

talk entitled “*Facebook’s role in Brexit – and the threat to democracy*” (‘the TED Talk’) which Ms Cadwalladr gave on 15 April 2019 at the TED2019 Conference in Vancouver, Canada (‘the TED Conference’). A video recording of the TED Talk was published on the TED.com website shortly after it was given. Mr Banks also complains about a tweet published by Ms Cadwalladr on 24 June 2019 (‘the Tweet’). The text of the Ted Talk, and a hyperlink to it, are set out in Saini J’s judgment: *Banks v Cadwalladr* [2019] EWHC 3451 (QB), [4a] and Annex A. Both publications remain accessible.

2. Mr Banks is an important public figure in the political domain, having been one of the leaders of, and by far the largest donor to, the successful campaign for the United Kingdom to vote in favour of leaving the European Union in the referendum held on 23 June 2016 (‘the EU Referendum’). He is also a businessman with a diverse range of business and investment interests, including in the insurance industry. Ms Cadwalladr is a freelance journalist and writer who has written predominantly for *The Observer* and *The Guardian* newspapers over the past 16 years.

3. The words spoken by Ms Cadwalladr in the TED Talk, of which complaint is made by Mr Banks in these proceedings, were:

“And I am not even going to get into the lies that Arron Banks has told about his covert relationship with the Russian Government.”

4. In the Tweet, Ms Cadwalladr provided a hyperlink to the TED Talk and wrote:

“Oh Arron. This is too tragic. Nigel Farage’s secret funder Arron Banks has sent me a pre-action letter this morning: he’s suing me over this TED talk. If you haven’t watched it please do. I say he lied about his contact with the Russian govt. Because he did.”

5. The essential issues in this trial have been whether each of the statements made by Ms Cadwalladr has caused or is likely to cause serious harm to Mr Banks’s reputation, within the meaning of s.1 of the Defamation Act 2013 (‘the 2013 Act’). And, if so, whether Ms Cadwalladr has established a public interest defence to the claim pursuant to s.4 of the 2013 Act.

6. On 12 December 2019, Saini J determined that the meaning of the words complained of in both the TED Talk and the Tweet is:

“On more than one occasion Mr Banks told untruths about a secret relationship he had with the Russian government in relation to acceptance of foreign funding of electoral campaigns in breach of the law on such funding”.

(See *Banks v Cadwalladr* [2019] EWHC 3451 (QB). I refer to this below as ‘the single meaning’.)

7. Ms Cadwalladr does not contend that the single meaning is true. On the contrary, as she stated unequivocally in a letter of apology sent to Mr Banks on 25 March 2021:

“It was not my intention to make any such allegation and I accept that such an allegation would be untrue.”

8. Although the sincerity of that apology has been called into question (a matter I address below at paragraph 46 below), Ms Cadwalladr has not sought to withdraw from or dilute her clear acknowledgment that the single meaning is untrue. Ms Cadwalladr gave evidence that “*there was no evidence*” that Mr Banks “*had gone through with the deals*” (proffered via the Russian embassy) “*or made any money from them*”; or that he “*had accepted any money from the Russian government or its proxies*”. Nor was there any evidence “*that Russian money went into the Brexit campaign*”. Ms Cadwalladr also made clear that she had never thought Mr Banks was a “*Russian agent*” or a “*Russian actor*”.
9. Ms Cadwalladr has repeatedly labelled this claim a SLAPP suit, that is a strategic lawsuit against public participation, designed to silence and intimidate her. I have set out a summary of my conclusions in paragraph 416 below. Although, for the reasons I have given, Mr Banks’s claim has failed, his attempt to seek vindication through these proceedings was, in my judgment, legitimate. In circumstances where Ms Cadwalladr has no defence of truth, and her defence of public interest has succeeded only in part, it is neither fair nor apt to describe this as a SLAPP suit.

B. Issues for determination

10. The agreed issues for determination are:

Serious harm

- i) Has the claimant proved that the publication of the TED Talk and/or the Tweet has caused and/or is likely to cause serious harm to his reputation?

Public Interest Defence

In respect of each publication:

- ii) Has the defendant shown that she believed that publishing the statement complained of was in the public interest?
- iii) If so, has the defendant shown that her belief was reasonable having regard to all the circumstances of the case?
- iv) If so, has there been a significant change in circumstances since the original publication such that the defence in section 4 of the 2013 Act ceased to apply and, if so, when did any such change occur?

Damages

- v) If the claimant succeeds on liability in relation to the TED Talk and/or the Tweet, what sum should be awarded in damages?
11. If the claimant succeeds on liability, the parties have agreed further issues arise in relation to remedy, concerning an injunction and orders under sections 12 and 13 of the 2013 Act. However, it was agreed that those are matters on which it would be better to

42. In this paragraph, Ms Cadwalladr said both that there are certain things she never said about Mr Banks and also that she (positively) pointed out, and stressed, that there was no evidence to suggest that Mr Banks accepted money from the Russian government or its proxies or that Russian money went into Brexit. Asked where she had pointed out or stressed this, Ms Cadwalladr said, “*I believe that in the talk in the Convention, for example, I carefully pointed out that we had no evidence to suggest that he had accepted any money, and we were certainly not making that accusation*”. When she was later shown the transcript of the Convention Speech that she gave on 7 June 2019, Ms Cadwalladr accepted that she did not state that there was no evidence to suggest that Mr Banks accepted any money, albeit she considered that was the import of what she had said as, if there was evidence of that, she would have said so. The parts of paragraph 153 that I have underlined are inaccurate.
43. There were other minor inaccuracies. In her witness statement, Ms Cadwalladr said that the ‘Airplane tweet’ – a tweet posted by Leave.EU on 14 November 2017 describing her as “*hysterical*” and photoshopping her image into a scene from the film Airplane so that it showed her being assaulted – had been up for 72 hours, whereas her contemporaneous account was that it had been up for 42 hours. In paragraph 137 of her statement, she said Mr Banks had posted a tweet – “*I’m buying gold at the moment & big mining stocks*” – “*in the run up to the EU referendum*”, whereas it was posted shortly afterwards, on 17 July 2016.
44. I also accept that on the first day of giving oral evidence Ms Cadwalladr mistakenly suggested that she had only mentioned Mr Banks’s former wife (and the so-called “*spy scandal*”) in a *New York Review of Books* article, whereas she acknowledged the following day that she had also referred to her in two further articles (see paragraph 255 below).
45. I do not consider that the admitted inaccuracies in Ms Cadwalladr’s evidence warrant a finding that she is not a reliable witness of fact. The inaccuracies in reporting her interview with Mr Banks do not go to the core of the defence, and it is obvious they were not intended to mislead. Ms Cadwalladr would have been well aware that what she wrote could be checked against the record of the interview. Her overstatement in paragraph 153 is more significant and it is a factor that I bear in mind, particularly in considering Ms Cadwalladr’s intended meaning.
46. As I have said, on 25 March 2021 Ms Cadwalladr sent Mr Banks a written apology (see paragraphs 7-8 above). In cross-examination, she avoided answering the question whether her apology was sincere. The impression I gained was that she felt unable to say that it was “*sincere*” because that word may convey the meaning that the apology was heartfelt and willingly given. Plainly, that was not the case. Ms Cadwalladr was obviously reluctant to apologise for a meaning she is convinced she never conveyed, to a man she believes is hounding her in a SLAPP suit. At the same time, in my view, part of the reason for avoiding answering the question was that a simple ‘no, it was not sincere’ would not have been accurate, either. My impression was that Ms Cadwalladr found it difficult to convey, under the stress of cross-examination, the point that the apology was honest (and so in that sense sincere) – she did not intend to make the allegation conveyed by the single meaning and accepts it is untrue – albeit she did not give it willingly and wholeheartedly. Ms Cadwalladr’s evidence on this point did not undermine the impression that she was an honest witness.

services of Cambridge Analytica...?” Mr Wigmore responded on 27 January 2017, “We had advice from them yes and met them many times yes – employed them we did not – we did not need to they happily helped”. This email was forwarded to Ms Cadwalladr who was, at the time, investigating Cambridge Analytica and the “fake news ecosystem”.

155. On 14 February 2017, Ms Cadwalladr sent Mr Wigmore an email stating that she was interested in how Leave.EU had reached out to new voters during the referendum campaign, particularly using social media, and asking if he would be prepared to speak to her about it. This approach led to a meeting on 20 February 2017. Prior to this meeting, Ms Cadwalladr “*knew that the Claimant was a businessman who had funded the Leave campaign and that Mr Wigmore was his close associate who handled PR on his behalf*”, but beyond that she knew “*almost nothing*” about either of them. The meeting was expected to be brief but Ms Cadwalladr “*ended up speaking to him for several hours*”.
156. Ms Cadwalladr states, “*Mr Wigmore described how data, artificial intelligence and Facebook had been crucial assets in the Leave campaign. He explained in detail how personal data was the critical difference that allowed the Leave campaign to target individuals in order to message them.*” Mr Wigmore said Cambridge Analytica had been happy to help the Leave.EU campaign because “*the Trump and Brexit campaigns were the same family*” and he talked about the help they had had from a US election consultant Gerry Gunster of the firm Goddard Gunster.
157. Following this meeting, Ms Cadwalladr investigated Leave.EU’s electoral returns by searching the Electoral Commission website and by telephoning the Electoral Commission’s press officer to seek assistance. Ms Cadwalladr ascertained that a political campaign such as Leave.EU not only had to declare its spending, a “*gift of services*” by a company also had to be declared to the Electoral Commission; and she discovered that donations from foreign companies or individuals are impermissible. Ms Cadwalladr established that nothing had been declared by Leave.EU in relation to use of Cambridge Analytica’s or Goddard Gunster’s services. Ms Cadwalladr believed that, according to the reporting rules explained to her by the Electoral Commission’s press officer, Leave.EU “*had potentially broken several UK electoral laws if it had failed to declare a ‘gift of services’ from CA*”.
158. Ms Cadwalladr also investigated Leave.EU’s use of data. She spoke to Professor Paul-Olivier Dehaye, a professor of mathematics at Geneva University and a data activist who had been investigating Cambridge Analytica for many months before Ms Cadwalladr began to do so, and with whom she had spoken before meeting Mr Wigmore. Ms Cadwalladr describes Professor Dehaye as “*an expert in the use of personal data in politics*”. She also interviewed “*a number of authorities on electoral and data law*”. Having done so, Ms Cadwalladr believed that what Mr Wigmore had told her about the way Leave.EU had gathered data, and the crossover with Mr Banks’s insurance business, and about their use of Cambridge Analytica and Goddard Gunster, raised serious questions of potential breaches of electoral and data laws.
159. On 26 February 2017, a “*special report*” by Ms Cadwalladr, “*Who is the secretive billionaire using ‘cognitive warfare’ to take down mainstream media?*” and articles by her under the headlines “*Robert Mercer: the big data billionaire waging war on mainstream media*” and “*Revealed: how US billionaire help to back Brexit*” were

article I have ever seen Carole – a massive thank you – had an extraordinary reaction to it – all positive (so far)”. Although Ms Cadwalladr’s articles prompted investigations, Mr Banks and Mr Wigmore did not hold this against her and they remained on friendly terms.

170. In about April 2017, Ms Cadwalladr spoke to a confidential source who had worked for UKIP for many years, and who told her that UKIP had been targeted by Russian individuals with close ties to the Russian state. The source suggested that Russian money had been used to fund the Brexit campaign. Ms Cadwalladr also investigated the timing of Mr Farage’s visit to the Ecuadorean embassy in March 2017 and the leak of “Vault 5” by Mr Julian Assange, and published an article on the subject on 23 April 2017, “*When Nigel Farage met Julian Assange*”.
171. Ms Cadwalladr’s next major articles regarding Cambridge Analytica, Leave.EU, and a “*CA-linked tech firm in Canada, AggregateIQ*” that had worked for Vote Leave, were published on 7 and 14 May 2017 in *The Observer*.
172. On 30 July 2017, *The Sunday Times* reported, in an article by the Political Editor, Caroline Wheeler, to whom Mr Banks appears to have spoken, that Mr Banks had been “*tipped off*” that he would be called to give evidence to the US congressional committee investigating Russian interference, under threat of subpoena. Ms Cadwalladr followed these developments closely, as well as articles that were published regarding the sources of Mr Banks’s wealth, and the comments on the subject made in the House of Commons (see paragraphs 232-237 below).
173. On 30 October 2017, the first indictments in the Mueller investigation were sealed. Ms Cadwalladr was struck, reading the indictment of George Papadopoulos, an aide to Donald Trump, “*by the level of detail about individuals based in London who were implicated in the investigation, the role of London itself as a ‘neutral city’ for key meetings and in particular the role of the Russian ambassador to London, who was not named but I knew to be Ambassador Yakovenko*”.
174. On 1 November 2017, the Electoral Commission announced it would be investigating whether Mr Banks and BFTC were the true source of donations to Brexit campaigns in their names. Mr Banks issued a press statement in response (see paragraph 275 below).
175. Ms Cadwalladr wrote two further articles for *The Observer* about the British connections to the Mueller investigation which were published on 4 November 2017. In one of these articles, “*Brexit, the ministers, the professor and the spy: how Russia pulls strings in UK*”, Ms Cadwalladr included a brief reference to Mr Banks:

“Speaking to the Observer about the inquiry into the sources of funds for his Leave.EU campaign, Banks complained about the focus on him. ‘There should be an inquiry into all the campaigns, not just us.’ And later: ‘What about Vote Leave?’

What about Vote Leave? And what about the new man in the Russian embassy? Some of the suspicion that has encircled Banks has been a result of his Russian wife, Katya, his vocal support of Putin, and the fact that in his memoir, *The Bad Boys of Brexit*, he is quite open about his Russian contacts, describing

contacted by Paul O’Sullivan, a South African forensic investigator, and others who said they had given evidence to the NCA in relation to its investigation into Mr Banks.

211. On 5 March 2019, Channel 4 broadcast a further programme regarding Mr Banks’s dealings with Russia. In this broadcast Channel 4 revealed for the first time the “*helicopter view ‘consolidation of Russian Gold’ doc*” sent by Mr Andrew Umbers of Oakwell Capital (copied to Mr Banks) to Mr Siman Povarenkin on 12 January 2016 (see paragraphs 305-306 below). Ms Cadwalladr said in her witness statement that this new document:

“priced the cost of buying the gold companies at \$4 billion and set out that the deal would be funded by ‘friend of GeoProMining’ and the sanctioned Russian bank Sberbank and suggested meetings with the Claimant or his associates and Sberbank in Moscow. The Claimant had previously told ITN that he had not had meetings about investments in Russia because he knows it is a complicated place to do business. The new documents contradicted that assertion. The report also included an interview with a former head of GCHQ, Sir David Omand, who said that the proposed deal had the appearance of a Russian influence operation.”

212. On 18 March 2019, a lengthy article by Ed Caesar was published in the *New Yorker*, entitled “*The chaotic triumph of Arron Banks, the ‘Bad Boy of Brexit’*” (‘the *New Yorker* article’) (see paragraph 291 below). It appears from the article that Mr Caesar had interviewed Mr Banks and Mr Wigmore in November 2018. The *New Yorker* article was drawn to Ms Cadwalladr’s attention by Ms Stivers. She read it before giving the TED Talk and it had an impact on what she included in her draft. The *New Yorker* article includes the following:

“Banks’s 2016 memoir, ‘The Bad Boys of Brexit,’ acknowledges that before the referendum he met with Russian officials, including Alexander Yakovenko, the Russian Ambassador to London. Subsequent reporting has uncovered several other previously undisclosed meetings and contacts between Banks and Russian businessmen, during which opportunities with Russian firms in the mineral sector were discussed.

...

No other meetings with Russian diplomats or businessmen are described in ‘The Bad Boys of Brexit.’ For more than a year, the public had the impression that this single lunch engagement was Banks’s only meeting with Ambassador Yakovenko. This wasn’t true.”

(d) The ICO, Electoral Commission and NCA investigations

213. The articles by Ms Cadwalladr that were published on 26 February 2017 (referred to in paragraph 159 above) triggered (as the report to Parliament makes clear) an

appeared in the press (see paragraph 39 above). Mr Banks told Ms Cadwalladr directly, speaking of his (then) wife, “*she is not a Russian spy*”.

254. On 19 October 2017, openDemocracy published the article “*How did Arron Banks afford Brexit?*” (see paragraph 235 above). Ms Cadwalladr read the article and one of the points she noted was that the journalists had “*uncovered new details about [Mr Banks’s] wife who had kept possession of a council flat in Portsmouth overlooking the naval base*”.
255. Ms Cadwalladr referred to the “*spy scandal*” reports in the Interview article and the NYRB article. She did not make any further reference to the “*spy scandal*” in the many articles that she wrote about Mr Banks, although in one of her articles, published on 4 November 2017, she referred to “*his Russian wife, Katya*” as one among a number of reasons for the “*suspicion that has encircled Banks*” (see paragraph 175 above).
256. Shortly before giving the TED Talk, Ms Cadwalladr read the *New Yorker* article (see paragraph 212 above). It can be seen from the article that the journalist had interviewed (amongst others) Mr Banks, Ms Banks’s ex-husband, Eric Butler, and Boris Volodarsky, who is described as a former undercover operative for the GRU, Russia’s military intelligence agency, and an academic authority on Russian espionage. The article includes a substantial segment regarding Ms Banks, including Mr Volodarsky’s opinion that “*Russian intelligence services – most likely SVR – ‘were in this or that way involved in the life and further career development’ of Paderina [i.e. Ms Banks] and Zatuliveter*” and that Alexander Udod was “*the SVR agent who had met with Ekaterina Zatuliveter in London*”. The article included Mr Banks’s assertion that it was “*preposterous*”, and Mr Wigmore’s that it was “*laughable*”, to suggest that Ms Banks had any connection with Russian intelligence.
257. In evidence, Ms Cadwalladr acknowledged that there is no evidence that Ms Banks was a Russian spy. It is not a matter Ms Cadwalladr referred to in the TED Talk and I accept her evidence that, prior to giving that talk, Ms Cadwalladr sought to avoid overplaying its significance.
258. It is likely that it was referred to by Ms Cadwalladr in the published articles to which I have referred as a “*colourful footnote*”, just as it was referred to in articles by other journalists in, amongst other newspapers, *The Times* on 2 November 2017, *The Sunday Times* on 10 June 2018 and *The New York Times* on 29 June 2018, rather than because Ms Cadwalladr gave weight to *The Daily Mail*’s suggestion that Ms Banks was a Russian spy in considering Mr Banks’s links with Russia. Indeed, in Mr Banks’s own memoir, the “*cast of characters*” includes the entry:
- “**Katya Banks:** Arron’s Russian wife, daughter of a local government official and a teacher in Ekaterinburg. Speaks six languages and studied French at the Sorbonne. A larger-than-life extrovert who was caught up in a spy scandal in 2010. The number plate on the family Range Rover is X MI5 SPY.”
259. In my judgment, prior to the TED Talk, the fact that Mr Banks’s wife was Russian was no more than one of many reasons why Ms Cadwalladr thought it likely that Mr Banks would have been “*on the radar of Russian intelligence*”, and she did not place any real weight on the suggestion that his wife had any connection with Russian intelligence.

AB: I wouldn't care in the least. They said I was a Russian actor and that Russian money had funded Brexit and it was wrong, and there has to be a point where you draw a line in the sand."

271. Ms Cadwalladr's evidence was that her conversation with Mr Banks continued in his car after the interview. Mr Wigmore joined in the conversation by telephone. During this part of the conversation, which was not recorded, Ms Cadwalladr understood Mr Wigmore to be saying there was only one lunch with the Russian Ambassador, although Mr Banks had told her twice that there were two lunches, and had earlier posted a tweet to the same effect.
272. It was also during the conversation in the car that Ms Cadwalladr asked if Mr Banks had a diplomatic passport. In the Interview article, published a week after the interview, this conversation is recorded as follows:

"Later, he gives me a lift to the station, and Andy Wigmore – they call each other Wiggy and Banksy – is on speakerphone. Wigmore has family links to Belize, and he was that country's trade envoy to the UK until January, when the foreign office stripped him of his diplomatic status because of his political activity. And Banks lost his status too: he was Belize's special envoy to Wales. It's all a terrific joke. 'But what?' I say. 'You're telling me you have a diplomatic passport?'

'Yes,' he says. 'We both do.'"

It is clear from the next line ("*[t]hen Wiggy pipes up*") that "*he*" in the above sentence is Mr Banks. However, in evidence, Ms Cadwalladr said that Mr Banks had told her he had been the special envoy for Wales "*and did not dispute that this entailed having a diplomatic passport*" (emphasis added).

273. On 10 May 2017, in response to a tweet from Ms Cadwalladr, Mr Banks tweeted:
- "Again, the Russians did not give our campaign any money, gifts or assistant [sic]!"
274. On 1 August 2017, in response to a tweet from Ms Cadwalladr, Mr Wigmore wrote "*we know the Ambassador @RussianEmbassy he's a good man*"; and Mr Banks replied: "*Yes agreed, Russian ambassador is a fine fellow @RussianEmbassy*".
275. On 1 November 2017, following the announcement of the EC's second investigation (see paragraph 218 above), Mr Banks put out a press release which stated:

"...The Leave.EU campaign was funded by myself, Peter Hargreaves and the general public.

The Guardian allegations of Brexit being funded by the Russians and propagated by Ben Bradshaw are complete bollocks from beginning to end.

My sole involvement with 'the Russians' was a boozy 6 hour lunch with the Ambassador where we drank the place dry (they

“In an interview with ITV News, Mr Banks was asked: ‘Did you ever invest in Russia? Did you go further and have more meetings about this?’

He replied: ‘No. Flat. Zero. Nothing. In fact, I wouldn’t do. Because I know it is a complicated placed to do business.’

...

Arron Banks told Channel 4 News: ‘Channel 4 allege that business deals done with Russia funded our Brexit campaign, either directly or indirectly. I have repeatedly stated that was not the case and that potential investment opportunities were assessed and rejected at the time.

‘The so-called Russian “sweetheart” gold consolidation play was referred to Lord Guthrie, former head of the British Army, who referred us to a Russian gold expert – otherwise known as “Goldfinger”.

We had one short meeting about the potential project and then rejected it. The funding of our Brexit campaign came from myself and other UK-based donors. I look forward to the NCA report in due course.’”

291. Mr Banks and Mr Wigmore were interviewed for the *New Yorker* article (see paragraph 212 above). The article states:

“Banks writes in his book that Udod invited him and Wigmore to lunch with the Russian Ambassador, Alexander Yakovenko, on November 6, 2015. They readily accepted. ‘You get invited by the Ambassador, of course you go!’ Banks told me. ‘Maybe it was a mistake.’

‘They weren’t perceived as bad back then,’ Wigmore added. At the time, he said, British politicians were ‘actively trying to get people to invest in Russia.’

Wigmore later texted me to say that ‘The Bad Boys of Brexit’ contained an error: he, not Udod, had suggested the embassy lunch. Another member of Banks’s circle, however, told me that the meeting was indeed arranged by Udod.

...

Two months before the referendum, a third opportunity to work with Russians was presented to Banks: a gold-mining project in Guinea, in West Africa, owned by Ilya Karas, a London-based Russian businessman with a Belizean passport. ...

Wigmore recently told me that Banks and Karas never met, saying, ‘When we checked it out, we decided not to proceed

303. On 12 January 2016, Mr Umbers sent an email to Mr Povarenkin and Mr Sergey Kuznetsov of GeoProMining, copied to Mr Banks and two others from Oakwell Capital. The subject of the email is “*Russian Gold Consolidation*”. Mr Umbers’s email states:

“Dear Siman,

A belated Happy New Year !

\$ strong, Oil weak, Chinese deflation on the horizon, a flight to quality. All points to gold as the default currency.

Please see my helicopter view ‘consolidation of Russian Gold’ doc.

Haven’t forgotten about your Alrosa project either.

Let me know what you wish to do.

Best regards,

Andrew”

The content of this email appears in the email cache and the Attic document, and the email has been disclosed by the claimant.

304. It is evident that there must have been other communications prior to Mr Umbers’s email of 12 January 2016, first, because Mr Umbers has obtained an email address of one of Mr Povarenkin’s colleagues at GeoProMining and, secondly, because the reference to “*your Alrosa project*” shows that at some earlier point Mr Povarenkin must have referred to that project.
305. The “*Consolidation of Russian Gold*” document prepared by Mr Umbers is a four-page Word document bearing that title. It is the document first revealed by Channel 4 on 5 March 2019 (see paragraph 211 above). The first paragraph stated:

“The consolidation of 6 potential companies in to 1 corporate entity requires significant private and public markets expertise. After a thorough investigation into the feasibility of the project, Oakwell Capital, through its corporate finance arm, would be extremely interested in overseeing the entire project on behalf of its prospective client GeoProMining.”

306. Under the heading “*Practical Considerations*”, Mr Umbers wrote:

“...7/Sberbank would have to agree to the recommended and broad strategy of consolidation of all 6 companies given their own assumed debt roll over and extensions and a new financial position in the consolidation vehicle (New co/GeoProMining). We believe that the leverage of Sberbank has with all of the 6 potential target acquisitions could very materially alter the valuation, type of approach and structure of the new company

399. In all the circumstances, I find that the defendant has established that her belief that publishing the TED Talk was in the public interest was reasonable. For the same reasons, if I had found that the serious harm threshold was met in relation to the Tweet, I would also have found that the defendant's belief that publishing the Tweet was in the public interest was reasonable.

M. Significant change in circumstances

400. The claimant contends that even if the defendant has established a public interest defence when the TED Talk was given (or the Tweet was posted), there has been a significant change of circumstances such that the defence falls away. The claimant identifies the following as significant changes:

i) The statement made on 24 September 2019 by the NCA ('the NCA's statement') that it had concluded:

"Mr Banks took a loan from Rock Holdings Ltd, a company of which he is the ultimate beneficial owner. He was legally entitled to do so.

Mr Banks was legally entitled, in his capacity as an individual, to release these funds to Better for the Country Ltd, by instructing another of his companies, Rock Services Ltd, to make the transactions on his behalf.

Rock Holdings Ltd was not involved in these transactions in a manner which contravened PPERA.

The NCA has found no evidence that any criminal offences have been committed under PPERA or company law by any of the individuals or organisations referred to it by the Electoral Commission. It will therefore take no further action against Mr Banks, Ms Bilney, Better for the Country Ltd or Leave.EU in respect of this specific matter.

...The NCA has not received any evidence to suggest that Mr Banks and his companies received funding from any third party to fund the loans, or that he acted as an agent on behalf of a third party."

ii) The handing down of Saini J's judgment on meaning on 12 December 2019.

iii) The joint statement by the Electoral Commission and Mr Banks (and others) on 29 April 2020 ('the Joint Statement') in which the Electoral Commission:

"confirms it accepts (a) the NCA's conclusions that it found no evidence that any criminal offences have been committed under PPERA or company law by Mr Banks or Ms Bilney; and (b) the NCA had not received any evidence to suggest that Mr Banks or his companies received funding from any third

N. Summary of conclusions on public interest defence

414. For the reasons, I have given, Ms Cadwalladr has succeeded in establishing a public interest defence in respect of the TED Talk from the original date of publication, 15 April 2019, until 29 April 2020. In relation to the Tweet, Mr Banks did not establish that the serious threshold was met and so the need for Ms Cadwalladr to establish a defence did not arise. However, if it had arisen, she would have succeeded in establishing a public interest defence from the original date of publication, 24 June 2019, until 29 April 2020.
415. I have concluded that there was a significant change of circumstances on 29 April 2020, and so Ms Cadwalladr failed to establish the public interest defence in respect of continuing publication of the TED Talk from that date. However, Mr Banks failed to establish that the serious harm condition was met in respect of publication of the TED Talk from 29 April 2020. In view of the conclusions I have reached, no question of awarding damages arises.

IV

O. Overall conclusions

416. For the reasons I have given, I conclude:
- i) The claimant has proved that the publication of the TED Talk has caused and/or is likely to cause serious harm to his reputation. The TED Talk is defamatory of Mr Banks for the purposes of s.1 of the 2013 Act.
 - ii) The claimant has failed to prove that publication of the Tweet caused or is likely to cause serious harm to his reputation. The claim in respect of the Tweet is therefore dismissed on the ground that the Tweet is not defamatory for the purposes of s.1 of the 2013 Act.
 - iii) The defendant has established a public interest defence in relation to the publication of the TED Talk pursuant to s.4 of the 2013 Act.
 - iv) There was a significant change of circumstances once both the NCA's statement and the Joint Statement had been published on 29 April 2020, such that the public interest defence in s.4 of the 2013 Act ceased to apply.
 - v) The claimant has failed to prove that the publication of the TED Talk from 29 April 2020 caused and/or is likely to cause serious harm to his reputation. In respect of that period, the TED Talk is not defamatory for the purposes of s.1 of the 2013 Act.
 - vi) Accordingly, the claim is dismissed.