

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO:**

**QUEEN'S BENCH DIVISION**

**B E T W E E N:-**

**PETRO POROSHENKO**

**Claimant**

**- and -**

**BRITISH BROADCASTING CORPORATION**

**Defendant**

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**PARTICULARS OF CLAIM**

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**The Parties**

1. The Claimant is, and has been since 2014, the President of the Ukraine. He is also well-known as a politician and business entrepreneur. During his Presidency, he has been actively involved in the promotion of a number of anti-corruption measures in the Ukraine, including the enactment of new legislation and the establishment of dedicated bodies set up in order to conduct pre-trial investigation and prosecution of high-profile corruption crimes in the country (for example the National Anti-Corruption Bureau of Ukraine and the Specialized Anti-Corruption Prosecutor's Office), as well as the creation of an Anti-Corruption Court.
2. The Defendant is a national public service broadcaster provider which not only broadcasts television programmes (including its flagship channel, *BBC One*) to an enormous number of viewers within this jurisdiction but also operates a highly influential website on which it posts information and articles that are made widely

available both in this jurisdiction and worldwide at the URL [www.bbc.co.uk](http://www.bbc.co.uk) (“the BBC Website”)

### **The Publications complained of**

3. From 23 May 2018 onwards, the Defendant published or caused to be published an article on the BBC Website entitled “**Trump Lawyer ‘paid by Ukraine’ to arrange White House talks**” which was made available to millions of its readers in this country (as well as abroad) via the worldwide internet at the URL <http://www.bbc.co.uk/news/world-us-canada-44215656> (“the BBC Online Article”). The BBC Online Article contained the following words defamatory of and concerning the Claimant:

### **“Trump lawyer ‘paid by Ukraine’ to arrange White House talks**

Donald Trump's personal lawyer, Michael Cohen, received a secret payment of at least \$400,000 (£300,000) to fix talks between the Ukrainian president and President Trump, according to sources in Kiev close to those involved.

The payment was arranged by intermediaries acting for Ukraine's leader, Petro Poroshenko, the sources said, though Mr Cohen was not registered as a representative of Ukraine as required by US law.

Mr Cohen denies the allegation.

The meeting at the White House was last June. Shortly after the Ukrainian president returned home, his country's anti-corruption agency stopped its investigation into Trump's former campaign manager, Paul Manafort.

A high-ranking Ukrainian intelligence officer in Mr Poroshenko's administration described what happened before the visit to the White House.

Mr Cohen was brought in, he said, because Ukraine's registered lobbyists and embassy in Washington DC could get Mr Poroshenko little more than a brief photo-op with Mr Trump. Mr Poroshenko needed something that could be portrayed as “talks”.

The senior official's account is as follows – Mr Poroshenko decided to establish a back channel to Mr Trump. The task was given to a former aide, who asked a loyal Ukrainian MP for help.

He in turn used personal contacts who attended a Jewish charity in New York state, Chabad of Port Washington. (A spokesman for the Chabad has asked us to make clear that officials there were not involved.)

This eventually led to Michael Cohen, the president's lawyer and trusted fixer. Mr Cohen was paid \$400,000.

There is no suggestion that Mr Trump knew about the payment.

A second source in Kiev gave the same details, except that the total paid to Mr Cohen was \$600,000.

There was also support for the account from a lawyer in the US who has uncovered details of Mr Cohen's finances, Michael Avenatti. He represents a porn actress, Stormy Daniels, in legal action against President Trump.

Avenatti said that Suspicious Activity Reports filed by Mr Cohen's bank to the US Treasury shows he had received money from "Ukrainian interests".

As well as Mr Cohen, the two Ukrainians said to have opened the backchannel for their president also denied the story.

The senior intelligence official in Kiev said Mr Cohen had been helped by Felix Sater, a convicted former mobster who was once Trump's business partner. Mr Sater's lawyer, too, denied the allegations.

The Ukrainian president's office initially refused to comment but, asked by a local journalist to respond, a statement was issued calling the story a "blatant lie, slander and fake".

As was widely reported last June, Mr Poroshenko was still guessing at how much time he would have with Mr Trump even as he flew to Washington.

The White House schedule said only that Mr Poroshenko would "drop in" to the Oval Office while Mr Trump was having staff meetings.

That had been agreed through official channels. Mr Cohen's fee was for getting Mr Poroshenko more than just an embarrassingly brief few

minutes of small talk and a handshake, the senior official said. But negotiations continued until the early hours of the day of the visit.

The Ukrainian side were angry, the official went on because Mr Cohen had taken “hundreds of thousands” of dollars from them for something it seemed he could not deliver.

Right up until the last moment, the Ukrainian leader was uncertain if he would avoid humiliation.

“Poroshenko’s inner circle were shocked by how dirty this whole arrangement [with Cohen] was.”

These words were posted on the BBC Website beneath a prominent colour photograph of the Claimant sitting alongside the President of the United States, Donald Trump, whilst the two leaders are pictured shaking hands.

4. On the evening of 23 May 2018, during its highly-influential *News at Ten* programme on the *BBC One* channel, the Defendant broadcast or caused to be broadcast, and thereby published or caused to be published, an exclusive news item which was watched by millions of viewers within the jurisdiction and which contained the following words defamatory of and concerning the Claimant (“**the BBC News Story**”):

**Huw Edwards – BBC News Presenter**

“Claims that last year’s meeting between President Trump and the Ukrainian leader was arranged after a big payment to Mr Trump’s personal lawyer, we have an exclusive report.

Donald Trump’s personal lawyer Michael Cohen received a secret payment of at least \$400,000 to arrange talks between the Ukrainian president and President Trump that is the claim made by those with direct knowledge of the process who have spoken to the BBC. They say the money was sent to Mr Cohen by intermediaries acting for the Ukrainian leader Petro Poroshenko. The Ukrainian government has denied the claims.

Mr Cohen and his partner Felix Sater and the two intermediaries also deny involvement as our correspondent Paul Wood tells us...”

**Paul Wood – North American Correspondent**

“Donald Trump’s run for the US presidency was watched with alarm by Ukraine’s government dismayed by his apparently pro-Russian rhetoric. Then Trump had a setback, his campaign manager Paul

Manafort was forced to resign, accused of getting millions of dollars from Russian interests in Ukraine. The leak that brought Manafort down came from the very top of the Ukrainian government according to sources here and outside Ukraine. If that's true, the Ukrainian's badly miscalculated backing the losing side in the US election.

So in early 2017 President Poroshenko was desperate to get talks with Donald Trump, but he was being offered a little more than a White House photo op. According to a senior official here who has direct knowledge of what happened, Poroshenko instructed two close associates to open a back channel. That back channel, our source says, was President Trump's personal lawyer and trusted fixer Michael Cohen.

The senior official says that Cohen was paid \$400,000; a second source says it was more. There is no suggestion that Trump knew of this. We are told that Cohen got help from Felix Sater, a convicted former mobster once in business with Trump. Cohen is under investigation for paying hush money to a porn actress Stormy Daniels on Trump's behalf.

Her lawyer says Cohen's bank records show he took money from US companies for access to the President."

#### **Michael Avenatti - Lawyer for Stormy Daniels**

"I think it's pretty obvious at this point that Michael Cohen took substantial sums of money and was selling access to the highest office in the land, namely to the US president. We have every reason to believe that there are additional payments that have not been reported yet from those with Ukrainian interests."

#### **The Meaning of the Publications complained of**

5. In their natural and ordinary meaning, the words complained of in both the BBC Online Article and the BBC News Story, meant and were understood to mean that the Claimant had made or arranged for a secret payment of \$400,000 to Michael Cohen, the personal lawyer of Donald Trump, in order to fix back-channel talks between him and the American President in June 2017, and was therefore guilty of serious corruption.

#### **Relief claimed**

6. By reason of the Publications complained of, the Claimant has been seriously injured in his reputation and has been caused substantial distress and embarrassment.

7. In support of his claim for general, including aggravated, damages, as well as his contention that he has or is likely to have been caused serious harm by these Publications, the Claimant will rely upon the following facts and matters:
- (1) The allegation that the Claimant was guilty of serious corruption is self-evidently an extremely grave and damaging one, not only in relation to his role as President of the Ukraine but also his political and business reputation.
  - (2) This is especially so given the emphasis which he has chosen to place during his Presidency on the promotion of a number of anti-corruption measures in the Ukraine, for example the enactment of new legislation, the establishment of specialist bodies to conduct pre-trial investigation and prosecution of high-profile corruption crimes and the creation of an Anti-Corruption Court.
  - (3) It has also caused him considerable distress and embarrassment since the allegation strikes at the core of his personal dignity and integrity.
  - (4) The Claimant will also refer to the fact that the BBC is regarded worldwide as a highly reputable and reliable news organisation, and it enjoys readership and viewing figures in this jurisdiction which stretch into the millions. The Defendant deliberately chose to publish it on its Website in the most prominent manner. The allegation complained of was therefore seen or heard by a vast number of people, including influential and prominent figures within the world of politics, diplomacy, finance, business and media.
  - (5) In addition, given the hugely serious and sensational nature of the allegation (especially as it also related to the US President, Mr Trump), its likely impact, the Claimant's position as President himself, and the deliberate prominence which was given to the allegation by the Defendant both in its broadcast and online form, it was inevitable (if not intended) that the sting of the words complained of would be widely picked up and republished in other publications, as in fact happened, thereby seriously adding to the harm which was or would have been caused to the Claimant. For example, the Claimant will refer to the republication which took place later that day (23 May 2018) in *The Mail Online*, one of the most popular websites in the world (let alone the

United Kingdom), under the headline “**Ukraine paid Trump lawyer Cohen to arrange White House talks – BBC**”.

- (6) The Claimant will also rely upon the fact that the Defendant chose to publish this hugely serious and damaging allegation despite its journalists having been repeatedly told by those alleged to be involved that it was completely untrue, and that there had been no payment and no back-channel talks.
- (7) Finally, even after the Claimant complained about these Publications through his solicitors, pointing out the falsity of the allegation, the Defendant refused (and continues to refuse) to publish a correction or apology, or even remove the BBC Online Article. The result is that the allegation stands uncorrected, despite there being no evidence of any payment or secret talks, and therefore the damage to the Claimant’s reputation remains unrepaired. The Claimant will also refer to the dismissive and arrogant manner in which the Defendant has chosen to deal with his complaint, notwithstanding all of the above.

**AND THE CLAIMANT CLAIMS:**


- (1) A Declaration that the allegation complained of, as set out in paragraph 5 above, is false.
- (1) An injunction to restrain the Defendant whether acting by its directors, officers, servants or agents or otherwise howsoever from further publishing or causing or permitting to be published the same or any similar defamatory words of and concerning the Claimant.
- (2) Damages (including aggravated damages) for libel.
- (3) Such further relief or order as is just and apposite.
- (4) Costs.

**DAVID SHERBORNE**

**STATEMENT OF TRUTH**

The Claimant believes that the facts stated in these Particulars of Claim are true.

I am duly authorised by the Claimant to sign this statement.

Signed:  .....

Name: Graham Atkins

Position: Partner, Atkins Thomson (Claimant's Solicitors)

Dated: 3 September 2018