarev, questioned about this, said that he generally does not know where the staff and management of these customers are based. Given the limited number of customers that are said to be European, one might have expected some attempt at a granular analysis of the business lost (in the sense of not gained) from this sub-set of customers. I have had no such evidence.

Conclusions

89. Standing back from the detail, it would be naïve and unreal to suppose that these serious allegations had no impact on Webzilla Ltd, and its business. But it is for the company to establish the nature and scale of that impact, and it has failed to do so. If the company did lose out on business it would otherwise have gained, the likelihood is that such loss - or the bulk of it - was felt in respect of its business outside the EU. But the financial statements leave it quite unclear whether or not there was any impact on the bottom line. The claimants' own case is that group companies were "quite successful" in their efforts to reassure customers who expressed concern. It has not been suggested that the allegations went unnoticed in the EU. I am satisfied that there was substantial publication and republication within the EU of the words complained of or their gist, on a scale which I can infer will have caused serious injury to the reputation of Webzilla Ltd (and, as is conceded) Mr Gubarev. But it has not been shown that this publication brought the allegations to the attention of anyone at any of the 32 customers of Webzilla Ltd who are said to have been "European". More importantly, it has not been shown that, if that did occur, it led or is likely to lead to substantial financial loss for Webzilla Ltd. The modern law does not permit a body that trades for profit to complain of reputational injury unless it is shown that this has caused serious financial loss, or that it is likely to do so in future. The evidence here falls short.

Responsibility for publication

The factual context

90. I have outlined the background to the creation of the Steele Dossier at [7] above. Much of the more detailed history of events has become common ground, as reflected in the agreed chronology at Appendix C. The focus of attention is the period of about 8 months beginning in late May 2016, when Orbis was commissioned by Fusion to investigate the alleged links between Russia and the presumptive Presidential candidate Donald Trump, and ending with the BuzzFeed Article of 10 January 2017. To summarise some key features of the story, as they are now known:

i) The sixteen PEM were produced by Orbis and supplied to Fusion on various dates between late June and late October 2016. A number of the PEM were provided by Mr Steele to the FBI during that period.

ii) From September 2016 onwards, Orbis made wider disclosures of the PEM, passing copies to senior individuals in the US political establishment, and Mr Steele briefed various media organisations..

iii) On and after 31 October 2016, articles about the existence of the PEM appeared in some media outlets (*Mother Jones, Washington Post*).

iv) On 8 November 2016, Mr Trump was elected President of the United States.

v) Mr Kramer came on the scene in mid-November 2016, when he attended an international conference in Halifax, Nova Scotia, with Senator John McCain (with whom Mr Kramer was associated), and Sir Andrew Wood. In late November 2016, Mr Steele asked Fusion to provide Mr Kramer with copies of the PEM.

vi) The December Memorandum was produced on or around 13 December 2016. Thereafter, Mr Steele discussed the December Memorandum with a senior UK official, and passed copies to him, and to Fusion. Fusion passed a copy to Mr Kramer.

vii) On 23 December 2016, Mr Bensinger contacted Mr Steele saying he had heard that Senator McCain had a dossier concerning Mr Trump and Russia. On Christmas Eve, Mr Steele suggested to Mr Kramer that he should meet Mr Bensinger. According to Mr Kramer, that meeting took place, on 29 December 2016, and Mr Bensinger left the meeting with photographs of all the memoranda on his mobile phone.

viii) On 3 January 2017, Mr Bensinger and Mr Steele had a meeting at Orbis' London offices.

ix) On 6 January 2017, Mr Comey briefed the President-elect on aspects of the Steele Dossier.

x) On 10 January 2017, from 5pm, CNN reported the existence of the Dossier, the FBI investigation into it, and the Presidential briefing. Less than an hour and a half later, the BuzzFeed Article appeared online.

The rival contentions

The claimants' case

91. This is another aspect of the claim that has evolved over time, in the light of disclosure and the numerous third-party depositions, none of which were available to the claimants when this action was brought.

92. The original Particulars of Claim, apparently settled by the claimants' solicitors, were filed and served with the Claim Form on 3 February 2017, less than three weeks after the publication of the BuzzFeed Article. It is plain that the claimants had a very slender evidence-base at the time. Paragraph 6 contained the primary allegations, quoted at [8] above. Paragraph 8.2 put the claimants' overall case in support of those contentions as follows:

> "Pending disclosure, the Claimants freely admit that they do not know the precise identities of those to whom the Defendants originally provided the December Memorandum. However, the Defendants prepared and initially published the December Memorandum intending that its contents should be republished to the world at large; further or alternatively in circumstances such as it was reasonably foreseeable that its contents would be republished to the world at large."

The reference to "contents" was elaborated later in the Particulars of Claim, which complained of republication "of the words complained of (further or alternatively the allegation they conveyed)."

93. Paragraphs 8.2.1 to 8.2.5 contained particulars in support of those broad propositions. These alleged that the general subject of the Steele Dossier was one of enormous topicality; that the memoranda were prepared by the defendants to be provided to third parties, knowing they would be used for strategic purposes, and knowing that such use would be highly likely to include making public the information contained within them; and that by 13 December 2016, (a) the defendants were aware that some or all of the Memoranda had been published within media organisations and were being discussed and (b) Mr Steele had himself given informal interviews to journalists, and discussed his desire that the contents of the Dossier should be published more widely. Most if not all of this was information or allegations that were in the public domain at the time the Particulars were served, as a result of media coverage. The claimants conceded that

> "Pending disclosure it is not known whether the Defendants themselves directly provided any of the memorandums to media organisations or journalists."

94. The claimants' pleaded case on this issue has undergone two rounds of formal amendment. When the pleading was amended for the third time, on 19 February 2020, two new strands were added to the general case on responsibility for publication. In the further alternative to the case that republication was (1) intended by the defendants, or (2) a reasonably foreseeable consequence of their actions, it was said that republication was

> "**[3]** impliedly authorised by them and/or **[4]** it is just and equitable that the Defendants should be held liable for the republication."

I have added the numbering here.

95. Additional factual matters were pleaded in support of the overall case, as thus amended. For the most part, these stemmed from the testimony given by Mr Kramer, in December 2017 (see [16(5)] above), and Mr Bensinger, in February 2018 ([16(8)]), the records of which had by now been "unsealed". The amendments included new allegations:

i) that the memoranda were given to Mr Kramer in two versions, one more redacted than the other, implying an intention to publish;

ii) that Mr Kramer "had given copies of the Steele Memorandums to (at least) the Washington Post in December 2016";

iii) that Mr Steele knew this;

iv) that on or about Christmas Day, Mr Steele encouraged Mr Kramer to meet Mr Bensinger of BuzzFeed, as a matter of urgency, with a view to discussing the Dossier, including the December Memorandum, and "did not advise Mr Kramer against giving Mr Bensinger that Memorandum"; and

v) (at paragraph 8.2.6), that in all the circumstances:

> "Mr Kramer would have reasonably believed that he had at least implied authority to give Mr Bensinger a copy of the December Memorandum."

96. When the pleading was amended, for the fourth time, on 19 June 2020, the following was added:

> "8.6 Further by widely circulating the PEM, or their gist, beyond the FBI to journalists, state department officials, retired persons of influence (such as Strobe Talbott), politicians (including the President elect's political opponents), all of whom were likely to share the information with others, it was intended and/or foreseeable in the circumstances, as happened, that:
>
> 8.6.1 the President and President elect would have to be briefed on the dossier's headline allegations;
>
> 8.6.2 that fact would be reported by the media; and
>
> 8.6.3 sooner or later this would lead to publication by the media of the PEM and/or their detailed allegations and with them the December memorandum and/or its detailed allegations.
>
> 8.7 In this context the Claimants also rely on the fact that the Defendants (via at least Mr Kramer) continued to communicate

> with the media on issues relating to the memoranda (including the December memorandum) up and until publication by BuzzFeed."

97. The claimants' case also drew in facts and matters alleged in the Reply. The claimants' Skeleton Argument for trial contained a helpful 10-point summary of the overall case, as it then stood. It was this (internal citations omitted):

> (1) D2 … briefed the media on the detailed allegations in both the PEM and (via Mr Kramer) the December memorandum;
>
> (2) D2 knew before the BuzzFeed publication that the media had published from time to time detailed allegations from his reports without verifying them and without any protest or assertion of confidentiality by the Ds and that information from the reports was being shared between the media;
>
> (3) D2 knew that copies of the PEM had been (at the very least) reviewed by [the news website] *Mother Jones* in late October 2016;
>
> (4) D2 authorised Mr Kramer to meet Mr Bensinger (a journalist with whom D2 had previously worked) to discuss the allegations in his reports and subsequently met Mr Bensinger himself a few days later;
>
> (5) D2 circulated detailed allegations in the PEM to the State Department, an official at the Department of Justice, and others with no responsibility for national security (such as Strobe Talbott), who were likely to share the information with others, in addition to the FBI;
>
> (6) D2 knew that the FBI was conducting a serious investigation into the detailed allegations in the reports provided to them and so informed the media which gave them added verisimilitude and further caused the media to publish that fact in and after September 2016;
>
> (7) D2 must have known that many of the allegations were incapable of verification by the media (as distinct from the FBI);
>
> (8) D2 was aware that serious allegations in the PEM and the December Memorandum were circulating within the media and political circles and that the Democratic party was calling for the publication of the information being investigated by the FBI;
>
> (9) It was reasonably foreseeable that by the cumulative effect of the above the President elect would have to be briefed, so

> creating further pressure for the unpublished allegations to be published (as they were);
>
> (10) None of the later reports (including the December Memorandum) contained any confidentiality warning on their face.

98. A much more detailed case has been advanced in the course of the argument and cross-examination. It is the claimants' case that, as Mr Caldecott put it: "the devil is in the detail". I shall come to some of that. The claimants also invite me to draw adverse inferences from the defendants' conduct of their case, including their disclosure. Their case on this point was elaborated by Mr Caldecott in opening, in cross-examination of Mr Steele, and in closing. Its main thrust was to suggest that the defendants had deliberately suppressed a number of facts or documents unhelpful to their case, and given false accounts to assist in the cover-up. In support of this aspect of their case, the claimants rely on fine-grained analysis of a variety of written communications that have been disclosed in the course of the action, identifying what they say are significant gaps. Accompanying their Skeleton Argument, for instance, was a "message log" showing communications between Mr Steele and Bruce Ohr between July 2016 and November 2017.

The defendants' case

99. The defendants submit that this is a simple case, which has been hugely over-complicated by the claimants' construction of what Mr Millar has called "a labyrinthine inferential case" the strands of which "are difficult to discern and follow with clarity".

100. The defendants deny that they intended, foresaw, or authorised the publication complained of, or that it would be just to hold them liable for that publication. They maintain that they only disseminated copies of the December Memorandum in strict confidence, so that the information in it was known to the US and UK governments at a high level by persons with responsibility for national security; the defendants did not provide or authorise anyone to provide the December Memorandum (or any of the PEM) to the media, or intend them to be circulated to the media; they were not aware that the PEM had been published to or within media organisations; Mr Steele gave some off-the-record briefings to a small number of journalists, and spoke to representatives of the Democratic Party, but it was not suggested that the PEM or the December Memorandum should be made public.

101. The claimants' allegations about the role of Mr Kramer are denied in paragraph 32 of the Re-re-re-Amended Defence, which gives this account:

> d. Shortly before Christmas Day 2016, the Second Defendant spoke with Mr Kramer …[who] informed the Second Defendant that Mr Bensinger had been repeatedly contacting him with requests to speak. The Second Defendant suggested that Mr Kramer should therefore meet with Mr Bensinger with a view to finding out what Mr Bensinger was investigating and what he wanted. The Second Defendant was unaware that Mr Kramer had been contacted by any media outlets about

> the "dossier". … the Second Defendant did not instruct, encourage or permit Mr Kramer to discuss the [PEM] or the December Memorandum with Mr Bensinger.
>
> e. … Mr Kramer already knew that he was not permitted to provide a copy of the [PEM] or the December Memorandum to any other person for any other purpose. The Second Defendant had no reason to suspect that Mr Kramer might breach that restriction by showing or providing copies of the [PEM] or the December memorandum to Mr Bensinger. In these circumstances, there was no reason for the Second Defendant to advise Mr Kramer against giving Mr Bensinger the December Memorandum.
>
> f. … Mr Kramer did not have any express or implied authority to give Mr Bensinger a copy of the December memorandum; nor could Mr Kramer reasonably have believed that he had such authority. On the contrary, he knew that he was not permitted to provide a copy of the December Memorandum to any journalist or media organisation.

102. The defendants describe the claimants' case, that they are liable for what BuzzFeed chose to do, as "novel and ambitious", making the following points, among others:

(1) There is no direct evidence from any witness or a document that the defendants knew, suspected or intended (a) that BuzzFeed would obtain copies of the PEM or the December Memorandum, or (b) that it would, or might, publish those documents to the world at large.

(2) It is inherently implausible that the defendants would willingly bring about any such publication, which was directly contrary to their personal and professional interests, and placed the lives and safety of their confidential sources at risk.

(3) It is common ground that:-

a) the defendants did not directly provide copies of the PEM or the December Memorandum to BuzzFeed;

b) Mr Steele did not expressly ask Mr Kramer to do this; and

c) BuzzFeed's publication of the PEM and the December Memorandum was one of the most irresponsible and reckless actions in the history of modern journalism, representing a profound departure from the most basic journalistic ethics and standards expected of a mainstream media organisation.

(4) The claimants' case that Mr Kramer was, in some sense, the defendants' agent for the purposes of passing the Dossier to BuzzFeed cannot be reconciled with the fact,

which is clear and undisputed, that Mr Kramer lied to Mr Steele about how BuzzFeed had in fact obtained the Dossier.

(5) Contemporaneous messages in the immediate aftermath of publication demonstrate Mr Steele's shock upon learning of BuzzFeed's conduct and his complete ignorance of (and genuine concern about) the means by which BuzzFeed had come by the Dossier.

The Aven *case*

103. The claimants in the *Aven* case attempted to persuade me that Orbis was responsible for the publication by BuzzFeed of the memorandum of which those claimants complained - "Memorandum 112" - and/or for the damage caused by that publication. Reliance was placed on Mr Kramer's deposition in the Florida Proceedings. The suggestion was that Mr Steele had put Mr Bensinger in touch with Mr Kramer when he knew or should have foreseen that this would lead to the provision of the Dossier to, and its ultimate publication by, BuzzFeed. I dismissed this contention on the twin bases that it was procedurally unsound (the case had not been pleaded, and no hearsay notice had been served in respect of the Kramer transcript), and in any event the claimants had not persuaded me that any disclosures of Memorandum 112 by Mr Kramer represented the processing of data by or on behalf of Orbis: see [55-61], [190], [198].

104. At [60-61] I said this:

> "60. The deposition of Mr Kramer is not a satisfactory basis for an invitation to reject Mr Steele's evidence and find Orbis liable for disclosure and publication of Memorandum 112 made by others. Besides the procedural shortcomings I have identified, the deposition is provided to me shorn of its context. I am told nothing else about the *Gubarev v Buzzfeed* litigation, and very little about Mr Kramer except that (as is obvious) he had a clear motive for tailoring his evidence. In any event, knowledge that a person intends to make a disclosure is not enough to bring home liability. And the substance of Mr Kramer's evidence, so far as Buzzfeed is concerned, is this. Mr Steele asked him to meet Mr Bensinger, but without asking him to provide a copy of the Dossier; Mr Kramer did not provide Mr Bensinger with a copy, but left him in a room with the memos for 20-30 minutes, on the agreed basis that Mr Bensinger would use the time to read them; in that period, Mr Bensinger took photos of the documents, without Mr Kramer's knowledge or consent; and Mr Kramer only found out about this when he saw the Buzzfeed Article, and did not intend the Dossier to be published. [Counsel for the claimants], having effectively called Mr Kramer as his witness, could not and did not question this account. It undermines the case he sought to advance.
>
> 61. On the basis of this evidence, I see no room for concluding that Mr Kramer made a disclosure to the

> *Washington Post* or Buzzfeed of the personal data contained in Memorandum 112 which amounted to processing of those data by or on behalf of Orbis, still less that the publication of those data by the *Washington Post* and Buzzfeed represented, or even resulted from, processing by or on behalf of Orbis…."

105. My findings in the *Aven* case do not bind the claimants in this action. Indeed, they have no legal relevance. As Mr Caldecott points out, these were conclusions drawn between different parties, in a different case, on evidence that was different and more limited (he calls it "exiguous"), and where the legal issue arose under the data protection legislation. Although there are evidential overlaps – for instance, Mr Kramer's deposition is relied on by the claimants in this case - my conclusions in the present case must be based on the totality of the fuller evidence and argument presented to me at this trial. The defendants have rightly approached the matter on that footing.

Legal principles

Liability for republication

106. The claimants' case is that the author(s) of a document (the December Memorandum) are liable for the defamation consequent on the republication of that document by others (BuzzFeed Inc). It is clear law that where a defamatory document written by the defendant is voluntarily republished by someone else the defendant is liable as a joint wrongdoer if he (1) intended the republication or (2) authorised it: see the decision of the Court of Appeal in *Speight v Gosnay* (1890) 60 LJQB 231, Gatley¶6.52, and the more recent decision of Nicklin J in *Turley v UNITE the Union* [2019] EWHC 3547 (QB) [84-89]. See also *Watts v Times Newspapers Ltd* [1997] QB 650, 670F-H ("participation or authorisation"). The case pleaded in the Particulars of Claim as they now stand asserts both these alternative bases for liability, as well as two others.

107. There is no need to elaborate on what is meant by intention. Authority to republish may be given expressly or by implication (see the examples at Gatley ¶6.53). The case which the claimants added by amendment in February 2020 is one of implied authority: see [94] above. The matter of republication is approached as one of substance, not form. Mr Caldecott points out that a defendant who intends or authorises it may be liable for the republication of the gist or sting of what he said or wrote; liability is not limited to cases where the defendant's words are reproduced *verbatim*: see Gatley ¶6.54 and *Al Refai v Dar Al Arkan Real Estate Development Co* [2013] EWHC 1630 (Comm) [34] (Andrew Smith J). But there is a distinction between, on the one hand, authorising a third party to perform an act and, on the other, merely facilitating that act, or creating conditions in which that third-party act becomes more likely, or reasonably foreseeable.

108. A third basis for holding a defendant liable for another's republication of his statement has been pleaded: that the defendant is liable if the republication was a reasonably foreseeable consequence of the original publication. In opening, Mr Caldecott advanced a different contention: that a defendant is liable for republication which is a "natural consequence" of publication by the defendant. He cited the judgment of Lopes LJ in *Speight v Gosnay,* where those words are used, and told me that the claimants would invite me to apply this principle, subject to a "more refined analysis". In his closing submissions, that invitation was withdrawn. Rightly so, in my view.

(1) Mr Millar complained that this was an un-pleaded case. In my view it can fairly be regarded as a variant of the pleaded case of foreseeability. In either event, the language adopted reflects the law of remoteness of damage. These are undoubtedly bases on which a defendant may be held responsible for damage caused by third-party repetition of his own publication: see, for instance, *Slipper v BBC* [1991] 1 QB 283. But that is a matter conceptually distinct from primary liability. Although it is possible to read what was said in *Speight* and *Turley* as identifying this "third way" as a basis on which a defendant might be found to be a joint tortfeasor, on a proper analysis neither case decided that this was so.

(2) In two recent defamation cases, the Court has expressed the view, albeit *obiter*, that in the modern law the test of reasonable foreseeability should not be adopted as a criterion of liability; a defendant should only be liable as a tortfeasor for "knowing or deliberate action": see *Berezovsky v Terluk* [2011] EWCA Civ 1534 [27-28] (Laws LJ), *Starr v Ward* [2015] EWHC 1987 (QB) [76] (Nicol J). This is also the view of the learned editors of Gatley (loc cit.) and Duncan & Neill on Defamation (4th ed ¶8.18). I agree with it.

(3) This is a coherent approach, consistent with general principles of liability in the law of tort. A party may be jointly liable for an act which furthers the commission of a tort by another, if that is done pursuant to a "common design" or "shared intention" with the primary tortfeasor to secure the doing of the wrongful act (*Fish & Fish Ltd v Sea Shepherd UK* [2015] UKSC 10 [2015] AC 1229 [21] (Lord Toulson) and [44] (Lord Sumption)). "Mere facilitation is never enough" (ibid, [39] (Lord Sumption)) and "foreseeability is never enough on its own to create a legal liability" (*Kalma v African Minerals Ltd* [2020] EWCA Civ 144 [85] (Coulson LJ)).

109. Mr Millar cited a number of additional authorities, and identified the potential chilling effect on free speech which might result from a laxer regime as another reason to hold fast to these principles in the media law context; but the stance ultimately adopted by the claimants means it is unnecessary for me to address these further arguments.

110. I do, however, make clear that I accept the defendants' submission, that aspects of the way the claimants' case on this issue was opened are, in the final analysis, unsustainable. It was argued (in paragraph 33 of the Skeleton Argument) that "on the third basis" the Court is "required to consider" the nexus between the original publication and the republication, and such matters as (a) whether the republication would not have occurred but for the original publication (the 'but for' test); (b) whether the intervening actor was a stranger to the defendant and, if not, the nature of their relationship where relevant; (c) whether the republication (of the relevant defamatory allegations) was reasonably foreseeable by the defendant; and (d) the objective likelihood of such a republication occurring. These are matters of causation and remoteness of damage, not touchstones of liability. At best, some of them may assist in answering the relevant questions: whether republication was intended, or authorised.

111. The fourth pleaded basis for holding the defendants liable for the BuzzFeed republication was not pursued. No argument has been presented that liability should be imposed on the basis that it would be "just and equitable" to do so.

Matters of procedure and evidence

The standard of proof

112. The claimants' case inescapably involves a frontal assault on the honesty and integrity of the defendants, and the veracity of Mr Steele. These are serious allegations, so it is necessary to recall that although the standard of proof remains the ordinary civil standard – the balance of probability – the claimants must present evidence commensurate with the gravity of the misconduct that is alleged against the defendants. More precisely:

> "When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence. …
>
> Although the result is much the same, this does not mean that where a serious allegation is in issue the standard of proof required is higher."

Re H (Minors) (Sexual Abuse: standard of proof) [1996] AC 563, 586D-F (Lord Nicholls). Mr Caldecott submits that this case is "not high on the *Re H* scale", because "the republication proposition" is not particularly unlikely. Mr Millar submits that the claimants' factual case is inherently improbable, for all the reasons I have summarised above, coupled with the clear and consistent evidence of Mr Steele that he did not intend or authorise the publication of the December Memorandum.

Lies

113. The claimants' case of wilful suppression of documents must also be looked at in the light of *Re H.* As Mr Caldecott put it in closing, there is a "relatively high standard" to be satisfied in that respect. In relation to this part of the claimants' case, I also remind myself of the *Lucas* direction given in criminal cases. I must ask myself if the claimants have established to my satisfaction (to the civil standard) that the defendants lied in one or more respects. If I find that the defendants have lied, I must beware of leaping to the conclusion that this is because they are guilty of what is alleged against them. There can be "innocent" reasons for lying: reasons that do not stem from a wish to conceal guilt.

Hearsay

114. The claimants have called no witness who can speak from personal knowledge of what took place in 2016-2017. They rely instead on some, relatively limited, contemporaneous documentation, and a substantial number of documentary records of what others have said, later on, about what happened, in books, articles, and testimony for proceedings in Court and to various political enquiries (see [15-18] above). Mr Caldecott fairly stresses the importance of contemporaneous records. In general, a Court will place particular weight on such documents, which tend to be a more reliable

guide to the truth than oral evidence which conflicts or is hard to reconcile with the records: see the discussion in *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) [40].

115. When it comes to hearsay, the position is different. I need to bear in mind a number of general principles:

(1) When evaluating hearsay evidence in civil proceedings the Court is required by s 4 of the Civil Evidence Act 1995 to have regard to "any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence", including a number of particular matters specified in s 4(2)(a) to (f).

(2) Hearsay is best used to establish peripheral or relatively uncontroversial matters. Reliance on hearsay as a means of establishing important facts is generally unsatisfactory: see Phipson on Evidence 19th ed ¶29.16, *Miller v Associated Newspapers Ltd* [2012] EWHC 3721 (QB) [24], [36-37] (Sharp J), and my judgment in *Hourani v Thomson* [2017] EWHC 432 (QB) [25].

(3) Where a Court is confronted with conflicting statements, one from the witness box and another in an unsworn written statement not tested by cross-examination, the Judge will tend to prefer the oral evidence: see Phipson (loc cit), and cases there cited.

116. Section 4 of the 1995 Act contains a rule of law, but its application will turn on the facts of the individual case. So will that of the other two principles I have mentioned, which are rules of thumb, not principles of law. As Dyson LJ made clear in *Welsh v Stokes* [2007] EWCA Civ 796 [2008] 1 WLR 1224 [23]: "Where a case depends entirely on hearsay evidence, the court will be particularly careful before concluding that it can be given any weight"; but it is permissible to advance a case based entirely on uncorroborated hearsay evidence, and there is no rule against a Court giving weight to such material. As Baroness Hale observed in *Polanski v Conde Nast Publications Ltd* [2005] UKHL 10 [2005] 1 WLR 637 [74] "The court is to be trusted to give the statement such weight as it is worth in all the circumstances of the case."

117. Among the factors that bear on the reliability of the hearsay evidence in this case are the following:

(1) Many of the statements relied on were given in formal proceedings. Some of them (as identified in the claimants' Skeleton Argument) were made on oath and under penalty of perjury. I am prepared to accept Mr Caldecott's additional assertion that knowing provision of false evidence to a Congressional investigation is a criminal offence in US law. This is supported by statements in some of the hearsay transcripts.

(2) There was no application for permission to call any of these witnesses to be cross-examined on the content of their statements (CPR33.4), nor did the defendants serve any counter-notice of an intention to attack the credibility of any of these hearsay witnesses (CPR 33.5).

(3) On the other hand, three of the hearsay notices were served out of time (after the date for exchange of witness statements); many of the accounts relied on were given

a long time after the events to which they relate; all or most of them were provided in highly-charged public proceedings, in a partisan context; the topics raised with the witnesses and the questions put to them will have been selected with particular aims in view, that are or may be different from those of this trial; many of the "witnesses" whose evidence is put forward in this way have political or other motives for elaborating, or being less than accurate or candid; most if not all had strong incentives to place their own behaviour in a better light and/or to cast a cloud over that of others; the books and articles have plainly been carefully crafted and edited; there is evidence of collaboration in the preparation of some witness statements (those of Messrs Smith and Bensinger of BuzzFeed in the Florida Proceedings).

(4) Moreover, it remains the fact that I was not able to evaluate any of these "witnesses" in person, with the benefit of cross-examination. It is far from clear that all the justifications offered for not calling any of these witnesses are sound or weighty. Oral testimony, subjected to challenge or probing, still has real value, especially where documents are lacking. Whatever might be said about proportionality, it is commonplace for witnesses to give evidence from abroad. The practical difficulties of arranging that have not been identified. All of this affects the weight to be given to the hearsay records.

118. There are some hearsay statements which find support in, or are at least consistent with, the objective facts established by other, reliable evidence. One illustration, offered by Mr Caldecott, concerns the book "Russian Roulette" (2018), by Michael Isikoff (of Yahoo News) and David Corn (of *Mother Jones*). The passage relied on asserts that in September 2016 Mr Steele orally briefed Mr Isikoff, in detail, about the alleged secret meetings between Mr Carter Page and high-ranking Russian officials to discuss a deal for the lifting of sanctions. This hearsay is supported, says Mr Caldecott, by Mr Isikoff's article of 23 September 2016, headed "US Intel Officials Probe Ties Between Trump Adviser and Kremlin". The article cited this same information, attributing it to a "Western intelligence official". The information was in Mr Steele's Memorandum 94, but not otherwise accessible. In other instances, however, the factors I have mentioned make it hard to have confidence in the hearsay records. As Mr Caldecott acknowledges, the position of Mr Kramer is especially difficult.

The binding effect of a party's evidence

119. As a rule, a party who adduces evidence from a witness is bound by what they say. They are not entitled to "impeach" the evidence, that is to discredit the witness, or to invite the Court to disbelieve their evidence, or part of it. This rule applies equally where the evidence is adduced in the form of a witness statement: see *McPhilemy v Times Newspapers Ltd (No 2)* [2000] 1 WLR 1732. Consistently with this rule, the claimants have not invited me to reject any part of what Mr Kramer said in the deposition and declaration on which they rely.

Assessment

120. In my judgment, having assessed the relevant evidence as a whole, it has not been shown that that Mr Steele authorised the publication of the words complained of, or words to that effect, by BuzzFeed, or that he intended that those words, or the gist of them, should be published by BuzzFeed or to the public at large.

The evidence of Mr Steele

121. He is the only person who was "in the room where it happened" - or did not happen - and who appeared before me as a witness. He has been consistent in his position, that he did not authorise the publication of the December Memorandum to the general public, or intend that such publication should take place. The account given in his witness statement is reasonably detailed, and inherently worthy of belief. That is to say, it does not lack credibility as a version of events. No allegations of general bad character have been made. Sir Andrew Wood has given evidence of Mr Steele's positive good character as a "serious and responsible intelligence professional and an individual of the utmost honesty and integrity", who had a "positive professional reputation". There is also evidence of Mr Steele's good character in Mr Kramer's Florida deposition (at p88 ll.18- 25, p115 l.22 – 116 l.19). He is entitled, as a starting point, to be treated as someone of good character. He gave his evidence calmly and with a degree of confidence, withstanding sustained challenge in cross-examination without becoming flustered or confused.

122. That said, he is an intelligence professional whom one would expect to be capable of dealing with challenge. I must, in any event, guard against basing my decision on an assessment of a witness's demeanour, or presentation. The evidence must be assessed as a whole, comparing the witness's account with other versions of events, contemporary documents, and what the evidence as a whole suggests about the inherent probabilities. I need to consider the detailed criticisms of the way the defence case has been conducted, and what inferences I should draw.

The claimants' case on the facts

123. The main features of the claimants' factual case are summarised in the ten propositions I have set out at [97] above. But there is more to it, and some general observations can be made.

(1) First, a number of the claimants' ten points go more to the case, ultimately abandoned, that BuzzFeed's republication of the December Memorandum was a natural or foreseeable consequence of the defendants' conduct, rather than to the narrower question of whether it was something that Mr Steele had authorised or intended. This point applies, in particular, to propositions (2), (3), (5) and (8).

(2) Secondly, the claimants' task is to prove that the defendants authorised or intended the publication of the December Memorandum, in January 2017, after the Presential election. What the defendants did, knew, intended, or authorised before the election, in respect of the PEM, is relevant only insofar as it lends support to inferences about the defendants' intentions, or what authority they gave, at the relevant times in December 2016 and January 2017.

(3) The role of Mr Kramer in all of this is pivotal. The claimants' first proposition includes the assertion that Mr Steele (on behalf of Orbis) "briefed the media on the detailed allegations in … the December memorandum" *via Mr Kramer* (my emphasis). There is no pleaded allegation that Mr Steele or Orbis "briefed the media" on those allegations directly, or in any other way than through Mr Kramer.

(4) Fourthly, the main focus of the claimants' case is (and has to be) on what *BuzzFeed* was told or given: see [97(4)] above. It is not suggested that BuzzFeed obtained the December Memorandum, or learned of what it said, from any briefings given by Mr Kramer to "the media" more generally. So, at the heart of the claimants' pleaded case is the proposition that Mr Kramer briefed BuzzFeed (Mr Bensinger), with at least implied authority to communicate, with a view to publication, the words of the December Memorandum, or at least the allegations complained of.

(5) But the claimants' case has ultimately gone beyond that. The claimants' ten propositions make reference to the London meeting, of 3 January 2017, between Mr Bensinger and Mr Steele. They do not assert that it was an occasion when Mr Bensinger was briefed. No such proposition appears in the claimants' statements of case, which do not mention that meeting. In cross-examination, however, it was squarely put to Mr Steele that on 3 January 2017, in London, he briefed Mr Bensinger about the details of his Dossier, and that he did so with a view to publication. It was suggested that this proposition was supported by the contemporaneous documents, the inherent probabilities, the failure of the Defence to mention this meeting, and failures of disclosure in respect of communications with Mr Bensinger. All those matters were explored in detail by Mr Caldecott in cross-examination, and this aspect of the case emerged as a prominent strand of his closing argument. He submitted that "the likelihood is that Mr Steele fully briefed the allegations" on this occasion, though the claimants "certainly don't say that he anticipated the form in which they came out".

(6) The claimants' case has also expanded in two other respects:

a) It now embraces the meetings which, according to Mr Kramer, took place between him and Carl Bernstein in the United States, in early January 2017, and involved disclosure of the Dossier (see the Agreed Chronology). Again, no reference is made to such meetings in the pleaded case. They were not mentioned in the ten-point summary, or otherwise in opening. But in cross-examination, and in closing, Mr Caldecott appeared to suggest that such meetings took place, at Mr Steele's request.

b) It also now embraces an additional, unpleaded, allegation that, by 6 January 2017, Mr Steele was aware that Alan Cullison, of the Wall Street Journal, had been briefed about the contents of the December Memorandum, and was contemplating follow-up investigations in Cyprus. Considerable emphasis was placed in closing on this point, and the documents said to support it.

The evidence as to the December Memorandum

124. In the light of what I have just said, it is as well to start with this. As Mr Caldecott acknowledged in opening, "Ultimately the case turns on the December Memorandum."

Witness evidence

125. **Mr Steele.** The account given in his witness statement is, in summary, as follows:-

i) In early November 2016, he discussed with Sir Andrew Wood his desire to ensure that a Senior Republican in Congress should be made aware of Orbis' investigation and the intelligence they had obtained. Sir Andrew proposed an approach to Senator John McCain, Chair of the US Senate Armed Services Committee, and an expert on Russia. Sir Andrew advised that the approach be made via David Kramer, a trusted associate who "could be relied on to handle sensitive intelligence securely". The three (McCain, Kramer and Wood) met at the Halifax conference mentioned above. Sir Andrew reported back that Senator McCain had asked Mr Steele to brief Mr Kramer, on his behalf.

ii) On 28 November 2016, that meeting took place, at Mr Steele's home in Surrey. Mr Steele showed the PEM to Mr Kramer, having first secured his agreement that they were strictly confidential and to be used only by Senator McCain in ways he considered necessary to protect US security. The PEM were not provided to Mr Kramer at the meeting, but later, by Fusion, following a reiteration of their confidential status, and on the agreed basis that they were intended for Senator McCain.

iii) The December Memorandum recorded further intelligence received, from "trusted confidential sources", in the period after the Presidential Election. It was produced "on my own initiative" for the sole purpose of providing it securely to appropriate officials in the US and UK "for the purposes of protecting US and UK national security."

iv) Mr Steele provided a copy to a senior UK government national security official. As Senator McCain had asked him to provide any further intelligence regarding the issues addressed in the PEM, he provided the Senator with a copy. This was done by sending an encrypted email to Fusion, directing them to provide a hard copy to Senator McCain, via Mr Kramer, on the understanding that it would only be used for the purposes identified above.

v) Neither Mr Steele, nor anyone else at Orbis, provided any briefings about the content of the December Memorandum to any journalists or media organisations, or authorised anyone else to do so.

vi) Mr Steele did not authorise, or instruct, Mr Kramer to engage with any journalists concerning the December Memorandum, and he was unaware of any contacts made in that regard, save as follows.

vii) In mid-December 2016, Mr Bensinger repeatedly contacted Mr Steele and Mr Kramer, seeking information about the Russia-Trump issue. Mr Bensinger indicated to Mr Steele that he was aware that Senator McCain had a file of intelligence on the topic. Mr Bensinger was "pestering" Mr Kramer about this. Accordingly, Mr Steele suggested to Mr Kramer that he should speak to Mr Bensinger. His intention was not to bring about a transfer of documents or information to Mr Bensinger, but to obtain information from Mr Bensinger: "to find out exactly what he was investigating and what he wanted". Mr Steele's purpose was to ensure he was forewarned of any potential threat to Orbis' work or sources that might be posed by BuzzFeed's journalistic enquiries.

viii) Mr Kramer knew he was not permitted to provide copies of any of the PEM or the December Memorandum to anyone other than Senator McCain, and Mr Steele had no reason to suspect that he might give copies to Mr Bensinger. He would have "explicitly forbidden him", had he known this was in prospect. Mr Steele says he did not "instruct, encourage or authorise" Mr Kramer to discuss the PEM or the December Memorandum with Mr Bensinger.

ix) Shortly before Christmas, Mr Steele received a message from Mr Kramer, confirming he had spoken, off-the-record, with Mr Bensinger, but with no detail of what they had spoken about.

x) Mr Steele was not told of the Kramer/Bensinger meeting of 29 December 2016, of which Mr Kramer has since spoken. He first learned of it, in June 2018, when he read Mr Kramer's deposition in the Florida Proceedings. That was the first time Mr Steele knew of any unauthorised disclosure by Mr Kramer of the December Memorandum (or the PEM).

xi) Mr Steele's London meeting with Mr Bensinger, on 3 January 2017, was not for the purpose of discussing the PEM or the December Memorandum. In the summer of 2016, the two had discussed a book Mr Bensinger was writing about corruption in FIFA, and Mr Bensinger – who proposed the January meeting - had given Mr Steele to understand that this was the topic to be discussed. During the meeting, however, Mr Bensinger asked Mr Steele, directly, if he had been involved in investigating Trump-Russia. Mr Steele refused to comment, and "brought the meeting calmly to an end". Mr Bensinger did not say or do anything to indicate that he had obtained copies of the PEM or December Memorandum, nor did Mr Steele suspect that he, or any other journalist or media organisation, had them.

xii) On the evening of 10 January 2017, on learning that BuzzFeed had obtained and published these documents, Mr Steele's first reaction was "one of shock and horror". Had he known the media had the documents, and intended to publish them, he would have done whatever he could to prevent it.

xiii) As for who was responsible, he had no reason then to suspect that the UK official or Mr Kramer was to blame. He did suspect someone in Senator McCain's office. He raised the matter with Mr Kramer, in writing. Mr Kramer responded in terms that indicated that he had received the Dossier from Glenn Simpson of Fusion and shared it with a "staffer" of Senator McCain, but knew of no wider distribution. In the light of Mr Kramer's deposition, Mr Steele now sees this as a deception, to conceal a deliberate and serious breach of trust.

126. Cross-examined, Mr Steele:

i) was not accused of authorising the provision of the Dossier by Mr Kramer to Mr Bensinger;

ii) maintained that Mr Bensinger had told him he was coming to London to discuss FIFA, and then going on to Europe to meet other FIFA-related contacts;

iii) denied that Mr Bensinger was open with him, or that it was clear, before the visit to London, that he wanted to talk about the Dossier; he said he had suspected this, but "did not want to look shifty" by cancelling a meeting with a commercial client (that being Mr Bensinger's status, so far as the FIFA matter was concerned);

iv) denied "absolutely" that, in the event, he had briefed Mr Bensinger about the details of the Dossier, with a view to publication or at all;

v) did not accept Mr Kramer's evidence that he had asked Mr Kramer to speak to Carl Bernstein; and

vi) accepted that it appeared, from the records, that on 6 January 2017, Mr Cullison was investigating Mr Cohen, but did not make any further admissions about what (if anything) Mr Cohen knew about the content of the December Memorandum.

127. **Sir Andrew Wood** His witness statement confirmed the account of his role provided by Mr Steele. He had believed it was clear, in his discussions with Mr Kramer and Senator McCain in Halifax, and in his later communications with Mr Kramer, that the PEM were not for publication. He had considered Mr Kramer to be honourable. He also thought very highly of Senator McCain, whom he described in cross-examination as "the very soul of truthfulness, honour and courage". So far as the December Memorandum is concerned, Sir Andrew said that he and Mr Steele did not discuss it, and he was not aware of its existence until after these proceedings were commenced. He had not expected any of the PEM to be published, and understood this to be contrary to the wishes and interests of Mr Steele and Orbis. This evidence was not challenged.

128. **Mr Kramer** The account he gave in the Florida Proceedings, so far as relevant, includes the following:

i) On 28 November 2016, he travelled to the UK to meet Mr Steele at his home, where he was shown the PEM. He was not given copies. He then returned immediately to the US.

ii) On 29 November 2016, he received from Mr Simpson two versions of the PEM, one with more things redacted than the other. He was not told why that was. Mr Steele and Mr Simpson knew that he was to pass the documents to Senator McCain. Mr Simpson made no suggestion that Mr Kramer should provide the material to anyone else, nor did he mention any discussions with any media outlets. Mr Simpson indicated "it was a very sensitive document and needed to be handled very carefully", meaning "it was not to be bandied about".

iii) On 30 November 2016, Mr Kramer met the Senator, and shared "the document" with him. On 9 December 2016, he learned that, at Mr Kramer's suggestion, "it" (which must mean the PEM) had been provided by Senator McCain to the Director of the FBI. Mr Kramer's discussions with Mr Simpson thereafter were about the status of Senator McCain's discussions with Mr Comey.

iv) Between 30 November and his receipt of the final memo (the December Memorandum), he had contact with a number of representatives of the media,

to whom he provided copies of the PEM, whilst stressing to every one of them "the sensitivity of the document, the need to verify or refute it, and not to publish it" unless and until it was verified.

v) After these contacts with media representatives, he received the December Memorandum from Mr Simpson. He was given it in person in Washington DC on a date which he could not specify but must be on or after 13 December 2016.

vi) Around Christmas Day, Mr Steele suggested, in a telephone conversation, that Mr Kramer should meet with Mr Bensinger. Mr Kramer agreed to let Mr Steele give Mr Bensinger his phone number. Asked if Mr Steele asked him to provide Bensinger with a copy of "the Memos", he answered "He didn't either way".

vii) At the meeting, in the McCain Institute Office in Washington DC on 29 December 2016, Mr Bensinger explained that he had got to know Mr Steele during "the FIFA investigation", and "they" were very interested in looking at "it" and doing some investigative reporting. Mr Bensinger wanted to read the memos and asked if he could take photos. Mr Kramer's evidence is, "I asked him not to". Mr Kramer went to the bathroom and "left him to read for 20, 30 minutes", but did not realise he had taken photos. The first time he realised that had happened was when he learned that the Dossier had been published by BuzzFeed.

viii) Mr Bensinger had not discussed the possibility of publishing the memos, and did not ask if he could quote from them. If Mr Kramer had known that Mr Bensinger would photograph the documents, and BuzzFeed would publish them, he would not have given Mr Bensinger access to them.

ix) He had not discussed Mr Gubarev, Webzilla or XBT Holdings with Mr Steele, Mr Simpson, Senator McCain, Mr Bensinger, or anyone in the media.

x) As for Mr Bernstein, they had a meeting on 3 or 4 January at Mr Steele's request, and a follow-up meeting about a week later. He gave Mr Bernstein copies of the documents. Mr Kramer did not say that Mr Steele had asked him to do that. He did say that he had told Mr Bernstein "the same thing that I had said to the others…"

xi) When he came to learn of the BuzzFeed publication, Mr Kramer was shocked. He believed that publication violated the spirit of his discussions with Mr Bensinger. He called Mr Bensinger and his first words were "you are gonna get people killed". He spoke to Mr Steele within an hour of publication, and Mr Steele was shocked.

xii) Mr Kramer said he had initially denied to Mr Steele having provided the Dossier to Mr Bensinger, and had never to that day told him the truth. The reason was that he had initially "panicked" and then "felt I could try to do more good ... by maintaining contact with Mr Steele which I thought might end if I told him."

129. The account given in Mr Kramer's interview to the Russia Committee hearing, 6 days after this deposition, was consistent with the above. It covered other ground:

i) Asked whether, when they were talking in December, Mr Steele had "some expectation that *this* wouldn't go public" (emphasis added), Mr Kramer said "No. I think he expected that *it* would come out in one form or another" (ditto) but "I don't think he anticipated the exact way it did come out".

ii) Asked if it was his understanding of the purpose of his meeting with Mr Bensinger that "Mr Steele wanted you to show him the work that he … had done", Mr Kramer answered, "Mr Steele didn't indicate one way or the other to show or not to show …"

iii) Asked what his impression was of the reasons why Mr Steele wanted to put him in touch with "certain reporters", Mr Kramer said

> "I don't – I think it was for the allegations to be pursued, not necessarily made public. Only made public if the allegations were verified. I don't think it was in his interest to have this released as it had been by Buzzfeed."

iv) Between 29 December 2016 and 10 January 2017, he had contact with Mr Steele. Asked what these communications were about, he said "It was mostly just trying to get a sense of what was happening with anything I was hearing in Washington."

130. **Mr Bensinger** In his deposition and declaration in the Florida Proceedings, he gave accounts of his receipt of the Dossier from Mr Kramer. He made the following relevant assertions:

i) On 1 December 2016, he learned from confidential sources of the existence of a series of memos written by Mr Steele, with information about Mr Trump's alleged ties with Russia. He was on leave, working on his book at the time, but he knew Mr Steele and it seemed a potentially important story.

ii) Having spoken to his editor, Mr Schoofs, he tried to obtain a copy of the memos, but was unable to do so. Among others, he approached Mr Simpson, who declined.

iii) Shortly before Christmas, his editor advised him that Ben Smith had been told that Mr Kramer had the memos. Mr Bensinger phoned Mr Kramer and they met at the McCain Institute on 29 December 2016.

iv) When they met, they spoke about the Dossier before Mr Bensinger saw it. In this conversation, Mr Kramer

> "was very clear with me that he believed the information in the Dossier was important … he was allowing me to review it because he believed it needed to be further investigated and verified. Mr. Kramer told me that portions of the Dossier were unverified, but that he believed the allegations it contained should be taken very seriously and to handle it with great care.…"

v) After their conversation, Mr Kramer "placed a copy of the Dossier on the table… and told me that I could feel free to look at it." He left Mr Bensinger alone for 20-30 minutes to look at it. Mr Bensinger says he understood Mr Kramer

> "… to give me permission to take the memos with me by way of taking pictures of each page with my cellphone which I did…
>
> [and to be] willing to have me take the Dossier so that I could further investigate its contents to try to verify them."

The copy he received had a redaction bar on the last page.

vi) After leaving the meeting with Mr Kramer, Mr Bensinger sent the Dossier to Mr Schoofs via WhatsApp. Having read the Dossier in full, he contacted sources in an attempt to investigate but "was unable to obtain any additional information about it".

vii) On 7 January 2017, when he was on a family vacation with his children at Disney World in Florida, he received a call from Mr Schoofs. He was surprised to learn that BuzzFeed was to publish the Dossier imminently. Mr Bensinger wanted to delay, but in a conference call that day, editorial staff determined that the publication of the CNN story made time of the essence and that publication would proceed without notifying Mr Kramer or anyone else. Mr Bensinger made one editorial amendment. After publication, Mr Simpson and Mr Kramer called to ask him to get the Dossier removed.

131. **Mr Smith** His declaration in the Florida Proceedings corroborates Mr Bensinger's account of how he came to contact Mr Kramer. Mr Smith confirms that it was on 23 December 2016 that he learned of the existence of the Dossier, and that Mr Kramer had a copy. On 29 December 2016, he received a copy of the Dossier from Mr Schoofs, which he learned had been obtained by Mr Bensinger from Mr Kramer.

132. **Observations** This evidence makes clear that the source from whom BuzzFeed obtained the Dossier was Mr Kramer. But the evidence could not sustain a finding that Mr Kramer intended or authorised the publication by BuzzFeed of the Dossier, or any words quoted from it. The claimants' own evidence is to the contrary. Mr Kramer did not intend or authorise such a thing, and was shocked when it happened. On Mr Kramer's evidence, any notion Mr Bensinger may have entertained, that he had been authorised to take photographs of the Dossier, or to quote from it, was mistaken. Photography was expressly prohibited. Mr Steele's evidence of his own shock at the BuzzFeed publication is not only supported by Mr Kramer's account it is also (as I shall explain) corroborated by contemporaneous records, and is not challenged. It cannot be, and is not, suggested that he intended or authorised the publication that in fact took place. The primary version of the original pleaded case fails.

133. That much has been accepted by the claimants. Their case now is limited to the proposition that Mr Steele and Orbis are, nonetheless, liable for BuzzFeed's publication of the defamatory imputations about them, because they intended or authorised the publication of something to that effect – an argument which might be labelled "reverse *Al-Refai*". This case was pleaded as an alternative from the outset, but it has evolved in

a number of ways. The evidence I have summarised poses a number of difficulties for this line of argument. The following points stand out.

(1) The evidence I have summarised contains no or no clear indication that Mr Steele intended or authorised Mr Kramer to convey to Mr Bensinger, at any stage, the detail of any aspect of the Dossier. Mr Kramer accepts that he was not asked to do so. Mr Steele says he was only seeking an exploratory conversation. I do not know what Mr Kramer might say to that, because he has not been made available for Mr Steele's account of things to be put to him. But he has said nothing to the contrary.

(2) There is nothing in the witness evidence to suggest that the initial Kramer/Bensinger conversation was an event of significance, in which Mr Bensinger obtained any detailed or significant information. Mr Kramer's evidence is clear: at no stage did he orally brief details from the Dossier to Mr Bensinger. Mr Bensinger's account is consistent with that.

(3) Mr Steele says he did not intend or authorise Mr Kramer to provide the Dossier to Mr Bensinger, and there is no witness evidence to contradict him. On the contrary. Mr Kramer's admission that he lied to Mr Steele about how BuzzFeed got the documents, and the reasons he gives for doing so, are clear indications that he knew at the time that he had done wrong: he understood he was not supposed to make documents available.

(4) What Mr Kramer did deliberately make available to Mr Bensinger was the information in the Dossier that Mr Bensinger was able to read in the time available. That information was provided on the express condition that it was for investigation and not for publication unless (at best) it had been independently verified. The evidence of the claimants' witnesses, Mr Kramer and Mr Bensinger, is to the same effect on this point.

(5) It is plain from Mr Bensinger's evidence, and from the terms of the BuzzFeed Article itself, that the condition was never satisfied: the contents of the December Memorandum were not verified by BuzzFeed. Indeed, the evidence suggests that no significant aspect of the Dossier was verified by BuzzFeed, as opposed to being considered by them to be important and worthy of publication.

(6) The evidence does not make clear that Mr Bensinger even read the December Memorandum before he left the meeting with Mr Kramer. I consider it unlikely than he did so. Mr Bensinger says, "During the time I was in that office, I was able to read some, but not all of the memos." This is understandable, given the limited time available. It is supported by Mr Kramer's evidence: he says Mr Bensinger told him he was a slow reader. The December Memorandum was the latest in time, and most likely at the bottom of the pile. If that is right, there is no chain of causation between (a) any authority that Mr Kramer might have had to convey to Mr Bensinger information contained in that Memorandum, and (b) the publication of the imputation complained of.

(7) There is no witness evidence to support the claimants' case that Mr Steele briefed the allegations to Mr Bensinger at their meeting of 3 January 2017. There is nothing, from any witness, to contradict Mr Steele's account of that meeting. Most pertinently, there is a striking absence of evidence from Mr Bensinger. His

declaration was made in support of an application for summary judgment, and sought to explain and justify BuzzFeed's editorial processes. It makes no mention of this supposedly crucial meeting. Nor is the meeting mentioned in the extracts from Mr Bensinger's deposition that are in evidence, or the extracts from Mr Smith's deposition.

(8) The written statements and depositions do not include anything from Carl Bernstein or Alan Cullison.

Documents

134. Several documents are relied on by one side or the other in respect of the December Memorandum. I shall address the more important ones, in chronological order.

135. **Pre-publication documents.**

i) 13 December 2016. The claimants invite an inference from the evidence that a copy of the December Memorandum, redacted as to source material existed, was given to Mr Kramer and ultimately published by BuzzFeed. Even in opening, Mr Caldecott acknowledged that this might be a peripheral point, describing it as a puzzle which it might be "inessential to solve". I think that is right. But I will say that it cannot be inferred from the redaction that Mr Steele intended or authorised the publication of the remaining information in the December Memorandum. I accept Mr Steele's evidence that he was not responsible for any such redaction.

ii) 19 December 2016. The claimants rely on a sequence of SMS exchanges between Mr Steele and Sir Andrew Wood, which culminated with an exchange of 19 December, in these terms:

> "CS: JM appears to have bottled it and left DK exposed. Indications are that wealthy R donors are buying off the critics. So much for patriotism! But JM has the info and therefore is compromised anyway. All quite depressing. Maybe let's catch up in person later in the week.
>
> AW: Yes but not surprising. I thought the stratagem unlikely to succeed. The immortal words of a former Sec. Gen of the former League of Communists of Yugoslavia have always comforted me: "In the end the Russians always f*** it up."[1] I shall be at CNN tomorrow morning around 1030 so could get to you around noon if you thought that useful."

The two arranged to meet the following day, at Mr Steele's London office. By this time, Sir Andrew had met Senator McCain, told him of the Dossier and suggested that its existence should be made known to "responsible Republican circles". The Dossier itself had been passed on to the Senator, via Mr Kramer. The Senator had passed it to Mr Comey at the FBI. The suggestion made to Mr Steele was, as I understood it, that his hope and plan was for (at least) the gist

[1] Asterisks in original

of the Dossier to be passed on by Senator McCain (JM) and/or Mr Kramer (DK) more widely, to Republican Congressional colleagues of Senator McCain and beyond, to prompt some public action and wider revelation; that this was the "stratagem" referred to by Sir Andrew; and that Mr Steele's "depression" stemmed from the failure of that stratagem.

iii) I do not find this persuasive as a basis for an inference that the defendants intended, or authorised, media publication of the allegations complained of. I accept the evidence of Mr Steele and Sir Andrew on the issue. Mr Steele's explanation of the exchange was, in substance, that he had hoped and expected Senator McCain to do a good deal more than merely act "as a postbox" to pass the Dossier to the FBI and Mr Comey, who already had it. Mr Steele and Sir Andrew saw the inaction of the FBI as part of the problem. Mr Steele had hoped information would be passed to the CIA, the National Security Agency, and to colleagues of Senator McCain on the National Security Committee. Senator McCain was "compromised" politically, because he could expect retribution from Mr Trump, as took place. Mr Kramer was "exposed" because he had been talking up the importance of the Dossier to senior officials at the NSC and State Department, and the limited steps taken by Senator McCain exposed him to a backlash – as indeed occurred. Sir Andrew's evidence was that he, too, had assumed the Senator would mention it to others on his Committee; the stratagem was to ensure that senior Republicans knew of its existence. My assessment is that Mr Steele and Sir Andrew wanted knowledge of the Dossier's contents spread in influential circles, but it by no means follows that they wished the contents of the December Memorandum to be published in the media.

iv) 23 December 2016. The claimants rely on WhatsApp exchanges between Mr Bensinger and Mr Steele. At 6pm UK time, Mr Bensinger suggested meeting in London on 24 or 25 January, and Mr Steele agreed. Later, after 11.30pm UK time, Mr Bensinger replied suggesting a Skype call "at your earliest convenience" on "something that's come up". Mr Steele replied that he was just going to bed, and asked what had "come up". The reply was "Trump related. Tomorrow?". Mr Steele replied "Probably. What's the angle?" All of this fits well with Mr Steele's evidence that the original topic of the meeting was FIFA, not Trump or the Dossier.

v) 24 December 2016. Some hours later – it seems in the early hours, UK time, Mr Bensinger responded to Mr Steele's question, saying "People are telling me that Sen McCain has a dossier and it's Russia related. Can we discuss?". That, no doubt, was prompted by what he had learned from his own confidential sources, and what Mr Smith had been told ([130(iii)] and [131] above). Mr Steele, doubtless slumbering at the time, did not reply. But nor did he reply during the daytime.

vi) The claimants rely on a WhatsApp message sent by Mr Kramer to Mr Steele on 24 December, saying "Just spoke with him, completely [off the record], gave him broad picture. Stressed importance of verifying. Merry Christmas!" In cross-examination, Mr Steele readily agreed that the "him" was Mr Bensinger, and that the messages showed he had been given a "broad picture view" at this time. Mr Caldecott invites me to place weight on all of this, but I am not persuaded that it takes the claimants' case very far. As Mr Millar submits, Mr

Kramer's message does not even refer to the Dossier. More significantly, to my mind, there is nothing in Mr Kramer's deposition, or the deposition or declaration of Mr Bensinger, to suggest that this was an important conversation with Mr Kramer, which provided anything in the way of detail. Further, Mr Steele's reply to Mr Kramer was "Thanks. But he's trying to call me still on Xmas Eve! I'm not speaking to him…" That is borne out by the Bensinger/Steele WhatsApp messages. Mr Steele's silence, and his response to Mr Kramer, are consistent with his evidence. Both are at odds with the claimants' case that Mr Steele was keen to have Mr Bensinger briefed in detail, and that he did that himself when the two met on 3 January.

vii) 3 – 6 January 2017. The claimants rely on WhatsApp exchanges in this period to support their case that Mr Steele was "well aware that Mr Kramer was talking to journalists about the contents of the dossier in January 2017". That is a very broad-brush proposition. Mr Steele clearly knew that Mr Kramer was talking to journalists about matters contained in the Dossier, but the claimants need more than that. They need to establish that Mr Steele intended or authorised the publication of allegations contained in the Dossier. For that purpose, some active briefing or other assistance is required. The claimants have no evidence from Mr Kramer on this aspect of the case, nor have they adduced any witness evidence from any of the journalists concerned. We are left with the messages, and Mr Steele's evidence about them. In my judgment that evidence, viewed in the round, does not take the claimants' case over the line.

viii) The great majority of the messages consist of Mr Kramer reporting what journalists have said or asked for. It is clear that several were pestering for more information. The evidence does not suggest that Mr Kramer was providing any detailed information and – consistently with his approach to Mr Bensinger's calls - Mr Steele several times declined to engage.

a) On 3 January 2017, Mr Kramer wrote that "WSJ Alan" had "asked one more time about a meeting". He had clearly learned not to expect a positive response, writing "I know you'd rather not but wanted to ask one more time." Mr Steele wrote "My business partner and wife remain opposed to me talking to media … so I can't I'm afraid. I also have nothing further to add."

b) On 4 January 2017, Mr Steele made clear that (as Mr Kramer clearly anticipated) he would decline requests to meet Mr Ignatius of the Post, and Carl Bernstein. He wrote that he had learned (through Mr Simpson) that Mr Bernstein wanted to meet him, and went on:

> "Our position on this is that we have not been actively working on the subject for two months; that we have no client; that we spoke to several us journalists before, including dana and tom h at the post only at the client's request; that we have nothing much new to add; and need to maintain a low profile… I honestly think it's time these journos got on with their work and stopped trying to lean or anchor it all on us."

ix) The most relevant issue, of course, is whether the messages support a conclusion that Mr Steele intended or authorised BuzzFeed's publication of the content of the December Memorandum. I do not consider that they do. The claimants invite me to place great weight on references to Alan Cullison (the "WSJ Alan" I have mentioned already). The messages of early January do indicate that – to the knowledge of Messrs Kramer and Steele - Mr Cullison was investigating issues to do with Michael Cohen, and Prague. That is explicable on the basis that (according to Mr Kramer) copies of the PEM had been disclosed to Mr Cullison earlier, Memoranda nos 135 and 136 refer to Mr Cohen's involvement, and the latter mentions Prague. But Mr Caldecott highlights two further points:

a) a reference to Cyprus in a message from Mr Cullison that Mr Kramer forwarded on 6 January 2017. He wrote: "I was preparing to go to Cyprus next but I expect they're prepared there as well. And that really is crawling into the lion's den…"; and

b) the fact, verified by Mr Gubarev's statement, that Alan Cullison examined his LinkedIn page on 23 December 2016.

x) The reference to Cyprus could have another explanation, but, in the light of the LinkedIn evidence, I accept that it is likely that Mr Cullison had somehow come to learn, before Christmas, that Mr Gubarev was implicated in the Trump allegations, and was linked to Mr Cohen. The evidence does not directly reveal what he knew or how. It has never been suggested that Mr Cullison obtained his information from Mr Steele. Mr Kramer's deposition identified Mr Cullison as a person to whom he provided "the Memos" but it does not say he gave him a copy of the December Memorandum, and the context suggests the handover was before Mr Kramer received that document. The Kramer deposition does not suggest that Mr Steele authorised such transfer, or even that he was aware at that time of any dealings between Messrs Kramer and Cullison. The most likely explanation is, nonetheless, that Mr Kramer was Mr Cullison's source. The Kramer/Steele messages do not indicate surprise or concern at what Mr Cullison evidently knew. So, I conclude that Mr Steele either knew that Mr Kramer had provided Mr Cullison with information from the December Memorandum, or was at least content for Mr Cullison to be aware of the allegations. I do not think it goes further.

xi) The January exchanges generally indicate a lively interest in whether journalists had managed to corroborate information in the Memoranda, and some desire that this should be achieved; but they do not contain evidence of any fresh encouragement. They are consistent with the standard practice that Mr Kramer describes, of briefing information to journalists on terms that it was unverified, and not for publication absent verification. So, in my judgment Mr Kramer will most likely have provided Mr Cullison with information, not a document; it is unclear how much detail he provided; and he will in any event have made disclosure on his standard conditions. His evidence on that point was unequivocal.

xii) In January 2017 Mr Cullison was following up and attempting to verify. He was looking for help. But there is no evidence that, in January 2017, Messrs Kramer or Steele provided (or even could have provided) Mr Cullison with any help

towards verifying the information. The effect of the evidence is that they did not intend him (or others) to publish unverified, and were not providing assistance or encouragement. (I note that in a later exchange with Mr Kramer Mr Steele referred to "Cullison's hounding"). The evidence indicates that Mr Cullison never did verify the information, and that is at least one reason why he did not publish. BuzzFeed clearly did not receive or obtain any verification either; on their own account, they published because they decided it was appropriate to do without having verified the information.

xiii) 10 January 2017 CNN published a report headed "Intel chiefs presented Trump with claims of Russian efforts to compromise him", attributed to four journalists, including Carl Bernstein. The report states among other things that "CNN has reviewed a 35-page compilation of the memos". The claimants rely on this report, and a message from Mr Kramer to Mr Steele that day, stating "CNN reporting it now". It does appear that CNN had a version of the Dossier, but it is not clear that it included the December Memorandum, or that the source was Mr Kramer. The article provides very little indeed by way of detail and the concluding paragraph quotes a "high-level administration official" suggesting that the Dossier was a result of the "outgoing administration and intelligence community setting down the pieces so this must be investigated seriously…" The Kramer/Steele message goes on "Carl never got back." This issue was not explored in any detail in cross-examination of Mr Steele, and in the absence of any evidence from Mr Bernstein, I do not find this to be persuasive evidence that Mr Kramer provided the December Memorandum or the rest of the Dossier to Mr Bernstein, or that Mr Steele knew as much.

136. **Post-publication documents.**

i) 11 January 2017 The day after publication of the BuzzFeed Article Mr Kramer sent a message to Mr Steele: "Calling to check on you." There were other messages indicating concern for his welfare in the days that followed. These messages are hard to square with a common design, shared by these two, to bring about the publication of the allegations complained of. Mr Steele and his family went into hiding at about this time, having been identified as the author of the Dossier.

ii) 14 January 2017 Mr Bensinger sent Mr Steele a WhatsApp message in these terms:

> "I am sorry this has been such a difficult week. I was very upset to hear you were forced to go into hiding. For what it is worth, which I suspect is not much, I have not told anyone we met and do not plan to, and have not mentioned your name to anyone. If and when you are ready to discuss, I will always be available."

The claimants ask, rhetorically: why say that if you have not discussed the Dossier at all? But an equally valid rhetorical question would be: if they did discuss the Dossier why has Mr Bensinger never said so, when giving a detailed account of the genesis of the BuzzFeed Article? I have nothing from Mr Bensinger either way. Mr Steele's evidence is that they did not discuss the

Dossier; he received this message out of the blue, finds it puzzling, but has seen it as Mr Bensinger trying to salve his conscience in some way. I do not consider that the obscure wording employed in this post-publication message is a sufficient basis for rejecting that evidence. Mr Millar's analysis is more persuasive: this was a journalist whom Mr Steele had trusted and worked with on the FIFA matter, who had "done the dirty" on his collaborator, and was suffering in his conscience as a result. I do not believe that Mr Bensinger was promising Mr Steele a cover-up of their guilty secret. It is more likely that he was offering his erstwhile collaborator reassurance that he would not make things worse, by mentioning a meeting which might lead people to the false conclusion that Mr Steele had helped him with the BuzzFeed publication.

iii) 23 January 2017 Mr Steele and Mr Kramer were by now using the Signal messaging app to communicate with one another securely. Mr Steele wrote the following:

> "I wonder if buzzfeed have reflected on the lives and livelihoods they put at risk by publishing the dossier, or the shutter it has drawn down on any further collection efforts on this issue and others by anybody or any government agency. In my view buzzfeed did the kremlin's work for them because they were determined not to lose the scoop entirely after cnn broke the original story. One of the most irresponsible journalistic acts ever and my fear is that they may have got the dossier from mccain's office. I would welcome the chance to discuss this with you later."

Mr Caldecott has attempted to reconcile this message with the claimants' case by arguing that Mr Steele's concern was only about the risk to sources, and not about the publication of the allegations themselves. That is ingenious but far too subtle, in my judgment. Besides, it fails adequately to account for Mr Steele's manifest ignorance of the true provenance of BuzzFeed's copy of the Dossier, and Mr Kramer's deliberate silence on the point.

iv) 30 January 2017. Signal messages between Mr Steele and Mr Kramer show the former asking the latter "do you recall whether you ever had a hard copy" of the December Memorandum, as he wanted to "check on its distrib as it is the basis of the single defamation threat to us to date" (sic). This private message is, as Mr Millar points out, inconsistent with several aspects of the claimants' case, including the theories they advance (without support from Mr Bensinger's deposition or declaration), that, when he and Mr Bensinger met in London, Mr Steele knew Mr Bensinger had a copy of the Dossier, or that he had been briefed on it by Mr Kramer in detail, or that Mr Steele provided him with a copy, or at least briefed him on its contents in detail.

v) Mr Kramer's reply to the Signal message just quoted was that he had shared the Dossier with a McCain "staffer" but not otherwise: see [125(xiii)] above. Mr Kramer's deliberate concealment of his unauthorised provision of a hard copy to Mr Bensinger is inconsistent with the notion that he did that in pursuit of a common design between him and Mr Steele to procure a publication to the effect complained of. It indicates his awareness that providing the text of the

December Memorandum to Mr Bensinger was unwanted by Mr Steele, as I find it was.

137. In addition to what the documents say, I attribute importance to what they do *not* say. The Kramer/Steele messages do not, for instance, contain anything from Mr Kramer after his meeting with Mr Bensinger saying, "I have done as you asked". In January 2017, Mr Kramer says a good deal about other journalists and their enquiries, but neither he nor Mr Steele say anything at all about that meeting. Nor is there anything in the Bensinger/Steele messages of early January to indicate that information as to the contents of the Dossier was discussed when they met. The Kramer/Steele messages exchanged privately after the BuzzFeed publication contain no hint that they were satisfied with the publication of the allegations. There is nothing on the lines, for instance, that "Bensinger went too far".

Allegations of misrepresentation and/or concealment

138. These topics consumed a sizeable portion of Mr Caldecott's opening speech, a good deal of his cross-examination of Mr Steele, and also his closing submissions. I have considered these with care. I am left unpersuaded that I should draw any adverse inferences against Mr Steele, for any of the reasons advanced. Particular attention was focussed on allegations that the Defence and/or the defendants' disclosure involved misrepresentation or suppression in respect of (a) the Bensinger/Kramer dealings; (b) the fact of the Bensinger/Steele meeting; and (c) the existence and content of the Bensinger/Steele messages.

139. As for the Defence, it is necessary to beware overly sophisticated textual analysis. Such documents are the product of many hands, and when complex matters are at issue apparent flaws can creep in. I do not accept the claimants' submission that paragraph 32(d) of the Re-re-re-Amended Defence has been shown to be deliberately false or misleading. I am not persuaded that statements in the Defence that Mr Steele was unaware that Mr Kramer had been contacted by journalists "about the 'dossier'" or that he "did not instruct, encourage or permit Mr Kramer to discuss the [PEM] or the December Memorandum with Mr Bensinger" are incriminating lies. Nor do I accept that there was an onus on the defendants to disclose the Steele/Bensinger meeting in this paragraph of the Defence. The allegation the defendants were addressing was about contact between Mr Bensinger and Mr *Kramer*, not Mr Steele. It would be unfair to draw an adverse inference from a failure to address an unpleaded allegation. As Mr Caldecott submitted in opening "It is central to our system that a party's case on the primary facts is set out in the statements of case… [which] are the starting point."

140. Turning to disclosure, a similar caution needs to be applied. Flaws in disclosure are common, but it is relatively rare for Court to be able to conclude that they are deliberate, and incriminating. The claimants' criticisms in this case fall to be considered against a truly exceptional background. That is apparent from the statement of Mr Mathieson, the partner in charge of the defendants' case since mid-February 2020. He says this: "the partner at RPC with responsibility for this case until mid-February 2020 actively, seriously and repeatedly misled the Defendants about these proceedings". That summary is amply borne out by the more detailed evidence of the partner's misconduct. It is unnecessary to set it out in full here, but important to identify that it included, though it was not limited to: (a) withholding the defendants' disclosure from the claimants for many months, in breach of a court order, and without telling the

defendants; (b) failing to show the defendants their own disclosure statement and list dated 29 July 2019; (c) signing that document herself and serving it on the claimants on 12 December 2019, without showing it to the defendants. The evidence of Mr Mathieson also discloses that, when Mr Steele first learned of the partner's misconduct, he was shocked and dismayed. The specific criticisms advanced relate to events after the replacement of the partner concerned, but the context cannot sensibly be ignored, as will become clear.

141. Some of the claimants' criticisms are, in my judgment, lightweight. It was suggested, for instance, that there was something suspicious about the fact that the defendants disclosed some messages by way of screenshots taken on Mr Steele's phone, and the screenshots omitted parts of some of the messages. But the fact that they were incomplete was plain and obvious on the face of the disclosure, and the omissions tended to favour rather than harm the defence case. This was manifestly sloppiness, not fraud. The weakness of this point is only highlighted by the fact that the claimants conducted some of their own disclosure in the same way.

142. The main criticism is that there was wilful suppression of the fact of the Steele/Bensinger meeting. It arises from a single sentence in a long letter from RPC, sent about 3 weeks after Mr Steele learned of the partner's wrongdoing. This stated that apart from some specified face-to-face meetings Mr Steele did not conduct communications with "Schedule A/B individuals", of whom Mr Bensinger was one. This was of course incorrect, as Mr Steele readily accepted when cross-examined. I can easily see why the claimants advanced the argument that this was a deliberate falsehood. But in the end that contention rests largely on Mr Bensinger's message of 14 January 2017. Its existence was later disclosed by the defendants. More pertinently, I am told by Mr Millar on instructions (and Mr Caldecott made clear he would accept such an account) that Mr Steele had disclosed the existence of the Bensinger messages to the RPC partner by 19 September 2017 at the latest, and that he had told her of the London meeting by 7 February 2018. All of this was a long time before the defendants' disclosure statement and list. That, as I have mentioned, was created in July 2019 and served in December 2019. The conduct of disclosure in this respect was clearly deficient, but I am not persuaded that the statement in the letter or any other statement in this respect was, or reflected, wilful misrepresentation by Mr Steele.

The inherent probabilities

143. The defendants invite me to conclude that the claimants' case is inherently improbable. They had nothing to gain, and a great deal to lose, by causing or authorising media publication of detailed allegations from the Dossier. I see some force in this. The publication of the Dossier, or detailed allegations from it, was liable to undermine trust in Orbis' business, which depended to a significant extent on its ability to maintain confidentiality. There was also a risk of litigation, as has resulted. The suggestion that Mr Steele was so keen to undermine trust in Mr Trump that he was willing to take such risks is unconvincing. It is hard to see what else the defendants could have had to gain.

The claimants' case about the PEM

144. There is certainly a wealth of evidence that Mr Steele had, before the election, been keen to engage media interest in the fact of the allegations in the Dossier by conducting briefings. That is not seriously in dispute. But despite the detailed care and attention

devoted to this aspect of the story on behalf of the claimants, I do not consider that it lends material assistance to their inferential case. It certainly does not outweigh the factors I have mentioned already, that count against that case.

145. Three general points can be made:

(1) First, there are significant distinctions between the PEM and the December Memorandum, and between the factual situation that obtained at the two times in question. The PEM were commissioned on behalf of a political party, or leading members of a party, in the run-up to the election. Mr Steele was very concerned at the intelligence he had received, and its implications for democracy in the US and, in my judgment, the UK. But the December Memorandum was produced some six weeks after the election. The world was a different place. Any hopes that may have been entertained, that publicity for information in the PEM could change the outcome, had been dashed. Orbis' commission had been fulfilled and – as Mr Steele wrote – "we have no client". The December Memorandum was produced of Orbis' own initiative and, consistently with this reality, the circulation of the information it contained was limited compared with the extent to which the information in the PEM became circulated.

(2) Secondly, the effect of the evidence as a whole is that even the briefings conducted by Mr Steele in September 2016 were off-the-record, on background, and did not include copies of any documents. The defendants rely on an account by one journalist (Jane Mayer, the New Yorker, 5 March 2018) which appears to me to be a fair summary of the general picture that I gain from the evidence before me:

> "The sessions were off the record, but because Steele has since disclosed having participated in them I can confirm that I attended one of them. Despite Steele's generally cool manner, he seemed distraught about the Russians' role in the election. He did not distribute his dossier, provided no documentary evidence, and was so careful about guarding his sources that there was virtually no way to follow up."

(3) The intelligence obtained by Mr Steele was consistently briefed on the footing that it was for background and for investigation. Mr Steele's evidence is that the purpose of the briefings was for the reporters to use the information "to carry out their own independent investigations of various general leads and individuals…" That is entirely consistent with Mr Kramer's evidence about his own approach.

146. Turning to the ten-point summary, in so far as I have not already dealt with it: (1) The allegation that Mr Steele briefed the media on the detailed allegations in the PEM is overstated at best. I do not accept that he briefed the detailed allegations in the December Memorandum "via Mr Kramer". Mr Kramer's own evidence, in his deposition, is that he was not asked to do this. (2) Nor do I accept the claimants' case that Mr Steele knew from September 2016 that the media had published detailed allegations from his briefings without investigation or (put another way) that his briefings "were liable to be reported without further investigation". This aspect of the claimants' case focused in the end on three publications in the Autumn of 2016. I take them in date order, and will deal at the same time with allegation no (3).

i) Yahoo News, 23 September 2016. The claimants' case depends on the book extract and article I have mentioned ([118] above). In the absence of the authors, these are not a strong basis for the inferential case which the claimants advance. The claimants do not suggest that the relevant memorandum (or any of the PEM) was provided to Mr Isikoff. The article does not contain any real detail. On the face of the article, Mr Steele was one of a number of sources for the article, the other sources including US intelligence officials. Mr Steele's evidence is that he was assured by Mr Simpson, after publication of this article, that Mr Isikoff had a source in the Department of Justice, and that was why he had published the article. In other words, that the information had been verified separately.

ii) Mother Jones, 31 October 2016. The article indicates that David Corn of Mother Jones had seen one or more of the PEM. Mr Steele had spoken to Mr Corn, but his evidence that he was careful, reticent and spoke only in broad terms is corroborated by other accounts of his briefings generally: see 145(2) above. I accept his evidence that he realised when he read the article that someone must have provided Mr Corn with the content of some PEM, contacted Mr Simpson to express his concerns, and was reassured that Mr Simpson was not the source. Mr Kramer might seem an obvious candidate, as he has admitted discussing the PEM with Mr Corn. But he has not admitted being a source for this article. In his deposition he said that Mr Corn had "reached out" to him "about the memos" in early December 2016, when it was clear to him that Mother Jones had seen the PEM. It is an agreed fact that Mr Steele did not provide the PEM to Mr Kramer or discuss them with him until late November 2016. There are other candidate sources. I note, further, that *Mother Jones* did not post the memos themselves, or publish full details. Mr Corn's later explanation is that he had been unable to confirm them.

iii) Newsweek, 4 November 2016. It does appear that the authors may have had sight of some of the PEM. But I accept Mr Steele's evidence that he did not brief Newsweek. Mr Kramer did not identify Newsweek as a media organisation with which he had contact. So, unless his evidence on deposition and interview lacked candour or was incomplete, the magazine would seem to have had another source. The options are few. It could have been US officials, as Mr Steele told me he assumed.

147. Returning to the ten-point list, allegation no (4) concerns the Kramer/Bensinger meeting, which I have disposed of above. (5) I do not accept that Mr Steele's conduct in sharing the PEM with Strobe Talbott, and other senior officials before the election, affords a reasonable basis for concluding that, in December or in January 2017, he intended or authorised media publication of the allegations of which these claimants complain. (6) Briefing the media, in 2016, that the FBI was investigating the Dossier would be at best a weak basis for the inference the claimants invite. But I accept Mr Steele's evidence that he did not brief the media to that effect. The hearsay evidence relied on is not enough to justify rejection of his evidence. (7) The fact that some of the allegations were not capable of verification by the media is not disputed, but does not lend any material support to the claimants' case. (8) Nor does any knowledge that allegations "were circulating", or that the Democrats were calling for publication. This is a long way from demonstrating that he foresaw, still less authorised or intended, media publication of the detailed contents of any of the memoranda. (9) Is a point about

foreseeability which cannot bear any real weight. (10) The lack of a confidentiality warning is a point of no consequence. It was explained by Mr Steele as an omission, but these were not documents designed for dissemination to ingenues, and the confidential nature of their content was self-evident.

Main findings

148. For all these reasons, I reject the claimants' case that the publication by BuzzFeed of the defamatory allegations conveyed by the Memorandum was something intended or impliedly authorised by the defendants. With the modest qualifications I have indicated, I accept Mr Steele's evidence. The essential facts as I find them are as follows.

(1) In the pre-election period, Mr Steele was keen to ensure that the media were aware that intelligence had been gathered which indicated a connection between Mr Trump and Russia, and he briefed accordingly. His briefings were generally broad, and unsupported by documents. His overall purpose was to provide a spur to investigation. He never gave, or authorised the provision of, any of the PEM to any journalist. Copies were provided, by Mr Kramer and Mr Simpson, but not with Mr Steele's authority.

(2) After the election, having conducted further research and created the December Memorandum, he provided one copy to a UK intelligence official and one to Fusion. He authorised the disclosure of the latter to Mr Kramer for onward transmission to Senator McCain. His aims at this stage were limited to providing information for national security purposes; they did not include stirring up further journalistic investigation.

(3) At a time when Mr Bensinger and other journalists were pestering him and Mr Kramer, Mr Steele asked the latter to meet Mr Bensinger to find out what he wanted. Mr Steele did not authorise or intend Mr Kramer to provide a copy of the December Memorandum or any other part of the Dossier to Mr Bensinger to read, let alone to make and take away photographic copies. He was not aware that Mr Kramer even had a copy of the December Memorandum. Mr Steele's conduct afforded Mr Kramer no reasonable grounds to believe that he had Mr Steele's authority to do that, and Mr Kramer did not hold any such belief. Nor did Mr Steele intend or authorise Mr Kramer to brief Mr Bensinger on the details of the December Memorandum, or any other part of the Dossier.

(4) At his meeting with Mr Bensinger, Mr Kramer knowingly went well beyond the scope of the role assigned to him by Mr Steele. But even he did not authorise Mr Bensinger to take copies of the December Memorandum, or to publish the document, or to quote from it publicly, nor did he intend either thing to happen. Nor did Mr Kramer brief Mr Bensinger about the contents of the Dossier, other than by providing him with copies to read. At the highest, he intended to give Mr Bensinger the opportunity to read and then investigate, attempt to verify and, if verified, to publish information from the Dossier (by this time, including the December Memorandum).

(5) Mr Bensinger's conduct in photographing the Dossier was not only unauthorised, it was expressly prohibited by Mr Kramer. It was that wrongful conduct that led

directly to the publication of the BuzzFeed Article, including the words complained of. If he had merely read the Dossier, as was authorised by Mr Kramer (but not by Mr Steele), Mr Bensinger would not have been able to provide his editors with the text or even the substance of the December Memorandum. That is because he had not read it in the time available, and he had not been briefed on its contents: as Mr Kramer stated in his deposition, the two had not discussed Mr Gubarev, Webzilla or XBT.

(6) Mr Bensinger obtained no assistance from Mr Steele when they met in London on 3 January 2017. That meeting made no contribution to the publication of the BuzzFeed Article.

149. As for the additional matters relied on to support the inferential case, these do not assist.

(1) Although it is likely that the Bernstein/Kramer meetings took place in January 2017 as alleged by Mr Kramer, and Mr Steele may have been aware there was some such meeting, the evidence does not persuade me that this was at Mr Steele's request. In any event, I am confident that Mr Steele did not ask Mr Kramer to disclose the Dossier to Mr Bernstein, or intend or impliedly authorise him to do that. The contemporary records are consistent with Mr Steele's evidence, and do not support the opposite view: see, for instance, [135(viii)(b)] above. Moreover, such disclosure as was made was on Mr Kramer's usual terms, and – consistently with those terms - CNN did not publish the detail of the allegations.

(2) By January 2017, Mr Cullison had obtained some information about the contents of the December Memorandum. His source was probably Mr Kramer, but Mr Kramer had not given Mr Cullison a copy of the December Memorandum (nor had Mr Kramer been authorised by Mr Steele to pass one on). Whatever disclosure Mr Kramer made would have been on his standard terms as to verification, and Mr Cullison never did verify. When Mr Cullison was pressing for more help in January 2017, Mr Steele neither gave nor authorised the provision of any further assistance.

Remedies

150. In the light of the conclusions just stated, this issue does not arise. It would not have arisen anyway, so far as Webzilla Ltd is concerned. If the claimants had established the defendants' responsibility for the BuzzFeed publication, Mr Gubarev would have recovered a substantial award, but I need not examine what it would have been, or whether any and if so what injunctions would have been appropriate.

Summary of conclusions and disposal

151. The words complained of, in their context, meant that there were good reasons to suspect the claimants of having, under duress from the Russian Secret Service, taken part in hacking the computers used by the Democratic Party leadership, and using the access they unlawfully gained in that way to transmit virus, plant bugs, steal data and alter files and software. That imputation is defamatory of Mr Gubarev at common law, and its publication in this jurisdiction and the EU caused serious harm to his reputation. No substantive defence has been advanced. He would have been entitled to substantial damages, if he had proved that the defendants are responsible in law for the publication complained of. But he has failed to prove that. So, Mr Gubarev's claim must be

dismissed. Webzilla Ltd's claim must also be dismissed, for the same reason. That claim would have failed in any event because, although the words complained of are clearly defamatory of the company at common law, it has failed to establish that their publication caused it serious financial loss. Its claim therefore falls short of the statutory threshold set by s 1 of the Defamation Act 2013.

Appendix A

The BuzzFeed Article

"These Reports Allege Trump Has Deep Ties To Russia

A dossier, compiled by a person who has claimed to be a former British intelligence official, alleges Russia has compromising information on Trump. The allegations are unverified, and the report contains errors.

[1] A dossier making explosive – but unverified – allegations that the Russian government has been "cultivating, supporting and assisting" President-elect Donald Trump for years and gained compromising information about him has been circulating among elected officials, intelligence agents, and journalists for weeks.

[2] The dossier, which is a collection of memos written over a period of months, includes specific, unverified, and potentially unverifiable allegations of contact between Trump aides and Russian operatives, and graphic claims of sexual acts documented by the Russians. BuzzFeed News reporters in the US and Europe have been investigating various alleged facts in the dossier but have not verified or falsified them. CNN reported Tuesday that a two-page synopsis of the report was given to President Obama and Trump.

[3] Now BuzzFeed is publishing the full document so that Americans can make up their own minds about allegations about the president-elect that have circulated at the highest levels of the US government.

[4] The document was prepared for political opponents of Trump by a person who is understood to be a former British intelligence agent. It is not just unconfirmed. It includes some clear errors. The report misspells the name of one company, "Alpha Group," throughout. It is Alfa Group. The report says the settlement of Barvikha, outside Moscow, is "reserved for the residences of the top leadership of the top leadership and their close associates." It is not reserved for anyone, and it is also populated by the very wealthy.

[5] The Trump administration's transition team did not immediately respond to BuzzFeed News' request for comment. However, the president-elect's attorney, Michael Cohen, told *Mic* that the allegations were absolutely false.

[6] "It's so ridiculous on so many levels," he said. "Clearly, the person who created this did so from their imagination or did so hoping that the liberal media would run with this fake story for whatever rationale they might have."

[7] And Trump shot back against the reports a short time later on Twitter.

[8] His former campaign manager and current senior White House adviser, Kellyanne Conway, also denied the claims during an appearance on *Late Night With Seth Meyers*, adding that "nothing has

> been confirmed." She also said Trump was "not aware" of any briefing on the matter.
>
> [9] The documents have circulated for months and acquired a kind of legendary status among journalists, lawmakers, and intelligence officials who have seen them. *Mother Jones* writer David Corn referred to the documents in a later October column.
>
> [10] Harry Reid spokesman Adam Jentleson tweeted Tuesday that the former Senate Democratic leader had seen the documents before writing a public letter to FBI Director James Comey about Trump's ties to Russia. And CNN reported Tuesday that Arizona Republican John McCain gave a "full copy" of the memos to Comey on Dec. 9, but that the FBI already had copies of many of the memos."

Appendix B

The December Memorandum

"COMPANY INTELLIGENCE REPORT 2016/166

US/RUSSIA FURTHER DETAILS OF SECRET DIALOGUE BETWEEN TRUMP CAMPAIGN TEAM, KREMLIN AND ASSOCIATED HACKERS IN PRAGUE

Summary

- TRUMP's representative COHEN accompanied to Prague in August/September 2016 by 3 colleagues for secret discussions with Kremlin representatives and associated operatives/hackers

- Agenda included how to process deniable cash payments to operatives; contingency plans for covering up operations; and action in event of a CLINTON election victory

- Some further details of Russian representatives/operatives involved; Romanian hackers employed; and use of Bulgaria as bolt hole to "lie low"

- Anti-CLINTON hackers and other operatives paid by both TRUMP team and Kremlin, but with ultimate loyalty to Head of PA, IVANOV and his successor/s

Detail

1. We reported previously (2016/135 and /136) on secret meeting/s held in Prague, Czech Republic in August 2016 between then Republican presidential candidate Donald Trump's representative, Michael COHEN and his interlocutors from the Kremlin working under cover of Russian 'NGO' Rossotrudnichestvo.

2. __ provided further details of these meeting/s and associated anti-CLINTON/Democratic Party operations COHEN had been accompanied to Prague by 3 colleagues and the timing of the visit was either in the last week of August or the first week of September. One of their main Russian interlocutors was Oleg SOLODUKHIN operating under Rossotrudnichestvo cover. According to __, the agenda comprised questions on how deniable cash payments were to be made to hackers who had worked in Europe under Kremlin direction against the CLINTON campaign and various contingencies for covering up these operations and Moscow's secret liaison with the TRUMP team more generally.

3. __ reported that over the period March-September 2016 a company called XBT/Webzilla and its affiliates had been using botnets and porn traffic to transmit viruses, plant bugs, steal data and conduct "altering operations" against the Democratic Party leadership. Entities linked to one Aleksei GUBAROV were

involved and he and another hacking expert, both recruited under duress by the FSB, Seva KAPSUGOVICH, were significant players in this operation. In Prague, COHEN agreed contingency plans for various scenarios to protect the operation, but in particular what was to be done in the event that Hillary CLINTON won the presidency. It was important in this event that all cash payments owed were made quickly and discreetly and that cyber and other operators were stood down/able to go effectively to ground to cover their traces. (We reported earlier that the involvement of political operatives Paul MANAFORT and Carter PAGE in the secret TRUMP Kremlin liaison had been exposed in the media in the run-up to Prague and that damage limitation of these also was discussed by COHEN with the Kremlin representatives).

4. In terms of practical measures to be taken, it was agreed by the two sides in Prague to stand down various "Romanian hackers" (presumably based in their homeland or neighbouring eastern Europe) and that other operatives should head for a bolt hole in Plovdiv, Bulgaria where they should "lay low". On payments IVANOV's associate said that the operatives involved had been paid by both TRUMP's team and the Kremlin, though their orders and ultimate loyalty lay with IVANOV, as Head of the PA and thus ultimately responsible for the operation, and his designated successor/s after he was dismissed by president PUTIN in connection with the anti-CLINTON operation in mid August."

Appendix C

Agreed Chronology

DATE	EVENT
2009	Orbis Business Intelligence Limited ("**Orbis**") incorporated
Early 2010	Christopher Steele ("**CS**") and Glenn Simpson ("**GS**") first meet
27 Jan 2010	GS signs Orbis' non-disclosure agreement (NDA)
2011	Fusion GPS ("**Fusion**") founded in the US by former journalists GS, Peter Fritsch ("**PF**") and Thomas Catan
Summer 2015	Cyber-attacks begin on DNC computing system
Approx. Sep/Oct 2015 to Apr/May 2016	Fusion retained by the Washington Free Beacon to investigate multiple candidates in the Republican presidential primary, including Donald Trump.
April 2016	Further cyber-attacks on DNC computing system
Apr 2016 to Nov 2016	Perkins Coie engages Fusion to perform research services during the 2016 election cycle
3 May 2016	Trump becomes the presumptive US Republican nominee
At some point in late May 2016, date unknown	GS meets CS in the UK and enquires whether Orbis could assist their research
Jun 2016	Orbis formally instructed by Fusion. Engagement for one month; subsequently extended for the remainder of the 2016 US presidential campaign.
20 Jun 2016	CS produces PEM Report 2016/080 (first PEM)
At some point between Jun 2016 but prior to 5 Jul 2016	CS produces PEM Report 2016/086
July to Oct 2016	CS provides some PEM directly to the FBI
5 Jul 2016	FBI Director James Comey announces the end of the FBI's year-long investigation into Hillary Clinton's use of a private email server; confirms recommendation no charges be brought.
Same date	CS meets with his FBI handling agent Mike Gaeta along with Christopher Burrows at Orbis' office in London
7 Jul 2016	Carter Page travels to Russia and gives speech at the New Economic School in Moscow
19 Jul 2016	CS produces PEM Report 2016/94
22 Jul 2016	WikiLeaks publishes hacked DNC emails and 8000 associated email attachments related to the Clinton 2016 presidential campaign
Jul 2016	CS produces PEM Report 2016/095
29 Jul 2016	CS attends meeting at Perkins Coie's offices in Washington DC between Orbis, Fusion and Perkins Coie.
30 Jul 2016	Breakfast meeting takes place between CS, a colleague, Bruce Ohr ("**BO**") and Nellie Ohr ("**NO**") at a hotel in Washington DC
Same date	CS produces PEM Report 2016/097
31 Jul 2016	FBI counter-intelligence operation named "Crossfire Hurricane" opened
Summer 2016	CS meets with Ken Bensinger ("**KB**") of BuzzFeed

5 Aug 2016	CS produces PEM Report 2016/100
Aug 2016	FBI open individual cases under the Crossfire Hurricane umbrella on George Papadopoulos, Carter Page and Paul Manafort
10 Aug 2016	CS produces PEM Report 2016/101 CS produces PEM Report 2016/102
19 Aug 2016	Manafort resigns as Trump's campaign manager
22 Aug 2016	CS produces PEM Report 2016/105
27 Aug 2016	Letter sent from Sen. Harry Reid to Comey
14 Sep 2016	CS produces PEM Report 2016/111 CS produces PEM Report 2016/112 CS produces PEM Report 2016/113
19 Sep 2016	According to the FBI, Crossfire Hurricane team receives some of the PEM from CS
21-23 Sep 2016	CS visits Washington DC
On or around 22 Sep 2016	CS attends meetings with journalists from The New York Times, The Washington Post, Yahoo News, The New Yorker, ABC News and CNN along with GS and PF
On or around the same date	CS attends a meeting at Perkins Coie's office in Washington DC
23 Sep 2016	CS meets with BO for breakfast in Washington DC
Same date	Yahoo News publishes an article by Michael Isikoff entitled: *"U.S. Intel Officials Probe Ties Between Trump Adviser and Kremlin"*
Late September	CS meets with US State Department official Jon Winer
3 Oct 2016	CS meets with members of the FBI in Rome
7 Oct 2016	Joint Statement from the Department of Homeland Security and Office of the Director of National Intelligence on Election Security, confirming Russian government directed the cyberattacks on the DNC
Same date	Wikileaks begins to publish John Podesta's hacked emails, which it continues on a daily basis through Oct 2016
11 Oct 2016	CS returns to Washington DC and attends meeting with US State Department official Kathleen Kavalec, as Victoria Nuland's deputy for Russia/CIS affairs
11 or 12 Oct 2016	CS provides press briefings to The New York Times, The Washington Post and Isikoff of Yahoo News. The briefings are also attended by GS.
12 Oct 2016	CS produces PEM Report 2016/130
Same date	CS attends a third meeting at Perkins Coie's Washington DC office with GS and Marc Elias
18 Oct 2016	CS produces PEM Report 2016/134
19 Oct 2016	CS produces PEM Report 2016/135
20 Oct 2016	CS produces PEM Report 2016/136
21 Oct 2016	The first of four FISA orders sought and obtained by the FBI authorising electronic surveillance on Carter Page from the Foreign Intelligence Surveillance Court (FISC)
28 Oct 2016	Comey sends a letter to congressional leaders stating that the FBI had come across new e-mails relating to Clinton's use of a private server as Secretary of State. Stated FBI was therefore reopening its investigation. Letter made public.
30 Oct 2016	Second letter sent by Sen. Reid to Comey
30 Oct 2016	CS meets with Jon Winer at a bar in London

31 Oct 2016	CS gives Skype interview to David Corn of Mother Jones
Same date	Article published by Corn in Mother Jones: *"A Veteran Spy Has Given the FBI Information Alleging a Russian Operation to Cultivate Donald Trump"*
On or around Nov 2016	Corn contacts the FBI and supplies some of the PEM
Early Nov 2016	Discussion between CS and Sir Andrew Wood about approaching Senator McCain at a forthcoming international security conference
1 or 2 Nov 2016	CS's formal relationship with the FBI ended/suspended
Approx. 2/3 Nov 2016	CS provides a copy of the PEM to Strobe Talbott via Fusion
4 Nov 2016	Newsweek article by Kurt Eichenwald: "*Why Vladimir Putin's Russia is backing Donald Trump*".
6 Nov 2016	Comey makes a second announcement, clearing Clinton of wrongdoing
8 Nov 2016	US 2016 election day – Trump elected as 45th President of the US. Orbis' engagement with Fusion ceases
14 Nov 2016	CS meets an unnamed "senior UK government national security official" in London
18-20 Nov 2016	Halifax International Security Forum takes place in Halifax, Nova Scotia, Canada. Attended by Sen. John McCain, Christian Brose, David Kramer ("**DK**") and Sir Andrew Wood.
19 Nov 2016	Meeting between Sen. McCain, Wood, Brose and DK
At some point following the Halifax conference, but date unknown	Wood meets CS at Orbis' London office
28 Nov 2016	DK meets CS in Surrey. DK is shown the PEM.
At some point following the meeting, but date unknown	CS asks GS to provide a copy of the PEM to DK
29 Nov 2016	According to DK, DK meets with GS and Jake Berkowitz at Fusion's office
30 Nov 2016 approx. 5pm	According to DK, DK meets Sen. McCain and Brose in Washington DC and provides a copy of the PEM
1/2 Dec 2016	According to Fusion, Fusion management attend retreat in San Francisco at which KB appears
Early Dec 2016	According to DK, DK meets with Corn (from Mother Jones) and Julian Borger (from The Guardian)
Same period	DK contacts CS seeking permission to discuss the PEM with Celeste Wallander. According to CS, DK also informs CS that he had spoken about the PEM to the chief of staff of the Speaker of the House of Representatives, Paul Ryan.
Same period	According to DK, DK meets with Wallander and Nuland
Same period	According to DK, DK provides a copy of the PEM to Peter Stone and Greg Gordon at McClatchy and Fred Hiatt at the Washington Post
9 Dec 2016	According to DK, Sen. McCain meets Comey and gives him a copy of the PEM

At some time prior to 10 Dec 2016	According to DK, DK was contacted by a number of media outlets by this time –by Corn at Mother Jones, the Guardian, ABC News and the Washington Post, all of whom were aware that he had provided Sen. McCain with a copy of the PEM
10 Dec 2016 at 10AM	According to BO, BO receives a thumb drive from GS during a breakfast meeting at Peet's Coffee, in Washington DC, containing the PEM save for Report 130
12 Dec 2016	According to BO, BO provides the thumb drive he received from GS on 10 Dec 2016 to the FBI
On or around 13 Dec 2016	Final memo produced by CS: Report 2016/166 (the "December Memorandum", aka "Report 166"), which contains the words complained of by the Claimants
Shortly after 13 Dec 2016	CS contacts the same senior UK national security official about the December Memorandum
On or around 14 December 2016	December Memorandum is collected from Orbis's office by senior UK national security official
13 or 14 Dec 2016	CS contacts GS about the December Memorandum
Same period	Email sent on behalf of CS to Fusion attaching a copy of the December Memorandum
At some point after 13 Dec 2016, though date unknown	DK given the final December Memorandum by GS in Washington DC in hard copy
Same period	According to DK, DK provides the Steele Dossier to several further media contacts, including Alan Cullison at The Wall Street Journal and Bob Little at NPR
Mid Dec-2016	According to CS, KB contacts CS about arranging a further visit to London in January 2017 for the purpose of discussing corruption at FIFA.
15 Dec 2016	According to Fusion, GS and PF meet with Eric Lichtblau from The New York Times, to whom they provide a copy of the Steele Dossier
20 Dec 2016 at 11AM	According to BO, BO provides FBI with another thumb drive containing the open source research that his wife, NO, had produced for Fusion
23 Dec 2016	KB contacts CS saying he had heard that Sen. McCain had a dossier concerning Trump and Russia
Shortly before or around 24 Dec 2016	CS and DK have a conversation, during which CS suggests that DK should meet with KB
29 Dec 2016	According to DK, KB meets with DK in Washington DC. KB apparently leaves the meeting with a copy of the Steele Dossier on his mobile phone.
Same day	US Department of Homeland Security and the FBI jointly release report called "GRIZZLY STEPPE – Russian Malicious Cyber Activity", detailing the efforts of Russian State actors to interfere in the US election
Around New Year	According to DK, DK gives Wallander a copy of the Steele Dossier

Early January 2017	According to DK, DK gives a copy of the Steele Dossier to Congressman Adam Kinzinger and shows a further copy to John Burks, Chief of Staff to Speaker Ryan
3 Jan 2017	KB and CS meet at Orbis' office in London
3 or 4 Jan 2017	According to DK, DK meets journalist Carl Bernstein in New York and gives him a copy of the Steele Dossier. A follow up meeting between those two individuals takes place a few days later in Washington DC.
On or around 5 Jan 2017	CS/Orbis' instruction to their external IT provider to delete *"all email traffic relating to the Ds' assignment by Fusion GPS to gather intelligence regarding Russia's efforts to influence the US Presidential election process and the links between Russia and Donald Trump…"* said to have been effected, which included deletion of the email sent on behalf of CS to Fusion on 13/14 Dec 2016
6 Jan 2017	Comey briefs then President-elect Trump in a conference room at Trump Tower in New York on aspects of the Steele Dossier
Same day	Intelligence Community jointly release a public version of a report confirming Russian government cyberactivity designed to interfere in the election in support of Trump
10 Jan 2017 Approx 5pm	CNN reports the existence of the Steele Dossier, the presidential briefing and the FBI investigation into the Steele Dossier
Same day, published at 6.20PM ET	BuzzFeed Article published, attaching a copy of the Steele Dossier
11 Jan 2017	The Wall Street Journal publishes an article revealing CS as the author of the Steele Dossier
12 Jan 2017	"XBT Statement on Unsubstantiated Buzzfeed report" published online in response to the BuzzFeed Article
13 Jan 2017	Mother Jones article published by Corn entitled: *"The Spy Who Wrote the Trump-Russia Memos: It Was "Hair-Raising" Stuff"*
20 Jan 2017	Trump inaugurated as US President
3 Feb 2017	Claim Form issued in the UK proceedings and POC served on the Defendants
Same date	Related US proceedings filed in the case of (1) Aleksej Gubarev (2) XBT Holding SA (3) Webzilla Inc v (1) Buzzfeed Inc (2) Ben Smith
30 Mar 2017	Vanity Fair article published entitled: "How Ex-Spy Christopher Steele compiled his explosive Trump-Russia dossier"
3 Apr 2017	Defence served in the UK proceedings
9 May 2017	Comey dismissed as FBI Director by Trump
17 May 2017	Crossfire Hurricane investigation transferred from the FBI to the Office of Special Counsel Mueller
8 Jun 2017	Comey produces his Statement for the Record and publicly testifies to the Senate Intelligence Committee
30 Jun 2017	Claimants serve a Reply in the UK proceedings.
22 Aug 2017	GS testifies before the Senate Judiciary Committee in Washington DC
Nov 2017	Book published by Luke Harding entitled: *"Collusion – How Russia helped Trump win the White House"*
14 Nov 2017	GS testifies before the HPSCI
19 Dec 2017	DK testifies before the HPSCI

4 Jan 2018	Letter sent by Sen. Chuck Grassley and Sen. Lindsey Graham referring CS to DAG Rod Rosenstein of the DOJ and FBI Director Christopher Wray for potential investigation
5 Jan 2018	Statement published on Sen. Grassley's website entitled *"Senators Grassley, Graham Refer Christopher Steele for Criminal Investigation"*
4 Feb 2018	CBS Face the Nation broadcast in which former State Department official Victoria Nuland told CBS News that CS' reporting came to the State Department's attention in mid-July 2016
Mar 2018	Book published by Corn and Isikoff entitled: *"Russian Roulette: The Inside Story of Putin's War on America and the Election of Donald Trump"*
5 Mar 2018	Article published by Jane Mayer in the New Yorker entitled: *"Christopher Steele, the man behind the Trump dossier"*
28 Mar 2018	Inspector General Horowitz announces the OIG would begin a review into the FBI's FISA applications relating to "a certain US person"
17 Apr 2018	Comey's book published, entitled: *"A Higher Loyalty: Truth, Lies and Leadership"*
13 Jul 2018	Mueller-directed grand jury charge 12 Russian intelligence officers with hacking offences during the 2016 presidential election
September 2018	Rajesh Mishra ceases to be Chief Financial Officer of the XBT Group
3 and 18 October 2018	Former FBI General Counsel Baker appears before the Committee on the Judiciary, joint with the Committee on Government Reform and Oversight, US House of Representatives
19 Dec 2018	Court Order on summary judgment in favour of BuzzFeed in US proceedings
26 Nov 2019	Book published by GS and PF entitled: *"Crime in Progress: The Secret History of the Trump-Russia Investigation"*
9 Dec 2019	The Horowitz Report (formally titled: *"Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation"*) is published by the OIG
10 Dec 2019	CS/Orbis release a public statement through their US lawyers Bredhoff & Kaiser in response to the Horowitz Report
16-19 March 2020	Warby J hears trial in Data Protection Act proceedings brought by three Russian businessmen against Orbis in connection with one PEM (*Aven, Fridman and Khan v Orbis Business Intelligence Limited*).
8 Jul 2020	Warby J gives judgment in *Aven, Fridman and Khan v Orbis Business Intelligence Limited* [2020] EWHC 1812 (QB)

Appendix D

Corporate structure of the XBT Group