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Case No: QB-2020-001332

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/11/2021

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

(1) DAMAVAND MEDIA LIMITED
(2) MR PANAH FARHADBAHMAN

Claimants

- and -

(1) DMA MEDIA LIMITED
(2) VOLANT MEDIA UK LIMITED

Defendants

Mr Simon Cheetham QC (instructed by Ronald Fletcher Baker LLP) for the **Claimants**
Mr Rupert Paines (instructed by Howard Kennedy LLP) for the **Defendants**

Hearing dates: 18th – 20th October 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.
The date and time for hand-down is deemed to be 10.30am Thursday 25th November 2021.

Mrs Justice Collins Rice:

Introduction

1. Mr Panah Farhadbahman started as a print media journalist in his native Iran. He moved to London in 2008 to join the BBC Persian TV launch team. He rose to Senior Broadcast Journalist with BBC Persian. He says he came to the attention of the Iranian government in 2009, when he reported on a controversial general election there, and again in 2013 when he made a feature documentary about the election. In 2017 the Iranian judiciary froze the assets of a list of BBC journalists, and Mr Farhadbahman was on that list. The BBC took the matter to the UN Human Rights Council in 2018, and Mr Farhadbahman testified.
2. Mr Farhadbahman resigned from the BBC on 11th September 2018. In late 2017 he had begun discussions with Mr Rob Beynon, then acting head of channel at Iran International TV (IITV). IITV, then in its launch phase, is a Persian language TV channel, based in London and broadcasting by satellite to Iran. It is owned by Volant Media UK Limited (Volant), has a number of Saudi Arabian shareholders, and was managed by DMA Media Limited (DMA). Mr Beynon is CEO of DMA.
3. The outcome of the discussions was a contract dated 23rd August 2018. This was entered into on Mr Farhadbahman's side by Damavand Media Limited (Damavand). Damavand develops and produces TV programmes, and Mr Farhadbahman is a director. Under the contract Mr Farhadbahman was to provide certain media services to DMA on a consultancy basis. He started working with IITV on 17th September 2018, a week after he left the BBC.
4. The arrangement lasted less than a year. On Mr Beynon's account, he suspended the contract on 31st August 2019 and terminated it on 6th September 2019, because Mr Farhadbahman persistently breached editorial guidelines in his personal social media activity. Mr Farhadbahman says Mr Beynon had no right to do so.
5. Mr Farhadbahman and Damavand, the Claimants, bring this action for two reasons. The first is to claim compensation for wrongful termination or breach of the contract. The second arises from an incident early in the life of the contract. The Claimants say compensation is due because the Defendant owners and managers of IITV breached their legal duties to handle Mr Farhadbahman's private and personal information properly, so that details of his association with the channel wrongly leaked into the public domain.

The contract terms

(a) *Service provision*

6. The agreement recites that DMA was contracting with Damavand to obtain the media consultancy services it offered, and to have the benefit of its '*considerable skill, knowledge in show development, production strategy and editorial services*'. The services Damavand were to provide were set out in a schedule to the agreement as follows:

1. The provision of television show development and individual programme development services to DMA, supporting the day to day management of productions and also developing ideas for new television shows, specifically:
 - a. Review of existing output
 - b. Development of new programme content across diverse content channels
 - c. Development of new programme ideas
 2. Providing training and feedback to DMA staff
 3. Supervising production of feature / news productions
 4. Managing staff and resources with a view to the long term strategic objectives of DMA
 5. Acting as supervisor for individual television programme output, including determining the content and running order of the programmes and lead others on the production of items through to transmission, including assigning, briefing and determining priorities for operational and editorial teams.
7. Certain services were, however, excluded. The ‘excluded services’ were:
1. Any ‘on-screen’ and ‘on-air’ contributions including but not limited to presenting, reporting, interviewing.
 2. Making any form of documentary, film or series.
 3. Any kind of participation in output on TV, website and social media platforms which may result in the disclosure of the identity of Damavand Media and its directors and officers.
8. The contract made clear that Damavand, and Mr Farhadbahman, was a contractor and not ‘*an employee, worker, agent or partner*’ of DMA. The agreement was not to prevent the Claimants engaging in other activities ‘*provided that such activity does not cause a breach of any of Damavand’s obligations under this agreement*’.
9. Damavand warranted under the contract to ‘*promote and protect the interests of DMA during the term of this agreement*’ and to ‘*comply with the reasonable instructions of DMA in the provision of the services which may be given from time to time*’ (clause 4(a) and (f)).
- (b) *Information provisions*

10. Clause 9 of the contract is a confidentiality provision requiring Damavand to preserve the confidentiality of materials made available to it by DMA. By clause 9(1)(c), Damavand ‘*undertakes to keep confidential all and every part of ... the content of this Agreement*’.
11. Clause 21 is headed ‘**Advertising**’. It prevents Damavand making reference to the agreement, to the services being provided, or to DMA, without prior written consent (not to be unreasonably withheld).

(c) *Termination*

12. Clause 12 of the contract deals with termination. Either party was free to terminate without cause on 90 days’ written notice (clause 12(3)). By clause 12(2):

DMA shall have the right to terminate this agreement in case of any material breach by Damavand Media of this agreement. Prior to exercising this right, DMA shall send a notice to Damavand Media requesting it to cure the breach within 14 days. Should Damavand Media fail to cure the breach within the said 14 days, DMA shall be entitled to terminate this agreement.

Clause 12(5) provides for the calculation of liquidated damages to be paid by DMA to Damavand if DMA terminates the agreement ‘*without reasonable cause*’ in the first 36 months of the agreement.

13. There was some discussion at trial about the relationship between clause 12(2) and 12(5), and between the tests of ‘material breach’ and ‘reasonable cause’. The drafting is not clear. The best reading may be not that subclauses (2) and (5) operate on each other, but that subclause (5) operates on subclause (3). In other words, while both parties have a right to terminate without cause on 90 days’ notice, if DMA exercises that right within the first 3 years then it must in effect buy out Damavand on a sliding scale, depending on timing.
14. IITV has a set of Editorial Guidelines. Clause 12(6) gives Damavand the right to terminate within 28 days of being notified of any change to the Editorial Guidelines which, in its reasonable opinion, may affect Mr Farhadbahman’s journalistic impartiality, or in the event that Damavand reasonably considers that DMA’s instructions or actions may constitute a breach of the Guidelines. Liquidated damages are recoverable by Damavand in these circumstances.

(d) *The Editorial Guidelines: contractual status*

15. In his oral evidence Mr Farhadbahman suggested more than once that he was ‘not bound’ by the Editorial Guidelines, including because of the limitations of his role as set out in the ‘services’ schedule. His pleadings and the submissions made on his behalf did not say that. His formal position was that in any event he did observe the Guidelines and his conduct, even assessed against the Guidelines, gave no cause for terminating the contract.

16. The contractual status of the Guidelines matters because the Defendants rely on them to characterise Mr Farhadbahman's conduct as sufficiently serious to justify termination. They say the Guidelines are the prism through which it must be viewed. To the extent that their contractual status is a disputed issue, then the following points arise.

17. First, clause 1 of the contract, the interpretation clause, includes this:

“Editorial Guidelines” are set out in Appendix 3 and may be amended by DMA at any time by notifying Damavand.

Then Clause 19 is headed ‘**Whole Agreement**’ and states: ‘*This Agreement (together with any documents annexed to it) constitutes the entire agreement between the parties...*’. And clause 24, headed ‘**Variations**’, says that where an appendix to the agreement is amended, replaced or updated, ‘*the agreed version shall be signed and dated by the Parties prior to its insertion*’ into the agreement. These provisions, taken together, make clear enough that the Guidelines, as from time to time amended, are incorporated into the contract terms. Understanding to what effect requires reading the contract and the Guidelines together as a whole.

18. No express provision in the contract explicitly binds the Claimants to observe the Guidelines. Indeed, the only further reference to them in the contract is in the termination clause, set out above. The drafting of clause 12(6) is problematic: the relationship between its two limbs is unclear. But in any event, it confirms the contractual significance of *change* in the Guidelines, and that change can affect the Claimants’ contractual position. That in turn implies the contractual significance of the Guidelines – and their bearing on the Claimants – in the first place. Indeed, it suggests they are important enough for the parties to have agreed a special exit route from the whole contract in the event of change.

19. Then the Guidelines themselves say they are ‘*an essential part of the editorial contract that everyone involved in Iran International has signed up to – investors, managers, staff, contributors and external providers*’. They provide that everyone *involved* in producing content and making editorial decisions, whether staff or external providers, must understand the Guidelines and work within them. Knowledge of the Guidelines is ‘*not only an essential professional requirement, but also a contractual obligation*’. No express or implied exemptions appear.

20. Some time was spent at trial over what in practice Mr Farhadbahman's role amounted to. He was certainly *involved* in the work of IITV. On the basis of the ‘services’ schedule, and putting the totality of the oral evidence at its lowest, it is evident that Mr Farhadbahman was at least *involved* in content design, planning and production, and editorial processes. His role as a contractual provider of the scheduled services appears to fall well within the all-inclusive audience to which the Guidelines address themselves.

21. From the IITV evidence in this case, that may reflect an industry norm, editorial policy being brand-definitive for media organisations. The specific context within which IITV operated – the closely attentive and partisan world of Iranian media and politics – gave it additional cause to guard its editorial line and the editorial calibration of its output carefully. Reading the contract and the Guidelines together in

this context, it is not surprising to find an express requirement for *all* involved in the work of IITV to respect and work within the Guidelines, and that that was ‘*essential*’.

22. Mr Farhadbahman agrees he was on notice of the Guidelines: he asked for a copy in the process of negotiating the contract, which suggests active acknowledgment of their significance for him at the time.
23. Reading the contract as a whole and in context, I am satisfied that Mr Farhadbahman was ‘bound’ by the Editorial Guidelines: they were part of the contract he agreed to. Of course, they are just that – guidelines. The issue is the application of the *whole* contract, Guidelines included, to the facts the Defendants rely on to justify termination.

(e) *The Editorial Guidelines: content*

24. The Guidelines are principles-based. They set standards of accuracy, impartiality, balance and fairness for IITV output, including dealing with particular issues under those headings such as the difference between fact and opinion, diversity of opinion, fair challenge, giving right of reply, use of language (*‘precise and measured’*) and care with expressing personal views. I heard that the particular Iranian political and media context within which these principles and values were to apply gave them especial significance for IITV.
25. The Guidelines open with an extended statement of editorial responsibility and control. This sets out that editorial decisions are devolved as much as possible and content producers have to exercise their judgment about the application of the Guidelines accordingly. But it is a collaborative process: people have to exercise common-sense about when and how to consult about what the Guidelines require. Referral up the editorial line is mandatory for decisions which are *‘particularly difficult or contentious, or may have wider implications for the channel’* – the more difficult or contentious, or the more it tests or challenges the Guidelines, the higher up an issue needs to go.
26. The Guidelines have a section on social media use and other public utterances or appearances. It begins with this statement, which Mr Beynon described as an organisational touchstone:

What we do as individuals on social media is becoming increasingly important, and sensitive at the same time, for our news gathering and reporting. The simple, and perhaps most sensible, advice is not to post anything on social media that you would not publish or broadcast on Iran International.

In other words, *‘if you can’t say it in public on the channel, don’t say it on social media even as an individual’*.

27. The section sets out expectations for responsible personal use of social media. Users should adhere to IITV editorial principles and avoid conflicts between the expression of personal views and positions taken by IITV; use disclaimers (*‘my opinions, not necessarily those of the channel’*); and not take sides. Eight bullet points of ‘good practice on social media’ are set out. These include: *‘do not be offensive’*; *‘do not*

undermine the work of colleagues by posting information which devalues their journalism’; ‘do not post anything that contradicts stories on any of Iran International platforms’; and ‘avoid arguments on social media’.

The termination of the contract

(i) Factual history

(a) Introductory

28. The claim of wrongful termination, and the way it is defended, require some detailed consideration of the parties’ conduct over the short lifetime of the contract. Their relationship - as is not unusual in this kind of contract dispute - was entered into with enthusiasm and high hopes, but rapidly cooled and ended in mutual recriminations. I heard substantial oral evidence from Mr Farhadbahman and Mr Beynon. Each is an experienced media practitioner with a flair for new projects and real expertise in Iranian media and politics. But the relationship did not work out. It proved less than the sum of its parts.

29. At the outset, Mr Beynon and Mr Farhadbahman were collaborating on an ambitious new commercial, professional and creative enterprise. The project involved not only high journalistic aims (as evidenced in the Guidelines) but also some collective and individual exposure. First, there was exposure to strongly polarised debate about the record of the Iranian regime, including on press freedom, which found full-throated expression on social media. Second, there was exposure to some perceived external threat, up to and including an expectation of surveillance and attack. Journalism and media ethics under pressure were not only the business context for the contract, they featured in IITV output: it covered, and took positions on, the situation of Iranian journalists at home and abroad and their relationship with the Iranian government. All of this no doubt both energised and tested the working relationship between the parties.

(b) The events of autumn 2018

30. IITV relies on a course of conduct by Mr Farhadbahman in his personal use of social media. Six exchanges in particular are complained of, all conducted in Farsi. All but one are directed to or about prominent Iranian figures active in media and/or politics.

The Dehghan posts

31. The first dates from 6th October 2018. Mr Dehghan, the Guardian’s Iran correspondent, had published an article accusing IITV of close financial links with the Crown Prince of Saudi Arabia. Mr Farhadbahman sprang to the defence of IITV. He posted that Mr Dehghan was wrong on the facts; it was ‘a disgrace’ to journalism that he would not admit it; and he was claiming to be a hero when he was really just exploiting or feeding Iranian anti-Arab feelings. In the ensuing exchanges, Mr Farhadbahman described Mr Dehghan’s theory as ‘childish’ and ‘pitiful’.

32. The matter came to Mr Beynon’s attention. On 16th October, he emailed Mr Farhadbahman: *‘Hi there. We have agreed not to poke Dehghan on social media unless via Exec Editors and me. Sorry if the message didn’t get through to you.’* Mr

Farhadbahman replied: *'Hi. Sure, I didn't get the message. However, anyway my comments have been in a personal capacity and I'm not known as an Iran International staff or contributor.'* Mr Beynon responded: *'Okay!! But he will know you are here I expect, so if you are able to desist for now, it stops the roof falling in on us every few days... Thanks.'* Mr Farhadbahman: *'Sure. I didn't want to make things worse. He acts like a child and all his attacks are so personal and it was difficult for me not to reply him. I'll ignore him from now on.'* Mr Beynon: *'I know, I know... Thanks.'*

The Alizadeh posts

33. The second posts date from the same day, 16th October 2018. Mr Alizadeh is a UK-based Iranian social media commentator opposed to Western intervention in Iranian affairs. He tweeted that the *'ladies and gentlemen of IITV, especially Mr Farhadbahman ...'* were serving the *'filthiest regional dictatorship'* (Saudi Arabia) and called on them to resign. This was part of a wider attack on IITV and its staff (including Mr Beynon). Mr Farhadbahman took issue. He challenged Mr Alizadeh to disclose his immigration status, implying, in context, that his status as an asylum-seeker was at odds with being an apologist for the Iranian regime.
34. In the ensuing heated exchanges, Mr Farhadbahman taunted Mr Alizadeh's *'lust for fame'* and promised to visit *'disgrace'* on him as he had in the past on *'liars and forgers'*. He described him as having a *'shameless'* and *'evil hearted'* relationship with the truth, and as a liar who should *'shut up'*.
35. The Alizadeh exchanges led up to the leak incident which forms the second aspect of Mr Farhadbahman's claims, and is discussed in more detail below.

(c) *The events of summer 2019*

The Hitler 'joke'

36. Mr Farhadbahman published a couple of tweets on 15th May 2019. The first said: *'I was texting "we should buy an oven". The stupid autocorrect changed it to "we should buy a gas chamber". RIP Hitler. [smiley face]'*. This was followed up with a second which said: *'Hitler was a criminal whose racist ideology still causes tragedies today. No race and nationality is superior. To clear any misunderstanding for those who may not have grasped the satirical nature of the tweet I'm trying to make the point that it is this complicated and yet idiotic piece of technology (the autocorrect) that at the same time that reminds us of the crime it cheers up the ghost of the criminal'*.
37. This came to Mr Beynon's attention a few days later. On 22nd May, he emailed Mr Farhadbahman that he had heard about 'your tweet' and asked for a conversation. Diary exchanges ensued. Mr Farhadbahman commented at one point that he had forgotten to ask which tweet Mr Beynon was talking about. Mr Beynon said it was a tweet referring to Hitler.
38. The conversation took place on 28th May, and Mr Beynon followed it up with a short email record of it. It said this:

“Hi Panah.

“Good to talk to you today.

“We discussed a tweet you published on 15th May [hyperlink] which ended with a reference to Hitler. You wrote ‘Hitler RIP’ with a smiley symbol at the end of the tweet.

“You agreed that though it had not been your intention, this tweet could have caused offence and as such was in breach of the Editorial Guidelines by which all our suppliers and staff are bound (section 6 for reference).

“You said you had had no intention to cause harm or to offend anyone and it was just a joke, although in hindsight you realised it was ill-judged. You published a later clarificatory tweet the same day to mitigate any offence caused.

“Although we understand that no offence was intended, I reminded you that the Editorial Guidelines must be adhered to, and you agreed to take extra care with tweets in future.

“I will forward this note to Mahmood Enayat, the IITV General Manager, and to DMA’s Commercial Director, Mark Toogood.

“This note will serve as a record of the incident. Please acknowledge that what I have written is an accurate account of our chat.”

Section 6 of the Guidelines is the section dealing with social media use.

39. Mr Farhadbahman replied on 11th June. His email said: *‘Hi Rob. Please accept my deepest apologies for this very late acknowledgment. I would like to emphasise again on the fact that due to sensitivity of the general subject, my tweet was a bad joke and I won’t do it again. Many thanks. Panah’*. Mr Beynon replied on 19th June to thank him and to confirm that the correspondence would be copied as before and kept on file.

The Three Singers post

40. In August 2019, a number of Iranian singers and musicians signed an open letter to the Supreme Leader of Iran, Ayatollah Khamenei, calling on him to resign. On 20th August, Mr Farhadbahman posted a tweet showing images of 15 of the signatories. Beneath, he commented that the signatures of three of them, young pop singers he picked out by name, would be *‘a major blow to the regime’*. The intention was evidently sarcastic.

The Taheri post

41. Mr Taheri is a prominent Iranian journalist and author. On 30th August 2019, Mr Farhadbahman published a tweet calling him one of the most disgraceful, discreditable journalists in world media. It referred to Mr Taheri’s Wikipedia entry

listing journalistic scandals attaching to him, including fabrication of materials and a false allegation about the death of Osama bin Laden.

42. The Three Singers and Taheri posts were referred to Mr Beynon the following day (Saturday 31st August) by Mr Enayat, who had been copied in to the record following the Hitler ‘joke’. Of the Three Singers post, Mr Enayat explained that the musicians’ letter had been part of an initiative started by a group of women activists in Iran, the majority of whom had been arrested as a result. He said: *‘These are important acts of dissent and we covered them all in our news output, including the one that Panah made fun of’*. Of the Taheri post, Mr Enayat said: *‘Amir Taheri is a distinguished journalist. While I am not passing any judgment on the authenticity of the claims highlighted by Panah, a journalist associated with us is not allowed to publicly call any other journalist “the most disgraceful and non-credible Iranian journalist”.’*
43. Mr Enayat’s email concluded by saying this:

“Unfortunately, Panah is a liability to our brand. He has clearly ignored your notice to him. I’d like Panah’s contract to be terminated on the grounds highlighted by you to him on the 28th of May. In the meantime I am going to ask him not to come in and I’ll disable his access to the building and IT system. Please let me know if you need any more information.”

Mr Beynon responded the same day: *‘Understood. Am out today but might call you tomorrow’*.

44. Mr Enayat WhatsApp-messaged Mr Farhadbahman that same afternoon: *‘Dear Panah, I’ve asked your access to the building and IITV email account to be suspended. Rob will follow up with you on Monday.’* Mr Farhadbahman responded immediately: *‘OK. Because of my tweet?’*. On Monday 2nd September 2019, Mr Farhadbahman emailed Mr Beynon asking for a conversation to know the reason for his suspension. They arranged a discussion for that afternoon. It was conducted on a ‘without prejudice’ basis. I was not shown a record of it.
45. Correspondence between Mr Beynon and Mr Enayat around that time noted adverse social media reaction to, and complaints about, the two posts. They took the view that tweeting this kind of ‘opinionated material’ was entirely contrary to the Editorial Guidelines.

(d) *The termination of the contract*

46. On Tuesday 3rd September, Mr Beynon messaged Mr Farhadbahman to give him a call. He replied that he was sorry to have missed the call, but *‘If it’s about my decision, give me another 24 hours please and I’ll get back to you on Thursday’*.

The Alinejad post

47. On Friday 6th September, Mr Farhadbahman posted a tweet about Ms Alinejad, a well-known Iranian journalist, author and women’s rights activist, and critic of the Iranian regime. She had led a campaign called ‘my camera, my weapon’, encouraging people to use their phones to capture images of alleged rights violations

in Iran. She and her family had been subjected to harassment and intimidation. IITV had portrayed her campaign positively. Mr Farhadbahman's tweet suggested Ms Alinejad had been caught out by her own campaign – she had cut her hands on her own 'weapon'. It linked to materials suggesting she had an expensive house in New York funded by the US government. Ms Alinejad immediately protested in response that the tweet was an act of hostility to her and complicity with the Iranian regime, pointing out that five minutes' research would have established the house was owned by her husband since two years before their marriage.

48. Mr Beynon sent a series of messages to Mr Farhadbahman that afternoon. *'Huge upset about the latest tweet. Why did you tweet again?? I can't do much now we think you are in breach of contract.'* Then: *'You should stop tweeting'*. And *'You have broken the editorial guidelines again...'*.
49. Mr Farhadbahman did not respond until the following day, Saturday 6th September. He said: *'Hi Rob. Sorry I missed your call. Yesterday I had a personal issue. I don't believe I have breached anything in my last tweet at all. Anyway I'm suspended since Saturday by Mahmood's WhatsApp text and I believe the contract is breached anyway. Thanks for your time but I have decided to choose Plan B.'* Mr Beynon: *'What is Plan B?'*. Mr Farhadbahman: *'You told me about my two options. The Plan B is to leave the case to the solicitors.'*
50. That evening, Mr Enayat tweeted from the IITV account, in response to Ms Alinejad, that it was necessary to make a public announcement that Mr Farhadbahman had not been acting in an official capacity as a spokesman for IITV, and that his collaboration with IITV was now at an end. Ms Alinejad expressed her thanks for the public acknowledgment of the tweet as an act of personal anger and hostility to her campaign, and her gratitude for IITV's 'professional reply'.

(ii) Analysis

(a) General approach

51. IITV says (a) it effected a contractually compliant termination and/or (b) in any event Mr Farhadbahman was in repudiatory breach and had forfeited his right to a contractually compliant termination. There is no real dispute between the parties as to the correct approach to this defence.
52. Whether the termination was contractually compliant turns on whether it falls, and was handled, within the terms of clause 12 of the agreement. That resolves to two issues: whether IITV was entitled on the facts to consider Mr Farhadbahman in 'material' breach of contract (or, conversely, had terminated 'without (reasonable) cause') and whether proper notice was given.
53. As to whether IITV was entitled to treat Mr Farhadbahman as having forfeited his contractual entitlements through his own repudiatory breach, the governing principles are again not disputed and may be briefly stated. The test is whether Mr Farhadbahman's conduct amounted to a breach of contract 'so serious as to justify IITV bringing the contract to an end'. It involves considering whether, objectively and from the perspective of a reasonable person in the position of DMA, it appeared that Mr Farhadbahman had clearly shown an intention to abandon and altogether

refuse to perform the contract by repudiating the relationship between them. The focus is on the damage to the relationship between the parties, and whether the conduct complained of is such as to show disregard for the essential conditions of the contract. It must be of a 'grave and weighty character' and seriously inconsistent or incompatible with the duties of his role, rendering him unfit to continue in it. These are all aspects of what is a highly fact-sensitive test and all the relevant context must be taken into account.

54. IITV's objections to Mr Farhadbahman's social media conduct are made by reference to the Editorial Guidelines. It objects that the tone of the tweets was quarrelsome, intemperate and offensive; and their content was partisan, unbalanced and cut across, or undermined, editorial positions publicly taken in the channel's output, causing it damage as a result. IITV also objects that Mr Farhabahman purported to act autonomously and in excess of any devolved editorial responsibility: he failed to consult or refer up before making decisions to put 'difficult and contentious' material in the public domain; he failed to follow advice and instruction to desist; and he put his own judgment and interests ahead of IITV's. Mr Farhadbahman responds that, consistently with the Editorial Guidelines, he was entitled to offer 'fair challenge' to, and to hold to account, public commentators; that his posts were true and fair; and the objections made were minor matters of style and not 'material'.

(b) *'Material breach'*

55. Starting with the Dehghan and Alizadeh posts, two points are notable. First, Mr Farhadbahman's intentions were evidently to be supportive of IITV's editorial line. He was responding to attacks on the channel, including, but not limited to, attacks on him personally. Second, he did so in a confrontational and highly-charged manner, including offering personal insult. That was of a piece with the general tone of the debate he chose to join; it was a combative social media exchange of strong views passionately expressed, including about political opinions and the people holding them. That appears characteristic of Iranian political/media debate in the social media arena more generally. Perhaps that was why the Editorial Guidelines enjoin those associated with IITV to 'avoid arguments on social media' altogether, and in particular to avoid offensiveness and partisanship.
56. Mr Beynon took action on that basis. He made clear at the time to Mr Farhadbahman that the posts were not in fact helpful to the editorial line and asked him to desist. Mr Farhadbahman appears to have accepted that. Mr Beynon acknowledged in evidence that, by themselves, the autumn 2018 posts were not *fundamentally* problematic; but, in tone and in their treatment of public commentators, problematic enough for IITV that he needed to be clear this sort of thing was discouraged (including by the Guidelines). The measures he took appear appropriate: informal, but clear, firm and fair. Both parties seemed resolved at the time to move on with the relationship, the point about social media conduct having been made and accepted. Mr Farhadbahman's use of social media gave no further cause for complaint for the next seven months.
57. The Hitler 'joke' episode is somewhat different from the other exchanges complained of. It did not arise out of participation in online debate with or about individuals involved in Iranian media or politics. Mr Beynon saw it at the time as a lapse of judgment obviously capable of causing offence. This time he dealt with it formally: a

written record copied to senior management and kept on file is a recognisably formal step. Mr Farhadbahman seems to have acknowledged, both at the time and since, that he was entitled to do so. The formal ‘warning’ notice is notable for its express reference to the Editorial Guidelines, in a context concerning a wholly personal act of self-expression on social media. Again, it appears both sides regarded the matter as dealt with and the lesson learned. Mr Farhadbahman again gave no further cause for concern in his social media use for several more months.

58. The Three Singers and Taheri posts, taken together, were, however, clearly regarded by IITV at the time as serious breaches of the Editorial Guidelines, and hence ‘material’ breaches of contract. They thought the Three Singers post sneering and the Taheri post confrontational and insulting; and what they had in common was that this time they took positions contrary to IITV’s own output. IITV had covered the musicians’ letter-writing initiative with sympathy and respect for the risks the individuals took. The Three Singers post was also seen as implying criticism of IITV’s coverage and editorial decisions. Its stance on Mr Taheri was that he was a figure whose public profile, however polarising, merited respectful and balanced treatment. Mr Farhadbahman’s actions were seen as conflicting with, and undermining, IITV’s editorial line - a significant escalation in the problem posed by his use of social media, and reflected in the public reaction caused.
59. The reasonableness of IITV’s views that these were serious (‘material’) breaches of contract has to be judged (a) against the Editorial Guidelines and (b) in the context of the history of the relationship.
60. As to the latter, although neither party had necessarily expected the Dehghan, Alizadeh and Hitler ‘joke’ postings to have further contractual consequences, each episode had provided opportunities for IITV to explain and emphasise, and Mr Farhadbahman to accept and acknowledge (or indeed to challenge and clarify had he wished to) the limits the contract placed on his freedom to act as he pleased on social media. Mr Beynon had done so by express reference to the Guidelines. Although Mr Farhadbahman suggested in oral evidence that he had in effect reserved his position throughout, I am satisfied on the contemporaneous documentary evidence that IITV was entitled to consider it had on these past occasions asserted a contractual entitlement to restrain Mr Farhadbahman’s use of social media, including by reference to the Guidelines, *and* that that had not been challenged.
61. Mr Farhadbahman’s conduct in making the Three Singers and Taheri posts is not said by him to have been a mistake. He had not consulted or referred up before posting. He was on notice that IITV management asserted its entitlement to insist on restraint from him in conduct of this nature, and he had in the past ostensibly acknowledged as much. On this occasion, however, he resisted that assertion and insisted he was not in breach of the Guidelines and was exercising an entitlement to hold public commentators to account. That was the position he maintained in his oral evidence.
62. In viewing Mr Farhadbahman’s conduct as ‘material breach’ of contract, IITV was fairly entitled to point to multiple features at odds with the Guidelines. This was public comment on controversial issues of Iranian politics and media, and it was partisan, intemperate, and offensive to those concerned. It did not demonstrate the Guidelines’ values: balance, impartiality and so on. It was undoubtedly engaging in ‘arguments on social media’. But most importantly of all, it was inconsistent with the

way IITV approached and covered the issues in its own output. Considered objectively, it had the appearance of public dissent from, or challenge to, IITV's editorial line.

63. There is no reasonable reading of the contract which would give an IITV contractor an entitlement to public opposition to IITV's editorial line. On the contrary, Mr Farhadbahman warranted he would promote and protect IITV's interests and comply with the IITV's reasonable instructions in fulfilling his role. The contract's description of these contractual obligations as warranties is an indication of the seriousness with which they were fairly to be regarded. The reasonableness of IITV's previous express instructions to Mr Farhadbahman on social media use is confirmed by their consonance with the Editorial Guidelines, and those Guidelines were themselves standing instructions with contractual status. Public dissent from established editorial lines, conducted by way of intemperate and partisan social media comment, together with a measure of implied undermining of colleagues' editorial decisions and an asserted entitlement to prioritise his own judgment about editorial compliance over that of IITV senior management when challenged, clearly contravenes the Guidelines and can in these circumstances fairly and objectively be regarded as a material breach of the agreement.
64. For all these reasons I am persuaded that IITV was entitled to, and did at the time, regard Mr Farhadbahman's conduct in making the Three Singers and Taheri posts, in context, as a 'material breach' of contract.

(c) *Notice*

65. However, what the contract required IITV to do where it claimed material breach was to give Damavand 14 days' formal notice requesting it to cure the breach. What it in fact did was to suspend Mr Farhadbahman peremptorily with an indication of an explanatory conversation with Mr Beynon to follow.
66. What a remedial notice would have looked like in these circumstances was a matter of some debate at trial. On the one hand, Mr Farhadbahman was never asked to take down his posts, but on the other Mr Beynon took a pragmatic view that once a post is 'out there' on social media there is little to be gained by removal; what is said cannot be unsaid, and the chat moves on fast. I agree that is reasonable, but I disagree that these breaches were therefore 'incurable'. The effective, and only, cure for social media misuse is for it to stop. That was the line Mr Beynon had taken with Mr Farhadbahman in the past. He had taken it informally at first, and then formally in the aftermath of the Hitler 'joke'. A notice to cure the breach on this occasion might therefore have been an enhanced form of 'cease and desist' instruction. A formal acknowledgment and undertaking from Mr Farhadbahman might have been sought within the 14-day remedial period provided for by contract.
67. No notice was in the event given. Mr Enayat's action in summarily removing Mr Farhadbahman's access, without contemporaneous explanation, does not have any clear basis in the termination or other provisions of the contract. Nor, however, does it appear to have been intended as instantly determinative of the future of the contract. 'Suspension' suggests a pause for thought. The actions of Mr Beynon and Mr Farhadbahman in proceeding to a conversation indicate there was something at any rate left to discuss about the future of the relationship. Perhaps curing the breach, or

alternatively a contractually compliant (on notice) or agreed termination, were on the table. It seems some sort of ultimatum or choice was offered, and indeed reflected upon.

68. Possible developments along such lines must, however, remain a matter of speculation. After the conversation of the 2nd September, we see Mr Beynon evidently seeking to continue the conversation the following day and Mr Farhadbahman, too, seeking further thinking time before responding. While this ‘suspension’ or pause for thought was still live, however, and before the working week was out, Mr Farhadbahman posted the Alinejad tweet.

(d) *The ending of the contract*

69. This development was evidently met with incredulity at IITV. On any objective view, that is hardly surprising. This was not only precisely the conduct complained of, which had brought the parties’ legal relationship to the point of some sort of crisis discussions, it had the appearance of a provocative escalation of that conduct. IITV saw it as a floridly expressed personal attack on a prominent and vulnerable Iranian political activist, whose campaigning had been sympathetically covered in IITV’s current affairs output; it cut directly across IITV’s editorial line; and it was based on an insinuation which turned out to lack a solid factual foundation.
70. In context – in content and timing – it is hard to see the post objectively as other than a dismissive riposte to the suspension and the ensuing conversation, an assertion by Mr Farhadbahman of an intention to consult no-one but himself in his use of social media, and a repudiation of IITV’s contractual claims to hold him to what he knew was its interpretation of his warranties and of the Editorial Guidelines. Mr Farhadbahman cannot reasonably have been in any doubt about how the Alinejad post would be received by IITV. His actions were in context assertive, confrontational, and repudiatory of IITV’s interests and claims. They in fact caused a damaging social media storm and complaints. He had no basis for surprise if they were received as a declaration that any continuing discussions, and any relationship of mutual contractual trust and confidence, were over. His ‘plan B’ declaration is to the same effect.
71. That is clearly how they were received. That is confirmed by the IITV posting of the same date that the relationship was at an end, putting distance between the Alinejad tweet on the one hand and the channel and its editorial line on the other. That constituted clear and unequivocal acceptance of Mr Farhadbahman’s repudiatory breach. He cannot be heard to complain that it was not personally notified to himself first, since he had by his own actions foreclosed on the contractual conversation and correspondence initiated by Mr Beynon and gone into the public domain instead to make his position clear.
72. In his oral evidence Mr Farhadbahman continued to assert the supremacy of his own judgment as to the consistency of his social media activity with editorial values over that of IITV management, and his freedom to make his own decisions about what he said in public about individuals with a profile in Iranian media and politics. That itself is fundamentally inconsistent with the Editorial Guidelines.

73. He argued at the same time that even if he had overstepped the mark, it was to no material degree. That is unsustainable. I am satisfied that IITV's control and calibration of its editorial position on sensitive Iranian media/political matters such as the Alinejad campaign was of the essence, and so described in the Guidelines. IITV had made that clear consistently, including in relation to the Three Singers and Taheri posts. It was entitled in the circumstances to consider Mr Farhadbahman's Alinejad post, in conflicting with IITV's editorial line, a deliberate and knowing repudiation of the contractual relationship between them, his last word on the matter and the last act in the crisis of confidence which followed the Three Singers and Taheri episode. It was the last straw. IITV was entitled to consider Mr Farhadbahman to have demonstrated a sustained and egregious disregard for its editorial policy and a sustained refusal to desist. In repudiating the burden of the contract, Mr Farhadbahman necessarily repudiated its benefits also, including any claims he might possibly have had in relation to IITV's antecedent conduct, including the fact that no remedial or other notice had (yet) been forthcoming.

The information claims

(a) Factual background

74. On the day he left the BBC, 11th September 2018, Mr Farhadbahman posted an announcement about it, citing a dispute between unions and management at the BBC as the reason. It generated a lot of comment, mostly supportive. One, on 13th September, was from one of his prospective new colleagues: '*Lucky us that you are becoming our colleague dear Panah. Welcome to Iran International family*'. Mr Farhadbahman's response included this: '*...I will work with Iran International in one or two projects as Damavand Media*'.
75. There was wider social media speculation about where Mr Farhadbahman was going next, including speculation about a move to IITV. A number of BBC journalists had followed this path (and indeed there is evidence that Mr Farhadbahman had discussed his move among BBC colleagues and had had expectations of bringing others with him).
76. Not all the social media comment was positive. Mr Alizadeh, a prominent voice, persisted in challenging or goading Mr Farhadbahman to confirm or deny a move to IITV. Mr Alizadeh made clear his disapproval of IITV and its asserted Saudi sponsorship. Mr Farhadbahman responded on 6th October 2018 that he had never denied working for IITV, there was no shame in doing so or cause for reluctance to talk about it, and in any event it would be very difficult to keep it secret.
77. When Mr Farhadbahman joined IITV in September 2018, he and Mr Beynon had collaborated over a warm exchange of emails copied around everyone working there. Mr Beynon welcomed Mr Farhadbahman on board, explaining his background and role. Mr Farhadbahman's response looked forward to working with his new colleagues. He signed it off with the title 'Creative Director' and his contact details. The exchange went out on 18th September. On 19th October Mr Beynon informed him Mr Alizadeh had published the exchange on social media. A leak was the assumed explanation.

78. It was not the first time IITV had been troubled by leaking. A staff meeting on 24th September had been covertly recorded and leaked, and that matter was under active investigation at the time. Mr Beynon accepted as inevitable that attempts would be made to infiltrate IITV and pass information to supporters of the Iranian government. He says he took Mr Alizadeh's publication very seriously on that basis, and acted on it in a number of ways.
79. He asked Mr Farhadbahman not to 'react', but to come and discuss things with him. On 22nd October, Mr Farhadbahman gave him an account of his earlier exchanges with Mr Alizadeh. He told Mr Beynon: '*in many occasions in the past I have mentioned in my posts that I'm working with Iran International as a contractor*' and mentioned his post of 6th October in that connection.
80. Mr Beynon instructed solicitors to write to Mr Alizadeh. They did so on 23rd October. The letter protested that Mr Alizadeh had published material defamatory of Mr Beynon. It also protested about the publication of the welcome exchange, described as Mr Farhadbahman's personal information taken from a private internal email. It protested there was no journalistic merit in this: the object was simply to publicise Mr Farhadbahman's work with IITV, disparage him by association, and share his personal contact details. It complained of breach of confidence and an attempt to damage the reputation of IITV, its staff and its contractors. It asked Mr Alizadeh to take down the content.
81. Mr Beynon instigated a leak investigation within the organisation. It proved inconclusive. There was no evidence of anyone in the organisation forwarding the welcome exchange out of the organisation. But it would have been easy for someone to take a screenshot on a phone or copy the content in other ways.
82. Mr Beynon confirmed to management colleagues in early November that he believed IITV was the subject of 'an orchestrated campaign by the Iranian government to undermine IITV'. He said the Iranian Ambassador in London had offered support to any IITV staff who 'wanted to leave'. Iranian state-sponsored TV sent a reporter to do a stand-up outside their building. Scotland Yard's anti-terror branch, and local police, had also been alerted. Mr Beynon had been in touch with the Foreign Office.

(b) The basis of the information claims

83. Mr Farhadbahman blames IITV for the leak of the welcome exchange. He says he suffered detriment as a consequence and IITV should compensate him. He brings this part of his claim in privacy (misuse of private information) and data protection. Again, the applicable principles are not disputed and may be shortly stated.
84. Mr Farhadbahman says he had a 'reasonable expectation of privacy' as to his contractual relationship with IITV. That is a fact-sensitive test. He says it is met because: (a) he had made it clear to IITV that he expected the fact of his contractual status to be kept private by IITV; (b) that was also apparent from the context of his departure from the BBC under, he says, pressure from the Iranian government, (c) it is reflected in the contract and (d) he demonstrated by his own conduct that he expected the fact that he was working for IITV to be kept private and confidential. He also says his contact details were private. He says IITV could and should have prevented the leak.

85. He also relies on Article 5(1)(f) of the (UK) General Data Protection Regulation (GDPR) which provides that personal data are to be:

processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ('integrity and confidentiality').

He says his contact details and the content of the welcome note constituted personal data and IITV did not take appropriate technical or organisational measures to protect it against unauthorised leaks. He says, for example, there is no evidence of a full risk assessment in the wake of the leak of the covertly-recorded staff meeting, of written instructions to staff not to leak, or of a written data protection policy being issued to staff.

86. I was taken to the *Morrison's* case (*Various Claimants v Wm Morrison Supermarkets plc* [2017] EWHC 3113 (QB); [2018] EWCA Civ 2339) for help in applying the 'ensures appropriate security ... using appropriate technical or organisational measures' test to a leak. The mere fact of disclosure or loss of information is not sufficient for there to be a breach. An organisation is not *vicariously* liable for deliberate leakage. So it is a question of 'appropriate' risk management in all the circumstances of the case.

(c) *The privacy of the contract*

87. To uphold Mr Farhadbahman's claim in privacy, I have to be satisfied he expected the fact of his contractual relationship with IITV to be treated as private, and that that was reasonable. This is not information of a classically private or personal nature – for example about home, family, sexual or health issues. The fact of a workplace contract is not routinely or intrinsically a private matter. So whether it can properly be regarded as a matter protected by Mr Farhadbahman's personal privacy rights would have to be sought in the particular circumstances of this case.
88. Mr Farhadbahman relies on the express terms of the contract itself to make this case. He points to the stipulation of 'excluded services' and the fact he had a defined behind-the-scenes role at IITV. The services schedule deals with what DMA could, and could not, ask of Damavand by way of contractual services. It is not in itself recognisable as a confidentiality clause, much less a form of privacy undertaking. The fact that IITV could not ask Mr Farhadbahman to do on-air work, or author or participate in output, is not the same as accepting a duty of confidentiality as to his contractor status or recognising a quality of privacy in that fact. That DMA could not contractually oblige Damavand to provide *services* disclosing its own identity does not mean Damavand could contractually oblige DMA to keep that identity secret. They are different kinds of proposition. Not every behind-the-scenes role is necessarily *private*. Something more needs to be shown.
89. The contract's confidentiality clause is an undertaking by Damavand to keep the content (but not the existence) of the agreement secret. The advertising clause prohibits Damavand making reference to the existence of the contract without prior

written consent. But there is no provision dealing with disclosure of the fact (or content) of the agreement by *DMA*.

90. If a contractual relationship is intended by the parties to be endowed with an essential quality of privacy, the contract might be expected to say so. The absence of such provision, and the particularity of the provision the contract does make about confidentiality, do not assist Mr Farhadbahman's privacy claim.
91. He says none the less that was his clear intention, and understood to be so. Such contemporaneous evidence as there is of the process of agreeing the contract does not bear that out. Email discussions between Mr Beynon and Mr Farhadbahman principally document the latter negotiating hard over salary. He made clear he wanted to come on board not as an individual employee but by way of a limited company; he explained that was because he wanted to engage in other activities via that company (there may also have been tax considerations). The contract does contain express provision about Damavand's 'other activities', but there is no mention or sign in these exchanges of an expectation of privacy.
92. Mr Farhadbahman's oral evidence gave an account of his and his family's standing with the Iranian government at the time he left the BBC, as explaining his desire to keep his contract with IITV entirely hidden. This account was challenged as to its sustainability on the facts. The issue is, however, not the ultimate sustainability of Mr Farhadbahman's motivations but whether they were recognisable at the time. Mr Beynon accepted he was aware Mr Farhadbahman (a) wanted a behind-the-scenes role and (b) did not want actively to publicise his working relationship with IITV, but said he thought that was personal preference (perhaps a tax matter) not that he expected IITV to recognise a duty to keep their relationship secret. He says Mr Farhadbahman could not have reasonably had any such expectation since his contractual role would necessarily have been apparent to the several hundred employees and contractors with whom he would be working (and to whom he had consented to share the welcome exchange on arrival).
93. There is in my view insufficient contemporaneous evidence of a recognisable express expectation of contractual privacy – something more than just a low- profile role – or of a context in which an expectation of privacy could readily be recognised or inferred. There is Mr Farhadbahman's own public account of his departure from the BBC, which simply cites disagreement with management. Then there is the matter of the occasions prior to the leak where Mr Farhadbahman seems to have gone at least some way himself to acknowledging a working relationship with IITV on social media (and subsequently confirming to Mr Beynon he had done so). He said he had maintained a careful 'neither confirm nor deny' policy in these public exchanges, but that is not a straightforward objective reading of them. Mr Farhadbahman may possibly be recognised in these exchanges as making a distinction between working 'with' IITV (as a contractor, on a project basis) and working 'for' IITV (as an employee) – that is, as trying to claim a measure of distance for the relationship. But that is not a distinction of any obvious relevance to a claimed expectation of privacy for the relationship itself. In any event, to evidence a quality of privacy in the fact of the contract Mr Farhadbahman might be expected to go further than adopting a public policy of prevarication or calibrated distance. Had he been concerned with privacy he need not have engaged in public exchanges at all. He certainly did not need to take the bait of Mr Alizadeh's cat-and-mouse game.

94. Finally, there is the contemporaneous evidence of Mr Farhadbahman's reaction to the leak itself. When Mr Beynon told him about it, apologised, and asked him not to 'react', his response was '*No worries. I'm used to it.*' He said he had hoped to leave this sort of thing behind when he left the BBC. He wanted to reassure Mr Beynon he was not going to react as he had to Mr Dehghan. He said the most annoying part was the publication of his mobile number. Mr Beynon offered to pay to have the number changed, but Mr Farhadbahman declined: '*Nevermind! That would be another headache. Thanks for your support.*' None of this supports, or is easy to reconcile with, an asserted reasonable expectation of *privacy* as to the fact of the contract, or indeed as to his contact details.
95. I was not shown examples, in practice or the decided authorities, of a quality of privacy attaching to the existence of a contract of this sort. It is an unusual proposition and as such needed to be established by clear evidence. Mr Farhadbahman says he left the BBC precisely to withdraw from public attention and the attention of the Iranian government; that was understood as the basis of the contract; and, before the leak, he had successfully done so. The difficulty he faces in making out a claim for misuse of private information is the lack of contemporaneous evidence that he actively made clear to IITV he expected his contract to be kept *private* (as that term is understood in law), or that IITV ought in all the circumstances to have inferred as much. It is for Mr Farhadbahman to discharge the burden of showing on the facts and evidence that he had a reasonable expectation of privacy as to the existence of his contract. I am not satisfied he has done so.

(d) *Responsibility for the leak*

96. Both the privacy and data protection claims rely on fixing IITV with legally relevant responsibility for the leak. Nothing appears known about exactly how it occurred, so the claim necessarily proceeds on inference as to the facts. The welcome exchange was expected by both sides to be sent on general circulation to several hundred associates of IITV. Mr Farhadbahman was consulted and did not stipulate for special protective steps at the time. He took the initiative himself to add his contact details. While it may be fair to say Mr Farhadbahman expected, and Mr Beynon hoped, this information would be kept within the organisation and used for work purposes only, it is also fair to note the inherent risks involved from the outset.
97. Because of the recent leak of the staff meeting recording, IITV senior management was aware of the risk of leaks and taking active steps at the time to investigate what had already occurred. Mr Beynon said it was partly out of concern about leaks that he took the step of clearing the welcome exchange with Mr Farhadbahman. I was shown no contemporaneous evidence that he shared those fears with Mr Farhadbahman or that the latter could or should have been aware of a specific risk of leaking. But his 'I'm used to it' response after the event perhaps suggests a measure of general awareness.
98. The evidence of IITV's Director of Technology, who investigated and reported on the leak to Mr Beynon, was that no *technical* (IT) measures could have been taken to prevent unauthorised leaking of the welcome exchange. None has been suggested. There are plainly no *technical* means of stopping people determined to take screenshots – or, come to that, preventing them confirming Mr Farhadbahman's role

from their own knowledge. The question is whether there were *organisational* or other measures which could or should have been taken.

99. The evidence indicates that neither Volant nor DMA had a written data protection policy at the time. It was the unchallenged evidence of IITV senior management that data protection and security were the subject of internal training and frequent communications to staff. It is also apparent from the contemporaneous documents that IITV went to some lengths to try to get to the bottom of how the various leaks had happened and who was responsible, and to hold Mr Alizadeh himself to account. The question is what they could or should have done, that they did not do, which could have made a difference.
100. The Claimants' pleadings and evidence contain no clear proposition about this. They realistically accept the risk of hostile leaking was ultimately not wholly eliminable. The working assumption of all concerned was that the disclosure was not accidental, and did not arise out of mistake or ignorance. It was malicious: an act of hostility towards both Mr Farhadbahman and IITV more generally. That appears a likely explanation. Organisational measures to prevent malicious leaks might include clear prohibitory messages, prioritising investigation, and deterrent sanctions. In a world, however, in which infiltration and surveillance by hostile agents is said to be (by all the witnesses in this case) a constant and ultimately ineradicable hazard for media organisations and journalists active in Iranian current affairs, the risk of leaking appears to be endemic.
101. I am satisfied on the evidence that IITV senior managers were preoccupied with and exercised about that, actively engaged in trying to manage it, including with external help and advice. If they missed an effective measure to prevent the welcome exchange leak then no-one identified it. A written data protection policy was not a convincing candidate.
102. I bear this in mind also. A fair reading of the exchanges between Mr Farhadbahman and Mr Alizadeh suggests the latter already knew or guessed about Mr Farhadbahman's association with IITV. At least some hints of it were already in the public domain, and in the online world of UK Iranian media gossip more could doubtless be deduced. The welcome note was titillating confirmation of information which could and probably would have come out in any number of other ways, deliberate or otherwise. I also bear in mind that Mr Farhadbahman can take some responsibility for his own choices about circulating his contact details, not specifying any particular confidentiality considerations, declining the offer of a replacement phone number, and making himself visible by engaging in online combat with Mr Alizadeh on the issue of his relationship with IITV in the first place.
103. Again, it is Mr Farhadbahman's responsibility in bringing this claim to establish that the Defendants failed to comply with their legal duties in relation to his personal data and that that failure was causative of the leak. Something more than the fact of the leak needed to be established. Even allowing for the challenges of making a case by factual inference, I am not satisfied on the evidence on which he relies that he has discharged that burden of proof.

Conclusions

104. I am unable to uphold these claims. I have no doubt that Mr Farhadbahman feels badly treated by IITV. The claims he has chosen to bring rely, however, on the application of highly fact-sensitive legal tests to the circumstances of the case. Those circumstances in turn have to be established on the balance of probabilities with sufficient evidence. I have to consider that evidence fairly and objectively, after it has been tested at trial. For the reasons I have given, the Claimants have not persuaded me on balance that the available evidence sufficiently supports their claims.