

1 Claimant  
2 J P Harding  
3 First  
4 JPH1, JPH2  
5 6 October 2022

**IN THE HIGH COURT OF JUSTICE**

**CLAIM NO.**

**KING'S BENCH DIVISION**

**ADMINISTRATIVE COURT**

**BETWEEN:**

**THE KING  
on the application of  
TORTOISE MEDIA LIMITED**

**Claimant**

**-and-**

**THE CONSERVATIVE AND UNIONIST PARTY**

**Defendant**

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**WITNESS STATEMENT OF JAMES HARDING**

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I, **JAMES PAUL HARDING**, of 22 Berners Street, London, W1T 3LP, **WILL SAY** as follows:

1. I am the Editor and one of the co-founders of the Claimant, Tortoise Media Limited ("**Tortoise Media**"). Tortoise Media is a news website providing in-depth and investigative journalism. Prior to founding Tortoise Media, I was Director of BBC News for a period of 5 years. Before that, I was Editor of The Times.
2. This witness statement is made on behalf of the Claimant, Tortoise Media, in support of its application under Civil Procedure Rule 54.4 for permission to proceed with a judicial review claim against The Conservative and Unionist Party (the "**Conservative Party**").
3. The facts and matters set out in this witness statement are made from my own knowledge unless otherwise stated and I believe them to be true.
4. There are now produced to me Exhibits "**JPH1**" and "**JPH2**". Exhibit JPH1 is a paginated bundle of correspondence and Exhibit JPH2 is a collection of articles and other documents. Both exhibits are referred to in the course of this witness statement. A reference in this statement to a page number is a reference to the corresponding page number in that exhibit, unless otherwise stated. References in this witness statement to page numbers in exhibits are in the format "[**Exhibit/page number**]".

## **Tortoise Media**

5. I co-founded Tortoise Media in 2018, with the website going live in 2019. Tortoise Media's deliberate approach is to focus on 'slow news', rather than the fast-paced, headline-oriented content of some traditional media. Tortoise Media's journalism is geared towards producing well-researched and rounded content. We take the time to investigate and explain the news, rather than adding to the torrent of headlines and breaking news.
6. Tortoise produces podcasts and audio programmes, newsletters and opinion pieces and live events on specific topics of interest which can be attended in person or digitally.

## **The Conservative Party leadership contest**

7. As a result of the political turbulence experienced in the United Kingdom over the last few years, one issue that Tortoise Media has been focussing on is democracy in the United Kingdom.
8. As part of this, Tortoise Media hosted a Democracy in Britain summit in July of this year. Tortoise Media also conducted a poll of 10,000 UK residents to gather their views on British democracy and whether it was working for them. A majority of respondents felt that people like them had not much or no say in the way that Britain is run, and felt uneasy about the way democracy works in Britain.
9. When Boris Johnson resigned as Prime Minister on 7 July 2022, Tortoise Media's focus turned to the Conservative Party's leadership contest, by which the next Prime Minister would be chosen.
10. On 11 July 2022 Sir Graham Brady MP, the Chairman of the Conservative Party's 1922 Committee, announced the rules of the leadership contest, which had been agreed with the Board of the Conservative Party (the "**Rules**"). The Rules provided for a two-stage process. First, Conservative Party MPs would vote on the prospective candidates for leader until only two candidates remained. Second, the members of the Conservative Party would vote on which of those two remaining candidates they wished to become leader, with the result of that vote being announced on 5 September 2022. It was later announced by the Conservative Party that only those members who had been members for at least three months before the close of the ballot would be entitled to vote (i.e. those members who had joined the party on or before 3 June 2022).
11. At Tortoise Media, we were interested to learn that GCHQ had been in contact with the Conservative Party to ensure the safe conduct of the election. It prompted us to start thinking about who was voting in the election and how the contest was being run. Only limited information concerning the details of the Rules had been publicised. Information about the number of Conservative Party members was not available. It wasn't known how many of those members were foreign nationals, were not resident in the UK or were not of voting age. In short, it appeared to Tortoise Media that there were a number of unanswered questions about the process being applied at this stage of the leadership contest.
12. In July and early August, Tortoise Media reporters contacted the Conservative Party to ask them to answer questions on the points mentioned above about the make-up of the membership and

the integrity of the process. The Conservative Party press officers to whom our reporters spoke refused to answer our reporters' questions; on one occasion the press officer simply hung up. When one of our reporters attended Conservative Campaign Headquarters ("CCHQ") at 4 Matthew Parker Street in London to try and ask the questions in person, our reporter was turned away.

13. In the absence of information from the Conservative Party and in order to test the safeguards being applied to the members' vote in the leadership contest, in August 2022 Tortoise Media applied for four new memberships to the Conservative Party. The applications were for Archie Harding, a pet tortoise, two foreign nationals and Margaret Roberts, the maiden name of the late Prime Minister, Baroness Margaret Thatcher. Each of these applications was successful, with the membership fee being taken by the Conservative Party and the individuals being issued with membership numbers. Despite not having been Conservative Party members on 3 June 2022, each of the individuals were invited to the leadership contest hustings. The approach taken to these applications reinforced the concerns as to the robustness of the process being applied in the leadership contest.

### **Correspondence with the Conservative Party**

14. Faced with the lack of engagement from the Conservative Party in respect of our questions, on 17 August 2022 I wrote a letter to Darren Mott OBE, in his position as CEO of the Conservative Party, setting out nine requests for information regarding the Conservative Party membership and the members' vote in the leadership contest [JPH1/1-5]. The nine requests were for information in the following categories:

- "1. *Anonymised data you hold on the demographic of the Party's membership:*
  - *Particularly, we invite you to provide, where held, the number of Party members who:*
    - *Live abroad;*
    - *Are foreign nationals*
    - *Under voting age [sic]*
  - *We also ask you to provide data in respect of:*
    - *The age range of members;*
    - *The geographic distribution of members; and*
    - *The gender balance.*
2. *An explanation of whether, and if so how, the Party keeps its membership database up to date, ensuring that it sends ballot papers to correct addresses.*
3. *Anonymised data you hold on variations in member numbers over time, presented quarterly over the past 10 years. The public interest is particularly acute in respect of quarterly membership numbers for the past twelve months.*
4. *An explanation of the Party's system of compliance, including the following questions:*
  - *How does the Conservative Party check that new members are who they say they are?*

- *Who oversees compliance? i.e. who independently checks whether the Conservative Party is checking?*
  - 5. *What is the number of efforts at infiltration which the Party has thwarted, i.e. how many cases have you discovered of a fictional person, a dead person, a bot, a person of non-voting age or a member of another political party registering as Conservative member [sic]?*
  - 6. *An explanation of any third party compliance mechanisms in place to ensure that only those eligible to vote do so, that they vote only once each, and the election is not manipulated.*
  - 7. *An explanation of the circumstances by which GCHQ came to offer advice on the distribution of Conservative party ballots.*
  - 8. *An explanation of why non-UK citizens who join the party abroad are eligible to vote even if they pay no tax and spend no time in the UK.*
  - 9. *Confirmation of whether Party members under the national voting age can vote in the election of Party leader and Prime Minister.”*
15. Various requests set out above were for general, anonymised data. Tortoise Media was not requesting the names or personal data of any individual Conservative Party members.
  16. The letter set out that the request was being made both under Article 10 of the European Convention on Human Rights and common law. The letter requested a response within 7 days, i.e. by 24 August 2022, and was copied to Ben Elliott, the then Conservative Party Chairman, and Sir Graham Brady MP, the Chair of the 1922 Committee.
  17. On 18 August 2022 the Conservative Party sent a holding response to me, stating that it would provide a full response to my letter of 17 August [JPH1/6-8]. The Conservative Party did not request any extension of time to provide its response.
  18. On 25 August, a representative of CCHQ called Tortoise’s offices saying that they would be sending their full response to my letter of 17 August the following morning.
  19. Having received no response on the morning of 26 August 2022, my colleague James Wilson emailed [press@conservatives.com](mailto:press@conservatives.com) at around 1:45pm to ask when the Conservative Party would be sending the response. He received a response stating that it would be sent at 5:00pm that day.
  20. At 5:06pm on 26 August I received the Conservative Party’s response to my letter of 17 August 2022 by email [JPH1/14]. The letter was written by Mr Mott. The letter set out the Party’s refusal to provide the information requested, on the basis that the Conservative Party is an unincorporated association and does not consider itself to be carrying out a public function.
  21. In response, I wrote a further letter to the Conservative Party on 27 August [JPH1/15-16]. Given the Conservative Party’s refusal to provide the information requested, the letter set out that Tortoise would be sending a letter before action under the Pre-Action Protocol for Judicial Review (the “**Pre-Action Protocol**”). The letter stressed the urgency of the requests made in my letter of 17 August, and, in light of the impending end of the Conservative Party leadership contest, the letter stated as follows:

*“By this letter we put the Conservative Party on notice that our Pre-Action Protocol letter will ask for an urgent response, rather than one within the normal period of 14 days. A significantly abridged period of time is reasonable in the circumstances, given the date on which your election closes and the fact that the Conservative Party has been on notice as to our position since 17 August 2022.”*

22. On 30 August, being the next working day after the receipt of the Conservative Party’s response (given that 29 August was a bank holiday) I sent Tortoise Media’s letter before action under the Pre-Action Protocol to the Conservative Party. The letter set out Tortoise Media’s position that it was entitled to a judicial review of the Conservative Party’s decision, as provided on 26 August not to provide the information requested in our letter dated 17 August. The letter was again addressed to Mr Mott, and copied to Mr Elliott and Sir Graham Brady MP [JPH1/17-29].
23. The letter before action requested a response by 5:00pm on 31 August, being one working day prior to the ballot of the Conservative Party members concluding at 5:00pm on Friday, 2 September, and ahead of the winner of the contest being announced at 12:30pm on Monday, 5 September. I considered this compressed timetable for the provision of the Conservative Party’s response to the letter before action to be fair and reasonable given that the law on which the requests were made was set out in my letter of 17 August, which the Conservative Party had had for some 14 days, and I had flagged that we’d be seeking an urgent response in Tortoise Media’s letter of 27 August.

#### **Correspondence with the Conservative Party’s solicitors**

24. Shortly after 5:00pm on 31 August, I received a letter from Anthony Field, a solicitor at Rosenblatt solicitors, who had been instructed by the Conservative Party [JPH1/30]. That letter set out that the Conservative Party could “*see no reason for any urgency*” and that it would be providing its response to the letter before action within 14 days, i.e. by 13 September 2022, namely after the conclusion of the leadership contest.
25. I responded to Rosenblatt by letter on 2 September, setting out that the sooner the information requested was provided by the Conservative Party the greater the benefit to the public interest in being able to scrutinise the process of the leadership contest [JPH1/31-32].

#### **Result of the members’ vote in the leadership election**

26. On 5 September 2022 the Conservative Party announced that Liz Truss MP had won the leadership contest, receiving the votes of 81,326 members, with Rishi Sunak MP receiving the votes of 60,399 members. It was also announced that 142,379 of the eligible 172,347 members had voted.
27. Liz Truss MP flew to Balmoral the next day and was appointed Prime Minister at the invitation of Her late Majesty Queen Elizabeth II.

#### **Further correspondence with the Conservative Party’s solicitors**

28. Rosenblatt provided the Conservative Party’s response to our letter before action on 9 September [JPH1/33-35]. That letter set out the Conservative Party’s position that there was no basis for Tortoise Media to seek a judicial review of its decision, based on the Conservative

Party's view that it was not fulfilling a public function in conducting the leadership contest. Rosenblatt also asserted that there "*are obvious and suitable ways in which to obtain the information that you [Tortoise Media] are looking for without the need to waste the resources of the Court or our client.*" Rosenblatt's letter concluded by stating that the Conservative Party would seek indemnity costs against Tortoise Media if it continued to pursue its claim for judicial review.

29. Subsequent to the receipt of the Conservative Party's response to the letter before action, Tortoise Media instructed Lewis Silkin LLP as its solicitors in respect of the matter. On 21 September Lewis Silkin responded to Rosenblatt's letter of 9 September [JPH1/36-38]. Rosenblatt wrote to Lewis Silkin on 23 September confirming that the Conservative Party was the correct Defendant to the judicial review claim [JPH1/39].

#### **The relevance of the information sought**

30. The election of the leader of the Conservative Party was effectively the process by which the next Prime Minister of the United Kingdom was chosen. Indeed, Liz Truss MP, having won the leadership contest on 5 September 2022 subsequently became Prime Minister the following day.
31. The Prime Minister was chosen solely by members of the Conservative Party, over the preference of the majority of Conservative Party MPs in the first stage of the leadership contest and in a process that excluded more than 99 per cent of the voting public.
32. The information requested relates to the membership of the Conservative Party, and the process by which those members were balloted by the Conservative Party to choose the new leader of the party and thereby the Prime Minister.
33. Tortoise Media has no intention of challenging the result of the contest by which Liz Truss was elected as leader of the Conservative Party and thereby Prime Minister, but merely to ensure public scrutiny of the leadership contest so to enable the public to have confidence that fair and reasonable standards were adhered to and, in this way, to promote transparency and accountability of the process.
34. And it is not just Tortoise Media who are interested in the process. Lord Sumption wrote in The Sunday Times on 4 September questioning the adequacy of the leadership election process [JPH2/1-5]. Archie Norman, the chief executive of the Conservative Party from 1998-1999 who reformed the current membership rules of the party when William Hague was leader, has written querying whether different election rules should apply when the party is choosing a Prime Minister [JPH2/6-9]. Speaking in respect of elections generally, the Conservative Party's own Michael Gove MP has spoken of the need to "*support public confidence in the integrity of our electoral system*" and to "*ensure that our electoral law continues to be fair and transparent*" [JPH2/10-11].

## **The public interest in the information being made available to the public**

35. Because the Conservative Party has not indicated in any of its or its solicitor's correspondence that it disagrees with my assessment of the public interest, I am not addressing this in detail in this witness statement.
36. The Prime Minister has powers unconstrained by Parliament, including potentially instructing that military action be undertaken, appointing the Cabinet and vetting all significant appointments including to the House of Lords.
37. In circumstances where the Prime Minister has been chosen in a process which involves a tiny proportion of the overall electorate, being the Conservative Party membership, it is imperative that the election process is transparent so that the vast majority of the eligible voting population who have been excluded from the process can satisfy themselves that a fair, proper and legitimate process has been followed. Information relating to the make-up of the membership enables the public to understand the constituency from which the Prime Minister derives authority. The lack of information about the membership affected public and private polling during the course of the leadership contest, influencing perceptions of the race, political endorsements and policy statements.
38. The public interest in the information being provided to the public is weighty, whether or not the information reveals any matters which would or could be of concern to the public. If the information would address any public concerns, then that is important for the reasons set out above. If the information would highlight problems or issues with the election process, then the public interest is equally clear and significant.
39. As a press organisation, Tortoise Media is in a position to obtain and to provide information to the UK population so that they may satisfy themselves as to the process.
40. There are unanswered questions regarding whether the process was open to potential foreign interference, digital foul play or operational incompetence. The Government goes to great lengths to ensure the safety and integrity of a General Election; the information sought by Tortoise Media will help determine if the contest to select the Prime Minister was similarly robust. In the circumstances, and given that it is the only entity which can do so, it is imperative that the Conservative Party provides the requested information.
41. In doing so, the Conservative Party would be being transparent and enabling the public to satisfy themselves about the leadership contest, which would help maintain trust in the democratic process. The requested information is in the public interest in that it would help address:
  - (a) The demographic range of members who participated in the election process;
  - (b) Whether those voting were representative of the United Kingdom as a whole or concentrated in specific geographic areas;
  - (c) Whether all those voting were of voting age;
  - (d) What percentage of those voting were foreign nationals or not resident in the UK;

- (e) Whether there had been an increase (or decrease) in members in the period prior to the election process, and whether sufficient checks were carried out to verify the identity of any new members; and
- (f) Whether the process of balloting the members was robust and free from interference.

**Whether the information is publicly available**

42. As set out at paragraph 28 above, Rosenblatt inferred in its letter dated 9 September 2022 that the information sought is publicly available. I am not aware of any public sources which would provide the information requested in our letter dated 17 August 2022, and I note that Rosenblatt did not set out what public sources of information it was referring to. The only entity which will hold the requested information is the Conservative Party. This is the reason why Tortoise Media has been making requests of the Conservative Party for the information concerned since July of this year, and why it is pursuing this claim for judicial review.

**Statement of Truth**

I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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Signed JAMES PAUL HARDING

Date: 6 October 2022

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**Solicitors for the Claimant**