

From: [REDACTED]

Sent: 17 July 2019 13:34

To: 'Peter Gregson' <chuff.chuff@outlook.com>

Subject: Defamation : GRE002-0001

Dear Pete,

Thank you for that.

I've read over the articles but I am afraid my advice is the same as it was when we met. I will reiterate that I either entirely accept, or will assume for the purposes of advising you, the following:

- that there is, put loosely, a campaign being waged by your political opponents to discredit you
- that one of the methods they use is to accuse you of "anti-Semitism" (which in the minds of most people is a species of racism and which implies sympathies with Nazism)
- that the justifications for this label that are offered are in fact, at worst, examples of anti-Zionism or of criticism of the Israeli government's (or possibly Israeli state's) policies towards Palestine and the Palestinians
- that there is a difference between anti-Semitism and anti-Zionism
- that you are not an anti-Semite
- that it is defamatory to accuse someone of being an anti-Semite (again put loosely, because it would lower the standing of that person in the eyes of right-thinking members of the public)
- that the Herald reports that you have been accused of anti-Semitism
- that the Herald inaccurately reports words attributed to you ("Holocaust was exaggerated for political gain") and that in fact you said something like "Israel exaggerates [or Israeli-supporting organisations exaggerate] the Holocaust for political gain" and that you did not, in saying that, mean to deny the factual realities of the Holocaust but, rather, to suggest that the Israeli state weaponises the Holocaust to shut down critics (especially, as you explained, in Britain)

I will assume, for the purposes of giving the advice that I am giving, that a reasonable reader of the articles (and I will also assume that they should be considered as a whole and that a reader would read both) would take them to amount to an expression (by implication at least) by the Herald of the view that you **are** an anti-Semite. I am not, in so doing, advising that I think a court would agree. It might not. However, assuming that it did, then I think that that would mean that the Herald had defamed you and the burden would then shift to it to establish one of the possible defences to a claim for defamation. As we discussed, I think that it would be able to do that. It might be able to persuade a court that, as a matter of fact, you **are** an anti-Semite. That would involve arguments about the meaning of that phrase and of whether, say, accusing Israeli-supporting groups of exaggerating the Holocaust amounts to anti-Semitism. I understand the explanation you gave for what you meant but it is at least possible that a court would not and that it would be easy for a judge to think "Holocaust denier" and then jump more or less immediately to "anti-Semite". However, I think that the paper could also put forward a defence of "fair comment". It is very important to realise that that phrase is legal shorthand for a defence which has a set of specific elements. It does not invite a general argument about whether what is written is "fair". It invites argument about whether or not the following tests are met:

- that what is said is a comment (an expression of opinion), rather than statement of fact
- that the facts from which the comment is derived are accurately stated
- that the facts are true
- that the comment is on a matter of public interest

The article does not explicitly accuse you of anti-Semitism. It accurately reports that you have been accused of it. I do not think that the inaccuracy in respect of the exaggeration of the Holocaust is, in this context, a material inaccuracy such as to make a fair comment defence unavailable. I think that the issue of alleged anti-Semitism in the Labour Party is a matter of public interest (even if you think that the problem is hugely exaggerated or does not

really exist). If all of that is right then the burden of proof would fall on you to establish that the comment was not "fair", within the legal meaning of that word. As we discussed, recent case law has said that a comment is "fair" if, in essence, it was honestly believed. It would be very difficult I think to disprove that a belief that to accuse Israel of exaggerating the Holocaust was anti-Semitic was not held honestly. As we discussed, a judge could hold that you are not an anti-Semite and yet accept that circumstances are such that someone else honestly believes you are, for reasons accurately set out.

Finally, even if I am wrong on everything I have said so far, and even if you raised and won an action for defamation, I think there would be a real risk that you would end up with a token or negligible award. You explained that you are regularly traduced by opponents as an anti-Semite. It might be difficult to pin any particular loss on the appearance of this particular article. Even if I am wrong in that, there would still be a real risk that the legal fees which you would pay a lawyer would be greater than the combined sum of any award of damages and any award of expenses. As I explained, awards of expenses to a successful party will typically be much less than the legal fees that party has had to pay his solicitor.

We discussed that you can complain to IPSO about any factual inaccuracies and I should point out that of course you do not need a solicitor to raise court proceedings. You could do so yourself. My advice to you though would be that there would be a very real risk, for all the reasons set out, that that process would end with you losing, having to pay the paper's expenses and so leave you out of pocket, perhaps very substantially so. I am sorry not to be able to be more positive (other than suggesting you check to see if you have any legal expenses insurance cover, perhaps as part of home insurance or a similar policy, although that often will not cover defamation claims).

I attach a copy of the fee note that I am sending out tonight and will look forward to receiving payment. If there is anything else we can assist with then let me know.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Partner