



**FINANCIAL
TIMES**



ADJUDICATION

by

GREG CALLUS

EDITORIAL COMPLAINTS COMMISSIONER

Financial Times Limited

INTRODUCTION

1. This is an Adjudication of a complaint by Ryan Butta (“the Complainant”) made to the Editor, Lionel Barber, on Sunday, 19 August 2018. It concerned a long-form article (“the Story”) by JP Rathbone (“the Author”) and Gideon Long (“the Second Author”) published on FT.com on Wednesday, 15 August 2018 under the headline “*Colombia and corruption: the problem of extreme legalism*”. The Article is available online at: <https://www.ft.com/content/ob833ef8-9c81-11e8-9702-5946bae86e6d>.
2. In summary, the Story concerns allegations of corruption, the risks of hyper-legalism, politicisation of a complex judicial process, and the interplay with a transitional justice scheme which aims to render justice to the atrocities of guerillas and soldiers within the confines of an unsettled peace process.
3. The Complainant alleges that the Story breaches Article 7(2) of the FT Editorial Code of Practice¹, which states that:

“Editorial employees and contributors must not plagiarise others’ work. That is, they must not knowingly pass-off others’ work as their own: if the essence or a substantial part of another’s work is knowingly included in material to be published by FT, sufficient acknowledgement of the original author and/or publisher should be provided.

(In assessing whether any plagiarism has occurred, regard may be had to all the circumstances, including a person’s state of mind; the extent of any apparent copying or derivation; and, the nature of any original, and subsequent, work.

It is recognised that the facts and subject matter of current or historical events may be public-domain details that are legitimately available to be reported by different authors and news organisations in their own right.

Principles of fairness and common sense should be applied.)”

¹ FT Editorial Code of Practice
https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/7c/85/7c858c2a-9489-4bc0-8681-9f2ea02ee534/2019_150119_editorial_code_of_practice_final.pdf

4. The basis of the complaint is that the Complainant had written a two-part blogpost, headed “*All Roads lead to Macondo: A Story of Infrastructure and Marmalade*”, which was published on his LinkedIn page on 11 and 18 April 2018, which later became a Kindle eBook headed “*On Corruption*” (leading him to take down the blogposts). The Complainant maintains there are key similarities between his work and the Story.
5. The Author tweeted the respective parts of the blogpost on 15 and 19 April 2018, and they were included in the “What We’re Reading” on FT.com on 20 April 2018: <https://www.ft.com/content/1218a61c-4458-11e8-803a-295c97e6fd0b> . The tweets led to the Author asking the Complainant to email him, and a conversation began.
6. I will deal in the substance of the complaint and the correspondence in due course, but in summary, the Story was reported primarily in the period May to July 2018, and then published on 15 August 2018. The Complainant complained directly to the Author on 17 August 2018, who ultimately (and correctly) referred the Complainant to the complaints procedure, who then wrote a detailed complaint to the Editor.
7. The complaint was handled on behalf of the Editor by the FT Deputy Editor, Roula Khalaf, who sent her reasoned decision with admirable alacrity to the Complainant on 1 September 2018. She did not find a breach, but did make changes: attribution for the Complainant (two mentions, and a hyperlink to his work), an amendment, and clarification of the changes.
8. The Complainant notes the thoroughness and seriousness with which the Deputy Editor had handled the complaint, but disputed the conclusion that there had not been a breach. He exercised his right to appeal to me on 2 September 2018.
9. Due to the Author being based overseas and my preference for an in-person interview, we did not get a chance to speak until 18 December 2018. It took me almost four months since that interview to produce this Adjudication (sent to the FT and the Complainant in draft), and another month has elapsed in final edits before publication, meaning it is now almost nine months since the original complaint. I apologise for this, and thank all concerned for their patience. In mitigation, this has been the most difficult Adjudication I have had to write, and all will appreciate my sincere concern to get this right to the best of my ability, even at the expense of time.

10. Article 7(2) was drafted in response to my *Labate Adjudication*², which was a complaint of plagiarism (which I did not uphold, because I was not satisfied the copying was intentional) by Dr Beatriz Labate against the Author.
11. One difficulty of adjudicating that complaint was that there was no express prohibition in the FT Editorial Code (or the IPSO Code annexed to the FT Editorial Code) on ‘plagiarism’. It is not acceptable to hold journalists to an uncertain standard of ethical behaviour. Given the seriousness of such allegations, I formulated a definition of plagiarism which I considered reflected the spirit of the Code, but found no breach on the facts. I then recommended that the Editor and the Committee that oversees my work should draft an express prohibition to codify what is meant by ‘plagiarism’.
12. In the *Tierno Adjudication* (a complaint from Paul Tierno about the copying of a *New York Times* obituary of Charles Manson) I first had cause to adjudicate on the proper construction of Article 7(2). On that occasion I did find a breach of Article 7(2)³.
13. This is therefore the third plagiarism complaint upon which I have had to adjudicate as Editorial Complaints Commissioner, but only the second under Article 7(2).

THE COMPLAINT

14. There are six aspects to the complaint, which encompass allegations both of borrowing particular words or phrases (plagiarism of expression) and a more general complaint about passing-off the reporting work of the Complainant in certain respects. These six aspects concern the following six passages (RB is the Complainant; FT is the Story):

² *Labate Adjudication*, 18 June 2015
https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/75/99/75999bef-ec3c-480a-a314-8f7939bd356a/2015-02-27_jp-rathbone-adjudication-edited.pdf

³ *Tierno Adjudication*, 15 February 2018
https://ft1105aboutft-live-14d4b9c72ce6450cb685-1b1cc38.aldryn-media.io/filer_public/b7/bc/b7bc0379-6acd-4fdd-b3e9-98ca06c585e2/tierno_adjudication_final.pdf

(1) The ‘nebulous’ charge in translation

RB *“...the Attorney General was forced to go with "undue interest in the awarding of a contract", a term that is as nebulous and unwieldy in the original Spanish as my English translation makes it sound.”* (Paragraph 17/50)

FT *“Caught in the crosshairs, meanwhile, is Mr Andrade who faces charges of “undue interest in the awarding of a contract” – a nebulous term which essentially means he was influenced by others who took bribes.”* (Para. 27/40)

(2) ‘Marmalade’ spread around

RB *“The ‘mermelada’, marmalade as these additional payments are known in the vernacular of the corrupt, would be spread around the participants of the fraud.”* (Paragraph 4/50)

FT *“Such illicit payments are colloquially known as “marmalade”, and are often spread around to fund political campaigns.”* (Paragraph 21/40)

(3) The scale of the 4G Programme

RB *“The ANI's flagship project was the National Highway Plan, known as the 4G program, that looked to inject approximately US\$ 20 billion into Colombia's road infrastructure.”* (Paragraph 8/50)

FT *“Until last year, Mr Andrade ran a \$20bn portfolio of projects at the National Infrastructure Agency (ANI)...”* (Paragraph 3/40)

(4) Number of PPP Contracts

RB *“In 2014 the ANI was recognised by P3 Bulletin as the American continent’s best Private Public Partnership agency...Under Andrade’s leadership, the ANI awarded more than 30 PPP contracts without a single complaint, lawsuit or investigation.”* (Paragraphs 9 & 10 / 50)

FT *“In 2014, P3 Bulletin, a specialist journal, voted ANI the best public-private partnership agency in the Americas. Under Mr Andrade, it awarded more than 30 contracts without any legal complaint.”* (Paragraph 22/40)

(5) ‘Impeccable’ Public Servant

RB *“President Santos has described Luis Fernando Andrade as an “impeccable” public servant.”* (Paragraph 10/50)

FT *“and was so well regarded that Juan Manuel Santos, the then-president, described him as an “impeccable” public servant.”* (Paragraph 3/40)

(6) Consistency of Views

- RB *“But in this case, Colombia’s Attorney General has stated that there is no evidence to suggest that Luis Fernando Andrade received any money. On this point the Attorney General’s view coincides with the statements of those that have admitted to paying bribes”* (Paragraph 16/50)
- FT *“The attorney-general has said there is no evidence of that, a view that gels with testimonies of those who have admitted to paying bribes.”* (Para. 6/40)

THE CORRESPONDENCE

15. It is unusual that, once again, the complaint of plagiarism comes from a person who was in touch with the Author prior to the piece being published, and was a source of information in the writing of the Story. Accordingly, both sides have provided me with the pre-publication correspondence, which sets out the relationship between the Complainant and the Author, and is relied upon by both parties.

16. It is already common ground that the Author had read and tweeted a link to the Complainant’s blogpost in April 2018. The Author then wrote a Direct Message on Twitter to the Complainant, whereby email addresses were exchanged. The Complainant wrote to the Author at his request on 16 April 2018 (*“Hi John Paul, Thanks for your message. Just touching base as requested Kind regards, Ryan”*), and the Author responded by email dated the same day to say:

“Hi Ryan

Thanks for writing. And for the piece that you wrote too. I know Luis, of course, and have been wanting to address the case. I really just wanted to touch base with you and establish contact -- for now and in future. The attorney general seems to me to be a walking conflict of interest. I am much looking forward to reading your Part II!

best, John Paul”

17. On Friday, 10 August 2018, a few days before publication, the Author wrote to say:

“Hi Ryan

Am hoping that I can quote you for longish Colombia law n order piece am running next week. This the quote, basically drawn from what you have already written publicly. Is the descriptive attribution correct, or best put?

Thanks John Paul”

"In 2014, P3 Bulletin, a specialist journal, voted the ANI the best public-private partnership agency in the Americas. Furthermore, under Mr Andrade's tenure the ANI awarded over 30 contracts without a single legal complaint, notes Ryan Butta, an Australian infrastructure expert who worked with Mr Andrade."

18. The Complainant responded the same day:

"Hi JP, happy with the quote. I wouldn't consider myself an infrastructure expert. I was working as a consultant for Australian mining companies in Colombia. My interactions with Luis were around the development of the Paz del Rio mining concessions which were linked to the development of rail and road infrastructure in Boyaca. Cheers, Ryan."

19. The next day, Saturday 11 August 2018, the Author wrote again to say:

"many thanks how can i best describe you? "an australian goverment official/financier/corporate investigator who knows Colombia well/worked with Mr Andrade." Or any better suggestion???"

20. The Complainant again responded the same day:

"Maybe...an Australian who has worked extensively in the Colombian infrastructure and mining sectors and had dealt with the ANI and Mr. Andrade

Or maybe... an Australian who has investigated and written about Mr Andrade's case.... Or an Australian who had experience dealing with Mr. Andrade and the ANI.. "

21. On Tuesday, 14 August 2018 (two days before publication), the Complainant wrote to the Author making a suggestion.

22. The Author responded the next day (the day immediately prior to publication):

"Sadly not. But hopefully that's ok. Story comes first thing tmrw online. It's wider than just ANI. I also dropped your named quote as couldn't accredit it in a right way - sorry."

23. The Complainant did not object to the dropping of the named quote, responding just two minutes later to say:

"No worries. I'll be interested to read it. Cheers, Ryan"

24. Almost 24 hours after publication, the Author sent the article to the Complainant, just with the message *“Hi Ryan, See attached, Thanks”*.

25. The Complainant’s response, the day of publication was to say *“JP I note that you didn’t drop the quote as you advertised but just dropped the attribution”*.

26. The Author responded a few hours later, to say *“Thanks but Yes, and No. I sourced the info from elsewhere, Santos interview. With you and him sourcing, I took it as public knowledge”*.

27. This led to a more serious conversation over the next two days, beginning with the Complainant on 17 August 2018:

“Hi John Paul, I have now had a chance to read through the full article. I am concerned and upset by the article's heavy borrowing from my original article. I would respectfully ask that you appropriately acknowledge and attribute my work in this article immediately.

Regards, Ryan”

28. The Author responded the same day:

“Dear Ryan

I'm truly sorry to hear of your upset, and, strange as it may seem to you, I find myself also quite upset as I fear there has been a misunderstanding. I wanted to cite you -- as you know. But when I asked how to describe you, you were vague and seemed so reluctant as to how I could concretely attribute your work/role, that I assumed (wrongly, clearly) that you would rather not be cited, and so dropped it. Oh dear! I'd very happily reinstate you as an Australian investor/investigator/journalist/government official/infrastructure expert/whatever-is-best-descriptor, as per the quote in our earlier emails

Like you, I'd very much like to sort this out soonest

The day is just starting in the Americas; is too late to call you in australia to talk this through? Best, John Paul”

29. Some 18 hours later, the Author wrote again, to make an offer of accreditation:

“Dear Ryan

In the interests of speed...How about this wording, or words to this effect -- with the attribution drawn from your Amazon page? We should also link to your article, if you could provide a live link.

"In 2014, P3 Bulletin, a specialist journal, voted the ANI the best public-private partnership agency in the Americas, notes Ryan Butta, a corporate intelligence investigator who has followed the case closely [link]. Furthermore, under Mr Andrade's tenure the ANI awarded over 30 contracts without a single legal complaint."

Please rest assured I always wanted to credit you, with due accreditation. This is an important story -- at the FT, my team and I have been writing about the topic since at least 2010. I have also known Andrade for the best of a decade, he first spelled out his distressing situation to me in December, and I have been digging into it ever since -- including asking President Santos when I last interviewed him in May.

Please let me know about the above wording, and I will gladly sort out soonest with the page editor. Hope to hear from you soon. Kind regards, John Paul”

30. The Complainant responded *“Good morning John Paul, Thank you for your prompt reply and the seriousness with which you have taken my request. However, I am not merely referring to the attribution of the quote. I am concerned about what I see as various parts of the article that are lifted from my article”* The Complainant then listed five examples (which are those matters subject to this complaint, save for Number (3): the Scale of the 4G Programme.

31. The Author's response said as follows:

“Dear Ryan Thank you for your latest email. I see your cause for upset. But I am somewhat confused. In your last example below, I always sought and still seek to credit you. But you have never supplied the accreditation needed to do so; and even after I told you that I couldn't quote you without it, you did not seem to mind.

Nebulous is indeed an unfortunate echo; I do grant that. But the other examples are public knowledge, common parlance, or reported fact that my colleague and I drew from interviews with Andrade and others. I trust you agree that the FT came to this story long before your article came out, and that it also explores broader and quite different aspects of Colombian legalism. Still, I understand where you are coming from, and I apologise for any upset.

What do you propose we do next? I suggested the possibility below of accreditation and link, which still stands. But if that way forward is not acceptable to you, there is a process to follow, of escalation to page editors and beyond. I can point the way forward for you on that. Please let me know. I'd also be happy to talk any of this through over the phone during the coming weekend. You first described to me your interest in the case as "my only intention is to raise awareness". In that same founding generosity of spirit, it would be nice to think we can sort this out.

Best regards, John-Paul"

32. The Complainant was not minded to allow this to rest, and responded the same day:

"Hi John-Paul, thank you for your email. Unfortunately I cannot agree with a number of your points.

1. But you have never supplied the accreditation needed to do so; and even after I told you that I couldn't quote you without it, you did not seem to mind. - *You seem to be blaming me for your failure to attribute correctly. I supplied you with three options for accreditation on August 11. You never responded to those. You advised me that you were dropping my quote on 15 August only after I wrote to you offering more help. Also important, as I have noted in a previous email, is that in the email of 15 August you advised you were dropping the 'named' quote not my attribution which is an important difference and explained why I didn't mind. In the end you didn't drop the quote at all, you just didn't attribute it.*

2. Nebulous is indeed an unfortunate echo; I do grant that. - *It is more than an unfortunate echo; it is a direct appropriation. Caracol Noticias have since picked up the FT story and are attributing this phrase to yourself and Gideon.*

3. But the other examples are public knowledge, common parlance, or reported fact - I would dispute this. There is evidence that the FT article uses parts of my article that could only have come from my work.

4. I trust you agree that the FT came to this story long before your article came out - I fail to see the relevance of this point.

I agree that the article is much broader than the ANI angle but parts that deal with LFA and the ANI I feel have been directly taken from my work.

You are correct in reminding me of my intentions in writing my original article but that cannot excuse what I see as a breach of ethics. While I appreciate your offer to accredit the quote now and the offer of a phone call, as we seem to disagree on the extent of the borrowing, which i feel goes beyond the quote, I feel that it would be best if I could take my complaint higher up as you suggest. If my complaint is found to have no merit then I will be happy to apologise.

As someone who is just starting to publish material on Latin American and has genuinely admired and read the FT for many, many years this is not an option I take lightly but I feel it is the correct course.

Regards, Ryan”

33. The Author – quite rightly, and (in my view) at an appropriate time in the conversation – had acknowledged that this should be elevated to editors, and now provided the specific mechanism for doing so: “Ryan, If you still wish to make a complaint, the procedure is laid out here: <https://aboutus.ft.com/en-gb/ft-editorial-code/> “

THE AUTHOR’S POSITION

34. The Author has been reporting on Colombia in general for 30 years, but specifically as Latin American Editor of the FT since around 2010. He knows Mr Andrade reasonably well, and interviewed him twice for the Story, each occasion for about 2-3 hours. He first learnt of the charges against Andrade in October/November 2017, and met him for the first interview at Andrade’s home in Bogota (him being under house arrest) on 1 November 2017, and again on 14 May 2018.

35. The specific commission of this piece is recorded in an email of 6 March 2018 from the Author to the Second Author saying:

“Yes -- I want to get thier view on Humberto Martinez, the attorney general. In a previous job, he was lawyer for Sarmiento, Colombia's richest man, who managed/contracted an Odebrecht project that has since been the main (?) source of bribery payments. (The 4G system of infrastructure set up by Luis Andrade never used any Odebrecht works -- although he has now been accused of corruption.) Humberto Martinez, despite his past, is now overseeing the Odebrecht corruption prosecution situation in Colombia. This is surely a conflict of interest. He has also gone after Luis Andrade, despite the obvious conflict of interest. ... I think that it is situations like this, in general, that truly explain why Colombians are so disaffected...its all about corruption, or perceptions of corruption, and the erosion of the rule of law and not about peace process etc etc”

36. The Author also emailed the Second Author the Complainant’s blogpost on 20 April, and the exchange concluded with a discussion about Andrade, and the proposal that his case would be an interesting hook for a ‘rule of law’ article for the ‘Big Page’. This was detailed in an email to Geoff Dyer, who commissioned the story, on 2 May 2018, with a view to publication around the time of the second round of the Colombian elections scheduled for 17 June 2018.

37. The Author has revealed to me the notes and drafts of the story, the first major draft being in an email sent to the Second Author on 20 July 2018 (“the First Draft”).

38. The Author has explained to me – both in writing and in-person – he felt he had not passed of the Complainant’s work, and pointed to his efforts to bring that blogpost to public attention in April 2018. He considered that the factual commonalities between the Story and the Complainant’s work were public domain facts which were not proprietary, and which were not directly copied. The Author had independently double-sourced all of those facts (the Complainant’s work being one such source).

39. While the Author said he had intended to – even tried to – give the Complainant credit by way of a direct quote which would be attributed to him, there had been a complication as to how the Complainant would be referred to. This in turn led to concerns and suspicions on the part of the Author as to the Complainant’s connection

to Andrade, and the extent to which public reliance upon him could detrimentally affect the credibility of the Story. He felt (at the time) that the Complainant was being somewhat cryptic about his relationship with Andrade, and in the somewhat murky world of Colombia politics, was eager to avoid putting public store by the comments of a person about whom he knew so little.

40. It is important that I record the Author's insistence that he takes full responsibility for the complaint, and that the Second Author is blameless. Accordingly, this Adjudication does not concern the conduct of the Second Author, whom I decided I did not even need to interview. I have explained in previous Adjudications that formally speaking I am judging whether the *Financial Times* (rather than any particular journalist) is in breach of its Code, which is why I have no disciplinary function, but the clarity with which the Author has emphasised that he considers himself solely responsible for any breach by the FT is to his credit.

FRAMEWORK

41. As to the proper construction of Article 7(2) of the FT Editorial Code of Practice, I incorporate by reference the discussion in the *Tierno Adjudication* at paragraphs [12] to [47] inclusive. In summary, using the 'balance of probabilities' standard of proof (sometimes called the 'preponderance of the evidence' standard) I must assess:

a. The *actus reus*:

- i. Whether there has been the inclusion in an FT article of a '**substantial part**' or '**essence**' of another person's work (i.e. a person not by-lined); and
- ii. Whether that person has received '**sufficient acknowledgment**', in that failure to acknowledge would give rise to an objective tendency (in the eyes of FT readers) to **pass-off** the included 'substantial part' or 'essence' as the sole and exclusive work of the by-lined authors;

b. The *mens rea*:

- i. Whether the author(s) or editor(s) **knowingly included** a 'substantial part' or 'essence' of another's work in the FT article; and
- ii. Whether the failure to give 'sufficient acknowledgment' was done '**knowingly**' on the part of an author or editor.

42. I explained in the *Tierno Adjudication* at [29]-[35] my reasons for holding that ‘substantial’ in this context meant ‘more than trivial’ or ‘not insubstantial’. As in that case, here there was no attribution to the Complainant in the Story at all, so I am not required to construe what ‘sufficient acknowledgment’ means, or determine how much acknowledgment would be ‘sufficient’.
43. I accept entirely that this was a properly reported piece, with double-sourcing of the facts contained therein. I do not consider that what has happened in this Story is the mere re-writing of another’s work to avoid the pain and efforts of reporting the facts independently. The Author did substantial independent work on the Story, including in-country interviews with key figures. The Second Author clearly also did significant original reporting. There is no suggestion of fabricated research in this case, and the idea of Andrade’s case as a hook for the wider piece clearly pre-dated April 2018.
44. It is clear from both the *Labate Adjudication* and the *Tierno Adjudication* that original reporting and forms of expression (including translations) are capable of being a ‘substantial part’ or ‘essence’ of another’s work capable of being passed-off. However, mere facts **may be** public-domain details legitimately able to be re-used by other authors without infringing Article 7(2): see the penultimate sentence which says:
- “It is recognised that the facts and subject matter of current or historical events may be public-domain details that are legitimately available to be reported by different authors and news organisations in their own right.”*
45. However, as I have previously observed, the craft of journalism is selecting and curating factual information into a narrative. Re-writing another’s original work so that none of the expression was exactly the same, but that the fact-pattern and structure were identical, could well be a clear-cut case of plagiarism just as much as the borrowing of a particular turn of phrase might be.
46. In this sense, the Author’s frequent defence (as I shall set out below) of having additionally sourced all of the common facts in the six elements of the complaint is not a complete answer. It is – in my view - highly significant as to **when** in the sequence the Complainant’s blogpost was read *vis a vis* the additional reporting of those same facts. I accept that the initial interview and reporting of this Story began in November 2017, and there was a pitch ready by 6 March 2018, including mention of Andrade’s case. This took place before the Complainant’s blogpost was read and shared. However, the specific inception as a Big Page piece arose around 2 May 2018 when the Author emailed Geoff Dyer. By this point in time, and the subsequent green light, the

Complainant's work was something that both authors had read. The Author's evidence was that the bulk of the reporting (on the Author's account, seven of the nine most noteworthy interviews for which dates were provided, including the second interview with Andrade) were in the period from May 2018 onwards, which therefore came after both authors had read the Complainant's article (no later than 20 April 2018).

47. The Complainant asserts that his work was the only long-form piece on the Andrade case in English (although the Author identifies that a 141-page book published in April 2018 by Alberto Donadio called *Nobelbrecht: Santos and the Odebrecht bribes* has been translated into English). Given the enthusiastic praise given by both the Author and the Second Author for the Complainant's work in April, it would be odd if it were not relied upon at least as corroboration of factual information.
48. The problem is that the Complainant's blogpost was there at the formal inception of the Story in May 2018. While I discuss below that the Author explains how the common facts were double-sourced, that does not answer what I call the 'roadmap' problem, which is that the effort to stand-up something you already know is significantly less than the effort of discovering something in the first place.
49. The existence of a prior article with a collection of reported public-domain facts allows for a significant short-cut in a different journalist producing a later article on a similar topic: double-sourcing where another article provided the first source for *all* facts would be little more than reverse-engineering⁴. For this reason, while double-sourcing is important for the purposes of ensuring accuracy, it may not be a defence to plagiarism if the first source of all the information, and its structure, is the other article.
50. In fairness to the Author, when we spoke at length in December 2018, he accepted this point philosophically, although was not able to attest on that occasion – in each case of common facts, independently-sourced by him – which source was first in time. The Author has given me, where possible, his independent sourcing of particular facts which he says render the facts in question 'public domain' information.

⁴ See in this context the case of the outing of the pseudonymous blogger 'NightJack', as recorded in the judgments of Eady J in *Author of a Blog v Times Newspapers Ltd* [2009] EWHC 1358 9QB); [2009] EMLR 22, and the denouement in the Divisional Court decision (Lord Thomas CJ & Wilkie J) in *Brett v Solicitors' Regulation Authority* [2014] EWHC 2974 (Admin); [2015] PNLR 2. The journalist had originally identified the blogger by hacking his email, but as this could not be admitted to the Court, was instructed to see if he could get to the same outcome using only public information. He was able to do so, but the exercise was artificial as he already knew the person for whom he was looking (i.e. he had corroboration and a headstart as to what information he should be seeking).

APPLICATION TO THE FACTS

51. I shall apply the Framework discussed above to the facts of this case, having regard to the six areas of commonality identified by the Complainant. I shall deal with each aspect separately in respect of the *actus reus*, then take them together to consider whether they are a ‘substantial part’ or the ‘essence’, and then deal with the *mens rea* element separately at the end.

(1) The ‘nebulous’ charge in translation

52. The Author in his email to the Complainant described the use of the word ‘nebulous’ in the FT Story as an “unfortunate echo” of the Complainant’s wording. His notes of the 14 May 2018 interview with Andrade record that the charge is “recondite/vague” (which is similar) and he suggests that ‘nebulous’ stems from Andrade’s own description in the November 2017 interview.

53. The Author acknowledges that the translation “undue interest in the awarding of a contract” is the Complainant’s, describing it as “*the most elegant of the many translations that I saw*”, but says the use of ‘awarding’ is not unique to the Complainant. He does not understand why he put it in inverted commas (as did the Complainant).

54. I am entirely satisfied that this sentence was derived from the Complainant’s blogpost, having compared that blogpost to the First Draft by the Author.

a. The Complainant’s version says: “*Lacking a smoking gun, or a hand wedged firmly in a cookie jar, tthe Attorney General was forced to go with "undue interest in the awarding of a contract", a term that is as nebulous and unwieldy in the original Spanish as my English translation makes it sound.*”

b. The Author’s First Draft of 20 July 2018 says: “*Meanwhile, however, Mr Andrade faces charges of “undue interest in the awarding of a contract” – a term, given the lack of any evidence that his hand was in Odebrecht’s cookie jar, that is a nebulous in English as it is in Spanish.*”

55. As well as the identical translation in inverted commas, and the use of ‘nebulous’, both of which make it into the final version of the Story, there are two other commonalities:

- a. the recognition that the charge is vague in **both English and Spanish**; and
 - b. the metaphor (removed before publication) of “**hand in the cookie jar**” (meaning cast-iron evidence of guilt) being conspicuously absent in this case.
56. Whatever standard of proof to be applied, I am quite sure that this specific passage in the Story (polished from its First Draft) was originally derived directly from the Complainant’s blogpost, including original translation and metaphor.

(2) ‘Marmalade’ spread around

57. The Complainant relies on the fact that his was the first instance of using the term ‘marmalade’ in relation to the Andrade story, in English or in Spanish. The Author rebuts this by saying it is a generalised term for corruption, in common usage in Latin America, especially in Colombia, noting that leading weekly magazine *Semana* has included it in 676 articles. He has notes of his November 2017 interview with Andrade that include references to this word being deployed.

58. However, the Complainant insists that not only has the use of the term been copied from him, but that the Author has copied over an *error* of usage:

“The term “marmalade”, in this context, was first used by Minister Juan Carlos Echeverry, who said, “it is necessary to distribute the marmalade over all of the toast”. By marmalade he meant public works spending and was referring to the fact that public works spending favoured certain Colombian departments and regions and was not evenly distributed. The original phrase did not carry any negative connotations; it was merely a clever metaphor. However, it was soon adopted to characterise dubious spending on public works.

My original piece was incorrect in referring to the “additional payments” on contracts being known as marmalade. The whole of the public work spend is considered marmalade, not the additions that are funnelled into kickbacks for corrupt politicians. This error was replicated in the FT article with the addition that the marmalade “[is] often spread around to fund political campaigns.” This embellishment is false, as there is nothing in the term or the use of the term locally that refers to how the “marmalade” is spent. Again, I believe this extra description has been added to differentiate it from my own phrase and hide the derivation but it merely hides one error with another.”

59. The Complainant's blogpost was phrased as follows:

“Under the INCO regime, it was common for infrastructure project budgets to be inflated to two or three times the original amount. Public works budgeted at US\$100 million would eventually cost US\$300 million due to the contractor asking for, and receiving, "additions", requests for more money to finish the works. The ‘marmelada’, marmalade as these additional payments are known in the vernacular of the corrupt, would be spread around the participants of the fraud.”

60. Again, looking to the Author's First Draft of 20 July 2018, it says:

“The predecessor to the infrastructure agency that then-president Juan Manuel Santos tasked Mr Andrade to set up in 2012 was called INCO, and was so notoriously corrupt that the cost of projects were often inflated to twice or three times the original amount. It was also highly political. The “marmalade”, as these extra payments are called, were spread around participants of the fraud, who often used them to fund their political campaigns.”

61. The final published version of the FT Story says:

“Cost overruns on Inco projects were often huge, with the extra cash allegedly shared between corrupt beneficiaries. Such illicit payments are colloquially known as “marmalade”, and are often spread around to fund political campaigns.”

62. The final version of the Story shares with the Complainant's blogpost only the term “marmalade” and “spread around”, and the description that only the extra (illicit) payments are ‘marmalade’. But the First Draft also shares, in the same immediately preceding sentence, that INCO projects are “*inflated to two/twice or three times the original amount*” and says that the spreading-around is amongst “*participants of the fraud*”. These additional similarities mean I am again quite certain that this aspect of commonality was originally sourced from the Complainant's work.

(3) The scale of the 4G Programme

63. The Story and the Complainant's blogpost both put this figure at \$20 billion. The Complainant says that media reports before his blogpost ranged between \$18bn and \$70bn, with most suggesting a figure of \$27bn (as did the Complainant's early draft).

64. The Author's First Draft of 20 July 2018 has the figure at \$30bn, and it remained as such in the second and third drafts of 8 and 9 August 2018 respectively. It was amended pursuant to an exchange between the Author and a spokesperson for Andrade via email on 10 August 2018, where the figure was put, and the reply came back *"It is around US\$20 billion. The peso went down from 2,000 to 3,000 to the dollar"*. It was amended to \$20 billion by the time the Story was published.
65. The Complainant says *"I had my number corrected to \$20 billion by someone with intimate knowledge of the contracts and projects"* and suggests that the Author has simply lifted his error. I disagree – this does appear to be a classic case of common source of information, and I do not think it proven this was derived from the Complainant's April blogpost, given that the change was made to the Story so late.

(4) Number of PPP Contracts

66. While both the Complainant and Author refer to PPP 'contracts', it is important to appreciate that the technical terms in Spanish which are translated here are 'adjudicacion' and 'procesos de licitacion', which broadly correlate to what would be understood in English to be public sector procurement exercises or tendering processes. The Complainant has translated this as 'contracts'. His blogpost reads:

"The ANI's flagship project was the National Highway Plan, known as the 4G program, that looked to inject approximately US\$20 billion into Colombia's road infrastructure. The 4G program was of a size and ambition never before seen in Colombia. Using a Private Public Partnership (PPP) model based on the Australian experience, the ANI under Andrade aimed to award 43 projects spanning 8,000 kilometres of road and 1,500 kilometres of four-lane highways in addition to the expansion of ports and railways.

The sheer scale of the program, and the budgets involved, immediately placed the ANI "bajo la lupa", under the magnifying glass, as they say in Colombia. But those looking were only able to see an Agency, under Andrade's leadership, forging ahead. In 2014 the ANI was recognised by P3 Bulletin as the American continent's best Private Public Partnership agency.

President Santos has described Luis Fernando Andrade as an "impeccable" public servant. Colombia's leading business executives and lawyers have

described Andrade as diligent, proper and as someone whose behaviour was unimpeachable. Under Andrade's leadership, the ANI awarded more than 30 PPP contracts without a single complaint, lawsuit or investigation. Andrade seemed to be the embodiment of Colombia's successful emergence from its own past."

67. The Complainant says that all other reports except his blogpost had the number of PPP 'tenders without complaint' at exactly 30, and that only he had the number as being "more than 30" after his draft was corrected by a well-placed source (which is supported by the different drafts of his piece he has provided me). Therefore, he infers that the Author has copied his "more than 30" in the FT Story from the blogpost.

68. The Author's written response to me says that there is an article of 3 March 2017 in *El Herald*⁵ which says (in the Author's translation) "*They way in which he has conducted his work has been transparent, honest, impeccable. Doctor Andrade, you have my complete backing ... The president highlighted that under Andrade more than 30 road projects had come to fruition*".

69. However, the full quote in *El Herald* is a little different:

"Posteriormente, en Arjona, donde inauguró la calzada que une a ese municipio con Turbaco y Cartagena, el presidente destacó que en la gestión de Andrade se han concretado más de 30 vías 4G y otros 60 proyectos de Invías."

which appears to translate (in Google) as meaning:

"Later, in Arjona, where he inaugurated the road that joins the municipality with Turbaco and Cartagena, the president highlighted that in the management of Andrade more than 30 4G routes and 60 other Invías projects have been completed"

70. The full quote in *El Herald* suggests that the President was referring to more than 90 projects which had been completed, including more than 30 **routes** (*vías*) which fall under the 4G programme. But this doesn't tell us how many contracts there were, let alone how many tender processes.

⁵ Available online (in Spanish) at: <https://www.elheraldo.co/bolivar/santos-dice-que-con-la-ani-desaparecio-la-cueva-de-ladrones-que-era-el-inco-333545>

71. In any event, the Author's First Draft conveys this passage with an attribution to the Complainant:

*“Money began to flow in. Roads and bridges began to be built. In 2014, P3 Bulletin, a specialist infrastructure journal, voted the ANI as the American continent's best private public partnership agency. Under Mr Andrade, the ANI awarded over 30 contracts, without a single legal complaint, **notes Ryan Butta**, an Australian government official and infrastructure expert who worked with Mr Andrade.”* (emphasis added)

72. It is therefore not in doubt that this passage was directly derived from the Complainant's blogpost, even if the reference to the P3 Bulletin vote of confidence. Indeed, this was conveyed to the Complainant by the Author in the emails of 10 August in which the Author was offering to quote the Complainant directly. As the Complainant pointed out, the accreditation was dropped but not the passage. The fact that Andrade had boasted of the P3 Bulletin award, or the lack of any challenges to his PPP contracts, in the interview of November 2017 is beside the point. This was a passage that even the Author at one stage thought required accreditation.

(5) 'Impeccable' Public Servant

73. In comments which were reported in Colombian weekly magazine *Semana* on 3 August 2017⁶, former President Santos said of both Carlos Correa and Andrade that they were “funcionarios impecables”. The Complainant translated this (he says in error) into the singular to describe Andrade as an ““impeccable” public servant” (the adjective being in inverted commas in both his blogpost and the FT Story).

74. He says that the FT has not only copied his error (of putting an adjective that in direct speech was in the plural, in the singular), but has also used his translation of ‘funcionario’ as ‘public servant’, when he says that the Author has previously used ‘civil servant’ in 3 other FT articles, but never used ‘public servant’ before.

⁶ Available online (in Spanish) at: <https://www.semana.com/nacion/articulo/juan-manuel-santos-respalda-a-carlos-correa-y-luis-fernando-andrade/534738>

75. The Author's response is to note that he has only used 'civil servant' in 2 previous articles (one of the three is not by him), and both were references to Jonathan Powell, who was a Civil Servant in the specific British sense, whereas he knows Latin American officials who call themselves 'public servants'.
76. The Author has drawn my attention to comments by Santos dated 2 March 2017 on the ANI website which said "*La forma como se ejecuta el trabajo ha sido transparente, honesta, **impecable**. Doctor Andrade, usted tiene mi absoluto respaldo*"⁷ (which appear to be the same comments as reported in *El Herald* in paragraph 68 above).
77. The Author relies on these comments, although it is clear in his own translation of them that this singular use of 'impeccable' is divorced from any use of the term 'funcionario': it describes Andrade's manner of working (as a reflection on his character) rather than him directly. However, the Author also notes a different Santos quote further down the *Semana* article of 3 August 2017 where 'impeccable' is again used in the singular about Andrade alone, to rebut the Complainant's charge.
78. I consider it more likely than not (i.e. proven on the balance of probabilities) that this phraseology is derived from the Complainant's blogpost. This is for two main reasons:
- a. The Complainant's blogpost conjoined "impeccable" with "public servant" in the translation of "funcionarios impecables" (whilst rendering it in the singular), which was the precise quote of Santos in the August, and this conjunction is carried over into the final version of the FT Story. For the Author to have used a separate, singular use of 'impeccable' (not related to the Complainant's translation) would require the Author to have independently chosen 'public servant' as the translation of 'funcionario'.
 - b. The Author's draft of 10 August 2018 (which the Author emailed to himself on 13 August 2018, suggesting that he was the author of that particular draft) includes the sentence "*It is not just some of the country's biggest businesses that have become entangled in legality, politics and finance*". Yet the Author makes an edit which survives into the final published version of the Story, saying "*It is not just big business and **civil servants** that have become*

⁷ Available online (in Spanish) at: <https://www.ani.gov.co/presidente-de-la-republica-respalda-labor-de-luis-fernando-andrade-y-de-la-ani-en-la-gestion-de-la>] (see also these same comments in the *El Herald* article at Footnote 5)

entangled in such legal and political controversies but also senior judges and even former president Uribe.” (emphasis added).

79. In light of my clear conclusions in respect of the first two elements of the complaint, I am satisfied on the balance of probabilities (the standard of proof that I apply) that this passage too is directly derived from the Complainant’s work, and represents his translation of Santos quote concerning ‘funcionarios impecables’.

(6) Consistency of Views

80. The phrasing concerns two points: (1) that the Attorney General has said there is no evidence of Andrade receiving bribes; and (2) that this position is supported by those who “*have admitted to paying bribes*”. These final five words are identical as between the final published version of the Story and the Complainant’s blogpost, which also contrasts the Attorney-General’s “view” which is said to coincide/gel with the guilty individuals’ testimonies/statements.

81. I also note that in the blogpost and the First Draft, this passage comes immediately after a paragraph which concludes an exposition of the facts by reference to the impact of the corruption scandal in both (specifically) Brazil and Peru (the First Draft concentrating on the alleged involvement of presidents; the blogpost additionally mentioning Mexico and Panama).

82. Taken on its own, I would probably have found that these were facts at large in the world, available for re-use by any journalist writing this story. However, in light of the instances above where I have found direct derivation, on the balance of probabilities (which is the test I must apply) I consider that this passage too was directly derived.

‘Substantial Part’ or ‘Essence’

83. I have found that 5 out of the 6 elements of the complaint were directly derived from the Complainant’s blogpost, which was read and distributed by the Author prior to the bulk of the reporting of the Story. Taken together, the choices of phrase in translation (one described as ‘elegant’ by the Author) combined with the original reporting, and the Complainant’s well-sourced information about specific figures, I do consider that a ‘substantial part’ of his work was included in the FT Story. There is therefore no need for me to consider whether the ‘essence’ of the blogpost and the Story overlapped.

‘Sufficient Acknowledgment’ & ‘Passing-Off’

84. There was no acknowledgment of the Complainant at all in the Story, and so it follows that there has not been ‘sufficient acknowledgment’. This element of Article 7(2) is accordingly satisfied.

85. When the matter was before the FT’s Deputy Editor, Roula Khalaf, the complaint under Article 7(2) was rejected, but the following remedies offered:

“Having regard to all the facts, we do not regard this as plagiarism. But we believe we should amend the online article as follows in the interest of full transparency.

(1) Include the attribution that Mr Rathbone had originally proposed on the ANI award of over 30 contracts...

(2) Include a second attribution to take into account the common use of ‘nebulous’ and ‘undue interest’...

(3) Amend the paragraph of the description of Mr Andrade by Mr Juan Manuel Santos to the following which is a direct quote from Santos [...] This will make clear the description drew on independent sourcing, as Mr Rathbone has informed us.

We would also include a hyperlink to your blog and a clarification at the end of the article pointing to the fact that changes were made and an attribution added.”

86. It is only fair to note that the Complainant was very gracious as to this handling of his complaint, saying *“Thank you very much for taking the time to thoroughly review my complaint. I note the seriousness with which you have handled my complaint and your offer to amend the article. However, I cannot agree with some of the conclusions you have reached”*.

87. It will be apparent that I, too, am disagreeing with some of the Deputy Editor’s conclusions on Article 7(2), but I have had significantly more time to consider this matter, and have had the benefit of in-person interviews with the Author, and all of the earlier drafts and other materials I needed to reach my conclusions. I make no criticism whatsoever of the Deputy Editor’s handling of this complaint: I have included this passage simply to underline that a very experienced and senior editor, looking at this Story afresh, came to a conclusion as to the appropriate level of attribution for the Complainant. Her conclusion on the necessary degree of attribution is, in my opinion, not only manifestly correct, but indicative of what would be ‘sufficient’ in Article 7(2).

88. In the counterfactual world, where the First Draft (including the attribution of the Complainant was included only in respect of Number (4): the PPP Contracts) had been published would have raised more difficult questions on attribution. The Author told me that the original plan was to include that (either as an attributed passage, or as a direct quote) with a link to the Complainant’s blogpost which he had already tweeted and shared on FT.com in April 2018. However, by the time of publication of the Story, the blogpost was no longer online (the Complainant was publishing his eBook).

89. In circumstances where I consider just Numbers (1), (2), (5) and (6) alone would have constituted a ‘substantial part’ of the Complainant’s original work, I am not convinced that the mere fact of attribution of Number (4) (perhaps as a direct quote) would have been sufficient. It might have been sufficient if the link to the blogpost had been included, which would have covered all aspects of direct derivation. I highlight this as I consider that the ‘credit’ owed to those who have contributed a ‘substantial part’ of their work is credit for that work: a direct quote (even relating to part of it) is a different obligation of attribution, and I’m not sure the latter can be substituted for the former. I am fortified in this conclusion by the decision of the Deputy Editor at first instance.

‘Knowingly’

90. The agreed facts are as follows:

- a. The Author offered the Complainant attribution of Number (4) in pre-publication emails of 10 August 2018 (see paragraphs 17-18 above);
- b. There was correspondence as to how the Complainant could be described (see paragraphs 18-23 above).
- c. The passage was kept, but the reference to the Complainant cut.
- d. When the Complainant first complained, the Author offered to amend the Story to re-include the credit for the same passage (paragraphs 25-32 above).

91. In the *Tierno Adjudication*, I discussed the ‘Knowingly’ requirement of Article 7(2) in detail at [38]-[47]. I concluded that passage by harking back to the *Labate Adjudication* (which concerned the Author, although – contrary to the Complainant’s case, I have made this decision without reference to any similarities of alleged conduct between the *Labate Adjudication* and this Adjudication):

- “45. *So if the actus reus is made out, but the journalist genuinely thought that the attribution was included (but in fact it was cut, whether by the journalist or by sub-editors, by mistake) such that he believed no readers would think the work original, the mens rea will not be made out. Similarly, if the journalist genuinely does not know or realise that some of the material included is another’s work (e.g. because of a mix-up of typed notes), the mens rea will not be made out.*
46. *But if a journalist:*
- a. knows or intends to use a substantial part of another’s work; and*
 - b. knows or intends that it should be included in material to be published by the FT; and*
 - c. knows or intends that there is no (sufficient) attribution, and that the impression thereby created in the mind of readers will be that the content is original;*
- then the mens rea is made out. Whether the journalist also knows or intends or believes that Article 7(2) is breached, or knows or believes that what has been done is plagiarism, is simply not part of the relevant mens rea test.*
47. *This distinction proved critical in the Labate Adjudication. Through a forensic analysis of the 14 pre-publication drafts of the story, including their meta-data, it was established beyond reasonable doubt that the paragraphs in question had been derived from the complainant’s academic article, which there was evidence had been read by the journalist prior to writing. However, those 14 drafts were written and re-written over the course of many months, starting some considerable time after the academic article had been read by the journalist. The paragraphs had been substantially changed (by changes to the words, and by splitting them and moving them around the draft article, then re-worded, then the facts corrected) between first copying and final submission of the article. The paragraphs were primarily “boilerplate factual narrative” and so – when combined with other factors – it was established on the evidence that at the time of submitting the article for publication (and indeed until the second interview with me, bringing the evidence of derivation to his attention) the journalist had genuinely not realised that those paragraphs had begun life many months earlier as the work of another.”*

92. In the present case, applying paragraph 46 of the *Tierno Adjudication*:

- a. **Did the Author know or intend to use a substantial part of the Complainant's work?** Given that it was read when the Story was still inchoate, and that it was lauded and shared by the authors, and that it was the only English-language long-form piece on Andrade's case, and the translations of key phrases were deliberately adopted, I consider the answer to this is 'Yes';
- b. **Did the Author know or intend to include such material in the FT Story?** Given the intended attribution of Number (4), and the admitted use of the more 'elegant' translation of the charge, and the other aspects that I have found were directly derived from the blogpost, the answer is again 'Yes';
- c. **Did the Author know or intend that there was no (sufficient) attribution?** The attribution had been specifically offered by email as late as 10 August 2018, but had been deliberately cut by 15 August 2018. The only possible answer to this is 'Yes'.

93. Unlike in the *Labate Adjudication*, where the time period involved 14 drafts over many months such that I was satisfied that the Author did not (by the time of publication) honestly recognise text which was derived from Dr Labate's academic article, this article was published only weeks after the First Draft was written, and the Author was corresponding with the Complainant about attribution in respect of one element of his blogpost only days before publication. At the time of submitting his final draft to editors, there is no doubt in my mind that he was still aware of his reliance on the Complainant's work in drafting the Story.

94. I have carefully contemplated the Author's explanation for the cutting of the attribution, namely that he was no longer sure that the Complainant was being entirely open about his relationship to the Andrade camp, and was concerned about the ramifications of placing such public trust in a source that he could not be sure would not have political connections that could be exploited to undermine the credibility of the piece. I am not explaining this concern as well as the Author explained it to me, which he did with characteristic passion. I am happy to acknowledge that I do not have anything like his experience of overseas reporting, or the (political) pressures that produces, and I have tried to give due deference to such editorial decision-making.

95. However, I place less store by the Author's explanation than I otherwise might:

- a. First, I see nothing objectively obscurantist about any of the Complainant's correspondence: in fact, quite the opposite. He does not claim any sort of neutrality. He is utterly clear about his support for Andrade's case. I do not read the emails as him avoiding any particular form of reference for his attribution: indeed, on 11 August 2018, he makes 3 sensible suggestions.
- b. Second, there is no contemporaneous paper trail of these reasons for dropping the Complainant's attribution. There is mention, prior to publication but when the final draft had already been submitted, that the Complainant's quote had been dropped over a difficulty in describing him (which he does not seem to mind at all): see paragraphs 22-23 above. Only after publication does the Complainant raise that the passages which resemble his blogpost remain, and that only the attribution had been dropped. At that stage, the Author's response is to say the information constitutes public domain facts which he sourced elsewhere (see paragraphs 22-27 above). As I have explained above, at paragraphs 45-50 above, that this is no defence to a breach of Article 7(2).
- c. Third, I am concerned that the Author's emails give a slightly different account of motivation. The email at paragraph 28 above suggests to the Complainant that the Author thought he [the Complainant] *did not want to be cited*. The email at paragraph 30 above suggests that it was the Complainant's fault for failing to indicate how he should be described, even though he had given 3 workable options in his email set out at paragraph 20 above. This shifting case on the reasons for dropping the attribution concerns me: at best, the Author is being somewhat disingenuous with the Complainant in these emails, which might be explicable to avoid giving offence, but equally could suggest that the explanation now provided is (even if honestly held) a *post hoc* rationalisation.

96. I would not rule out that there might be some case where there was deliberate withholding of credit for another's work, and that this could be justified because of some higher journalistic principle: for example a late-discovered risk of breaching source confidentiality, or to avoid risk to life or limb of the person who would otherwise be credited. In extreme cases, all the elements of Article 7(2) could be made out, but I would not find a breach because of some extraordinary circumstances justifying it.

97. However, if such extraordinary circumstances obtained to justify the **deliberate** withholding or deletion of credit that was owing to a third party, I would expect this to be agreed with other editors, or at the very least that there would be a documentary record of those reasons prior to publication that explain why it has been necessary to breach Article 7(2).
98. In the present case, there is a complete absence of corroborating evidence of the concerns the Author has raised. But even if such evidence existed, I am not satisfied that the reasons given would have constituted an exceptional case where I might feel able to excuse the otherwise very clear case of knowingly withholding attribution that was owing, and expressly recognised by the Author to be owed.
99. The Complainant draws parallels between this case and the *Labate Adjudication*, specifically the apologetic failure of finding a way to attribute in correspondence, followed by a change of position to make the lack of attribution the fault of the person seeking it: see the *Labate Adjudication* at [5], [7], [9].
100. I have not, however, needed to rely on any such similarity of conduct in coming to my decision: the answers to the factual questions were too clear on the basis of:
- a. the documentary evidence in this case, especially the First Draft of 20 July 2018, and its greater similarities to the Complainant's blogpost than the final published FT Story, and
 - b. the Author's offer of attribution on 10 August 2018, and the absence of any such attribution in the final published Story.

CONCLUSION

101. It follows that I consider that a breach of Article 7(2) of the FT Editorial Code of Practice has been established to the requisite standard of proof, being the balance of probabilities, in respect of 5 out of the 6 elements of the complaint. Had I applied a higher standard of proof, of "beyond reasonable doubt", I still would have found a breach of Article 7(2) in respect of 3 out of the 6 elements of the complaint.

102. The Remedy that I direct is that which was proposed by the Deputy Editor, plus a link to this Adjudication to be included at the foot of the Article, the accompanying text to which should read in the following (or similar) terms: *“This article resulted in a complaint to the Editorial Complaints Commission, who found a breach of Article 7(2). The Adjudication can be read here”*.

GREG CALLUS
Editorial Complaints Commissioner
Financial Times
14 May 2019