Neutral Citation Number: [2023] EWHC 1256 (KB)

Case No: QB-2021-001227

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2023

Before :

THE HONOURABLE MR JUSTICE SAINI

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Between :

CHRIS PACKHAM CBE	**Claimant**
- and -	
(1) DOMINIC WIGHTMAN **(2) NIGEL BEAN** **(3) PAUL READ**	**Defendants**

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- -

Jonathan Price and **Claire Overman** (instructed by **Leigh Day**) for the **Claimant**
Nicholas O'Brien (**Direct Access**) for the **First and Second Defendants**
David Price KC, Solicitor Advocate for the **Third Defendant**

Hearing dates: 2-11 May 2023

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Approved Judgment

Mr Justice Saini:

This judgment is in 11 main parts as follows:

I. Overview

1. This is the trial of a defamation claim in which the Claimant ("Mr Packham"), a naturalist, television presenter and campaigner, sues three individuals in respect of articles published on the website of an online publication called *Country Squire Magazine* ("CSM"), and by way of social media including Twitter. The claim concerns three separate and unrelated matters.

2. The first concerns the tigers *Girona, Mondo, Antonella, Natasha* and *Zoppa* ("the Tigers"), that once performed in a Spanish circus (Circo Wonderland) but were later either "re-homed" or "rescued" (depending on one's perspective) and given what have been called "forever homes" in an animal sanctuary ("the Sanctuary") on the Isle of Wight. The Sanctuary is associated with Mr Packham and is operated by the Wildheart Trust ("the Trust"). Mr Packham is a trustee of the Sanctuary. He is alleged to have made fraudulent statements during 2018 in order to raise money from the public to fund the Tigers' journey from Spain to the Sanctuary, and for their subsequent care in their new home. This was the focus of the trial. I will call this the "Circus Big Cats Allegation".

3. The second subject of the claim is a statement made by Mr Packham to raise money from the public for the Sanctuary during the Covid-19 Pandemic in March 2020. He is alleged to have acted fraudulently in concealing insurance payments, or availability of insurance, from potential donors which made such a statement misleading and dishonest by omission. I will call this "the Insurance Allegation".

4. The third subject is a statement made by Mr Packham, during COP26 in Glasgow in November 2021, which concerned Muirburns. A Muirburn is the Scottish term for the practice of burning off old heather to encourage new growth. Mr Packham is said to have falsely stated that this practice has the effect of burning peat below the heather, thereby releasing harmful carbon into the atmosphere. I will call this "the Muirburn Allegation".

5. On its website, CSM describes itself as "*a platform for voices from the overlooked Great British Countryside*" and professes a hope "*to be a beacon for Truth in a world where moral relativists often have the loudest voices*." In broad terms, CSM's slant is pro-field sports and before me has been called a voice for "traditional" countryside management. It has

previously published articles critical of Mr Packham and those who share his views on animal welfare and nature conservation issues.

6. The First Defendant ("Mr Wightman", or "D1") is the editor of CSM. He accepts responsibility for each of the publications, including those made by social media. Mr Wightman is an asset manager by profession. He explains that CSM was set up as an online magazine in 2016 by him and two other "Brexiteers" to illuminate what they perceived as the injustice of the undemocratic positions taken by some "Remainers" at that time, and to partake in the campaign to see through the national referendum result, using "the cloak of the Brexit-voting 'countryside' to help achieve its aims". He describes CSM and himself as "conservative". CSM is said to be principally focussed on current affairs and politics with about a fifth of its articles covering countryside issues. He described the magazine as a "humble blog". That said, on his own evidence, certain of the articles in issue in these proceedings were read by numbers going into the 170,000s on Facebook.

7. The Second Defendant ("Mr Bean", or "D2") is an IT consultant. Together with Mr Wightman, he accepts responsibility for the publications in CSM attributable to him and all his social media postings.

8. The Third Defendant ("Mr Read", or "D3") is a retired computer programmer. He puts in issue any legal responsibility for the publications. He argues that he acted as a form of "proof-reader" in relation to the First to Fourth Articles and not as an author or editor of them. Although he was named in the by-line to these articles, together with D2, he says that was a decision made by D1 and D2, by way of a "thank-you" gesture to reflect his free proof-reading assistance. D3 says it was not reflective of any wider responsibility or role in drafting or making publication decisions. He admits sending the retweets pleaded against him but raises a number of defences to liability.

9. Johnson J ruled on the meaning of the publications in a judgment on preliminary issues: Packham v Wightman [2022] EWHC 482 (QB) ("the PI Judgment"). Johnson J appended the full text of each publication to his hyperlinked judgment and I will therefore not repeat that exercise. There are a large number of publications. Below, I will adopt Johnson J's definitions of the various publications.

10. Johnson J held that the publications accuse Mr Packham of various forms of dishonesty as follows:

    (1) In relation to the Circus Big Cats, the allegation made was that Mr Packham dishonestly raised funds from the public by stating that the Tigers had been rescued from a circus where they had been mistreated, whereas in fact (as Mr Packham knew) the Tigers had been well-treated and had been donated by the circus.

    (2) In relation to the Insurance Allegation (the Ninth Article and the Ninth Article Tweet), that at the start of the Covid-19 pandemic Mr Packham dishonestly sought to raise funds for the Wildheart Sanctuary by appealing for donations whilst concealing that the Trust that ran it was due to receive a £500,000.00 pay-out under its insurance or had received such a pay-out.

(3) In relation to the Muirburn Allegation (the Eighth Article), that Mr Packham lied when he said that gamekeepers on two Scottish estates were burning peat during the 2021 UN Climate Change Conference in Glasgow, when he knew that was untrue.

11. On 19 March 2021, Mr Packham's solicitors, Leigh Day, sent letters of claim to the Defendants, complaining of the First to Fourth Articles (which concerned just the Circus Big Cats Allegation). The next day, D1 published the Fifth Article ("*Packham Targets CSM Editor*") which provided hyperlinks to the First to Fourth Articles and published the letter of claim. Shortly thereafter D3's by-line was removed from the First to Fourth Articles.

12. Mr Packham issued his claim in respect of the First to Fifth Articles on 1 April 2021 and served it on 24 June 2021. Between issue of the claim and the PI Judgment on 10 March 2022, D1/2 published a further 4 articles and 2 videos making broadly similar allegations to the effect that Mr Packham had been dishonest. Mr Packham then also discovered that some or all of the Defendants had been promoting and republishing the articles and videos complained of on social media. That included, in the case of D3, on 2 different Twitter accounts. Mr Packham amended and re-amended his claim to include the additional publications.

13. As the litigation has progressed, the Defendants have published additional material which Mr Packham's representatives have submitted is puerile, offensive and damaging to him. He amended his claims to rely upon certain of this additional material in support of his plea for aggravated damages.

14. At the start of the trial, D1 and D2 relied on substantive statutory defences of truth, and publication on a matter of public interest, in relation to all the publications. However, after Mr Packham's oral evidence D1 and D2 abandoned the truth defence in relation to the Muirburn Allegation. Following conclusion of D2's evidence the truth defence was also abandoned in relation to the Insurance Allegation. They maintain a public interest defence in respect of these allegations.

15. Before Mr Packham's oral evidence began, D1 and D2 also abandoned a pleaded allegation of wrongdoing to the effect that Mr Packham had forged (using his own handwriting) a letter containing a death threat he claimed to have been sent to him. Those allegations had been made in mitigation of damages on a Burstein v Times Newspapers [2001] 1 WLR 579 basis. The false death threat allegation is a matter to which I will return in more detail at the end of this judgment.

16. The Defendants have periodically been represented throughout this litigation. From March to October 2022 they were all represented by specialist defamation solicitors and counsel who settled their joint Amended Defence. In January 2023, they appear briefly to have instructed a different firm, and at the Pre-Trial Review, D1 and D2 indicated that they were in discussions with yet another. At trial they were represented by direct access Counsel, Mr Nicholas O'Brien.

17. Since early March 2023, D3 has been separately represented by Mr David Price KC. That instruction led to a rather radical change of strategy, aptly described by him as a "reverse ferret" at the start of the trial. So, D3's Re-Amended Defence of 31 March 2023 wholly resiles from the truth defences, and *Burstein* pleas. D3 now restricts himself to denial of responsibility for publication of the First to Fourth Articles, and denials in relation to the claims arising out of his retweets. He also advances a new case that these retweets have not

caused "serious harm" to Mr Packham's reputation and are therefore not actionable. In his new pleading, D3 explains his change of position by stating that he "received no substantive advice" from his previous representatives. I directed at the start of the trial that I would not allow investigation of this issue any further.

18. The issue of responsibility for publication does not arise for D1 and D2. By contrast, D3's defence in respect of the First to Fourth Articles rests almost entirely on this issue. At the start of the trial, on behalf of D3, an issue was raised as to whether Mr Packham's representatives were, in pre-trial correspondence, seeking to hold D3 responsible for these publications on a wider basis than pleaded. The Re-Re-Amended Particulars of Claim seek to hold D3 responsible as an "author and/or editor" in relation to the First to Fourth Articles; and it was said by Mr Price KC that this was to be understood as referring to these terms as defined in section 1(2) of the Defamation Act 1996. I agreed that clarity was required and D3 should not be facing a case in cross-examination which had not been pleaded. I directed a statement of case on this specific issue at the start of the trial. It was served as directed and appeared to have allayed the concerns expressed on behalf of D3 as to the scope of the case on responsibility made against him. I will return to the way in which the case is put below.

19. Mr Packham was represented at trial by Jonathan Price ("Mr J Price") and Claire Overman. I am very grateful for the substantial assistance that they, together with Mr O'Brien and Mr Price KC, provided to me at trial. In particular, Mr O'Brien had only very recently been instructed through Direct Access and represented D1 and D2 with skill and moderation in a sensitive and document-heavy case.

II. The Legal Framework

20. There were a large number of authorities cited by the parties. The basic legal principles are, however, uncontroversial and well-established. I will summarise them below, but without extensive citation and quotation from the case law.

The cause of action

21. Mr Packham has to prove that each of the Defendants was legally responsible for making the relevant pleaded publications, that the statements relied upon referred to him, and that they were defamatory. It is not in issue that the statements are defamatory at common law. However, by section 1(1) of the Defamation Act 2013 ("the 2013 Act") a statement is not defamatory unless its publication has caused or is likely to cause "serious harm" to the reputation of the claimant.

22. Responsibility for the publication of statements which refer to Mr Packham is not put in issue by D1 and D2. Responsibility for publication of the First to Fourth Articles is however very much in issue between Mr Packham and D3, as I have described above. I will consider the law, the pleaded case, and facts in relation to claimed responsibility of D3 separately.

Serious harm

23. D1 and D2 do not put "serious harm" in issue in respect of any publications. D3 does not admit but does not require proof of "serious harm" in respect of the First to Fourth Articles. I treat that as effectively an admission. However, D3 very much puts in issue "serious

harm" as regards his retweeting activities. I will also address the pleadings, the arguments and evidence on this matter in **Section IV.**

24. Serious harm can in an appropriate case be satisfied as a matter of inference from the circumstances of the case. Particular reliance was placed by Mr J Price for Mr Packham on the observations in Banks v Cadwalladr [2023] EWCA Civ 219 at [55]-[56] in this regard. That said, inherent tendency of a statement to cause some harm to reputation is not sufficient. "Serious harm" refers to the consequences of the publication and depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. It is important not to dilute the "serious harm" element of the cause of action using the inference of harm argument to such a degree that it becomes so easy to satisfy the requirement that it becomes meaningless. This is particularly important in a case such as the present, which is concerned, in part (as against D3), with publication by retweeting of defamatory tweets or links to articles/videos. There is a real danger in inferring serious harm (as opposed to requiring some form of factual evidence) in such cases when the followers of the retweeter may be limited in number and may (or may not) have read the retweet. The importance of focussing on this element of the cause of action as a fact to be properly pleaded and proved should not be overlooked. As explained in Lachaux v Independent Print Ltd & another [2020] AC 612 at [14]:

> "…The reference to a situation where the statement "has caused" serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."
>
> (my underlining)

25. One should also not lose sight of the statutory qualifier, serious harm. I accept that in respect of the extent of publication, seriousness of harm caused is not merely an arithmetical test or what has been called a "numbers game". Small-scale publication does not of necessity rule out serious harm being established. The issue will always be fact-specific.

Truth

26. This is the primary defence relied upon by D1 and D2 in respect of the Circus Big Cats Allegation. A defence of truth under section 2(1) the 2013 Act is made out if the defendant can show, on the balance of probabilities, that the imputation conveyed by the statement complained of is "substantially true". In order to satisfy this statutory test, the defendant has to establish the essential truth of the sting of the libel. The court should not be too literal in its approach. In practice, that means proof of every detail is not required where the relevant fact is not essential to the sting of the publication. The court will give latitude to a defendant who may exaggerate at the margins.

27. In a case such as the present, where the common theme is a serious allegation of dishonesty on the part of the claimant (through knowingly false representations being made in his public statements), a defendant seeking to prove the substantial truth of such allegations needs to focus with some care on what exactly has to be proved by him as to the claimant's state of mind. I underline this point because during the trial and in evidence D1 and D2 approached the dishonesty allegation as if it were a purely objective question – where the focus is on whether it was reasonable for Mr Packham to have made the statements. That is not the correct approach. When dishonesty is alleged a court must first ascertain the actual and subjective state of the claimant's knowledge or belief as to the facts he represented. The reasonableness or otherwise of his belief may be a matter of evidence going to whether he held the belief. So, a person who makes statements which appear to be objectively irrational may have some difficulty in showing that they were made with a belief in their truth, but in a dishonesty case the first relevant question always remains a subjective matter as to what the claimant honestly believed. To borrow a principle from the common law of deceit, a statement honestly believed to be true, however implausible it may be, is not capable of amounting to fraud: see *Clerk & Lindsell on Torts* (23rd Edition) at [17.19].

Publication on a matter of public interest

28. This is D1 and D2's secondary defence. Insofar as material, section 4 of the 2013 Act provides:

> "(1) It is a defence to an action for defamation for a defendant to show that –
>
> (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and
>
> (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.
>
> (2) …in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.
>
> …
>
> (4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgment as it considers appropriate".
>
> …".

29. I will call this "the public interest defence" below. A defendant relying upon this defence has to satisfy the court, on the balance of probabilities, on three questions: (i) that the statement complained of was, or formed part of, a statement on a matter of public interest;

(ii) that the defendant believed that publishing the statement complained of was in the public interest; and (iii) that the defendant's belief was reasonable. The first question is not in issue. That is rightly conceded by Mr Packham in respect of the Circus Big Cats Allegation, the Insurance Allegation and the Muirburn Allegation. The second and third questions are in issue.

30. The second question concerns the defendant's subjective belief and it is to be assessed at the time when the statement was published. The defendant must have addressed their own mind to the issue, as opposed to showing a reasonable person could have had this belief.

31. The third question is an objective matter. A belief will be reasonable if it is arrived at after conducting such inquiries and checks as would be reasonable to expect of the particular defendant, in all the circumstances of the case. Attempts to confirm the truth of the specific imputation conveyed by the statement in issue are an important factor in the court's assessment. In this regard, records of research or the process undertaken by a defendant when drafting a publication may be significant. A court may require more in the way of research and investigation if allegations of dishonesty or criminal wrongdoing, as opposed to less serious allegations, have been made. Overall, this is a highly fact-specific question and is to be approached holistically by way of an evaluative assessment. Without being prescriptive, factors which may be relevant include the following: the seriousness of the allegation – is there an allegation of fraud or dishonesty or something less serious such as a lack of care; the nature of the information; the extent to which the subject matter is a matter of public concern; the source of the information; the steps taken to verify the information; the status of the information; whether comment was sought from the claimant; whether the publication contained the gist of the claimant's side of the story; the tone of the publication; and the circumstances of the publication, including the timing.

32. Finally, a court will respect matters of editorial judgment and will be forgiving of inaccuracies in some facts if the overall thrust of what is said is true. I also approach matters on the basis that a court should be inclined to give more latitude to a "citizen journalist" than a professional journalist.

III. The Witnesses

Factual witnesses

33. On the Claimant's side, I heard oral evidence from Mr Packham and his partner Charlotte Corney ("Ms Corney"). I also heard evidence from David Van Gennep ("Mr Van Gennep) of the Dutch animal rescue charity, *Animal Advocacy and Protection* ("AAP"). The Tigers came to the Sanctuary via AAP. Mr Van Gennep gave evidence as to how the Tigers first came to AAP.

34. I consider all of the witnesses called for the Claimant, including Mr Packham, to be wholly truthful witnesses. My factual findings are largely based on their oral evidence and the contemporaneous documents. I felt able to accept the evidence of these witnesses without qualification. For the avoidance of doubt, when I refer below to their evidence or statements they made to me, I accept that evidence as true.

35. Each of the Defendants gave evidence. As to Mr Wightman (D1), I found him to be an honest witness in the sense that he sincerely believed in the truth of the evidence he gave

me. He is an articulate and intelligent person. That said, I approach his evidence with a significant qualification, and with some caution. That is because both in his written and in his oral evidence, he gave me the impression of a person who had lost all objectivity when it came to Mr Packham. That meant he was unable to see any act of Mr Packham as being other than underhand or dishonest. Most striking is that he was willing to make and pursue allegations which I consider had no factual basis, such as the false death threat matter (see [196] below). That was pursued until the end of the first week of trial, when it was withdrawn by his Counsel. However, Mr Wightman was still unwilling to let go of this baseless allegation in parts of his oral evidence. Mr Wightman's negative views of Mr Packham were, I am sure, reflective of what I consider was his *them* and *us* attitude, with the traditional countryside on one side (those he described as hunters, farmers and landowners), and what he and Mr Bean (D2) perceived as those who were "left" leaning, including the BBC and animal rights activists, on the other side. In Mr Wightman's worldview, Mr Packham falls within this second camp as a person described by him as being on the "public teat", benefitting from BBC licence fee money. Below, I have extracted parts of the articles which followed the letter before claim. They show an ever-increasing level of rage towards Mr Packham, including offensive references to his neurodiversity as a claimed excuse used by Mr Packham. Mr Wightman's lack of objectivity sadly carried into what were abusive and offensive exchanges with Mr Packham's Solicitors, Leigh Day, in correspondence. I will address that matter briefly at the end of this judgment.

36. Mr Bean (D2) is an enthusiastic horse rider and he regularly rode to hounds until the Hunting Act 2004. He met D1 in person in the course of this case but has written for CSM for some years. Mr Bean accepted the description given of him by D1 as a "truffle pig investigator" for CSM. In his evidence he explained he had first-hand experience of the tactics of anti-hunt saboteurs and described their motives and purpose as being to "harass legal activities in the countryside". Mr Bean has written extensively about the methods, activities and what he calls the "sheer dishonesty" of the hunt saboteurs and animal rights extremists on his blog, *The Aldenham.* He associates Mr Packham with such persons. I found Mr Bean to be an honest witness in the sense that he sincerely believed that he had uncovered wrongdoing by Mr Packham and sincerely believes in the right of those who participate in traditional countryside activities and pastimes to do so. However, as with D1, in my judgment Mr Bean had lost objectivity and he had an "agenda" against Mr Packham. He saw Mr Packham as being part of a "left leaning" part of society whose views he opposed. Mr Bean was unwilling to accept that any of Mr Packham's actions could be explicable as innocent as opposed to fraudulent. His stubborn approach to the Fundraising Regulator's rejection of his complaint about the fundraising activities of the Trust in relation to the Tigers (addressed in more detail at [148] below) is illustrative of his approach. Mr Bean associated himself with wide-ranging and wild allegations of serious dishonesty and other wrongdoing made by D1 against Mr Packham in correspondence. A flavour of his approach is given by the words of his witness statement where he alleged that Mr Packham had "repeatedly shown himself to be manipulative and dishonest". Mr Bean's oral evidence was brief. I approach it with caution.

37. Mr Read (D3) is a 69-year-old retired computer programmer living in North Yorkshire. He has known D2 for about 10 years through social media groups related to hunting and is a keen country sportsman. Mr Read had not met D1 and D2 in person until this litigation. He gave very limited oral evidence as to his role in the specific acts he undertook in the drafting of the First to Fourth Articles. I accept that evidence as accurate and honest. D3 has never

worked in publishing or journalism but from his experience in dealing with technical and commercial documents he has developed a real interest in grammar and clarity of expression. Although, as I have described, his strategy in this litigation has undertaken a radical change following Mr Price KC's instruction, D3 joined with D1 and D2 in their pursuit of the truth defence and additional allegations (including the death threat allegation) until 17 March 2023 when he served his Re-Amended Defence. In his oral evidence, Mr Read also did not distance himself from what I regard as highly inappropriate and offensive correspondence sent by D1 (on behalf of all the Defendants) when asked about this in cross-examination. I suspect that he allowed himself to be taken along with an aggressively pursued defence strategy coordinated by D1 and D2 without giving any proper consideration to whether this was appropriate. I consider that the instruction of Mr Price KC was the first time he appreciated what he had gotten into in these proceedings.

38. The Defendants tendered witness statements from 3 further witnesses of fact: Mr O'Rourke, Mr Nash, and Ms Macaggi. On 11 April 2023 D1/2 disclosed "affidavits" from Jamie Clubb, David Sherwood and Thomas Chipperfield Snr. These witnesses were not required to attend and their evidence was put before me by consent of the parties and on the basis I could attach such weight as I considered appropriate to their evidence. I note in passing that many of these witness statements are not compliant with paragraph 18.2 of Practice Direction 32 in the important respect that they do not indicate: (i) which statements in them are made from the witness's own knowledge and which are matters of information or belief; or (ii) the source for any matters of information or belief. This is significant for example in the statements of Mr Nash and Mr O'Rourke, whose statements (as I describe below) are a collection of what I regard as tendentious and, in the case of Mr O'Rourke in particular, hearsay comments and speculation.

39. Mr O'Rourke is a journalist who was assistant editor of the South China Morning Post for some years. He says he investigated and wrote several articles on wildlife charities and animal rights extremists who "deceive the public while soliciting donations", one of whom is said to be Mr Packham. He was not, however, involved in any capacity in any of the publications complained of, and none of his investigations concerned the allegations in this case. The high point of the statement is at [8], where Mr O'Rourke says he became aware of "*the Country Squire and Daily Mail articles*" and, after unspecified "*further probing*" he was led to believe that they were accurate. Mr O'Rourke's belief is not relevant to either of the substantive defences in this case and I give his statement no weight.

40. Mr Nash's evidence suffers from the same defect. Mr Nash is the person responsible for what Mr Packham's representatives described as offensive cartoons depicted in a number of CSM articles. Mr Nash seeks to defend his cartoons, but he is not a defendant in this case. As with Mr O'Rourke, Mr Nash's investigations, views and beliefs (which extend to matters as obscure as whether the Sanctuary complies with the guidelines of the Global Federation of Animal Sanctuaries) are not relevant.

41. Ms Macaggi is capable of speaking to the facts at issue in this case, being part of the family that owned the Tigers. However, the factual evidence that she does give is of little value, given her (perfectly proper) indications that she had little direct contact with the animals and cannot recall precise details about them. The evidence she does give is expressed with less specificity than the documentary and video evidence, and Mr Van Gennep's evidence, which I prefer.

42. I accord little weight to the "affidavits". Mr Chipperfield Snr's and Mr Sherwood's affidavits go to an issue about whether or not Mr Packham lied about a tangential issue (concerning alleged mistreatment of a baby elephant – see [82] below). Having heard Mr Packham's evidence on this point, I accept it. Mr Clubb's affidavit concerns a matter not put to Mr Packham and I say nothing further about it.

Expert witnesses

43. Pursuant to the grant of permission by the Master, expert evidence was served on two issues: (1) the welfare of travelling circus tigers and whether it is inherently harmful to them to keep these animals in such environments ("tiger welfare"); and (2) the issue of peat burning in Muirburns.

44. I found the admission of evidence on the first of these issues, tiger welfare, somewhat puzzling given the issues which arise in the claim. I was told by Mr J Price for Mr Packham that such expert evidence had been opposed on his behalf before the Master, but it was nevertheless directed at the CCMC. I start by stating the obvious. Expert evidence must always be firmly tied to an issue which arises in the case. But even then the court has to consider whether it will be assisted in determining this issue by expert evidence bearing in mind considerations of cost and proportionality. There is a duty to restrict expert evidence: see CPR 35.1, and the commentary at *White Book* (2023) Vol. 1 at para. 35.1.1.

45. I do not consider the expert evidence on tiger welfare to be of assistance. The issue before me is whether Mr Packham honestly held the views he expressed as to what he said were the appalling lives the Tigers had in the travelling circus in which they performed. That matter is to be determined primarily on his evidence and according to what I find as a fact were his genuine beliefs at the material time.

46. What the general scientific knowledge may be about welfare of tigers in circuses generally is of no assistance on that issue. This is not for example a case where D1/D2 argue that it would be irrational for a right-thinking person to hold a view that keeping tigers to perform in circuses is harmful to them. Reasonable people can differ on this. Indeed, D1's and D2's own expert, Dr Friend, does not suggest that having such a view would be absurd or irrational. If an irrationality argument were being made, I might have understood why expert evidence could potentially assist the court in determining the genuineness and honesty of Mr Packham's views. But that is not this case.

47. That said, given that permission had been granted, I read the reports, and I considered the oral evidence on tiger welfare from Professor Knight (for the Claimant). I read the report of Dr Friend (for D1 and D2) but he was not required for cross-examination. Professor Knight was cross-examined at some length by Counsel for D1 and D2. He is plainly knowledgeable in this field and his views were informed by a detailed study of the literature. Professor Knight addressed the question as to whether there was a scientific consensus in relation to the welfare of tigers kept in circuses – is this practice inherently harmful to such animals? Dr Friend is a qualified expert, but his views focussed more on how big cats felt entertained and engaged in circuses, when compared to those in zoos. Dr Friend's report did not address the state of the scientific consensus. He instead concluded, that: (i) at circuses he visited, the wild cats he saw did not appear to have compromised welfare; (ii) the results of his 12 studies (of which 7 did not concern tigers) supported 2 other studies finding that there was no scientific basis for banning animals in circuses; and

(iii) photos he saw of the Tigers (in this case) showed that they had very good cages, transport wagons, and exercise pens. Professor Knight also viewed some photos of the Tigers in the Circus and I will briefly refer to his evidence on that matter below.

48. The expert evidence left me with the firm overall impression that the modern peer-reviewed literature supports the proposition that it is indeed inherently harmful to tigers for them to be kept in travelling circuses. That conclusion is based on applying what the literature calls the "domains" model for assessing animal welfare which considers nutrition, physical environment, health, behavioural interactions and mental state. I also note that Professor Knight considered the medical history of the Tigers and concluded (like Mr Packham and Mr Van Gennep) they had suffered serious and debilitating mutilations and injuries (from de-clawing and de-toothing) as well as other features of concerning ill-health (lameness, untreated fractures and viruses). These appear to have been the result of their lives as circus animals.

49. I conclude on this point by noting that it is perhaps more helpful to record that the literature reflects what is an emerging international legal consensus which prohibits the use of wild animals in circuses. That is supportive of the position of Mr Packham and his expert, Professor Knight. I note the following in this regard. 48 countries have imposed bans on the use or import/export of some or all wild animals in association with circuses. This includes a substantial number of EU states (now including Spain) and the UK. The Wild Animals in Circuses Act 2019 prohibits the use of wild animals in travelling circuses in England. That measure and many of the others are motivated by animal protection and animal welfare concerns.

50. As to the Muirburn Allegation, I received expert evidence from Dr Robert Stoneman (for the Claimant) and Dr Andreas Heinemeyer (for D1 and D2). I can more readily understand why that evidence was admitted: the court would have required some education as to what Muirburns are, the science of burning heather and its effects on peat and carbon emissions. However, other than helping me with the terminology and basic science, I did not obtain much assistance from this evidence. The experts were not called and submitted a Joint Report, which I can summarise briefly. They considered whether there was a preponderance of scientific evidence which considers the impact of Muirburns on peatland carbon stocks. The experts answered that there is no body of evidence to answer this proposition fully. They agreed that the evidence is very limited and often inadequate and contested (in relation to both methods and interpretation). They also considered whether there is a preponderance of scientific evidence that addresses the specific question of whether peat is burned in managed burning. They agreed that there are few studies that specifically address this matter. The experts each identified studies that go either way. I note that there is a Muirburn Code (issued by the Scottish Government) which gives guidance in relation to burning of vegetation. It states that burning should not take place on "peatland" (described as land with a peat depth of more than 50cm). This is said to be consistent with current thinking on the importance of our peatlands as a carbon store.

51. For completeness, I record that there was also expert evidence in relation to handwriting analysis (relevant to the false death threat issue). That expert was due to give evidence for D1 and D2. They were not called following withdrawal of the allegation. I will however need to refer further to that expert's report below.

Twitter

52. Finally, there was expert and factual data analytics evidence for Mr Packham from Mr William Guyatt in relation to Twitter usage and what is called "potential reach" of Tweets. That was not challenged and I will describe it in more detail in **Section IX** below.

IV. D3's case: publication and serious harm

Introduction: the issues

53. As I have indicated above, following his instruction, Mr Price KC completely recast the way in which D3's defence was to be put. Substantive defences of truth and public interest were abandoned in the Re-Amended Defence of 31 March 2023. That pleading was served in complete substitution of the Amended Defence in which D1, D2 and D3 had joined. By way of summary, as to the First to Fourth Articles it is said that D3 had limited involvement in them, and such involvement as he had could not make him the "editor" of any of them within the terms of section 1(1)(a) of the 1996 Act (set out below). That is a point that D3 has always taken. D3 also denies that he was the "author" or "editor" of the Fourth to Ninth Tweets in deciding to publish them (by retweeting using either his *Paul Read* or *Simon Templar* accounts) to his followers, or that he was an "author" or "editor" of the Fourth to Ninth Articles and the First Video Tweets in deciding to publish them by retweeting them to his followers. I will refer to all of these Retweets, which D3 admits publishing, collectively as the "D3 Retweets". Finally, D3 says that Mr Packham fails on the "serious harm" test in his claim based on the D3 Retweets.

54. So, there are broadly three sets of issues: was D3 the "editor" (within the terms of section 1(1) of the 1996 Act) of the First to Fourth Articles, was D3 the "author" or "editor" of the D3 Retweets within that section, and has Mr Packham established "serious harm" in respect of the D3 Retweets? Mr Price KC argued that I did not need to decide the second of these issues because I could dismiss that claim on the basis of a failure to show serious harm. He also in the alternative invited me to strike out the D3 Retweets case, which he described as a "makeweight", on a *Jameel* basis.

55. Section 1 of the 1996 Act provides as follows:

> "1 Responsibility for publication.
>
> (1) In defamation proceedings a person has a defence if he shows that—
>
> (a) he was not the author, editor or publisher of the statement complained of,
>
> (b) he took reasonable care in relation to its publication, and
>
> (c) he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.
>
> (2) For this purpose "author", "editor" and "publisher" have the following meanings, which are further explained in subsection (3)—

"author" means the originator of the statement, but does not include a person who did not intend that his statement be published at all;

"editor" means a person having editorial or equivalent responsibility for the content of the statement or the decision to publish it; and

"publisher" means a commercial publisher, that is, a person whose business is issuing material to the public, or a section of the public, who issues material containing the statement in the course of that business.

(3) A person shall not be considered the author, editor or publisher of a statement if he is only involved—

(a) in printing, producing, distributing or selling printed material containing the statement;

(b) in processing, making copies of, distributing, exhibiting or selling a film or sound recording (as defined in Part I of the Copyright, Designs and Patents Act 1988) containing the statement;

(c) in processing, making copies of, distributing or selling any electronic medium in or on which the statement is recorded, or in operating or providing any equipment, system or service by means of which the statement is retrieved, copied, distributed or made available in electronic form;

(d) as the broadcaster of a live programme containing the statement in circumstances in which he has no effective control over the maker of the statement;

(e) as the operator of or provider of access to a communications system by means of which the statement is transmitted, or made available, by a person over whom he has no effective control.

(4) Employees or agents of an author, editor or publisher are in the same position as their employer or principal to the extent that they are responsible for the content of the statement or the decision to publish it.

(5) In determining for the purposes of this section whether a person took reasonable care, or had reason to believe that what he did caused or contributed to the publication of a defamatory statement, regard shall be had to—

(a) the extent of his responsibility for the content of the statement or the decision to publish it,

(b) the nature or circumstances of the publication, and

(c) the previous conduct or character of the author, editor or publisher.

(6) This section does not apply to any cause of action which arose before the section came into force."

The First to Fourth Articles: was D3 an "editor"?

56. Following the clarification of Mr Packham's case against D3 at the start of the trial and the submissions from Mr J Price for Mr Packham, I understand his case is put as follows. It is argued that the evidence of D3's role in relation to the First to Fourth Articles and the evidence of his historic involvement in other CSM articles, show that D3 had "editorial or equivalent responsibility" for their content, and was thereby an "editor" of them for the purposes of section 1(2) Defamation Act 1996. It is said that his role was to review, make editorial changes to and/or approve the editorial content of copy, and to be named as author or editor of published articles in relation to which he performed such a role. I pause to note that Mr Packham's representatives stated that the role performed by D3 also made him responsible for the publication at "common law". I say nothing further about that because his Counsel agreed it adds nothing to the case. It is one of the points made which caused major diversionary arguments between Counsel as to the potential application of section 10 of the 2013 Act. I proceed on the basis that Mr Packham's Counsel have confirmed that they do not seek to rely upon any claimed common law responsibility outside the definition of "editor" in the 1996 Act. Their case is based exclusively on the statutory definitions.

57. It was agreed that there was little guidance in the case law as to how these statutory definitions were to be applied. I was taken to *Gatley on Libel and Slander* (13th Edition) ("*Gatley*") at [7-032] which refers to those who have limited functions of proof-reading, or checking for technical purposes, potentially not being editors within the statute. Ultimately, it is for me to make findings of fact and to assess whether on those findings it has been proved that D3 was an "editor" within the Act, adopting normal principles of statutory interpretation as to the meaning of the legislation.

58. I start by noting that I was not assisted by reference to evidence of what happened in the cases of other historic interactions in relation to different CSM publications where D3 may have had a more involved role. That may be general background evidence, but I must focus on whether D3 has responsibility for the pleaded First to Fourth Articles as an "editor", and not upon historic CSM publications.

59. Mr Price KC prepared a helpful chronology and a pre-publication bundle showing the drafting interactions between D2 and D3 in relation to the First to Fourth Articles. That was not challenged nor were the primary facts in the Re-Amended Defence setting out D3's role. My findings on the evidence are as follows in relation to each specific publication:

    (1) **The First Article.** At 11.44 on 2 April 2020 D2 sent an email to D3 attaching a Word file last saved by D2 at 11.35 containing a draft article headed "*Packhams [sic] Appeal*". D3 had no involvement in the writing of the draft or previous knowledge of the story. At 10.49 on 3 April D3 saved a Word file with suggested changes, all of which I find were of a proofreading nature, and emailed the file to D2 at 10.51. It was then further amended by D1 and/or D2 and went up on the CSM website on 4 April at

06.30 as the First Article. D3 had no other involvement in the publication of the First Article.

(2) **The Second Article.** At 19.13 on 23 November 2020 D2 sent an email to D3 attaching a Word file last saved by D2 at 10.25 containing a draft article headed "*Packham's Paper Tigers*". D3 had no involvement in the writing of the draft and no previous knowledge of any information in relation to the Tigers that had not already been published by CSM. At 17.07 on 24 November D3 saved a Word file with suggested changes, all of which I find were of a proofreading nature, and returned the file to D2. It was then very substantially rewritten by D1 and/or D2 and made accessible on the CSM website on 28 November at 01.58 as the Second Article. D3 had no other involvement in the publication of the Second Article.

(3) **The Third Article.** At 14.09 on 8 December 2020, D2 saved a Word file containing a draft article headed "*Simi, Packham's smoking gun tigress*" and thereafter provided it to D3. D3 had no involvement in the writing of the draft and no previous knowledge of any information in relation to the Tigers that had not already been published by CSM. At 10.05 on 10 December, D3 saved a Word file with suggested changes, all of which I find were of a proofreading nature, and returned the file to D2. It was then very substantially rewritten by D1 and/or D2 and made accessible on the CSM website on 12 December at 01.58 as the Third Article. D3 had no other involvement in the publication of the Third Article.

(4) **The Fourth Article.** At 10.20 on 21 December 2020, D2 sent an email to D3 attaching a Word file last saved by D2 at 10.18 containing a draft submission to the Fundraising Regulator headed "*Further evidence on Spanish Tigers*". D3 had no involvement in the writing of the draft and no previous knowledge of any information in relation to the Tigers that had not already been published by CSM or contained in the earlier articles on this subject. At 11.10 on 21 December, D3 saved a Word file with suggested changes, all of which I find were of a proofreading nature. He emailed the file to D2 at 12.04 and 13.18 and (following D2's indication that it had not been received) made it accessible for D2 to download on or around 14.18. It was then very substantially rewritten by D1 and/or D2 and made accessible on the CSM website on 23 December at 01.57 as the Fourth Article. D3 had no other involvement in the publication of the Fourth Article.

60. I am satisfied on the evidence that all relevant discussions about the content and decision to publish were between D1 and D2 without any involvement of D3. Indeed, I note that there were no communications between D1 and D3. D1's unchallenged evidence was that the decision as to whether to publish an article in CSM, and what to include within it, was solely his responsibility. D3 never had a contractual relationship with CSM and/or the other Defendants. He has not received any remuneration for any contribution to CSM and has no financial interest in CSM and/or the publication of material it features. He has never had access to CSM's content management system. He has never attended any premises and, indeed until the commencement of this claim, had never met D1. It is also clear that there was no expectation that D3 would make himself available to work on any article if he was busy. D3 was understood by D1 and D2 and himself to be a proof-reader as and when available. I note that he was only cross-examined on one amendment in the First Article, which I find can be justified as proofreading. D3 said that the use of words "*nasty little*

charity" was rude so he suggested changing them to "*charity with a somewhat dubious history"*. Further, I agree with Mr Price KC that whatever the characterisation, none of the proposed amendments identified in the pre-publication bundle had any impact on defamatory meaning. If D3 had added any text that impacted on defamatory meaning (that made it through subsequent edits), he could arguably have been sued as author in respect the relevant words. But that is not this case.

61. It was put to D2 that D3 was given "free rein". D2 did not accept that this went beyond the proofreading role and that if D3 had included anything that D2 did not like he would reject it. I accept that evidence. In any event, the relevant relationship was between D1 and D3, not D2 and D3. D1 was the editor.

62. Mr Price KC was right to submit that the issue is now (following clarification of the Claimant's case) solely editorial responsibility for content. If D3 had such responsibility it does not matter if he did not make any changes., It may not even matter if he had seen any copy before publication. The fact that his changes were not of substance simply supports the fact, evident from all of my findings above, that he did not have any editorial responsibility for the content of the articles as published.

63. Strong reliance was placed by Mr J Price for Mr Packham on the by-line credits given to D3. It was, however, agreed that this was not determinative but a factor in the analysis of the role D3 played. The real issue is whether D3 had effective editorial control over content, not whether such a representation was made to readers. Putting that point to one side, on the evidence the credit in the Second to Fourth Articles was "*by Nigel Bean and Paul Read".* This is an authorial credit and Mr Packham no longer alleges that D3 was author. The credit on the First Article was "*edited by Paul Read*". That does not amount to a representation of editorial control, especially given that D1 was held out as editor of CSM. In my judgment, the phrase is equally consistent with a form of sub-editing role, which does not equate to editorial responsibility within the meaning of section 1(2) of the 1996 Act.

64. I also find that D1 and D2 gave by-line credits to D3 as what they termed a "gentlemanly" gesture for his giving up free time to act in the proof-reader and tidying up role. I find that D3 was not an editor. He had no editorial or equivalent responsibility for the statements complained of or the decision to publish them. Even if one was looking at D3's acts from the perspective of joint liability under general principles of tort law, it is hard to classify his conduct as anything other than a *de minimis* or wholly trivial contribution to the commission of the tort by D1 and D2: see *Clerk & Lindsell on Torts* (23rd Edition) at [4.04]. The claims against D3 in relation to the First to Fourth Articles are dismissed.

The D3 Retweets: nature of responsibility for publication

65. There are two types of conduct in issue. They are both retweeting, which is simply re-posting of another's tweet. In both cases publication by such acts is admitted. The dispute between the parties is whether D3 is to be classified as a form of primary or secondary participant in his acts of retweeting. D3 retweeted the Fourth to Ninth Article Tweets (of CSM) to his own followers. That is said on behalf of Mr Packham to make D3 an "author" or "editor" of those Fourth or Ninth Tweets within section 1(2) of the 1996 Act. D3 retweeted the Fourth to Ninth Articles and the First Video Tweet (providing links to the substantive articles and video). That is said on behalf of Mr Packham to make D3 an

"editor" within section 1(2) of the 1996 Act. The relevant definitions are set out in the legislation I have cited above. If D3 is not liable as "author" or "editor" in respect of the D3 Retweets, issues arise in respect of section 10 of the 1996 Act. I note that in his Amended Defence (settled by specialist counsel before Mr Price KC was instructed), a point was taken that if Mr Packham failed to establish that D3 acted as "author, editor or publisher" of the D3 Retweets the Court would not have jurisdiction as a result of the operation of section 10 of the 1996 Act. The way in which Counsel invited me to determine the issues means that I do not have to resolve that point, as I have described above.

66. Counsel are agreed that there is no guidance in the case law as to whether retweeting in these forms makes the retweeter "author" or "editor" of the statements complained of. Mr Price KC's persuasive primary submission is that I should not determine this controversial issue because this is a "makeweight" part of the case which clearly fails on the serious harm requirement, or that I should dismiss this sub-claim on a *Jameel* basis. The detailed submissions before me from Mr Price KC as to the implications of holding retweeters responsible on this basis (and in particular as to which defences would be available to a retweeter) have persuaded me that this is an issue which should be resolved only in a case where it is necessary. As I describe below, the present case clearly fails on the serious harm requirement so resolution of the issue is not necessary.

D3 Retweets: serious harm

67. Where a claimant chooses to sue on a number of publications, it is necessary to prove serious harm in respect of each. That is an issue of fact to be established at trial. In the present case, in order to succeed in respect of any of the D3 Retweets, Mr Packham must establish that the *particular* retweet has caused "serious harm". In accordance with conventional principles of causation, a case of serious harm in a claim against the tweeter can include any harm caused by retweets. They are, generally, a foreseeable consequence of tweeting. Where a retweet is the very publication complained of, the relevant harm is limited to that caused by the dissemination of the tweet as a result of the retweet. At the risk of stating the obvious, a claimant cannot rely on the total harm caused by the (original) tweet or the retweets of others. A claimant's pleaded case should include reference "to the consequences (or probable future consequences) of publication, including the extent of publication, and the impact of the words complained of": see *White Book* (2023) Vol 1, 53BPD.13 at p.1882. Pleading a full case may depend on disclosure from a defendant (or obtaining third party analytics) but well before the trial is reached a claimant needs to have particularised the case to be pursued. That was not done in this case. There is bare pleading of harm (see below – there is no detail of the impact of the D3 Retweets), and no evidence from Mr Packham nor any expert evidence which specifically addresses that impact. I accept that reliance on inference is, in principle, permissible "although the facts and matters said to support the inference will have to be pleaded": *Gatley* at [28-026]. Simply asserting retweeting is not sufficient as a pleading of facts allowing an inference to be drawn in the case of a person with a minor tweeting profile such as D3. It does not tell a defendant or a court how and why the specific tortious act is said to have had an actionable impact.

68. Accordingly, in my judgment, Mr Price KC was right to submit that the Re-Re-Amended Particulars of Claim ("the Particulars of Claim") failed to properly plead a case on serious harm in respect of the D3 Retweets. The Particulars of Claim say at [15] under "Extent of publication":

> "Whilst the precise extent of publication is not yet known (pending disclosure) the Claimants will rely upon the following facts and matters in support of the inference that the extent of publication of each of the Articles, the Videos, the Article Tweets and First Video Tweet was substantial:
>
> …
>
> 15.3. As set out above, each of the Articles and the Videos were shared on Twitter via the Tweets and retweets of the Tweets and of the tweet at Paragraph 10.4 above, including also the First Article by a tweet from the CSM Twitter Account ("the First Article Tweet") which the Second Defendant retweeted.
>
> 15.4. As at the date of these Particulars of Claim the estimated number of interactions on Twitter with the First, Second, Fourth and Fifth Article Tweets (and estimates for the remaining Articles will be provided in due course, and further Twitter analytics will be sought by way of disclosure) is as follows:
>
> [figures provided for the First Article Tweet, the Second Article Tweet, the Fourth Article Tweet 287,448 and the Fifth Article Tweet].
>
> …"

69. The totality of the case in the Particulars of Claim under "Particulars of Serious Harm" is:

> "16.1. The imputations themselves are extremely grave. If true, they would constitute very serious criminal conduct by the Claimant in a field (wildlife conservation) in which the Claimant undertakes all of his professional activities and in which he has built his considerable reputation over many years. 16.2. The extent of publication of each of the statements complained of (as set out above) is very considerable.16.3. In relation to each of the Publications, having regard to the severity of the imputations and the extent of publication, it is to be inferred that serious harm has been caused by their publication.16.4. If necessary, the Claimant will in addition rely upon the considerable degree of animosity towards him demonstrated by social media users in reaction to the publication of the Articles, the Videos, the Article Tweets and the First Video Tweet".

70. No attempt was made before trial, despite Mr Price KC raising the issue at the PTR, to properly particularise (or support with analytics or other evidence) the serious harm said to be attributable to the D3 Retweets as a separate matter. I consider that the pleading was defective and should have been amended to make clear the case which now appears to be

pursued on behalf of Mr Packham. I will deal with that slender case (which I find in any event fails) but there was unfairness to D3 in an unpleaded case being pursued, particularly because further evidence may have been called on his behalf.

71. The case on serious harm which is pursued against D3 is sparse and was addressed in the briefest terms in the closing submissions for Mr Packham. As I understand it, it is based on two points. First, a pure inferential case based on the seriousness of the defamatory imputations. Second, an argument based on the number of followers of D3 (with his *Paul Read* and *Simon Templar* handles). Counsel for Mr Packham submitted that serious harm was a "threshold" issue with the implication that it was easy to satisfy; and he gave examples from other cases where limited distribution was held to satisfy the requirement. He took that word ("threshold") from Monroe v Hopkins [2017] EWHC 433 (QB) at [69] where Warby J cited an earlier case using this term but in a rather different context. Monroe predates Lachaux in the Supreme Court. I do not find Counsel's description of this as a "threshold" issue helpful. I proceed on the basis that the need to show serious harm is an important control mechanism on the scope of defamation liability and like other ingredients of a tort claim it needs to be proved with cogent evidence on a balance of probabilities. I refer back to Lachaux in the Supreme Court at [14]. The facts of what satisfied courts in other cases are equally not of assistance. I turn then to the two broad ways in which the case is put.

72. As to the first way in which the case is put, I do not accept that in the specific case of the D3 Retweets, I can be satisfied of serious harm (in terms of impact) merely as a result of the nature of the allegations. To allow such an argument to succeed on the present facts would rob the serious harm requirement of any meaningful role. I accept Mr Price KC's submission that even on the limited evidence adduced on Mr Packham's behalf, I can be satisfied that each of the D3 Retweets has had at most a "miniscule" impact. The evidence before me extracted from Mr Guyatt's report, taken together with D3's pleaded case (referred to further at [191] below) strongly suggests that the D3 Retweets are a small fraction of the entire circulation of each Article Tweet. As to the fractional approach, see Banks at [53]. The apparently large circulation of the Articles through Facebook and other social media should also be added to the composite circulation to which the D3 Retweets can be compared.

73. As to the second way in which the case is put, Mr Packham relies on the fact that D3 had 3,380 followers of his *Paul Read* account, and 1,275 followers of his *Simon Templar* account. That was compared in submissions by Mr J Price to the number of CSM followers, 13,400. In my judgment, the number of D3's followers does not provide any reliable basis for inferring serious harm as a result of the D3 Retweets in the present case. The relevant issue is not the number of followers but the impact of those Retweets. There is a detailed analysis from Mr Guyatt as to impact based on the significant amount of analytical information. A retweet does not contain any analytical information. It is common ground that many others, who have not been sued, were retweeting the offending CSM tweets. D1 and D2 have also been sued for tweets. There is nothing before me which would allow me to separate out and identify any harm (even on a highly generalised basis) to Mr Packham's reputation caused by the D3 Retweets. Equally, there is no sound evidential basis for me to connect negative social media comments received by Mr Packham to these Retweets (that is one of the ways in which the generalised plea of serious harm is particularised in the pleading I have cited above). The evidence in relation to this point is very different to that before Nicklin J in Riley v Murray [2021[EWHC 3427 (QB)

at [36] and [45].

74. Further, I note that a detailed factual case for D3 was pleaded and is in evidence in support of his denial of serious harm. That case was not challenged in any respect, and I accept it as accurate. In summary, it shows that the interactions with D3 by his followers were very limited. In particular, the figures pleaded show that D3, on both of his accounts on the material days, was sending tweets or retweets on many other issues. The particular retweets in issue in this case did not generate any replies.

75. It is for Mr Packham to make his case, and I find there is no proper evidential basis for inferring that D3's Retweets caused any harm to Mr Packham's reputation, let alone any harm that could properly be characterised as "serious". Mr Packham has not discharged the burden and fails to establish a cause of action in respect of the D3 Retweets. That claim is dismissed.

76. I do not need to deal with the *Jameel* abuse argument. As I observed during oral submissions, once the trial has been reached and indeed after it has been completed, it would be an odd case in which a judge could decide that there is so little at stake that the further expenditure of resources on the action is out of all proportion. The resources have been expended. I note the similar observations in Dhir v Saddler [2017] EWHC 3155 (QB) at [64]. That said, had an application been made much earlier in the procedural history of the claim, a *Jameel* argument would have had a substantial chance of success. Whist I accept that D3 was not an ordinary third party retweeter (he had some form of association with the earlier publications) the D3 Retweets claim is properly described as a "makeweight" and it would not have been a complaint that could justifiably have been pursued in its own right.

V. The Circus Big Cats Allegation

77. My narrative in the sections which follow contains my findings of fact. I will adopt a broadly chronological approach, identifying which issues are being addressed by way of sub-headings.

Mr Packham: background

78. Mr Packham formed an interest in wildlife at a young age. He explained how this turned into an obsession. As a child he kept reptiles, kestrels, barn owls, buzzards and a sparrowhawk, flying the birds free every day before school. Mr Packham continued keeping wild animals until he was a teenager when he was given pair of binoculars and realised that he could learn more about them by watching them in their own environment. He studied kestrels, shrews and badgers in his later teens and as an undergraduate reading Zoology at the Department of Biology at Southampton University. Mr Packham was about to embark on a PhD in 1983 to continue his work with badgers. However, he had a change of heart and decided to train as a wildlife film cameraman.

79. Mr Packham's work as a cameraman developed into presenting programmes on the BBC. He presented a number of well-known television shows including the '*Really Wild Show', 'Wildshots', 'Wild Watch', 'Go Wild', 'X-Creatures', 'Postcards from the Wild', 'Hands on Nature'* and *'Nature's Calendar'*. Some of the animals featured on the *Really Wild Show*

included big cats. In 2009, he became a presenter of the BBC's popular *Springwatch, Autumnwatch* and *Winterwatch* television series.

80. In addition to being a naturalist, nature photographer, television presenter and author, Mr Packham is a campaigner. He is active and vocal about wildlife and conservation issues and what he sees as injustices in this area. Mr Packham is a vociferous opponent of the badger cull and leads the campaign to ban driven grouse shooting (which is relevant to the Muirburn Allegation). Mr Packham is a Director of Wild Justice, an organisation which uses the courts to challenge decision-making that affects wildlife and the environment, and it is in that capacity that he learned matters which concern the Muirburn Allegation. On the evidence before me, it is clear that Mr Packham's views attract criticism from the shooting community and what has been called the "fox hunting" fraternity. He believes that we live in one of what he calls "the most nature-depleted nations" on earth, and we are in the midst of a climate and biodiversity crisis. I accept, however, that he considers that shooters, farmers and conservationists can work cooperatively and creatively together to address these issues.

81. Mr Packham is or has been president, patron, ambassador or supporter of a substantial number of charitable or conservation organisations over the years. This has involved assistance in raising funds using his public profile as a conservationist. That profile brings with it a responsibility to be fair and accurate when he lends his powerful voice to a cause. Of relevance to the present claim is the fact that he is a Trustee of the Wildheart Trust (Charity number: 1171144, "the Trust"), the charity which runs the Sanctuary. I will return to the Sanctuary in more detail below. Mr Packham has no day-to-day control over it but has assisted it to raise funds in the past for its work in providing what he calls a "forever home" for rescued animals.

Mr Packham and circus animals

82. The evidence is clear that Mr Packham has formed strong views about the inappropriateness of using any animals including wild animals as performers in circuses. Mr Packham was taken to circuses regularly as a child in Southampton. The Chipperfield Circus family kept their animals at Southampton City Zoo and he often went to this zoo with his mother as a child. Mr Packham worked with big cats on the *Really Wild Show*. By the early 1990s, the use of wild animals in circuses was starting to become unpopular and a few ex-circus animals were ending up at Longleat. Mr Packham gave evidence of Mary Chipperfield coming to Longleat when he was filming an episode of the *Really Wild Show* there in around 1989/90. He explained that they had an audience of children, and a young Indian elephant was not doing what Mary Chipperfield wanted it to do, so she started beating it with a stick in front of the children. This evidence was challenged as false by Counsel for D1 and D2 on the basis that the Chipperfields did not have such an elephant at that time. I accept Mr Packham's evidence as truthful and based on what he saw. Mr Packham refused to have anything to do with Mary Chipperfield again after that incident.

83. In the late 2000s, Mr Packham had a discussion with the BBC about the use of animals for filming when they were supplied by a company called Amazing Animals. The company was run by a long-time associate of the Chipperfield circus family, who was married to Sally Chipperfield. Amazing Animals was a major supplier of animals for television, advertising and films. Mr Packham was sent videos of undercover filming by a charity called Animals Defenders International (ADI), which showed owners and staff of Amazing

Animals using practices similar to those used in circuses. Mr Packham found those practices cruel and unacceptable. The BBC had used Amazing Animals to provide animals for a variety of shows and programmes. Mr Packham came to an agreement with the BBC that he would never be required to work on a programme where the services of Amazing Animals were employed.

84. Mr Packham was approached in the 2010s by Jan Creamer, President of ADI, to help with their *'Stop Circus Suffering'* campaign. In addition to lobbying governments and municipalities, the campaign included evidence from undercover investigations. He saw most of this footage. It showed the Chipperfields beating lions and tigers with metal crowbars and pipes, whipping a sick elephant, thrashing camels with sticks and beating a baby chimpanzee with a horse whip. Mr Packham said that this was a regular circus training technique. The campaign helped introduce legislation in 2019, banning the use of wild animals, which I have described above.

85. In his evidence, Mr Packham stressed that a particular problem with circuses is that they are always on the move and it is stressful for an animal to be continually moved from one location to another in a cage or container – referred to in the industry as a 'beast wagon'. He said that they are often in cramped and overcrowded conditions, which can cause animals to exhibit self-mutilation or to attack one another. Like other witnesses, he explained that the transient nature of circuses makes it very difficult to provide consistent conditions for the animals in terms of temperature, access to veterinary care, and appropriate diet. He has particularly strong views about the lives of big cats in such environments. His evidence was that the very fact of being in such environment gives those animals a miserable and poor life of mistreatment, irrespective of acts of physical beating and abuse which may take place.

Ms Corney and the Sanctuary

86. The Sanctuary was originally the Isle of Wight Zoo ("the Zoo") which was owned and operated by Ms Corney's family. Her parents bought the Zoo when she was a young child. They saw an opportunity to create a small educational zoo to inspire people from all walks of life. The family moved from Wilmslow, Cheshire to the Isle of Wight. The Zoo was not successful despite hard work, and it began focussing on big cats and primates. Her evidence describes in some detail a childhood that was chaotic but rich in experience of animals including big cats. In particular, when she was 19, her father asked her to consider not going to university but to look after an orphaned tiger cub that had been rejected by its mother at Longleat Safari Park. She agreed and took care of the cub, *Zia*. She looked after *Zia* until this tiger died at 22 years of age. It is clear on the evidence that Ms Corney has acquired substantial experience in relation to big cats.

87. By the 1980s tiger populations were declining in the wild. Like many other zoos, the Zoo responded by breeding and Ms Corney's father started taking in big cats from zoos and safari parks as well as some from private ownership and circuses. Her parents knew the Chipperfield circus family, who had co-founded Longleat. She was sometimes taken to their home in Chipping Norton, where they kept some of their 'collection'. Ms Corney explained that she never liked these visits because of the conditions the animals were kept in. She accepted that not all circus people inflict direct suffering on their animals and there will be a diversity of attitudes and approaches when it comes to husbandry and training. She also agreed that some circus animals can develop bonds with their trainers and vice

versa. Like Mr Packham, she does not believe that there is a place for circuses with wild animals in the 21st century. She explained that this was because of welfare concerns given the travelling nature of circuses and the inherent lack of consistent access to high standards of veterinary care and enclosure space in which to express as many of their natural behaviours as possible. Her ethical stance that it should not be permissible for wild animals to be bred or kept in captivity solely for commercial or entertainment purposes was not challenged.

88. Following her father's death in 2003, Ms Corney took over the running of the Zoo. At this point there were around 20 staff and approximately 50 animals, including invertebrates, reptiles, small mammals, primates and big cats. A decision was made to move towards providing a "forever home" for the animals and accordingly in 2016 she formed the Trust to take over the governance of the Zoo. Ms Corney explained that increasingly visitors to the Zoo were saying "you're more of a sanctuary than a zoo". This reflected the way she had felt about its identity for a number of years. She said that zoos tend to be synonymous with breeding and having a diversity of species – so people were understandably confused when they encountered a 'zoo' which was becoming increasingly full of non-traditional zoo residents, many of the same species. Ms Corney explained that many of their animals came with physical and psychological issues which would be expected and understood in the context of a sanctuary environment, but not a zoo. That led to the re-naming of the Zoo to "the Sanctuary" in April 2021.

89. The Sanctuary is visited by a wide demographic of people with various levels of knowledge and understanding of wild animals. The wellbeing of the animal residents is the priority. The Sanctuary is their home and the visitors pay to fund their care. There is no obligation for them to perform or entertain. Ms Corney and Mr Packham both said that in truth the animals should not be there. But they cannot be taken to their natural homelands and released into the wild because they would die. Therefore they will live and die in captivity.

90. The Sanctuary's animals mainly come from Europe. They have varied backgrounds including ex-circus, film industry, pet trade and ex-zoo. Sometimes they come directly after being seized or donated but they also work with intermediaries who help to find long term homes for animals. Of particular relevance in this regard is the Sanctuary's established relationship with AAP, the Dutch animal charity. AAP have a "waiting list" of animals needing to be re-homed and rehabilitated in their two centres (one in Holland and the other in Spain).

91. Ms Corney explained that before taking an animal it is critical that they find out as much as possible about them to ensure the Sanctuary is the right fit for them. This will mean close liaison with the intermediaries or people handing over the animal to establish psychological and physical health issues as well as social behaviour issues. If the animals come from other professional animal organisations, rather than individuals, they will receive digital records including where relevant medical, behaviour, breeding, diet and enrichment information collected since rescue. Often the animals will need to have undergone specific health checks to ensure they do not pose a threat to existing residents. For big cats the Sanctuary will often go to see the animal before committing to home them (as was the case with the Tigers). Ms Corney explained that ensuring the Sanctuary has the funds required for any alterations to existing facilities or for the building of new accommodation is critical. These must be built to a high standard to ensure the wellbeing of the animals as well as to ensure

human safety. Other costs need to be factored in such as travel, veterinary bills, quarantining, additional staff hours and longer-term care requirements.

AAP

92. There was substantial evidence before me about how the Tigers came to live at the Sanctuary on 22 June 2018. However, much of it does not concern Mr Packham, and relates to matters outside his knowledge. In relation to the truth defence, I must focus on Mr Packham's own written and oral evidence of what he knew when he made the statements in relation to the Big Cats said by D1 and D2 to be dishonest. However, in order to follow how Mr Packham became involved in this matter, I need to summarise some of the earlier facts concerning AAP and Circo Wonderland. The relevant evidence came from Mr Van Gennep, AAP's Managing Director.

93. Mr Van Gennep's role at AAP involves making and maintaining contacts between AAP and external bodies, and representation of AAP internationally. He has substantial experience in the field of welfare of exotic animals within Europe. AAP was set up in 1972 in Amstelveen in the Netherlands as a not-for-profit organisation and is respected internationally for its work. Both in the Netherlands and in Spain it holds a contract with the governments to assist with rescue and confiscations of illegally obtained animals, or animals that are being abused. AAP's Spanish premises, Primadomus, is considered the most prominent leading rescue facility for big cats in Europe. The Primadomus site in Spain provides a spacious location for several groups of animals like primates and big cats, and a climate where exotic animals would not need intensive in-house enclosures. AAP, in collaboration with other NGOs, first managed to get a ban in place in most of the autonomous Spanish regions on the use of exotic animals in circuses and then a national ban, as Mr Van Gennep explained in his oral evidence.

94. AAP takes in animals in distress and, for as many animals as possible, finds suitable places where they can stay permanently. Mr Van Gennep explained that AAP has a three-stage process involving: (i) rescue; (ii) rehabilitation and socialisation; and (iii) outplacement. In most cases, the outplacement partners for animals have not been identified at the stage of the rescue. He explained that determining which organisation will be the best fit for the animals can only be done once AAP has got to know the animals and their needs, after the rehabilitation phase. Any information about the animals deemed relevant for assessing the suitability of the animals for a host and for future care and management of them, is shared with the potential outplacement partner.

AAP takes the Tigers from Circo Wonderland

95. The Circus is owned and run by Ringo Macaggi and his family, and it operates mainly in Spain. In around 2015, it had eight big cats used as performers, and the Tigers were part of this group. These cats had been born in captivity, were brought up by the Macaggi family from birth, and had never lived in the wild. The evidence from the family is that their cats were well looked after. It is said that the Circus surpassed the relevant Spanish regulations for the care and maintenance of their cats and they were treated by the Macaggi Family as "family pets", as well as being a valued part of the Circus' attractions. I accept that Ringo Macaggi in particular enjoyed a close relationship with the Tigers.

96. A time came when the Tigers could no longer remain with the Circus. From 2015 travelling and performing with wild animals became increasingly difficult because of the different legal and regulatory regimes in place in different regions of Spain and increasing public concern about the use of such animals by circuses. It is said that the Circus could have sold the cats for significant sums but that was not done because of the concern for their animals. It was in these circumstances that the Macaggi family sought the assistance of a specialist Spanish animal rights lawyer, Raquel Lopez Teruel ("Ms Teruel"), to find a suitable home for the Tigers. Ms Teruel made efforts between 2015 and 2017 to re-home the cats including contacting AAP. After negotiations over some time, AAP agreed to re-home the Tigers at Primadomus. There appeared to be an issue in the evidence and papers before me as to why the negotiations took so long and whether the Circus was originally unreasonable in the terms it sought for the handover. AAP was insistent that all, and not only some, of the cats be transferred to it but the Circus was apparently resistant to this. I cannot resolve that issue and it is not relevant to the matters I have to decide.

97. Before AAP took the Tigers they had been housed on behalf of the Macaggi Family for about 1 year at a privately run facility, the Núcleo Zoológico Petit Parc at Guardamar del Segura, Alicante ("Guardamar"). Guardamar is not a zoo, but is a facility owned by a couple who have a private collection of animals. It is sometimes used by Spanish circuses for temporary winter accommodation for their circus animals. All parties before me agreed that the conditions for big cats at Guardamar were wholly unacceptable. The enclosures were not suitable for keeping big cats. While at Guardamar, the Tigers remained in the ownership of the Circus which contributed €400 per month for the animals' expenses. In his oral evidence, Mr Van Gennep explained that this figure was most concerning to him because a single big cat alone eats about 5 kilos of mostly red meat per day, and most facilities feed their animals 6 days a week. I accept his evidence that it would have been difficult to manage paying even for the necessary food for the Tigers with the modest amount paid by the Macaggis.

98. On 19 September 2017, a contract between AAP and Macaggi y Cortés Circus, S.L., effective on the day of the transfer of the animals, was signed by Lucio Macaggi as authorised representative of the Circus and owner of the animals. The Tigers were then transferred to Primadomus. I note that in the contract of transfer, AAP is referred to and defined as "the Rescue Centre". The transfer was filmed ("the Transfer Video") and this film or some footage from it was seen later by Mr Packham, as I describe below.

99. The Transfer Video was in evidence before me. It is about 6 minutes long. It records Mr Van Gennep collecting a number of big cats from a facility (which it is agreed was Guardamar). Mr Ringo Maccaggi, described as Director of "Wonderland" also appears from the inside what looks like the *Big Top* of a circus. Mr Macaggi speaks in Spanish (with Dutch, and sometimes English, subtitles) and explains why the circus could no longer keep the cats and the cost. There is footage of tigers performing in a circus (jumping between small tables and being rewarded). There is also footage of some rather miserable looking tigers in a small compound (Guardamar). The film features video of the teeth and claws of some of the cats (with the apparent suggestion that they have been the subject of some surgical activity). The cats are shown in cramped conditions (but with a Dutch commentary which has not been translated for me). A lion and some tigers are finally shown being tranquilised and taken away in a lorry and then arriving at what seems to be Primadomus (where they seem a bit happier).

100. Although AAP had been given permission to film the transfer of the animals, Mr Van Gennep said that once they arrived at the location the owners of Guardamar became hostile and refused to allow filming. After some time AAP agreed to film in such a way that the owners of Guardamar and the facility would not be recognisable in the footage. Mr Van Gennep explained that when they saw the enclosures and the situation he had a better understanding of why the owners initially refused AAP permission to undertake filming. He said the condition of the animals and the facilities was far worse than he had expected it to be.

101. Following the transfer, AAP published a press release and the Transfer Video on 10 October 2017. Neither stated that the Tigers had been located at Circo Wonderland when they were removed. In the Transfer Video, Mr Van Gennep stated that the circus stopped performing with the big cats about one and half years ago "and left them here", indicating that they were no longer on the circus' grounds. The press release states that the big cats were donated by the circus with "absolute collaboration of the circus and its owner". The Tigers went to live at AAP's Primadomus facility pending identification of a permanent home.

102. After negotiating the transfer or donation of the Tigers to AAP, Ms Teruel wrote and published her case notes on her firm's website on 21 September 2017 under the heading *"EL CIRCO WONDERLAND HACE HISTORIA, entrega 7 Tigres y 1 León"* ("the Teruel Report"). D1/D2 rely upon the Teruel Report and in particular on the following matters within it. That one of the Tigers, *Zoppa*, was lame and had suffered from this issue since her birth, and had never worked in a show at Circo Wonderland, but had nevertheless been cared for and fed by the Macaggi Family throughout her life. That having collaborated closely with the Circus, Ms Teruel was pleasantly surprised by their approach to the animals and this made a positive impression on her. That the Spanish state had failed to assist in re-homing the animals. Finally, that the donation was a historic event because the Circus is one of the largest circuses in Spain, and had decided to donate all of its cats to a sanctuary.

103. In a social media posting of 22 September 2017, Ms Teruel, who was clearly delighted with the outcome said as follows in an English language post (using her original spellings):

> "I feel super happy, after muuuch months of silence and very intense work, finally, 7 tigers and a lion, from the Circo Wonderland have moved homes and moved from living in a circus to a sanctuary forever. Thanks to the circus, who cared about the future of their animals and who trusted me, for many months, we did it, we found them a new and ethical home AAP Primadomus. More info, coming soon on DeAnimals Image made in Primadomus, in the relocation of animals in those facilities. They tell me from AAP Primadomus that they are all fine, settling into their new home, that they will quarantine and that after they can go out to play in their private park and bathe in their pools. I think I have chosen a good retreat for these kittens. Thanks to Circo Wonderland for trusting me and warning that I will go very soon to see your new shows without animals."

104. D1 and D2 rely upon the Teruel report, both to justify the original allegations and in their public interest defence. However, Mr Packham and Ms Corney only became aware of the report during this litigation. Their evidence was not disputed in this regard. The Report was not a document of which they were aware at the time Mr Packham is alleged to have made the fraudulent fundraising representations in issue. He was also not aware of Ms Teruel's social media posting until this litigation.

105. I will describe further below how the Sanctuary became involved in the transfer of the Tigers from AAP's Primadomus facility, but to conclude the narrative of AAP's involvement, I note that in June 2018, AAP released a press statement announcing the Tigers' placement with the Sanctuary. In that press release, in Dutch, it is said that "*AAP rescued the tigers from a Spanish circus last year*." The English version of the press statement reads: "*before being rescued by AAP Animal Advocacy and Protection (AAP), they had been part of a traveling circus show*". I now turn to Mr Packham's knowledge and involvement in this matter. That is the core issue in relation to this aspect of the case.

The Sanctuary provides a home for the Tigers

106. In late 2017 or early 2018, Ms Corney informed Mr Packham that AAP were looking to place some tigers from a Spanish circus. Mr Packham learned the following basic information at this time. The tigers had been rescued by AAP from a facility run by two old people who had little funding. The animals had been housed in concrete enclosures, which were not at all suitable for them. The circus had left the animals at this facility, in which they were overcrowded and not properly cared for. He was told that they were in very poor physical condition. Mr Packham understood that when they had been at the facility, the tigers were still owned by (and the responsibility of) the circus where they had been performing. He found out later that they had been kept in the facility for about a year, and that it was called Guardamar in Spain. Mr Packham was told that AAP had taken the Tigers from there to its Primadomus facility.

107. Mr Packham and Ms Corney formed the view in principle that the Sanctuary should provide a "forever home" for the Tigers. They decided that they would become the end part of what Mr Packham described as the "chain of rescue" of these cats. They initiated a fundraising campaign for the purpose of helping to fund the re-homing. I will need to set out what Mr Packham said in these communications because it is at the heart of D1's and D2's case that they were responding to false and fraudulent fundraising statements ("the fundraising statements").

108. The fundraising statements begin on 28 April 2018 ("the 28 April Tweet"), when Mr Packham Tweeted and included an embedded video in which he said:

> "The Wildheart Trust, based at the Isle of Wight Zoo, are currently trying to rescue five circus tigers from Spain. These animals have had a really terrible time and they could do with our help… we could do with some more so that we can make these tigers' lives a lot healthier and happier. If you can, please give generously."

109. Mr Packham and Ms Corney visited Primadomus on 18 and 19 May 2018. It is a large, modern, well-equipped holding facility but ultimately with a limited capacity. It was not in dispute that AAP is reliant on finding long-term placements for animals to free up room for future rescues. Mr Packham found that the standard of care there was outstanding.

110. During this visit, Mr Packham and Ms Corney were shown by AAP a video on a staff computer. Mr Packham recalled that the video included footage of a large group of big cats in a tiny bunker type of enclosure. His evidence was that this was possibly the Transfer Video from Guardamar or some cuts and clips from it, or other footage. It was plain to Mr Packham from this video that the conditions in which the animals had been kept were totally unsuitable. He described them as "appalling". As I have recorded, all parties appear to be in agreement that these animals were being kept in pitiful conditions at Guardamar. Mr Packham also described in the video what he considered distressing images of the tigers being forced to jump through burning hoops and being required to balance on a ball. He said that must have been in the Circus, not at Guardamar.

111. Mr Packham's view of how poorly the Tigers had been treated was strengthened when he and Ms Corney were taken to meet the 5 animals in their enclosures. Mr Packham and Ms Corney agreed they would be able to transition to the Sanctuary. However, they were very concerned at the health of the Tigers based on basic observations. They could see some troubling things immediately, such as the lack of claws on *Girona's* front paws and the fact that some of the Tigers had had their teeth sawn off. They both formed the view that although these cats had improved considerably from what they had seen of them in the Transfer Video, these "mutilations" (in Mr Packham's words) would come with some long-term consequences and veterinary issues. The evidence from each of Mr Packham, Ms Corney and Mr Van Gennep was that the de-clawing and de-toothing of these cats (a practice which regularly takes place in circuses) is cruel and distressing to these animals with long term negative effects. They each, reasonably in my view, formed the opinion that the mutilations and other ill-health were a result of their circus life as performers, as opposed to their admitted poor treatment at Guardamar. I will return in more detail to Mr Packham's evidence below, after summarising the various fundraising communications which D1 and D2 say contained lies.

112. Mr Packham and Ms Corney had previously run a *Hearts for Tigers* fundraising campaign to raise funds for *Simi* (another tiger who was brought over to the Sanctuary from Germany in 2016). With the proposal to bring over the Tigers from AAP they recognised that they were going to need significant funds for their transport, in order to expand the Sanctuary's existing enclosures, and for ongoing care. They started to develop a fundraising campaign along similar lines to *Simi's*. This resulted in early June 2018 in a "JustGiving" fundraising appeal under the name "*Hearts for Tigers*". Mr Packham did not draft it but accepts he shared a link to it. The appeal statement said:

> "Help the Wildheart Trust provide safe sanctuary for five rescued circus tigers at the Isle of Wight Zoo… During their time at the circus they were kept in miserable and overcrowded conditions in a tiny concrete cage all for the benefit of providing entertainment for the public."

113. A journalist from the *Daily Mirror*, Rhian Lubin, had gone to Primadomus with Mr Packham and Ms Corney. She was keen to assist with the fundraising. Using photos from her trip to Spain, and the video her photographer shot while they were there, the *Daily Mirror* published a story on 7 June 2018 ("the Mirror Article"). The article was headlined: "*Rescued from circus hell: Help Chris Packham give five abused tigers the retirement they deserve*". The paper cut the video to include some shots of Mr Packham and Ms Corney with *Natasha* and *Zoppa*. There was a link to the JustGiving appeal.

114. Mr Packham had no part in drafting the Mirror Article. However, in the video ("the Mirror Video"), he said:

> "… a couple of tigers that were rescued from horrendous conditions from a circus in Spain. They were kept with a bunch of other tigers and a lion in a tiny area, about a quarter of the size of a tennis court. They were all fed together, so there was intense competition for food. Some lost a lot of condition, they were in a really bad way. They were never cleaned out. I mean this is desperate. Why is it still happening? Well, because we still have circuses in Europe that have wild animals and those animals are not there for education or conservation, they're there for entertainment. [At this point, the footage shown displays Guardamar and a cage]. And when they don't entertain, they're surplus to requirements, and they just get abandoned, or abused. Now, thankfully they've been rescued, and brought to this absolutely fantastic rehabilitation centre…"

115. On 8 June 2018, Mr Packham tweeted with a link to the JustGiving appeal. He said:

> "I recently travelled to Spain to rescue five ex-circus tigers who lived in miserable conditions. They hadn't entirely lost their trust in people and greeted us with a tiger hello 'chuff'. Help us to raise money for their new home @IsleofWight_Zoo".

116. There was cross-examination of Mr Packham in relation to this tweet. The suggestion was made that it implied he was directly involved in liberating the Tigers from the Circus. I accept his evidence that readers would not be misled into believing that Mr Packham had been involved in "*busting into a zoo*" like "*Jason Bourne or James Bond",* rather than going through what he described as the requisite "*legal hoops.*" I find there is no material inconsistency between what he tweeted and what he had in fact done.

117. On 20 September 2019, Mr Packham and Ms Corney co-wrote an article for the re-launched magazine *The Face* ("the Face Article"). Under the headline "How wildlife experts Chris Packham and Charlotte Corney are liberating traumatised big cats from circuses across Europe", they said (insofar as relevant):

> "Mondo, Girona, Antonella, Zoppa and Natasha had been rescued by the Dutch animal welfare charity Animal Advocacy and Protection (AAP), and sent to their rehabilitation centre, Primadomus, outside Alicante in southern Spain… To this day, Chris struggles to keep a dry eye when he describes the moment Mondo sunk himself into the soothing waters of his big pool. Tigers love to swim. For the first time ever, Mondo could… These were, after all, animals which were forced to live on top of each other in captivity, crammed into a squalid concrete cell and left to compete for scraps of chicken. And, when they weren't, they were performing to the crack of a whip, their lives framed by a circle of flaming fear – literally and figuratively – which brought the Big Top down night after night… the more animals taken in by us, and similar sanctuaries, the more centres like AAP Primadomus will have additional space to deal with a backlog of desperate animals waiting in line to be rescued..."

118. I pause to note that The Face Article was published after the fundraising efforts for the Tigers' rescue had concluded. It cannot prove the truth of an allegation that Mr Packham defrauded the public into donating money.

The First and Second Articles are published and the December 2020 Video

119. The relevant narrative jumps some 2 years ahead to The First Article (4 April 2020), and the Second Article (28 November 2020). I refer to the annex to the PI Judgment for the text of those publications. D1 and D2 made the fundraising fraud allegations in those articles. Mr Packham made a video published on Twitter on 7 December 2020 ("the December 2020 Video"), following the publication of these two articles. He said in evidence that this video was made to address material circulating online that the Trust's efforts to rescue and re-home these animals was in some way "mischievous or misplaced". He said he knew that the Tigers had not been seized by AAP but handed over to them. However, he explained that his concerns were based on what he had been told, and what he saw himself of the Tigers and the conditions they were in. He underlined that nothing he has learned since then has changed his view that they were rescued from mistreatment at the hands of the Circus.

120. In the December 2020 Video, Mr Packham said (insofar as relevant):

> "Hello everyone. I'm taking an unusual step, in that I'm making a statement that has been instigated by the continual trolling that I receive on social media. I don't normally respond to these people, who continually try to undermine my integrity and credibility, but on this occasion their comments have spread out and they're impacting upon those people who I support, so I feel it's my responsibility to speak out and set some facts straight. …There are also rumours circulating that the Wildheart Trust, of which I am a trustee and so is my partner, Charlotte Corney, has

> been acting improperly, again, attempting to defraud our donors when we've run fund-raising campaigns. And these allegations centre around a group of rescued tigers that we have at the Wildheart Trust Sanctuary on the Isle of Wight. Those that are perpetuating the rumours say that the ex-circus tigers we have given a forever home to are not rescued tigers. Well the tigers were eventually handed over to the well-renowned Dutch animal charity AAP after lengthy negotiations with the circus and AAP have always referred to these animals as rescued tigers. The Oxford dictionary definition of rescue means "to save somebody, something, from a dangerous or harmful situation." And we were explicit that we were not rescuing the tigers directly from the circus but that we were taking them from an outplacement centre, a sort of halfway house, to free up space for them to be able to take in more big cats that we were being mistreated in some way, shape or form. There are also allegations that the tigers weren't badly treated at the circus. Well, several of the tigers had their claws removed and their canine teeth cut off, several of them were underweight, and one had a significant limp, in fact it was named 'Zoppa' which is Italian for "lame", and we think that our orthopaedic vet believes that this was due to a historical fracture which appears to have not been treated at the time. Now, in this post you will see a link and if you look at that, you'll see that AAP show the conditions that the animals were removed from and at 55 seconds they refer to the cats as being in cramped areas, having no food, and being dirty and smelly. And additionally, at 1:38, they refer to the cats as being found stressed and mutilated with their claws removed and teeth cut off. I'll let you make up your own mind whether you think these animals were being badly treated at the circus."

The Daily Mail Article

121. On 19 December 2020, the *Daily Mail* published an article about the Tigers ("the Daily Mail Article"). The process which led to this article (written by Guy Adams) was as follows. Mr Adams asked Mr Packham about the complaint lodged with the Fundraising Regulator and attached the letter sent to the regulator by D2 on 6 August 2020 (see further below at [148] in relation to this matter). Mr Packham sent Mr Adams some of the Defendants' publications so he "knew who he was dealing with". Mr Adams responded that he "can appreciate he [D2] has an agenda. That doesn't necessarily make him right or wrong". Mr Adams also said he was "taking everything he [D2] says with a slight pinch of salt unless it is proven to be true". Mr Packham provided various links to the AAP website showing the transfer of the Tigers to Primadomus, to show the welfare of the Tigers at the time and the conditions they had been living in. He explained that "de-clawing" was an act of mutilation, illegal in many countries, including Spain, and that it involves the amputation of the last digit of the paw as well as the claw itself. Mr Packham referenced an online article and a veterinary article showing this as well as attaching the X-ray of *Girona's* left front foot showing the abnormality in his bone structure. Mr Packham also included a statement from Matthew Twitchett of Island Vetcare who set out the longer-term damage

that de-clawing can cause. Mr Adams responded on 18 December 2020, reiterating his initial questions regarding the fundraising video. He noted that the videos provided related to the holding facility at Guardamar and not to the Circus itself. Mr Adams said he had spoken to Ms Teruel who helped negotiate the transfer of the Tigers, and who maintained the Circus took good care of the animals. He noted that AAP had provided no information regarding the condition the cats were kept in at the Circus, but only at Guardamar.

122. Mr Packham explained that he had spent a considerable amount of time finding and providing information for Mr Adams, and that AAP had also gone out of their way to assist him. I will not set out the full terms of the Daily Mail Article. The focus is the Fundraising Regulator's investigation and the tenor can be gleaned from the header and introduction:

> "Did Chris Packham's claims about tiger cruelty con people out of thousands? Charity probes the Springwatch star as a circus owner says he's been unjustly savaged. A perk of the job, when you're a top BBC presenter with a huge social media following is that if you climb onto a soap-box, people listen. Just ask Chris Packham, who over the years has used prime-time status to front noisy campaigns against everything from country sports and badger culls to plastic pollution and the HS2 high-speed rail scheme… Now, I can reveal, the Springwatch presenter's social media habit has sparked a spectacular dispute involving five tigers, two lions and one very cross Spanish circus owner. The row culminated this week with an official watchdog, the Fundraising Regulator, launching an inquiry into The Wildheart Trust, a charity that runs a zoo on the Isle of Wight and counts Mr Packham as a trustee. The zoo is run by his long-term girlfriend, Charlotte Corney, who inherited it from her father. [Image caption: A perk of the job, when you're a top BBC presenter with a huge social media following, is that if you climb onto a soap box, people listen. Just ask Chris Packham (pictured)] At issue is an appeal for the zoo charity (which pays Ms Coney £68,000-a-year in rent) that the BBC star fronted earlier this year. Like many fundraising videos, the two-minute advert was designed to tug at the heart strings. To a soundtrack of mournful piano music, Mr Packham told how coronavirus had left the zoo struggling to do its job, which he sombrely described as to 'rescue emotionally and physically broken animals, principally big cats from European circuses, that have endured horrific conditions throughout their lives'. Declaring it a 'time of crisis', Mr Packham said 'I'm afraid we are going to need your help' to keep the zoo's inhabitants fed and warm. On a donation page, viewers were told about the creatures that would benefit from their cash: 'Over the last few years we've welcomed five adorable tigers (Mondo, Girona, Antonella, Zoppa and Natasha) and two gentle giant lions (Vigo and Khuma) into our big cat sanctuary,' it read. 'While at the mercy of travelling circuses in Spain these defenceless animals were the victims of unimaginable neglect and cruelty living hellish lives confined within squalid beast-wagons or crammed into tiny pens where

> they were left to fights for scrapes [sic] of food in between performances.' Mr Packham continued: 'Any donation that you can possibly afford will be most gratefully received with a purr and a roar and a wag of a tail from a tiger.' It was heart-rending stuff. And viewers dug deep: more than 1,100 chipped in £62,912. The taxpayer added another £11,578 via gift aid…"

123. The Daily Mail Article ended by stating that whatever the Fundraising Regulator concludes "...this strange and messy catfight looks set to continue". Mr Packham was disappointed with the Daily Mail Article but for present purposes it is significant to note that, unlike the publications in issue in this claim, that newspaper did not accuse Mr Packham of fraudulent or dishonest fundraising. Rather, the article suggested that questions had been raised and sought to present both sides in what was described as a "row" or "dispute" in the context of the complaint to the Fundraising Regulator. There is a marked contrast between the approach taken by the Daily Mail (to essentially the same information concerning Mr Packham) and that taken by D1 and D2 in their publications. I also note that in light of the Fundraising Regulator's conclusion in favour of the Trust, and following a letter from Mr Packham's lawyers, the Daily Mail agreed (as a gesture of "good faith") to add an update to the top and bottom of the article clarifying that the Trust had been cleared of breaching the Fundraising Code.

Rescue or donation?

124. Mr Packham's evidence was that his use of the term 'rescue' in the context of the Tigers in the various fundraising communications he made was accurate. He said he believed they had been born into a circus with all the horrific connotations that entails in terms of welfare, training, transport, diet, and access to proper veterinarian care. He said he believed that they had been mutilated in that circus with their teeth sawn off and their claws torn out, leaving them with long term health issues. Mr Packham said that he did indeed believe that the Tigers had been abandoned by the circus to live in what he said was a "cramped, overcrowded, concrete hell hole" (a reference to Guardamar). In his oral evidence, he stressed his belief that these animals were the victims of systematic long-term abuse and deprivation and thus any movement toward a clearly positive change constituted a "rescue". I have already described above how he sees the Sanctuary as part of the "chain" of rescue with AAP.

125. In cross-examination, Mr Packham explained that he knew that the Tigers were not seized by AAP but had been handed over to AAP via the Guardamar facility. However, he underlined that based on what he was told by AAP, and what he saw himself of the Tigers and the conditions they were in, he believed that they were rescued from mistreatment at the hands of the Circus. I find that was his genuine belief at the time he made the fundraising statements and that there were reasonable grounds for this belief.

126. Although her state of mind is not in issue in this claim, I find that Ms Corney held the same view. To the same effect, in his evidence, Mr Van Gennep also considered that the Tigers had suffered mistreatment in the Circus (relying on what he called their malformations and mutilations) and that they had been rescued *from* the Circus.

The publications by D1 and D2

127. I turn to the publications by D1 and D2 relating to the Circus Big Cats Allegation. The full text of each (and hyperlink) appears in the annex to the PI Judgment but in summary the relevant articles are as follows:

(1) Packham's Paper Tigers, 4 April 2020 ("the First Article")
(2) Heat Turns Up on Chris Packham, 28 November 2020 ("the Second Article")
(3) FRAUD? Fundraising Regulator Probes Wildheart & Chris Packham, 12 December 2020 ("the Third Article")
(4) Damning Video Footage Nails Packham, 23 December 2020 ("the Fourth Article")
(5) Packham Targets CSM Editor, 20 March 2021 ("the Fifth Article")
(6) Fundraising Regulator Bottles on Packham, 29 May 2021 ("the Sixth Article")
(7) Statement & Questions for Packham, 1 June 2021 ("the Seventh Article")
Addressing Mr Christopher Gary Packham, 1 June 2021 ("the First Video")
(8) Meet Dominic Wightman, 21 June 2021 ("the Second Video")
(9) It's Official: Packham's Wildheart Charity Lied about 'Rescuing' Tigers, 15 November 2021 ("the Eighth Article")

128. D1 made the following tweets (pleaded as "the Article Tweets" and "the First Video Tweet") via the CSM Twitter Account:

(1) On 28 November 2020 ("the Second Article Tweet"):

> "We now know for certain that Chris Packham's "rescued tigers" for the Wildheart Trust were NOT rescued. Judges, lawyers, Spanish antis & previous owners have confirmed so in writing. So why's Packham engaged in crowdfunding saying they were? #csm #Packham"
>
> (The Second Article Tweet contained a link to the Second Article)

(2) On 10 December 2020 ("the Third Article Tweet"):

> "After CSM's revelations last week about Chris Packham, he made a public apology claiming no wrongdoing. Few believe him. The Fundraising Regulator has now launched an investigation into Packham's Wildheart Trust. With good reason. #csm @Longstophill"
>
> (The Third Article Tweet contained an image from the Third Article with a photograph of a tiger and the text, "Fraud?", and contained a link to the Third Article)

(3) On 23 December 2020 (the Fourth Article Tweet):

"Chris Packham drops deeper in doo-doo as video footage emerges showing he & the Wildheart Trust, of which he is a trustee, bare-faced lied in crowdfunders which raised many 1000's of £££ from the charitable British Public. @LongstopHill @PaulReadGB #csm"

(The Fourth Article Tweet contained a link to the Fourth Article)

(4) On 20 March 2021 (the Fifth Article Tweet):

"Chris Packham threatens Country Squire's Editor with legal action and tells him to take down a bunch of incriminating articles, or else. The Editor's response? 'Grow up, Packham! Let's hear the TRUTH!' @LeighDay_Law #csm #FreeSpeech #Packham"

(The Fifth Article Tweet contained a link to the Fifth Article)

(6) On 29 May 2021 (the Sixth Article Tweet):

"Gutless! A BLANCMANGE of a response received by @LongstopHill from @FundrRegulator on Packham & Wildheart's dodgy crowdfunders. What's the point of these chocolate teapot regulators when they dismiss blatant fundraising LIES as mere 'hyperbole'? #csm"

(The Sixth Article Tweet contained a link to the Sixth Article)

(7) On 1 June 2021 (the First Video Tweet):

"The Editor with 5 questions about TIGERS for Chris Packham - the Wildlife Presenter funded by BBC Licence Fee Payers. #csm @ChrisGPackham @bbcpress"

(The First Video Tweet contained the First Video)

(8) On 1 June 2021 (the Seventh Article Tweet):

"And Full Video Statement Here"

(The Seventh Article Tweet contained a link to the Seventh Article)

(9) On 15 November 2021 (the Eighth Article Tweet):

> "BREAKING & OFFICIAL: Chris Packham & his girlfriend's crumbling Isle of Wight zoo, the Wildheart Sanctuary, knew BEFORE their tiger 'rescue' crowdfunders that the tigers WERE DONATED. Sack Packham, BBC. NOW. #csm #bbc @TNLUK @NadineDorries @metpoliceuk"
>
> (The Eighth Article Tweet contained a link to the Eighth Article)

(10) On 19 November 2021 (the Further Eighth Article Tweet):

> "#nickknowles replaced by BBC on DIY SOS after appearing in a Shreddies ad. Yet the BBC continues with LIAR Chris Packham's contract even after lying in crowdfunders – the lives of many licence fee paying countrysiders wrecked by him. Wake up @bbcpress NOW."
>
> (The Further Eighth Article Tweet also contained a link to the Eighth Article)

129. D1 retweeted the Second, Third, Fourth, Fifth, Sixth, Seventh, the two Eighth Article Tweets, the Ninth Article Tweet, and the First Video Tweet from his personal Twitter account. D2 retweeted the Second, Third, Fifth, Sixth, Seventh, two Eighth Article Tweets and Ninth Article Tweet from his account.

130. I should record at this stage that the Fifth and Sixth Articles, in part, concerned the Fundraising Regulator. In short, D2 made a complaint to the Regulator on 6 August 2020 in relation to Mr Packham's communications seeking to raise money in respect of the Tigers. The Trust was cleared by the Regulator. D2 appealed to an external reviewer who reported on 9 November 2021. He also found no wrongdoing by the Trust. I will return to this issue again because it is principally relied upon as part of the public interest defence advanced by D1 and D2.

The Circus Big Cats Allegation: the truth defence

131. I begin by returning to the meanings found by Johnson J. Although there are relatively minor variations as regards the different articles, the overall core allegations are the same: that Mr Packham abused his privileged position as a BBC presenter by fraudulently raising funds from the public for his girlfriend's zoo charity by falsely stating that tigers at the zoo had been mistreated by, and rescued from, a circus, when, as he knew, the tigers were well-loved family pets that had been donated to the zoo.

132. In his attractively presented and concise written and oral submissions, Mr O'Brien for D1 and D2 referred to 6 publications said to be by Mr Packham in support of the argument

that their articles were exposing dishonesty. I have described each of these above in my narrative of the facts but in summary they are: (1) the 28 April Tweet; (2) the JustGiving Appeal; (3) the Mirror Video; (4) the Mirror Article; (5) the 8 June Tweet; and (6) the Face Article. I will return to these below. Mr O'Brien argued that in these publications Mr Packham falsely claimed (variously) that: the Tigers were to be rescued from a circus; that the Tigers had been rescued from a circus; that the circus from which the Tigers had been rescued had cruelly forced them permanently to live in a wholly inadequate and tiny cell in which they lacked the space to exercise; that while at the circus they had been subjected to serious mistreatment, and so badly mistreated that they ought to have lost their trust in people entirely; that they lived in desperate conditions and were forced to compete with each other for scraps of food. He argued that given the emotive power of animal welfare issues, Mr Packham's language should have been much more precise. Mr O'Brien underlined in his submissions that Mr Packham had deliberately "conflated" conditions at Guardamar with those at the Circus, and described conditions at the Circus in alarming terms ("horrendous conditions") when at best he knew almost nothing about those conditions. It was argued that the evidence establishes lying, dishonesty and, in the context of fundraising for the Trust, fraud. Overall, Mr Packham is said to have used his status and privileged position to pull at the heartstrings of the animal-loving British public. In their oral evidence D1 and D2 did not move from this position and maintained the allegations of fraud, and in fact suggested the case against Mr Packham had improved in the trial process. They "doubled down" in the course of each article and also "doubled down" at trial in relation to the fraud and dishonesty allegations.

133. For Mr Packham, Mr J Price forcefully submitted that D1 and D2 have not shown the substantial truth of the allegations. He underlined that the oral evidence of Mr Packham was at the heart of the case and I should accept it. He addressed both the oral and documentary evidence and submitted that the truth defence was hopeless. I largely accept those submissions. I turn to my conclusions.

134. As to what D1/D2 need to prove in respect of the dishonesty alleged against Mr Packham, D1 in particular appeared to recognise the nature of the task in his witness statement for trial, where he commented "…[p]roving the subjective level of fraud requested by Justice Johnson in his judgement from the preliminary trial on meanings at first seemed a high bar and we wished we had been lawyered up, but then, discovering fresh evidence through the disclosure process and more thorough investigation of the subject matter by the team of researchers that collected around us (including a retired police officer, a solicitor, a forensic accountant and a political researcher), has shown the Claimant committing fraud, across all three definitions of the Fraud Act, by false representation, by failing to disclose information, and by abuse of his BBC fame and via elevated positions at organisations such as the RSPB…".

135. Despite this acknowledgment of the task before them, in my judgment, D1 and D2 fail to come even close to establishing the substantial truth of the Circus Big Cats Allegation. Although my findings on the evidence above perhaps already indicate why this defence

fails, largely based on my acceptance of Mr Packham's oral evidence, I summarise my overall factual conclusions as follows:

(1) First, Mr Packham honestly and reasonably believed that he was involved in a "rescue" of the Tigers as part of a chain which began with AAP. Indeed, even approaching matters on purely a linguistic basis, I find that the use of the term "rescue" is appropriate in common usage to cover the situation where the Tigers were taken on by the Sanctuary from AAP (which was a temporary holding facility) as opposed to directly from a place where they were being abused. A "rescue" dog from Battersea Dogs and Cats Home is still a "rescue dog", even though in one sense the dog is already in a place of safety and has already been rescued.
(2) Second, Mr Packham honestly and reasonably believed, both on the basis of his personal experience and knowledge of wild cats in circuses, and the limited information he had about the Tigers' mental and physical wellbeing, that they had suffered ill-treatment and poor lives in the Circus. He had seen either the Transfer Video or some clips of the Tigers in his visit to Primadomus, which he interpreted as showing that the Tigers had poor lives. Mr Packham honestly regarded the poor facility at Guardamar (and the conditions there) as the responsibility of the Circus which was storing the Tigers at that place. He did not dishonestly conflate conditions at Guardamar with those at the Circus.
(3) Third, Mr Packham had no knowledge of the Teruel Report or of the Maccaggis' views of the lives of the Tigers when at the Circus. I accept his evidence that even with the benefit of knowledge of these matters, his view of the terrible lives of the Tigers in the Circus remains unchanged.

136. I will now address in more detail the particular fundraising statements relied upon by D1/D2 as containing false statements:

(1) **28 April Video:** D1/2's case is that the false statements in this publication were that: (i) Mr Packham would be directly involved in liberating the Tigers; and (ii) while at the Circus they had been subjected to egregious mistreatment. The publication however says neither of those things. It says that: (i) the Trust (not Mr Packham) was trying to rescue the Tigers; and (ii) they had had a "*really terrible time*" (which, on any view, is very different to "*egregious mistreatment*"), without saying where that "*terrible time*" had been suffered (nor what it entailed). Mr Packham did not make dishonest or fraudulent statements.

(2) **The JustGiving Appeal:** Mr Packham's unchallenged evidence was that he did not draft this statement (though he accepted that he republished it by sharing a link to it). D1/2's case is that the false statements in this publication were that: (i) the Tigers had been "*rescued*"; (ii) the Circus had "*cruelly forced them permanently to live in a wholly inadequate, tiny cell in which they had lacked space to exercise*"; and (iii) while at the Circus they had been subjected to egregious mistreatment. As to (i), all of the Claimants' witnesses including Mr Packham himself explained why their (and their organisations') use of the term "*rescue*" is accurate, despite the fact that the animals were transferred to AAP with the Circus' cooperation, and not seized. As to (ii), Mr Packham made clear in his evidence that the material with which he was provided by AAP showed the Tigers, in his genuine view under the responsibility of the Circus, at Guardamar in appalling, dirty and overcrowded conditions, in which he knew they had been for a significant period. Even if the language in the appeal could have been

clearer, I note from Professor Knight's evidence that the Tigers were in fact kept in overcrowded and insufficiently enriched accommodation whilst performing, such that their welfare would have been compromised (and this was Mr Packham's belief when he considered the photographic evidence annexed to Dr Friend's report, as he confirmed in cross-examination). As to (iii), Mr Packham made clear in his evidence his strong views as to the "mutilations" to which some of the Tigers had been subjected, as well as what he considered egregious failures to provide proper veterinary care, dietary care, etc. The statements in the appeal were not in my judgment untruthful and dishonest.

(3) **Mirror Video:** D1/2's case is the same as for the JustGiving Appeal, and fails for the reasons I have set out above.

(4) **Mirror Article:** Mr Packham's unchallenged evidence was that he had no part in drafting this publication.

(5) **8 June Tweet:** D1/2's case is that the false statements in this publication were that: (i) Mr Packham would be directly involved in liberating the Tigers; (ii) the Circus had "*cruelly forced them permanently to live in a wholly inadequate, tiny cell in which they had lacked space to exercise*"; and (iii) they had been so badly mistreated that they ought to have lost trust in people entirely. As to (i), as Mr Packham stated in cross-examination, and as I accept, readers would not be misled into believing that he would have personally undertaken some form of mission of rescue (see further [116] above). As to (ii), the same objection applies as it did to the 28 April Tweet: Mr Packham did not say this (instead saying that the Tigers lived in "*miserable conditions*", without saying that this was at the Circus). As to (iii), this is a strained interpretation of the words Mr Packham actually wrote. I agree with Mr J Price that it would receive short shrift were this a meaning determination. The statements made in the tweet were, when properly understood, not dishonest.

(6) **Face Article:** this was published after the fundraising efforts for the Tigers' rescue had concluded. It cannot prove the truth of an allegation that Mr Packham defrauded the public into donating money. In any event, I am satisfied that nothing Mr Packham said in this article was knowingly false or untruthful.

137. In short, Mr Packham did not lie and each of his own statements was made with a genuine belief in its truth. There was no fraud of any type committed by him in making the fundraising statements. The problem with D1's and D2's case throughout, including at trial, has been that of aiming at the wrong target when seeking to prove truth. They did not merely allege in the publications that there was some lack of care or negligence on the part of Mr Packham when he made statements about where the Tigers had come from or as to their earlier lives. Nor did they suggest merely a careless lack of precision by Mr Packham in which he stated or implied the Tigers were being kept in cramped conditions (the argument about conflation of conditions at Guardamar and the Circus). Nor did they suggest, like the Daily Mail Article, that questions which needed to be answered had arisen in relation to fundraising. D1/D2 went straight for the most serious allegations of actual fraud and dishonesty. Their evidence to support such allegations was essentially focussed on material of which Mr Packham was not aware (such as the Teruel Report and evidence of the Macaggis) and in asserting evidence about generic views on welfare of cats in circuses. Finally, I find that D1-D2 have not established some form of partial justification

for their allegations, which might operate as some form of mitigation of damages on a Pamplin v Express Newspapers Ltd [1988] 1 WLR 116 at page 120, basis.

VI. The Circus Big Cats Allegation: the public interest defence

138. I refer back to the three questions which arise in relation to this defence: see [29] above. As to the first question, it is common ground that the statements were part of statements on a matter of public interest. The issues in dispute concern the second and third questions, respectively: did D1 and D2 believe that publishing the statements complained of was in the public interest, and was such a belief reasonable? The witness statements of D1 and D2 did not properly address these issues but I accept they drafted them acting in person. Ideally, they would have addressed the defence in more detail in their written evidence. That said, D2 did to some extent describe his process of investigation and the documents in the bundles support what he says, as I set out below. I will take their main case on public interest from their pleading drafted by specialist Counsel, which was supported by statements of truth.

139. In relation to the facts pleaded as to what D1 and D2 say they did, and when they did it (as I summarise below), I accept those points as factually correct. Their pleading did not proceed in a chronological fashion and I have sought to re-order matters to follow the timing of the Articles and by subject-matter headings. It is common ground that the Defendants intended the meanings found by Johnson J (that also applies to the Insurance and Muirburn Allegations).

140. D2 researched and wrote, and D1 edited, the First Article and those which followed. That basic system continued throughout the process of publication of each of the relevant publications, on the basis of further information which came to light. As to process, D1 considered D2's sources, verified the product of D2's investigation for the purposes of editing and rewriting and then was responsible for publication by adding them to the website. D1 did not have any separate written notes of his preparatory work or investigations, and explained his process was simply to work from the material D2 had put into his first drafts.

141. D2's investigation into Mr Packham was prompted by the publication of the 28 April Video (see [108] above) and the May 2018 JustGiving video (see [112] above). D2 was suspicious of the claims in the videos that animals "rescued" by the Trust were ones which had endured "horrific conditions throughout the course of their lives". He was also suspicious of the claim in the Covid Video of 20 March 2020 (see [169] below) that animals at the Trust had been "at the mercy of travelling circuses in Spain" where "these defenceless animals were the victims of unimaginable neglect and cruelty living hellish lives confined within squalid beast-wagons or crammed into tiny pens where they were left to fight for scraps of food in between performances".

142. D2 was aware of the rehoming by the Trust of "Simi" (another tiger), and contacted Martin Lacey Jr. at Circus Krone in Munich. Mr Lacey sent D2 information about the seizure of animals from the Las Vegas Circus. D2 further investigated the re-homing of two tigers. The first, "Julia", which had been taken from the Köllner Family at the same time as Simi, and which D2 considered had been falsely alleged in reporting to have been abused by a circus. The second, "Tango", a tiger which had been voluntarily given up by

its Belgian owner, and which D2 considered had also been falsely alleged to have been abused by a circus.

143. D2 says he investigated the basis for Mr Packham's public statements about the Tigers, and in particular the circumstances in which the Tigers had been donated by Circo Wonderland and re-homed by the Trust. In the course of this investigation, and for the purposes of writing the First Article, D1 and D2 considered the Mirror Article, the Mirror Video, and the Transfer Video.

144. In writing the Second Article, D2 further took into account the Teruel Report and an email from the Macaggi Family which referred to the donation of the Tigers to Primadomus and their re-homing at the Trust as well as the falsity of claims of mistreatment of the Tigers. It also referred to a visit by a member of the Macaggi Family to the Tigers at Primadomus (that was Lucetto Macaggi) when the Tigers responded very positively to him.

145. D2 dealt with the outcome of his research on the Circus in a bit more detail in his evidence. D2 said he discovered that Mr Macaggi "could not be cruel to his tigers or other animals if he wanted to be". He exhibited evidence to the effect that the Tigers were routinely inspected once a month by Seprona, the "Spanish environment police"; he explained that he discovered that Mr Macaggi wanted to do the best for his Tigers after he found he could not keep them as pets at their winter quarters, due to bans by local municipalities. For that reason, Mr Maccaggi had engaged an animal rights lawyer (Ms Teruel) to search for a new final home for his beloved big cats (I have described her role above). While she searched, the Tigers were placed in "temporary accommodation" at a private zoo at Guardamar. Responsibility and care were signed over to the owners of this establishment as the Circus still had to travel and make money. D2 said he discovered that the owner found a home at the newly opened facility at AAP Primadomus and moved the cats there in September 2017.

146. It is significant that D1 and D2 considered that there was a legal risk of Mr Packham suing them as a result of the allegations they made in the First Article. There is email correspondence between them which evidences this. They also use language such as "got him" as regards Mr Packham. D2 also referred to a "strategy" they have against Mr Packham. For the purposes of writing the Third Article, D2 considered the 7 December 2020 Video and for the purposes of writing the Fourth Article, D2 again considered the video of the visit by Mr Macaggi to the Tigers at Primadomus. D2 formed the view that this showed a close and loving relationship between him and the Tigers.

147. For the purposes of writing the Fifth Article, D1 says he took into account the Letter of Claim. For the purposes of writing the Eighth Article, D2 considered the external reviewer's decision in relation to his complaint to the Fundraising Regulator. I need to set out the evidence on this issue in a little more detail.

The Fundraising Regulator

148. Following the publication of the First Article, D2 complained to the Fundraising Regulator on 6 August 2020 about the claimed dishonesty of the Trust in raising funds for the Tiger re-homing. The Fundraising Regulator is the independent regulator of charitable fundraising in England and Wales. In summary, D2 made this complaint on the basis that the Mirror Article and the Mirror Video falsely claimed, in the context of the Trust's fundraising activities, that the tigers mentioned in the video had been rescued from

horrendous conditions. The Fundraising Regulator communicated the complaint to the Trust. There were written communications between D2 and the Chief Operating Officer of the Trust from 29 September 2020 onwards. The Trust responded to the Fundraising Regulator with reference to general concerns about the use of wild animals in circuses and linked the Transfer Video.

149. On 26 October 2020, the Fundraising Regulator replied to D2 saying that it had decided that there was insufficient evidence to show a breach of the code that would require an investigation. D2 made further representations. In response, the Fundraising Regulator wrote to him on 8 December 2020 to tell him that he was starting an investigation. D1 and D2 published the Third Article on 12 December 2020 and considered the Fundraising Regulator's response for the purposes of its writing and publication. On 19 December 2020 the Daily Mail Article was published (see [122] above), making reference to the Fundraising Regulator's investigation. D1 and D2 published the Fourth Article on 23 December 2020.

150. The Fundraising Regulator held in a decision published on 21 May 2021 that the Trust's statements in support of their appeal for funds had a touch of "hyperbole", but were not misleading or likely to mislead. D2 was unhappy with this decision and sought an external review.

151. On 12 December 2021, the Fundraising Regulator published the external review of its decision. Mr John Wigmore ("the Reviewer") found the test for review was not met and that there was no evidence of fraud or bad faith on the part of the Trust. The Reviewer identified that D2's complaint focused on two elements of the Trust's fundraising campaign:

> "**A: The rescue claim** – that the charity itself had rescued animals from circuses and needed money to rescue more; and,
>
> **B: The cruelty claim** - that the conditions inflicted on the animals under the ownership of the circuses were demonstrably unsuitable; this included the claim that the animals had been mutilated, cruelly confined and forced to fight for scraps of food".

152. In providing his written decision to D2, the Reviewer said in the covering email to him:

> "Please find attached my completed consideration of your request for external review. In the attached I explain why I do not think the appeal was fraudulent or the FR's conclusion manifestly unreasonable. I don't find that the evidence, including the new evidence, reveals a significant fault line in the FR's position or approach. I regret that my conclusions will be a disappointment. Taken in the round, I think the appeal was clear enough that money was needed to pay for the upkeep of the cats. I think the FR's relaxed approach to the less evidenced aspects of the appeal fell some way short of the v high hurdle of manifest unreasonableness. I say more about the evidence and arguments

> in the attached. Once again, I must thank you for your assistance and understanding throughout the process".

153. The terms of the Reviewer's decision itself are also significant. In explaining, in a further email, why he was not prepared to overturn the Fundraising Regulator's rejection of D2's complaint that the Trust had misled donors, the Reviewer explained:

> "Going back to the point about what the charity knew, from the charity's perspective, the removal of the animals from a potentially dangerous situation (and the circuses I think were v aware that on the open market, the animals were at risk) to a situation of safety, is construed as a rescue. This is because, as you know, the same facts may be interpreted in different ways through the lenses of the beliefs and standpoints of different observers. In my view, although others apply a more reductive meaning to the word rescue, the charity's perspective was legitimate…".

154. In his conclusion, the Reviewer said:

> "Like the FR and the Vice-Chair, I have found that by far the greatest part of the appeal narrative was for money to look after rescued animals. I did not find that the appeal was framed in bad faith; I am not persuaded, either, by Mr Bean's case that the appeal was fraudulent. There is ample evidence, for example, of the charity over the years crediting AAP with hands-on 'rescue' work".

155. Following the external review, D1/D2 added an update, reporting on the outcome in critical terms, to the Third Article. D1/D2 rely upon their engagement with the Fundraising Regulator, and (they say) via the Fundraising Regulator, Mr Packham, as a relevant circumstance for the purposes of the public interest defence.

Contacting Mr Packham for comment

156. It is common ground that at no stage did these Defendants seek any comment from Mr Packham prior to the publications. In his oral evidence, as clarified following my questions, D1 explained that the reason they did not ask Mr Packham for any comments on the allegations to be featured in the articles were essentially three-fold: his naivety in the journalistic world; a belief that Mr Packham was an "arrogant and dishonest individual" who would dismiss the weblog as "unworthy", even if he was contacted; and a belief that if they had got anything wrong, Twitter was the way in which Mr Packham or others would respond to inaccuracy.

Mr Packham's "side" of the story

157. The Defendants stressed that each of the publications was published in response to public statements by Mr Packham or to developments in their investigation into the basis for these

public statements, including the involvement of the Fundraising Regulator. They say that each of the Articles effectively contained Mr Packham's side of the story, or its gist, including developments in his position as the investigation progressed.

158. Overall, the Defendants say that as a publisher, CSM has always made clear, including within the Articles complained of themselves, that it is eager to receive and publish "right of reply" responses to its publication, including from those on opposing sides of any debate which it covers.

Mr Packham's response to the public interest defence

159. On behalf of Mr Packham it was submitted that given the number and extent of the inferences that these Defendants have asked the Court to draw in their defence of truth, and the paucity of the facts and matters on which the Defendants relied for those inferences, the Defendants were at all times operating on the basis of significant gaps in their knowledge on key matters. It was said that given these significant knowledge gaps, offering Mr Packham a proper opportunity to respond to the allegations made in the publications prior to their publication was essential if the publication of such serious allegations of dishonesty was to be reasonably considered in the public interest. It was said that the sensationalist and increasingly belligerent tone of the publications belied any suggestion that these Defendants were impartially investigating the facts.

Conclusions on the public interest defence

160. Did D1/D2 believe that the publication was in the public interest (the second question)? That was not seriously challenged when they were cross-examined. Based on their oral evidence, I am satisfied that D1 and D2 genuinely believed that publication was in the public interest. I accept that each of them considered the issue of fundraising for care of animals, the status and role of Mr Packham as a BBC presenter and Vice-President of the RSPB, and the general subjects of the articles were matters of public interest. They accordingly succeed on the second question.

161. However, they fail by some margin on the third question. The approach revealed by the evidence is that rather than approaching the task with an investigative mind, these Defendants targeted Mr Packham as a person against whom they had an agenda. I underline that having an agenda does not, in and of itself, disqualify a person including citizen journalists such as D1 and D2 from being able to benefit from a public interest defence. Indeed, in general terms many publications and professional journalists approach stories with what might be called an agenda. However, the agenda adopted by D1 and D2 meant that they approached what might be facts suggesting (at the very highest) that questions might be asked about the accuracy of the fundraising statements, as proving fraud and dishonesty on the part of Mr Packham.

162. I accept that some form of initial investigatory work was undertaken by D2 but the product did not in my judgment even arguably support the allegations of dishonesty. Giving Mr Packham a chance to comment before publication would have made the position as to his actual knowledge clear. I find that the Defendants did not give him an opportunity because any answer he would give might contradict an agenda fixed on showing fraud. I will return to this point below.

163. The Defendants were piqued by receipt of Mr Packham's letter of claim on 19 March 2021, and I agree with Counsel for Mr Packham that any investigative journalism quickly gave way, in the Fifth and following Articles, to increasingly hyperbolic and vitriolic smearing of Mr Packham, with further unsubstantiated allegations of dishonesty regarding peat-burning and the Trust's insurance gratuitously thrown in. In my judgment, the campaign against Mr Packham is most strikingly illustrated by the fact that in the 4 years of CSM's operation prior to the First Article, 16 articles were published that mentioned him. In the 3 years that have followed the First Article, 93 have been published.

164. Mr Packham was not contacted for comment prior to publication of any of the Articles in this claim despite D1 acknowledging in his evidence "*I knew as soon as I received* [the First Article draft] *we were verging into tricky territory and this article needed a thorough investigation*." This is also evident from D1's request that the First Article "*needs a proper edit as Packham will sue*". I have noted above the three reasons D1 gave in evidence for the failure to contact Mr Packham prior to publication (see [155]). These reasons are not a remotely sufficient explanation for a failure to comply with such a basic tenet of journalistic good practice. It is a failure that is all the starker given that D2 was not a dispassionate investigative journalist, but, as D1 acknowledged, a "*loose cannon*" who can get "*quite emotional and angry*", and who has views on countryside issues and politics that were completely at odds with those of Mr Packham. D1 accepted in evidence that D2 got "*overexcited*" during his investigation (in which D2 headed the email to D1 attaching the draft of the First Article, "*Got him*"). Consistently with these descriptions, in D2's oral evidence, among other things he: (i) declined to agree that reasonable people would take different views of the word "*donate*" when applied to the transfer of the Tigers; (ii) agreed with the sentiment in his Tweet that the Trust was operating as part of an "*animal rights criminal cartel*"; (iii) complained that Mr Packham's legal representatives were continuing to withhold disclosable documents to force him to trial; (iv) unreasonably declined to accept that the Fundraising Regulator had exonerated Mr Packham and the Trust.

165. D1's evidence was that he conducted a "*solid investigation*" into the allegations in the First Article (repeated in subsequent Articles), albeit one with no apparent documentary trail, and concluded that Mr Packham engaged in "*calculated fraud*". D1's investigation centred on what he called "*anomalies*" in articles published by The Mirror, a supposed slip by Mr Packham saying, "*tigers making a living*" in a video betraying his view of the "rescue" as a transfer of a capital asset, his "*deduction sequence*" of ruling out Mirror journalist Rhian Lubin, Mirror cameraman Andy Commins, Ms Corney, and his conclusion that "*therefore it is Mr Packham who has manipulated the presence of the two articles which are fraud by misrepresentation*". Despite his repeated use of colourful phrases such as "*castle of lies*", "*false artifice of rescue*", "*the holy grail tweet*" and "*something seriously smelly here*", I find that D1 was unable to offer a coherent reason as to how he concluded that: (i) Mr Packham knew the Tigers were well-treated; and (ii) he knew the Tigers had not been rescued.

166. The Third Article gratuitously mocked Mr Packham's manner of speaking ("*intwepid hewo*"). As is clear on the face of the Articles that followed the letter of claim, the tone descended into sinister threats and outright vitriol, including offensive references to Mr Packham's neurodiversity, and abuse of Leigh Day. These were not the product of any acts of responsible journalism. I will not cite them in full - the following extracts are sufficient to provide a flavour:

(1) **Fifth Article:** "*the four articles are well worth a read, especially now Packham – like some kind of tinpot dictator – is demanding they be immediately removed.*" "*As those who know him are well aware, the Editor is not one to accept threats from dime store hucksters, whether they have a history of violence or possess a CBE. Certainly, the Editor does not have a fondness for extremist political activists who have built their careers on the back of forced licence fee payers, most of whom, frankly, are appalled by fringe and ridiculous views. Indeed he wonders why on earth a national broadcaster sucking from the public teat is involved with them at all." "Mr Packham has no idea about the army of witnesses (and enemies) he will now drag to the fore." "Whether in a public meeting or in a courtroom, Mr Chris Packham CBE, the truth will out. Choose your medicine wisely.*"

(2) **Sixth Article:** "*Hyperbole????!!!!!! Jesus wept. Strategic lies are not hyperbole!*" "*Come clean. Admit you added sizzle to the sausage to raise more money. Fess up. Do the honourable thing before this situation goes up a few gears and perhaps threatens the very future of the tigers and other animals you rehomed*."

(3) **Seventh Article and First Video:** "*What about your past and present colleagues who say you have a fiery temper and have attacked and bullied them in the past? Have you sought anger management? Is it really OK to blame your obvious nastiness on Asperger's when in reality you're just a narcissistic little bully?*" "*I have sent the articles, along with an evidence pack, to Tim Davie, Director General of the BBC, requesting that Packham be dismissed from all BBC programmes forthwith. Pinocchio Packham has lied very publicly in the past – but this time he has crossed a line which no BBC employer or contractor should be permitted to cross, however narcissistic or damaged they might claim to be.*"

(4) **Second Video:** "*If Packham is, you know, dumb enough to go to court where I'll put him and his girlfriend on the stand, you know Jonathan Aitken style, then we may have our legal people set up a crowdfunder." "It really doesn't look very good for him does it? I mean, he's being very badly advised. He could have avoided yet more people discovering the truth about him, but he's just pushed more and more people to read the articles. Then again he is using dodgy old Phil Shiner's colleagues as no win no fee lawyers rather than employing a decent firm." "…Team Packham has no idea, they have not asked, where on the spectrum I stand personally, yet they have already played the Asperger's card and no I don't buy it."*

(5) **Eighth Article:** "*…we stuck to our guns, refused to submit to Packham and his army of fellow animal rights bullies and trolls…" "The Editor has made clear he wants to go straight to the main trial and put Packham and Corney on the stand where they will be under oath and we will find out all kinds of things about the tigers, eagle videos, dead crow notes, zoo sackings and burned-out Landies." "The BBC should seriously look again now at why they dare continue with Packham's services. They know full well by now the Asperger's 'victim' card is no longer a get out of jail free card – it's been used so many times by this crook who happily speaks to packed halls of animal rights wingnuts. His turn-off turn-on tears should not permit this bully to wreck others' lives." "Resign, Packham. Now. You're an absolute disgrace."*

(6) **Ninth Article**: "*the Editor shall return shortly with the final nail in the coffin of Chris ~~Smollett~~ Packham's dodgy career." "Chris Packham is dishonest. But I'll let our fearless warrior kind of an Editor have the final word on that in the coming days…*"

("Smollett" is a reference to US actor Jussie Smollett, who was convicted of criminal offences arising from his fabrication of a hate crime against himself).

167. As to the Tweets, D1 explained in his oral evidence that this was a manual process: unlike automatic sharing of CSM articles on platforms such as Facebook, a person would have to physically post a Tweet with a link to the article on CSM's Twitter page. D1/D2 have provided no evidence of who took the decision to publish the Article Tweets, nor who did the posting. Nor have they provided any evidence of anyone giving thought to whether their publication (under cover of text that, in the case of the Article Tweets complained of, Johnson J determined constituted a separate defamatory publication about Mr Packham) was in the public interest.

168. The public interest defence fails for multiple reasons. In my judgment, D1's and D2's actions were characterised by "doubling down" in making further serious allegations of fraud as matters progressed, as opposed to responsible journalistic behaviour. The clear picture which emerges from the evidence is that the Defendants' overriding aim was to pursue an agenda or campaign against Mr Packham and those who share his views. That agenda was focussed on alleging fraud and dishonesty without any proper evidential basis.

VII. <u>The Insurance Allegation: the public interest defence</u>

169. This is a shorter issue. Truth is no longer relied upon as a defence. I will begin with some background. On 20 March 2020, Mr Packham made a video, published on YouTube, seeking donations to help keep the Sanctuary going during the Pandemic ("the Covid Video"). There was a related launch of the *Save our Sanctuary* Crowdfunder on 21 March 2020. Mr Packham said as follows in the Covid Video:

> "At the Wildheart Trust we rescue emotionally and physically broken animals, principally big cats from European circuses, animals that have endured horrific conditions throughout the course of their lives. And our mission is to provide them with great end-of-life care, grassy spaces, deep pools to bathe in, top-quality veterinary assistance and of course lots of love from our professionals who look after them. But we are in a time of crisis. We are dependent upon our visitors to support this work financially and in the early part of the year it poured and poured with rain and our visitor numbers were down. And now of course we have the Corona crisis, we are still open and we still encourage people to come, plenty of hand gel, plenty of clean air and if you follow the protocols you should be secure in that environment. But nevertheless we know that people are staying indoors and won't be coming. So we are issuing this appeal. We need to be able to cover our overheads, heating, top-quality food for these animals, and in order to do so I'm afraid we are going to need your help. So please give as generously as you can, I know these are very difficult times but we want to not only make sure that these lions and tigers are happy and healthy now but also that we can continue to operate and rescue more of them in the future and undertake even more important conservation work too. So any donation that you can possibly afford would be most

> gratefully received with a purr and a roar and a wag of a tail from a tiger. And what could be finer than that".

170. These statements in the Covid Video prompted the Ninth Article of 18 December 2021 in which (insofar as material) it was said:

> "Since the Fundraising complaint, something interesting turned up in Wildheart's accounts, and we feel we should share this information with the British public who are continuing to get partial truth and lies from Wildheart. We believe this new information shows Isle of Wight zoo is run by liars and shysters and Wildheart Sanctuary should be struck off as a charity for repeatedly failing to go out of their way to act honestly in crowdfunders, in the spirit of the Fundraising Regulator's rules… The honest approach would have been to inform the public of the potential £500k insurance payout **BEFORE** embarking on their Coronavirus zoo appeal… Looking at the income generated over the Covid period (below) it would appear Wildheart and Isle of Wight zoo have done very nicely out of the situation, thank you very much…",

171. On the same lines, in the Ninth Article Tweet of 18 December 2021, it was said:

> "GROUNDHOG DAY. Chris Packham's charity Wildheart Sanctuary which runs the Isle of Wight Zoo fails to mention a pandemic insurance policy paying out £500k before launching a 'desperate' Covid crowdfunder for the Zoo. Dishonest. Public deserves better. #csm".

172. Taking the meanings found by Johnson J together, they were essentially that Mr Packham lied to raise funds for the Trust by asking for donations to feed the animals during the Covid emergency whilst dishonestly concealing the fact that the Trust was due to receive a large insurance payment, potentially £500,000.

173. After D1's evidence was concluded the truth defence was abandoned. That was a wise decision and indeed it is somewhat surprising that this defence was ever pleaded and pursued. I say that because D1 appears to have conceded in his own witness statement for trial that he had doubts about what he had alleged in relation to insurance. He said this on the subject:

> "Looking back, the only fact that I have any doubts over, the Truth of which the defence hopes to further clarify via ongoing

> disclosure and in a trial, is who knew about the Covid insurance for the Wildheart zoo and when. As Editor of Country Squire Magazine, I decided to publish this point based on the robust related facts passed to me by my co-defendant Nigel Bean and the fact that the Claimant, as a trustee of Wildheart and boyfriend of the zoo's boss, really ought to have known about the insurance before making his crowdfunding video plea".

174. On the evidence before me it is clear that at the time Mr Packham made the Covid Video he knew little about insurance beyond being aware from his attendance at a meeting of trustees on 18 March 2020 that there was a real issue as to whether cover would be provided during the Pandemic. He did not know that the Trust was due to receive £500,000.00 (in fact they had no expectation of receiving anything at that time) and could not have concealed that from potential contributors. Indeed, the position after his appeal, as regards potential cover, looked bleak on the evidence before me. There was no certainty of any payment, let alone £500,000.00. The Trust was in the position of many enterprises who were in dialogue with brokers about the scope of business interruption insurance, a matter which eventually reached the higher courts in other well-known insurance litigation arising out of the Pandemic.

175. Turning to the public interest defence, the first question is not in issue (the statement was on a matter of public interest). However, the defence fails on questions 1 and 2 (see [29] for the questions). I do not accept D1or D2 considered publication to be in the public interest or (even if they had that belief) that it was reasonable. D2 gave no evidence on this and did not address his mind to it. It remained unclear which "robustly related facts" D2 is said to have passed to D1 (see my quotation from D1's statement above) to make good the allegation of dishonesty. D1's own witness statement indicated no investigation and in fact real doubts as to whether he should have made the allegation. No documentary evidence of any investigation into its veracity was provided, save that partial screenshots of accounting documents (that are not identified in the Article) are embedded in the copy. I was not assisted by any evidence from D1 and D2 as to where these came from or what they were meant to show.

176. There was no investigation, no chance to comment and this was another example of an allegation thrown into an article as part of the campaign or agenda against Mr Packham. Indeed, Counsel for D1 and D2, in his realistic approach, made no real attempt in closing submissions to press the public interest defence. It fails.

VIII. <u>The Muirburn Allegation</u>

177. The truth defence has also been abandoned in respect of this allegation. I will seek to deal with it briefly but some explanation of the background will be necessary. Mr Packham attended the UN Climate Change Conference (COP26) in Glasgow between 31 October and 11 November 2021. He also took part in a number of COP26 related fringe events. During the conference, he received on his Twitter feed a *Daily Record* article entitled '*Scots shooting estate toffs accused of 'putting two fingers up to COP26 by burning grouse moors'*, dated 11 November 2021. This article referred to, and contained a still from, drone footage

taken by the League Against Cruel Sports (LACS) of burning taking place on the Allargue and Edinglassie estates in the Cairngorms National Park. The article recorded that the burn at Edinglassie was filmed on Wednesday 27 and Thursday 28 October 2021, as delegates were arriving in Scotland for COP26. It quoted Robbie Marsland, of the LACS, criticising the owners of the estates for burning on days when most of Scotland was trying to get engaged in some way with COP26.

178. In reaction, Mr Packham uploaded a video to YouTube on 14 November 2021. The title was "*COP26 Has Failed Us, And It Has Failed Our Planet —Chris Packham*". In that video, Mr Packham said: "*... And whilst this has been happening, symbolically they've been spitting in our faces. Grouse moors burning here, in Scotland. Peat going up in smoke, carbon, going up in smoke*". He also posted a tweet to similar effect, embedding the *Daily Record* article. Mr Packham's evidence is that he made the video in response to the actions of the driven grouse shooting community. Mr Packham also spoke at a meeting of a group against grouse moors, *Revive*, on 14 November 2021 on this subject. In his evidence explaining these actions including the video, Mr Packham said those burning the moors had deliberately antagonised the world's environmental movement and embarrassed the Scottish government with what he called their "arrogant" burning at the Allargue and Edinglassie estates. That evidence was not challenged.

179. D1 and D2 included in the Eighth Article (which was mainly about the Circus Big Cats) the following text on this subject (by pasting a story from another publication by the Scottish Gamekeepers Association):

> "…Chris Packham is a liar and a lot worse. His girlfriend Corney could not run a bath. Expect to hear much more from this magazine about Packham and his cronies over coming weeks. **We shall not be silenced by this dime store huckster whose celebrity and influence the BBC is to blame for.** Meanwhile, the Scottish Gamekeepers Association have this to say about Chris Packham and anti grouse moor group *Revive* this week:
>
> *Chris Packham was on Twitter this week claiming gamekeepers were burning peat during Cop26. That statement was a lie and it was a knowing lie. Trying to put people on the dole and ditching centuries of indigenous knowledge seems to be ticketed entertainment for Revive. I just hope they are enjoying themselves because it's shameful. The next time Scotland needs a million deer managed for biodiversity or requires community help to extinguish climate damaging wildfires, such as Morayshire in 2019, the gamekeepers can stand down. We look forward to Revive and their paid lobbyists riding to the rescue from Edinburgh and England and getting their hands dirty at the fire-front instead of talking working people in remote Scotland out of their jobs and homes.*"

180. In the PI Judgment, it was held that the meaning of these statements was that Mr Packham lied when he said that gamekeepers on these two estates were burning peat during COP26 in Glasgow, when he knew that was untrue.

181. At the time when the truth defence was still being pursued in relation to this matter, the issue turned on whether Mr Packham knew that peat was not being burned on these estates when he made the video. That is no longer D1 and D2's case but they continue to rely on the public interest defence. In order to address that defence I will need to briefly set out why burning peat raises a potential environmental issue. I have relied upon the parts of the expert reports which were not in dispute and some parts of Mr Packham's unchallenged evidence in preparing my summary.

182. Peat is organic material representing the partially decomposed remains of plant and soil organisms which have accumulated over time. Due to the degraded nature of the UK's peat, resulting in the peat releasing carbon, peatlands are a significant emissions source. Appropriate management, involving restoration and protection of the upland stores of carbon in blanket bogs is needed to avoid them becoming strong greenhouse gas emitters. Upland peat habitats managed as grouse moors are subject to rotational burning in the practice known as Muirburns. Blanket bogs are burned by the grouse shooting industry and this involves vegetation on top of peat being set alight at regular intervals, in order to create better conditions for the survival of red grouse used in that industry. These grouse depend on heather for their diet, and young heather is particularly valued. Burning removes old heather growth and encourages the growth of young heather. But the question arises as to whether that practice will also burn peat with the deleterious environmental consequences I have outlined above. In the Joint Report of the experts they agree that there is no consensus in the scientific community on this issue - so Muirburns may or may not burn peat. The issue for me when truth was in issue was Mr Packham's belief as to whether peat was burned, as opposed to an objective assessment. However, his view appears to have the support of some within the scientific community. It was not challenged when he gave evidence that his genuine view was that the burning at the Allargue and Edinglassie estates was an obvious and intentional gesture of defiance to all those scientists, environmentalists and politicians attending COP26 trying to deal with some of these sorts of problems. In his evidence, he underlined that although gamekeepers claim to be able to control the fire when they carry out Muirburns they do not know where the peat is. He says that there may be areas where only the heather burns and the moss underneath remains, but the difficulty of controlling fires makes it impossible to categorically state that peat will not be burnt. As a matter of science, that opinion is supported by parts of the scientific community. D1 took a different view in his brief oral evidence on this issue.

183. Had it been necessary, I would have found that at the time he made his YouTube Video on 14 November 2021 and made the other communications on this issue to which I have made reference above, Mr Packham genuinely believed (based on his own knowledge of the science) that it was, in practice, impossible to conduct a burn (including a well-managed and so-called 'cool burn') and guarantee that it would not burn any peat. He therefore thought that peat was burnt in the Muirburns in the LACS drone footage he had viewed. To the extent that the expert evidence is of any assistance it shows that this was a view reasonably available to a person from an objective standpoint.

184. Turning to the public interest defence, D2 did not deal with this issue in his evidence. D1 briefly touched on it in his oral evidence as I describe below. There is no dispute in relation to the first question - this was a statement on a matter of public interest. However, I find D1 and D2 fail on both the second and third questions. I find that they

did not reasonably believe publishing the statement was in the public interest and that the Muirburn Allegation was introduced gratuitously as part of D1 and D2's anti-Packham campaign. D1 and D2 did a copy-paste of a quote from the Scottish Gamekeepers Association with no investigation being carried out at all into its veracity. No documentary evidence of any investigation has ever been provided. D1 said in his oral evidence that his investigation for the purposes of publishing this allegation consisted of: (i) his own basic knowledge; (ii) a conversation with John Nash, a countryside dweller and a regular cartoonist for CSM; and (iii) the fact that the Scottish Gamekeepers Association had said it. In my judgment, there was no proper basis for alleging dishonesty. It was not reasonable in all the circumstances to publish such a serious allegation on a contested environmental issue without investigation, and without providing an opportunity for comment.

185. As with the Insurance Allegation, Counsel for D1 and D2 in his realistic approach did not seriously press this defence in his closing submissions, although he did not abandon it. It fails.

IX. Extent of publication

186. The extent of publication of the Articles by page views of CSM was as follows:

(i) First: 2,084;
(ii) Second: 47,250
(iii) Third: 12,371
(iv) Fourth: 66,935
(v) Fifth: 4,678
(vi) Sixth: 1,464
(vii) Seventh: 8,068
(viii) Eighth: 16,128

187. As to the extent of publication of the Videos, the First Video received 5,953 views, and the Second Video 2,885 views. D1 informed D2 in an email dated 18 December 2020 that there had been Facebook views as follows: the First Article totalling 176,000 and Second Article 182,000.

188. The evidence as to the extent of publication through Twitter came from the unchallenged evidence of Mr Guyatt, who gave quasi-expert evidence as to the structure and use of Twitter. He also obtained and exhibited undisputed factual evidence in the form of reports ("the Reports") from Twitter authorised sources, as to the "Potential Reach" of the Articles, as I summarise below.

189. The Reports collate data which relates to the Uniform Resource Locator ("URL") of an article: that is, the unique "address" of that story published on the website. The Reports show how many times the URL of the Articles has been Tweeted, how many Home Feeds that URL has been sent to, how much engagement the Tweets with that URL have had (and

from which Twitter users). The Reports before me display these in a series of categories with statistics.

190. The relevant category shown in each of the Reports is called the 'Potential Reach' figure. I accept Mr Guyatt's evidence that this Potential Reach metric is the most accurate way to establish the reach of an article posted via a Tweet. As I understand the position, it takes the number of followers of each Twitter user who has engaged with the Tweet containing the article URL and determines the number of unique Twitter Home Feeds that the Tweet has been displayed on. The reason that it is called '*Potential*' Reach is because, much like a person who buys a newspaper will not read every article contained in it, not everyone who has a Tweet displayed in their Home Feed is guaranteed to have read that Tweet or the article to which it links. Some people may have scrolled past the Tweet and ignored it, and some may have seen the Tweet but not clicked through to the article. However, this category of data shows the exact number of Twitter feeds that the tweet which is the subject of the report has been sent to, and therefore the number of Twitter accounts on whose Twitter feed the published Tweet was displayed.

191. The Potential Reach figure for each Tweet is as follows:
    (1) the First Article and First Article Tweet: 27,293
    (2) the Second Article and Second Article Tweet: 199,718
    (3) the Third Article and Third Article Tweet: 350,888
    (4) the Fourth Article and Fourth Article Tweet: 232,190
    (5) the Fifth Article and Fifth Article Tweet: 126,917
    (6) the Sixth Article and Sixth Article Tweet: 117,348
    (7) the First Video and the First Video Tweet: 139,919
    (8) the Eighth Article, the Eighth Article Tweet and the Further Eighth Article Tweet: 528,304 (includes the Muirburn Allegation).
    (9) the Ninth Article and Ninth Article Tweet: 87,823 (includes the Insurance Allegation).
    (10) the Second Video and Second Video Tweet: 117,019

192. These figures are inclusive of the potential reach of D3's Retweets which are likely to form a rather small fraction of the relevant totals.

X. Damages

193. Mr Packham is entitled to damages in respect of each of the publications. I will award separate sums for the Big Cats Circus Allegation, the Insurance Allegation and the Muirburns Allegation. I proceed on the basis that libel damages have a threefold purpose, namely: (1) to compensate for distress and hurt feelings; (2) to compensate for actual injury to reputation which has been proved or might reasonably be inferred; and (3) to serve as an outward and visible sign of vindication. I am also asked to make a separate award by way of aggravated damages. Counsel for Mr Packham submits that this case is notable for the extraordinary level of vitriol that the Defendants have displayed towards Mr Packham and his Solicitors, Leigh Day, since this litigation commenced. It is said that this should significantly aggravate the damages to which he is entitled.

194. I start by stating that I accept Mr Packham's evidence as to the negative effects of the publications upon him. The false statements comprising the Circus Big Cats Allegation, in particular, go to the heart of his professional and personal life. None of that evidence was

challenged. I also accept the submission made on his behalf that the effect of D1 and D2's campaign has to be understood in the wider context of the harassment he has suffered from those who oppose his views. Although these Defendants did not themselves undertake wider acts of harassment to which he makes reference in his evidence, I accept that their unsubstantiated claims would have misled and agitated vocal and sometimes violent groups. Those people have posted threatening and vile material about Mr Packham and his family online. I have not overlooked the fact that D1 has also been the victim of inappropriate and offensive communications (including highly distressing trolling) from those who oppose his views on countryside issues. But I am concerned with the narrower issue of the impact of false statements on Mr Packham in this case.

195. I will not make a separate award in relation to aggravation. I will factor into general damages matters which might be seen as forms of aggravation. I adopt the approach taken in Lachaux v Independent Print Media [2021] EWHC 1797 (QB); [2022] EMLR 2 at [227]. My role is to assess the just level of compensation, taking into account all the relevant factors, which include any elements of aggravation. I consider the inappropriate conduct of D1 towards Leigh Day to be a separate matter and I will not include it in my assessment. At the level of principle, I find it hard to see how it should be reflected in an award to Mr Packham – it is not reflective of compensation of any injury to him. I will however briefly address some of D1's more offensive comments towards Leigh Day, below.

196. A substantial amount of material was placed before me by way of aggravation and at the trial I observed that a proportionate approach to such subsidiary issues needs to be followed. The additional material and time spent on it on occasion began to dominate the trial. I have identified, in as brief terms as possible, the two main areas of conduct which should be reflected in an award. I will call these "The Death Threat Forgery" and other "Offensive Allegations".

The Death Threat Forgery

197. D1-D2 with D1 taking the lead, have used this litigation as a device to introduce offensive material to smear Mr Packham. D3 has to some extent also participated and he did not distance himself from certain of the allegations. The evidence before me suggests that this litigation has been used by them as a continuation of D1's and D2's overall campaign against Mr Packham. In this regard a number of matters were relied upon but I consider the claimed false death threat issue to be the most serious. D1 and D2 maintained into the third day of trial the extraordinarily serious allegation that Mr Packham had forged his own death threat letter, when there was plainly no proper basis for doing so. I need to outline the history before explaining how these Defendants behaved. Mr Packham has received many threatening communications in the past, but the situation escalated around a successful legal claim brought by Wild Justice in relation to lawfulness of General Licences for killing of wild birds. At that time, Mr Packham received a series of such threats (as did Ms Corney) including a particularly frightening handwritten death threat letter ("the death threat") outlining "a list of things they might do" to kill him by organising a car crash or poisoning. The author said, "You will never be safe, you will never be able to go out, we will always be there". Mr Packham did not write the death threat and send it to himself. That is my finding. Indeed, even a cursory examination of the handwriting in the death threat and comparison with a true sample of Mr Packham's handwriting demonstrates obvious differences between the two. Mr Packham does not know who wrote the threat. Hampshire Police conducted an investigation which concluded he was not the writer. Mr Packham

took a photograph of the death threat, and posted it on social media. He said he did this because his approach is to be public and vocal when he receives threats. He explained that he wishes to show those responsible that he will not be intimidated. Mr Packham also appeared on the *Victoria Derbyshire* BBC television show in April 2019, during which he discussed the threats he had received. At the apparent instigation of the Scottish Gamekeepers Association (SGA), a group which is opposed to Mr Packham's views on a number of matters, a spurious claim that Mr Packham had in fact forged the death threat began to circulate. It was suggested the SGA had expert evidence to support this.

198. On 14 March 2021 an article was published in *The Sunday Times* with the headline, "*Packham did not forge death threat, say police*". The article went on to say that the SGA had, "*lodged a complaint with Hampshire Constabulary last month that questioned the authenticity*" of a note containing a death threat against Mr Packham. The SGA had commissioned two "graphologists" to compare the letter with examples of his handwriting. As I have said, the SGA are hostile to Mr Packham. The article said that the newspaper had instructed their own expert who had concluded that Mr Packham did not write the death threat letter. I note from the documents in the bundle before me that other experts had also considered this issue. One was professionally discredited and the other gave a report which was equivocal.

199. In the Amended Defence of 24 April 2022 it was alleged that Mr Packham had made:

> "knowingly false public statements … relating to the circumstances surrounding purported death threats made against [him], which were intended by [him] to elicit media interest in, and public sympathy and support, including financial support, for Wild Justice and [his] campaigning for environmental issues."

200. D1-D3 each authorised this pleading and signed a statement of truth attesting to their belief in the allegation. They further signed a statement of truth in a CPR Part 18 response expressly maintaining an allegation that Mr Packham "forged the death threat letter". They obtained an expert report in support of this allegation from a person who was due to give evidence at trial. I will not name that expert (but will call them "X") because what I say may amount to a criticism of their approach. In particular, I would have expected X, as a purported professional in this field, to have been horrified by what later emerged and to have unequivocally withdrawn their evidence. X did not give evidence, as I explain below, and has not had an opportunity to explain their position. The error was in X taking handwriting from a Companies House Form 288a (relating to a company of which Mr Packham is a director) as the "reference sample" of Mr Packham's own handwriting. That sample was used by X as the basis for comparison with the handwriting in the death threat letter. X concluded following this comparison, and without qualification, that Mr Packham had written the death threat with a "level of scientific certainty" and X made what they called a "definite conclusion of identity" (Report of 25 October 2022). The problem was that the sample from Companies House was not Mr Packham's handwriting. It was the handwriting of his accountant who, as is quite conventional, had completed the Companies House documentation. There is nothing distinctive about the handwriting and, of course, there is no suggestion that the accountant had authored the death threat.

201. This critical error was made clear to the Defendants by Leigh Day on 3 November 2022, but they refused to withdraw the allegation. Not only did they refuse to withdraw it, but D1 (writing expressly on behalf of all the Defendants) asked Leigh Day to serve a handwriting expert report, adding "…could you not find a handwriting expert this side of Basra willing to state that Packham did not write his own death threat note". Why *Basra*? This was a gratuitously offensive reference to the legal representation by Tessa Gregory ("Ms Gregory") of Leigh Day of Iraqi civilians in wholly unrelated litigation. Ms Gregory acts for Mr Packham in the present case. She had earlier worked at Public Interest Lawyers, a firm which, like Leigh Day, had acted in claims arising out of the Iraq War. Mr Packham's case has nothing to do with Iraq or other clients of Ms Gregory. To her credit Ms Gregory acted with exemplary professionalism and moderation in the firm's responses to this (and a number of other pieces of offensive correspondence emanating from D1 concerning representation of Iraqi civilians). I will not set out those further offensive references, which included irrelevant references by D1 to another person who worked at Public Interest Lawyers. One of the great assets of the British legal system and its respect for the Rule of Law is that solicitors and barristers are not to be equated with their clients, current or former. D1's approach showed an ignorance of this. D1 gave oral evidence about these references and sought to explain his actions. He said he found it difficult acting as a litigant in person and felt pressured by having to deal with correspondence, particularly letters which came in on a Friday afternoon. I accept it is hard to act in person in litigation. That is not, however, an excuse for D1's approach towards Leigh Day and Ms Gregory.

202. Despite being made aware they had no credible expert evidence for the trial supporting the allegation, D1/D2 persisted with it until the third day of trial when it was withdrawn. X was lined up to give evidence with no further report having been submitted. I queried how this case of forgery was to be pursued given that X's conclusion was patently unsustainable. Mr O'Brien wisely withdrew the allegation and I required that this be stated in open court on behalf of D1 and D2. However, later in the trial, in his oral evidence D1 still appeared unwilling to concede that Mr Packham had not forged the death threat. In terms of aggravation of damages, D1 and D2 are responsible for the fact that an obviously unsustainable allegation was made and pursued into trial. I reflect it in the damages they will be ordered to pay to Mr Packham. It has no relevance to D3, save possibly in respect of costs issues. D3, until Mr Price KC came on board, had adopted the false death threat case.

203. For completeness, given that it was explored in evidence, I also find that D1 was involved in procuring ostensibly third-party statements repeating the serious allegation that Mr Packham forged the death threat letter; and those third parties used documents and materials from this case to put the allegation in the public domain. In this regard, I find he was responsible for (or at the very least, instrumental in) the creation of the "*Packham Papers*" video (which contained the Companies House documents and extracts from X's report), and he was instrumental in the publication of a Fieldsports TV article. I find he provided its journalist with litigation documents for the purpose of reporting the death threat allegation. That led to widespread circulation of this baseless allegation which looked like it had expert support from X. Ultimately, it was not clear whether D1 denied he was responsible for these distributions of litigation documents and he appeared to accept that at least someone within his group of investigators was responsible. He did not suggest that such distribution was without his authority. I do not hold D2 responsible for these matters (they were not explored in his evidence). Although I find D1 responsible, the matters in

this paragraph are not factors which I have relied upon to increase the overall award beyond any increase for making the false death threat allegations in the litigation itself.

Other Offensive Allegations

204. The second area of improper conduct was the Defendants indicating in correspondence that they intended to put on the record in this litigation allegations that Mr Packham was a "rapist, a bully, and a pervert". They made references to such (and other) wholly false allegations in correspondence. Again, I will not set these out in a public judgment. A flavour is provided by what I have just cited. There is not a shred of evidence in support of the offensive allegations. I find they were made in order to scare off Mr Packham from seeking recourse in a public hearing for the libels. D1 was writing for all Defendants when he made these allegations. D2 and D3 did not distance themselves in any way from them. I reflect this matter in the damages to be paid by D1 and D2.

Quantum

205. I turn to quantum. I was referred to a number of awards in other cases involving imputations of dishonesty. Each case must however depend on its own facts and I am not limited by the cap which Mr Packham placed on the amount sought in his Claim Form. Having regard to the data before me as to the extent of publication, the nature of the allegations, the attempt to seek his dismissal from the BBC through making them, the evidence of Mr Packham as to the effect on him, and my findings as to additional conduct, I award the sum of £75,000 in respect of the Circus Big Cats Allegation. I award £10,000 in respect of the Insurance Allegation, and £5,000 in respect of the Muirburn Allegation. Those allegations are less serious in context and were not the subject of repetition. I also bear in mind the need to ensure that any overall damages award is proportionate given that free speech interests are implicated.

XI. Conclusion

206. Mr Packham's defamation claims against Mr Wightman and Mr Bean succeed. Mr Packham did not commit any acts of fraud or dishonesty. I will enter judgment for damages against Mr Wightman and Mr Bean in the sum of £90,000.00. I understand that they do not oppose injunctive relief.

207. The claims against Mr Read are dismissed. I will hear further argument in relation to additional relief including orders under section 12(1), and section 13(1), of the Defamation Act 2013, and in relation to costs.