Neutral Citation Number: [2025] EWHC 412 (KB)

Case Nos. KB-2024-001676 & KB-2024-001681

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST

Royal Courts of Justice, Strand, London WC2A 2LL

Date: 26 February 2025

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

- - - - - - - - - - - - - - - - - - - -

Between :

DALE VINCE OBE

Claimant

- and -

PAUL STAINES

Defendant

DALE VINCE OBE

Claimant

- and -

RICHARD TICE MP

Defendant

William Bennett KC and **Ben Hamer** (instructed by **Brett Wilson LLP**) for **Dale Vince OBE**
Ben Gallop (instructed by **RPC LLP**) for the **Paul Staines**
Richard Munden (instructed by **Wedlake Bell LLP**) for **Richard Tice MP**

Hearing date: 11 November 2024

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Approved Judgment

This judgment was handed down remotely at 10:00 on 26 February 2025
by circulation to the parties and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. Dale Vince OBE is a well-known and successful businessman. He is the founder and director of the energy company, Ecotricity Group Limited, an environmental campaigner and a major donor to the Labour Party. By two separate libel actions, Mr Vince sues:

    1.1 Paul Staines, the editor and founder of the news website Guido Fawkes that is published at https://order-order.com; and

    1.2 Richard Tice MP, the Deputy Leader of Reform UK and, since 4 July 2024, the Member of Parliament for Boston & Skegness.

BACKGROUND

2. On 7 October 2023, Hamas terrorists entered Israel from Gaza. They committed murder, rape and kidnapping on a massive scale. Some 1,200 people were murdered and 240 others taken prisoner. Two days later, Mr Vince was interviewed by Stig Abell on Times Radio. During the interview, Mr Vince was asked about these events.

3. In March 2024, there was a furore about remarks made by the prominent Conservative donor, Frank Hester, about the Rt. Hon Diane Abbott MP. Responding to that story, on 13 and 14 March 2024, Guido Fawkes published two articles in respect of Mr Vince's views about Hamas. In the first article, Guido Fawkes published a 16-second extract from the longer Times Radio interview. On 13 March, Mr Tice retweeted Guido Fawkes' tweet containing a link to the first article.

4. By these claims, Mr Vince seeks damages and other remedies for libel against the defendants. He argues that the publications asserted that he supported or had endorsed the terrorist acts of Hamas and that he was an antisemite who supported antisemitism and the racist murder of Jews. The defendants take issue with the pleaded meanings and assert that the statements complained of were, or contained, honest statements of opinion.

5. On 23 October 2024, Master Dagnall ordered the trial of the following preliminary issues in each case:

    5.1 The natural and ordinary, and the innuendo, meanings of the words complained of.

    5.2 Whether the statements complained of were, or contained, expressions of opinion.

    5.3 Insofar as the words complained of were, or contained, an expression of opinion, whether the basis of the opinion was indicated in general or specific terms.

    5.4 Whether the imputations found were defamatory of Mr Vince at common law.

6. The master also ordered the determination of two further issues in Vince v. Tice:

    6.1 Whether it is appropriate to decide as a preliminary issue whether there were two separate forms of publication.

    6.2 If so, whether there were two separate forms of publication.

7. I heard both matters together on 11 November 2024. In accordance with the guidance in Tinkler v. Ferguson [2019] EWCA Civ 819, I read the articles and tweets before considering

the parties' contentions and submissions in this case so as to capture my initial reactions to each of these publications.

LEGAL PRINCIPLES

THE PROPER APPROACH TO IDENTIFYING THE NATURAL AND ORDINARY MEANING

8. In Koutsogiannis v. Random House Group Ltd [2019] EWHC 48 (QB), [2020] 4 W.L.R. 25, Nicklin J helpfully summarised the well-established principles applicable when determining the natural and ordinary meaning in a passage that was subsequently approved by the Court of Appeal in Millett v. Corbyn [2021] EWCA Civ 567, [2021] E.M.LR, 19. Nicklin J observed, at [11]-[12]:

> "11. The court's task is to determine the single natural and ordinary meaning of the words complained of, which is the meaning that the hypothetical reasonable reader would understand the words bear. It is well recognised that there is an artificiality in this process because individual readers may understand words in different ways: Slim v. Daily Telegraph Ltd [1968] 2 Q.B. 157.
>
> 12. The following key principles can be distilled from the authorities …
>
> i) The governing principle is reasonableness.
>
> ii) The intention of the publisher is irrelevant.
>
> iii) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.
>
> iv) Over-elaborate analysis should be avoided and the court should certainly not take a too literal approach to the task.
>
> v) Consequently, a judge providing written reasons for conclusions on meaning should not fall into the trap of conducting too detailed an analysis of the various passages relied on by the respective parties.
>
> vi) Any meaning that emerges as the produce of some strained, or forced, or utterly unreasonable interpretation should be rejected.
>
> vii) It follows that it is not enough to say that by some person or another the words might be understood in a defamatory sense.
>
> viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (e.g. bane and antidote cases).
>
> ix) In order to determine the natural and ordinary meaning of the statement of which the claimant complains, it is necessary to take into account the context in which it appeared and the mode of publication.

x) No evidence, beyond the publication complained of, is admissible in determining the natural and ordinary meaning.

xi) The hypothetical reader is taken to be representative of those who would read the publication in question. The court can take judicial notice of facts which are common knowledge, but should beware of reliance on impressionistic assessments of the characteristics of a publication's readership.

xii) Judges should have regard to the impression the article has made upon them themselves in considering what impact it would have made on the hypothetical reasonable reader.

xiii) In determining the single meaning, the court is free to choose the correct meaning; it is not bound by the meanings advanced by the parties (save that it cannot find a meaning that is more injurious than the claimant's pleaded meaning)."

9. In Charleston v. News Group Newspapers Ltd [1995] 2 A.C. 65, the House of Lords considered the position where a publisher uses a defamatory headline. Lord Nicholls observed, at page 74:

> "Those who print defamatory headlines are playing with fire. The ordinary reader might not be expected to notice curative words tucked away further down in the article."

10. Lord Bridge added, at page 72:

> "Whether the text of a newspaper article will, in any particular case, be sufficient to neutralise the defamatory implication of a prominent headline will sometimes be a nicely balanced question for the jury to decide and will depend not only on the nature of the libel which the headline conveys and the language of the text which is relied on to neutralise it but also on the manner in which the whole of the relevant material is set out and presented."

The political context

11. In Ware v. French [2021] EWHC 384 (QB), Saini J observed, at [9], that "political discourse is often passionate and is not as precise as, say, financial journalism".

12. In Barron v. Collins [2015] EWHC 1125 (QB), Warby J, as he then was, considered a speech at a party-political conference. It was, he observed at [28], a "rallying call to the party faithful" who will have "made allowance for the fact that political expression will often include opinion, passion, exaggeration, and even inaccuracy of expression". That said, he continued at [53]-[54]:

> "53. As I have noted, the law relating to meaning, and to the distinction between fact and comment, makes some allowance for the need to give free rein to political speech. But the nature of the principles means that there are limits on the protection that can be given to political speech by those means.
>
> 54. The law must accommodate trenchant expression on political issues, but it would be wrong to achieve this by distorting the ordinary meaning of words, or treating as opinion what the ordinary person would understand as an allegation of fact. To do so would unduly restrict the rights of those targeted by defamatory political speech. The solution must in my judgment lie in resort,

> where applicable, to the defences of truth and honest opinion or in a suitably tailored application of the law protecting statements, whether of fact or opinion, on matters of public interest, for which Parliament has provided a statutory defence under s.4 of the Defamation Act 2013."

13. Millett v. Corbyn concerned comments by the then Leader of the Opposition, the Rt. Hon. Jeremy Corbyn MP, on the BBC's flagship Sunday morning politics programme, the Andrew Marr show. Warby LJ said, at [19]:

> "Nor can the political role and status of Mr Corbyn, or the political nature of the programme and its subject-matter, alter the approach required as a matter of law, still less dictate the answer to the question of whether the statement was one of fact or opinion. These are all important features of the context to which the court should be alive when deciding how Mr Corbyn's words would have struck the ordinary viewer. But they are no more than that."

Common knowledge

14. While evidence is not admissible in determining the natural and ordinary meaning, the context of any publication includes matters of common knowledge: see Koutsogiannis, at [15(xi)]. Thus, facts that are so well known that, for practical purposes, everyone knows them can properly be taken into account: Riley v. Murray [2020] EWHC 977 (QB), [2020] E.M.L.R. 20, at [16(i)]. In Fox v. Boulter [2013] EWHC 1435 (QB), Bean J, as he then was, distinguished between "matters of universal notoriety" which he identified as matters which any intelligent viewer or reader might be expected to know, and matters which required "assiduous reading and a good memory so as to recall the facts of a story dating back several weeks or months".

INNUENDO MEANINGS

15. While the natural and ordinary meaning of a statement is to be determined without evidence, if it is established that readers or viewers were aware of some extraneous facts and such knowledge would affect the way in which an ordinary reasonable person would understand the statement, then there will also be an innuendo meaning.

THE DEFENCE OF HONEST OPINION

16. Section 3 of the Act provides the defence of honest opinion:

    16.1 The first condition is that the defendant must show that the statement complained of was a statement of opinion: s.3(2).

    16.2 The second condition is that the defendant must show that the statement complained of "indicated, whether in general or specific terms, the basis of the opinion": s.3(3).

    16.3 The third condition is that the defendant must show that an honest person could have held the opinion on the basis of: (a) "any fact which existed at the time the statement complained of was published"; or (b) anything asserted to be a fact in an earlier privileged statement: s.3(4).

    16.4 The burden of proof then passes to the claimant who may yet defeat the defence by showing that the defendant did not hold the opinion: s.3(5).

17. As is conventional, the preliminary issues ordered in this case include the first and second conditions only under s.3.

The first condition: Fact or opinion?

18. While it is convenient to set out the principles separately, it is important to guard against compartmentalising the assessment of meaning and the question of whether the statement complained of was a statement of fact or opinion: British Chiropractic Association v. Singh [2010] EWCA Civ 350, [2011] 1 W.L.R. 133. The key point is that the court must consider whether the statement complained of, and not the imputation that it conveys, is one of fact or opinion.

19. Again, useful guidance was given by Nicklin J in Koutsogiannis, at [16]:

> "i) The statement must be recognisable as comment, as distinct from an imputation of fact.
>
> ii) Opinion is something which is or can reasonably be inferred to be deduction, inference, conclusion, criticism, remark, observation, etc.
>
> iii) The ultimate question is how the words would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.
>
> iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i.e. the statement is a bare comment.
>
> v) Whether an allegation that someone has acted 'dishonestly' or 'criminally' is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact."

20. Although not a defamation case, Bowen LJ's observations in Smith v. Land & House Property Corporation (1884) 28 Ch. D. 7, at 15, are pertinent to bare comment cases:

> "It is material to observe that it is often fallaciously assumed that a statement of opinion cannot involve the statement of a fact. In a case where the facts are equally well known to both parties, what one of them says to the other is frequently nothing but an expression of opinion. The statement of such opinion is in a sense a statement of a fact, about the condition of the man's own mind, but only of an irrelevant fact, for it is of no consequence what the opinion is. But if the facts are not equally known to both sides, then a statement of opinion by the one who knows the facts best involves very often a statement of a material fact, for he impliedly states that he knows facts which justify his opinion."

21. While a decision under the old law, Fletcher-Moulton LJ said in Hunt v. The Star Newspaper Co. Ltd [1908] 2 K.B. 309, at 319:

> "The law as to fair comment, so far as is material to the present case, stands as follows: In the first place, comment in order to be justifiable as fair comment must appear as comment and must not be so mixed up with the facts that the reader cannot distinguish between what is report and what is comment… The justice of this rule is obvious. If the facts are stated separately and the comment appears as an inference drawn from those facts, any injustice that it might do will be to some extent negatived by the reader seeing the grounds upon which the unfavourable inference is based. But if fact and comment be intermingled so that it is not reasonably clear what portion purports to be inference, he will naturally suppose that the injurious statements are

> based on adequate grounds known to the writer though not necessarily set out by him …
>
> Any matter, therefore, which does not indicate with a reasonable clearness that it purports to be comment, and not statement of fact, cannot be protected by the plea of fair comment. In the next place, in order to give room for the plea of fair comment the facts must be truly stated. If the facts upon which the comment purports to be made do not exist the foundation of the plea fails."

22. Warby LJ put the matter pithily in Millett v. Corbyn, at [24]:

> "In practice, when someone uses a descriptive word without giving any detail of what he is describing, that will tend to come across as an allegation of fact. That is what the cases on 'bare comment' say."

The second condition: Indication of the basis

23. The leading case before the 2013 Act was Joseph v. Spiller [2010] UKSC 53, [2011] 1 A.C. Lord Phillips explained the requirement:

> "102. It is a requirement of the defence that it should be based on facts that are true. This requirement is better enforced if the comment has to identify, at least in general terms, the matters on which it is based. The same is true of the requirement that the defendant's comment should be honestly founded on facts that are true.
>
> 103. More fundamentally, even if it is not practicable to require that those reading criticism should be able to evaluate the criticism, it may be thought desirable that the commentator should be required to identify at least the general nature of the facts that have led him to make the criticism. If he states that a barrister is 'a disgrace to his profession' he should make it clear whether this is because he does not deal honestly with the court, or does not read his papers thoroughly, or refuses to accept legally aided work, or is constantly late for court, or wears dirty collars and bands.
>
> 104. Such considerations are, I believe, what Mr Caldecott had in mind when submitting that a defendant's comments must have identified the subject matter of his criticism if he is to be able to advance a defence of fair comment. If so, it is a submission that I would endorse. I do not consider that Lord Nicholls was correct to require that the comment must identify the matters on which it is based with sufficient particularity to enable the reader to judge for himself whether it was well founded. The comment must, however, identify at least in general terms what it is that has led the commentator to make the comment, so that the reader can understand what the comment is about and the commentator can, if challenged, explain by giving particulars of the subject matter of his comment why he expressed the views that he did. A fair balance must be struck between allowing a critic the freedom to express himself as he will and requiring him to identify to his readers why it is that he is making the criticism."

24. Gatley on Libel & Slander (13th Ed.) describes Joseph v. Spiller as an important elucidation of the law and a vital precursor to the statutory reform. Importantly, as demonstrated above, the case relaxed the previous understanding that the reader had to be put in a position where he could judge for himself how far the comment was well founded.

25. In Riley v. Murray [2022] EWCA Civ 1146, [2023] E.M.L.R 3, Warby LJ explained the second condition at [44]:

> "The only question raised by s.3(3) of the 2013 Act is whether the statement complained of indicated the basis of the opinion which it contained. That is a question of analysis or assessment which turns exclusively on the intrinsic qualities of the statement complained of. If the statement did not indicate the basis for the opinion the analysis stops there and the defence fails. If it did, the condition is met and the analysis moves on to the next stage. The extraneous question of whether the matters indicated as the basis for the opinion are true or false is immaterial at this stage of the analysis. As Nicklin J held at [92], 'The issue (at this stage) is not whether the factual premise is right, but whether it was sufficiently indicated.'"

DEFAMATORY AT COMMON LAW

26. In Millett v. Corbyn, Warby LJ said, at [9]:

> "At common law, a meaning is defamatory and therefore actionable if it satisfies two requirements. The first, known as 'the consensus requirement', is that the meaning must be one that 'tends to lower the claimant in the estimation of right-thinking people generally'. The judge has to determine 'whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society': Monroe v. Hopkins [2017] EWHC 433 (QB), [2017] 4 W.L.R. 68, at [51]. The second requirement is known as the 'threshold of seriousness'. To be defamatory, the imputation must be one that would tend to have a 'substantially adverse effect' on the way that people would treat the claimant: Thornton v. Telegraph Media Group Ltd [2010] EWHC 1414 (QB), [2011] 1 W.L.R. 1985 [98] (Tugendhat J)."

AGREED EVIDENCE AND COMMON KNOWLEDGE IN THESE CASES

27. In his case, Mr Staines admitted the following facts set out in Mr Vince's Notice to Admit Facts:

    27.1 A substantial number of readers would have known that members of Hamas carried out mass murder, kidnapping and rape on 7 October 2023.

    27.2 A substantial number of readers would have believed that Hamas was proscribed/outlawed within the UK as a terrorist organisation.

28. Such admission was qualified in that there was no admission that these were matters of common or general knowledge which could be attributed to the ordinary reasonable reader for the purpose of determining the natural and ordinary meaning.

29. In the case of Vince v. Tice, the parties' agreement to the following facts was recorded in a recital to the master's order:

    29.1 A substantial proportion of readers of Mr Tice's tweet would have known that Hamas is proscribed/outlawed within the UK as a terrorist organisation.

    29.2 The hypothetical reasonable reader of Mr Tice's tweet, reasonably acquainted with Mr Vince, would understand it to refer to him.

30. Sadly, there are many terrorist outrages around the world that quickly fade from the collective consciousness. Even though on foreign soil, the events of 7 October 2023 were,

however, in that rare category of events that were so brutal and committed on such a scale that they attracted wall-to-wall media coverage. Even as the months passed, the events of 7 October 2023 and the identity of Hamas as a terrorist organisation were kept in the news by Israel's invasion of Gaza and the continued detention of a substantial number of hostages. The 7 October attack achieved what Bean J referred to as "universal notoriety". Accordingly, at the time of the publications in this case, I find that the fact that Hamas is a terrorist organisation and that it was responsible for the murder, rape and kidnap of Israeli citizens in October 2023 were matters of common knowledge that can properly be taken into account when identifying the natural and ordinary meaning of these publications.

VINCE v. STAINES

THE FIRST GUIDO FAWKES ARTICLE

31. At 13:47 on 13 March 2024, the following article was published on Guido Fawkes' website:

> "**MULTI-MILLION POUND DONOR TO LABOUR SAYS HAMAS ARE 'FREEDOM FIGHTERS'**
>
> Labour have spent the week saying the Tories should pay back the £10 million they received from someone who they say said something racist. Similarly long time Labour Party donor Dale Vince has given Starmer's party at least £2.5 million to date, including a £1 million cheque late last year. He's recently launched an initiative calling for the youth of Britain to vote Labour. Well and truly in the fold of Labour's funding class . . .
>
> If Labour thinks donor's cash donations should be returned when they say extreme things, what do they make of Vince's views? Late last year on Times Radio, after saying that Hamas should be able to defend itself, Vince stated that 'one man's terrorist is another man's freedom fighter'. When challenged on the fact that saying Hamas are freedom fighters isn't the official Labour position, Vince said: 'This is my view, this is how I feel'. When can we expect Starmer to announce that the £2.5 million will be returned?"

32. The article included a picture of Mr Vince with the tagline "This is my view". The picture was a still from the Times Radio interview. Readers were invited to watch an embedded 16-second clip from the interview. While not relevant to the determination of the preliminary issues before me, I should record that it is Mr Vince's case that the clip distorted the views that he had expressed across the whole of the Times Radio interview and misled readers. Equally, I should add that Mr Staines does not accept that the clip distorted or misrepresented the full interview.

33. In any event, the clip contained the following exchanges between Mr Abell and Mr Vince from the full interview:

"*Stig Abell:*	I'm not saying that. I'm saying: is a terrorist attack from Hamas, Palestine defending itself?
Dale Vince:	I think one man's freedom fighter is another man's terrorist, right. That's how it works.
Stig Abell:	So that is not the Labour position interestingly. They are not saying that; they are saying the opposite of that.
Dale Vince:	No, I know, yeah I understand.
Stig Abell:	But you are happy to, this is pragmatism.
Dale Vince:	But this is my view.

Stig Abell: This is your view.

Dale Vince: This is how I feel."

THE SECOND GUIDO FAWKES ARTICLE

34. At 10:37 on 14 March 2024, Guido Fawkes published a second article about Mr Vince:

> "**JEWISH MP BLASTS LABOUR FOR TAKING MILLIONS FROM 'HAMAS FREEDOM FIGHTERS' DONOR**
>
> **LABOUR SLAMMED FOR HAMAS 'FREEDOM FIGHTERS' DONOR**
>
> Labour have gone down the suspect donor rabbit hole this week. By claiming that money should be returned from a donor who said something naughty they've opened themselves up to obvious criticism. Longtime Labour Party donor Dale Vince has given the party at least £2.5 million to date and said in October of Hamas: 'one man's terrorist is another's freedom fighter… this is my view'. No apology from Vince, no statement of criticism from Labour…
>
> Prominent Jewish MP Andrew Percy tells Guido:
>
> > 'Nobody should take a penny or have any involvement with anyone who describes the Hamas terrorists who raped Israeli women, butchered innocent children, and murdered civilians in their own homes in the most brutal way as 'freedom fighters'. This is a group who want to murder not just all Jews in Israel but all Jews in this country too. Surely the Labour Party won't want to take a penny from anyone who thinks genocidal terrorist murderers and rapists are freedom fighters.'
>
> Labour say the comments aren't comparable to Hester's. Why not?"

MEANING

Argument

35. Mr Vince pleads the following natural and ordinary, alternatively innuendo, meanings:

35.1 The first article:

> "[Dale Vince] had supported the terrorist acts of Hamas which included the mass murder, kidnapping and rape which took place on 7 October, by stating that its members are freedom fighters."

35.2 The second article:

> "[Dale Vince] had supported the terrorist acts of Hamas, a proscribed/ outlawed antisemitic and genocidal terrorist organisation, which murders Jews because they are Jews, including the brutal murders of civilians and innocent children and acts of rape, by stating that its members are freedom fighters."

36. In advancing the pleaded meaning of the first article, William Bennett KC, who appears with Ben Hamer for Mr Vince, suggests that the court could stop at "on 7 October" but that, if it continued, the meaning should also encompass the additional unpleaded words "and also by saying that Hamas has a right to defend itself". Mr Bennett argues that the statement that Mr Vince is reported to have said that Hamas should be able to defend itself, was a clear indicator that it was being alleged that he was "out and out" supporting Hamas.

37. Mr Bennett argues that the reasonable reader would have known that Hamas is a terrorist group and that its members had carried out mass murder, kidnapping and rape on 7 October 2023. He therefore invites me to take judicial notice of such facts in determining the natural and ordinary meaning of the articles. Alternatively, he advances an innuendo meaning in reliance on the formal admissions made in response to the Notice to Admit Facts.

38. Mr Bennett observes that the two headlines to the second article bestowed the epithet "Hamas freedom fighters' donor" on Mr Vince. He submits that there was no ambiguity: a serious allegation was made against Mr Vince reinforced by the quote from the MP. Effectively it was being said that Mr Vince was "completely beyond the pale" and that no one should have anything to do with him.

39. Mr Staines contends for the following alternative meanings:

    39.1 The first article:

    > "Donations from Dale Vince to Labour are tainted and should be returned because during an interview on Times Radio he said of Hamas 'one man's terrorist is another man's freedom fighter'."

    39.2 The second article:

    > "Donations from Dale Vince to Labour are tainted and should be returned because during an interview on Times Radio he said of Hamas 'one man's terrorist is another man's freedom fighter'."

40. Ben Gallop, who appears for Mr Staines, urges me to focus on the words actually used and not the gloss put upon them. He argues that the admitted facts make no real difference and that what the reasonable reader needs to know about Hamas, namely that it is responsible for a terrorist attack, is already supplied by the embedded video clip. He cautions that allowing Mr Vince to fortify meaning by relying on additional facts is to succumb to the over-analytical approach of a lawyer who is avid for scandal.

41. Mr Gallop complains that, in respect of the first article, Mr Bennett invites the court to find an unpleaded and more injurious meaning. He asserts that the pleaded meaning is not one of general support for Hamas but of support for its actions by calling them freedom fighters. Accordingly, he submits that it is not open to Mr Bennett now to amend his client's pleaded meaning.

42. Further, Mr Gallop warns of the danger of seeking implied or inferred expressions of opinion. In that context, he relies on the observations of Nicklin J in Tinkler v. Ferguson, at [37].

43. It is common ground that the reasonable reader of the first article would have watched the 16-second embedded video clip. Mr Bennett argues that the video clip neither detracts from nor qualifies the article. He submits that it will be obvious to the reader that the video is a small clip from a longer interview and that Mr Vince must have made comments about his support for Hamas and its right to defend itself elsewhere in the interview.

44. Mr Gallop argues that the reasonable reader, having watched the clip, would know that Mr Vince did not literally say that Hamas were freedom fighters. He submits that Charleston

explains the need to look at the whole of a publication. When one does so, he insists that the reasonable reader would understand Mr Vince's actual words were those in the video clip and would not conclude that he must have said something else to justify the statements complained of elsewhere in the interview.

Analysis: the first article

45. In respect of the first article, I reject both parties' meanings:

45.1 Mr Bennett argues for a meaning that expressly imputes Mr Vince's support for the terrorist acts of Hamas and in particular the atrocity on 7 October 2023. There was nothing in the first article to support such a meaning, although the article alleged that Mr Vince had asserted the right of Hamas, as opposed to the Palestinian people, to defend itself.

45.2 Mr Gallop's argument brushes over the assertion made in the headline and alluded to later in the text that Mr Vince had said that it was his view that Hamas are freedom fighters. While the clip does not record Mr Vince making that point, the reasonable reader would conclude that the article taken in the round was asserting that Mr Vince believed and had said that Hamas are freedom fighters.

45.3 Further, Mr Gallop's argument ignores the clear statement that Mr Vince had said that Hamas should be able to defend itself.

46. Mr Gallop is right to assert the general principle that the court cannot find a more injurious meaning than that pleaded: see Koutsogiannis, at 12(xiii) and, in particular, the judgment of Diplock LJ in Slim, at page 175 D-G. That said, more recent authority indicates that the rule may not be absolute:

46.1 In Hewson v. Times Newspapers Ltd [2019] EWHC 1000 (QB), Nicklin J observed, at [24], that the origin and justification for the rule in Slim was to prevent ambush at trial where the issue of meaning was to be tried by a jury together with any defences. There was, he observed, less justification for the strictness of the rule in circumstances where the issue of meaning is to be tried as a preliminary issue.

46.2 In Allen v. Times Newspapers Ltd [2019] EWHC 1235 (QB), Warby J agreed that in the modern era the court should not be "absolutely barred" from finding a meaning that is more serious than the claimant's pleaded case. Against that, he added, at [50]:

> "On the other hand, caution is required. Civil litigation is an adversarial process, governed by rules which need to be adhered to if procedural fairness is to be achieved. Statements of case play a vital role in achieving that aim, and ensuring a level playing field."

46.3 Further, Warby J drew attention to the authorities that show that, as a rule, parties should not be able to advance at trial a case which significantly departs from the pleaded case, and which that party has had ample opportunity to formulate beforehand. He added, at [51]:

> "In my view, this principle should apply equally to issues about the meaning of allegedly defamatory words. The meanings complained of by a libel claimant have a profound impact on the way a defendant conducts the case. Trials on meaning are carefully prepared, on the basis of the meanings advanced in the formal statements of case and/or in some other written form. Any modification of substance to a claimant's case ought to be formulated in writing, and made the subject of a formal application in good time, well in advance of the trial skeleton arguments. It is not good enough to do this 'on the hoof' at the hearing, only reducing the point to writing after the event, without any formal application for permission to amend."

47. Here, Mr Bennett's amendment to his client's pleaded meaning was made "on the hoof" in oral submissions and was not reduced to writing. That said, I have rejected Mr Vince's case that the article alleged his support for the 7 October atrocity and I have declined to make a finding of some broader support for Hamas. I have carefully considered whether the rule in Slim prevents my making a finding as to meaning that includes the unpleaded assertion that Hamas should be able to defend itself. Properly understood, the statement that Hamas should be able to defend itself was always a ground for asserting that Mr Vince supported Hamas and its actions. When, however, the claimant's goalposts are placed in such an extreme position as to assert a meaning that the article was alleging support for the October atrocity, I have no doubt that it is a less injurious (and therefore available) meaning to find that the article meant, among other matters, that Mr Vince believes and has said that Hamas should have the right to defend itself. Accordingly, the meaning in this case can be determined on conventional Slim and Koutsogiannis principles and there is no need to consider further the oral attempt to amend Mr Vince's pleaded meaning.

48. In my judgment, the natural and ordinary meaning of the first Guido Fawkes article is as follows:

    48.1 The Labour Party had been hypocritical in calling for the Conservatives to return donations when it has not returned donations made by Dale Vince.

    48.2 Mr Vince has said of the terrorist organisation Hamas that "one man's terrorist is another man's freedom fighter".

    48.3 Mr Vince believes, and has said on Times Radio, that the terrorist organisation Hamas that carried out mass murder, kidnapping and rape in October 2023 are freedom fighters who should have the right to defend themselves.

49. If I am wrong to take judicial notice of the common knowledge that Hamas is a terrorist organisation that carried out mass murder, kidnapping and rape in October 2023, then – taking into account the admitted facts – I am satisfied that the article bears such innuendo meaning. Ordinarily the court will be wary about making findings as to the innuendo meaning in a trial of preliminary issues. Here, however, the facts relied upon by Mr Vince are agreed in each case and no party has argued that the court requires further evidence before determining the innuendo meaning.

Analysis: the second article

50. In respect of the second article, I again reject both parties' meanings:

    50.1 As before, Mr Bennett argues for a meaning that expressly imputes Mr Vince's support for the terrorist acts of Hamas. The published allegations were not that Mr Vince supported terrorism, but that he thinks terrorists are freedom fighters.

    50.2 Mr Gallop's argument makes light of the true sting of the publication. It entirely airbrushes the clear and very serious allegation that Mr Vince had described genocidal terrorists, murderers and rapists as freedom fighters.

51. In my judgment, the natural and ordinary meaning of the second Guido Fawkes article is as follows:

    51.1 The Labour Party has been hypocritical in calling for the Conservatives to return donations when it has not returned donations made by Dale Vince.

51.2 Mr Vince has said of the terrorist organisation Hamas that carried out mass murder and rape in Israel that "one man's terrorist is another's freedom fighter".

51.3 Mr Vince has described the genocidal Hamas terrorists who raped Israeli women, butchered innocent children and murdered civilians in their own homes in the most brutal way and who want to murder all Jews not just in Israel but also in this country as, and believes that they are, "freedom fighters".

52. In finding this meaning, I agree with Mr Gallop that the context is provided by the article and it is unnecessary to take judicial notice of further commonly known facts about the Hamas attack that occurred in October 2023, or to consider any separate innuendo meaning.

FACT OR OPINION

Argument

53. Mr Bennett argues that the publications made emphatic statements of fact and that the reasonable reader would not discern the statement of any opinion. The reader would, he asserts, infer that Mr Staines would not make such serious allegations if he did not have proper grounds for doing so.

54. Mr Gallop argues that readers of these articles would know that they were tuning into opinionated political debate. He argues that an emphatic tone is not necessarily indicative of a statement being one of fact and indeed that vehemence might well indicate a statement of opinion. He submits that the articles clearly expressed an opinion on something that Mr Vince had said publicly. He particularly relies on the "one man's terrorist" quotation having been set out as the basis for Guido Fawkes' comments in both articles that Mr Vince had said something "extreme" or "naughty". He submits that the only thing that is unequivocal is the video clip. The reasonable reader knowing what had been said would construe everything else as comment.

Analysis: the first article

55. While the first article expresses an opinion as to Labour's conduct, that is not the issue in this case.

56. The statement that Mr Vince has said of Hamas that "one man's terrorist is another man's freedom fighter" is a clear statement of fact. Equally, I conclude that the statement that Mr Vince had asserted that Hamas had the right to defend itself is presented as fact.

57. The critical issue is, however, the impression that the reasonable reader would form as to the statement about his also saying, and it being Mr Vince's view, that Hamas are freedom fighters. As to that:

57.1 The only direct quote attributed to Mr Vince was "one man's terrorist is another man's freedom fighter".

57.2 Against that, the headline was clear: Mr Vince, being the multi-million-pound Labour donor identified in the text below and pictured in the still from the embedded video clip, had said that Hamas are freedom fighters.

57.3 Further, the text of the article recounted Mr Vince being challenged "on the fact that saying Hamas are freedom fighters" isn't the official Labour position and asserted that he replied that that was his view.

57.4 The argument that it was a statement of fact also gains support from the statement that Mr Vince had asserted the right of a terrorist organisation such as Hamas to defend itself rather than, for example, asserting the rights of the Palestinian people.

57.5 I accept that a particularly analytical approach to the article against the video clip could identify two further points; one supporting and the other contradicting the view that the statement was one of fact.

a) On the one hand, it might be argued that the reasonable reader would note that the actual quote attributed to Mr Vince was "one man's terrorist is another man's freedom fighter" and then observe that the embedded clip recorded that quote (albeit that the quote would be recognised as having been accidentally inverted) rather than the direct assertions that Hamas were freedom fighters or that they had the right to defend themselves. Such analysis might lead to the conclusion that, since there was no attributed quote in either the article or the clip directly on these points, the statements complained of must have been statements of opinion based upon what Mr Vince had actually said.

b) On the other, it might be noted that Mr Vince was reported to have said the "one man's terrorist" remark after saying that Hamas should be able to defend itself. Since the "one man's freedom fighter" remark was actually the first thing that Mr Vince was recorded as having said on the edited clip, it might be argued that Mr Staines was asserting that Mr Vince had made relevant statements at an earlier stage of the interview and that the clip was not a complete record of his relevant comments on Hamas.

57.6 Both of these further arguments would, however, be to fall into the trap of analysing the publication as a lawyer and not considering the impression that the ordinary and reasonable reader would form.

58. Ultimately this is a matter of impression. In my judgment, the reasonable reader would form the impression that Guido Fawkes was making a statement of fact that Mr Vince had said, and that it was his view, that Hamas are freedom fighters.

Analysis: the second article

59. Again, the second article expresses an opinion as to Labour's conduct, but that is not the issue in this case.

60. In my judgment the statements complained of are statements of fact:

60.1 The second article asserts as facts that Mr Vince said of Hamas that "one man's terrorist is another's freedom fighter" and that he confirmed that that was his view. Indeed, the use of quotation marks makes plain that this is a direct quote.

60.2 The opinion expressed is that nobody should take a penny from Mr Vince but that is not a matter of complaint. The reasons given as to why nobody should take a penny were because Mr Vince was alleged to have described Hamas terrorists as freedom fighters and – a little later in the article - to think that they are freedom fighters.

60.3 The impression created is that the statements that Mr Vince described Hamas as, and thinks that Hamas are, freedom fighters are statements of fact.

INDICATION OF THE BASIS OF ANY OPINION

61. Given my conclusion that the statements complained of were statements of fact, this issue does not arise.

DEFAMATORY AT COMMON LAW

62. Given the nature of Hamas and the appalling atrocity committed on 7 October 2023, the imputations about Mr Vince's statements and beliefs were plainly defamatory at common law. Indeed, it is not argued otherwise.

VINCE v. TICE

THE TWEET

63. At 15:47 on 13 March 2024, Mr Tice retweeted the Guido Fawkes article. In doing so, he added the following comment:

> "So major Labour donor is pro the murderous antisemitic Hamas….
>
> Mmmm"

ONE OR TWO PUBLICATIONS

64. Mr Vince's primary case is that there were two publications: Mr Tice's tweet and, separately, the tweet read in conjunction with the Guido Fawkes article. Alternatively, if the court concludes that there was only one publication, he asserts that the hypothetical reasonable reader would have clicked on and read the article.

65. The starting point is that the hypothetical reader will consider the whole of the publication. Charleston is high authority for the proposition that a libel claim cannot be founded on a defamatory headline taken in isolation from the related text. Further, the bane and antidote cases make plain that the hypothetical reader is deemed to read the entirety of the publication. These principles simply beg the question as to the extent of the publication in this case. Although not an issue in Charleston, Lord Bridge observed, at pages 70H-71A:

> "I can well envisage also that questions might arise in some circumstances as to whether different items of published material relating to the same subject matter were sufficiently closely connected as to be regarded as a single publication."

66. Lord Nicholls added, just before his famous observation about those who print defamatory headlines "playing with fire", at page 74B-C:

> "I do not see how … it is possible to carve the readership of one article into different groups: those who will have read only the headlines, and those who will have read further. The question, defamatory or no, must always be answered by reference to the response of the ordinary reader to the publication."

67. Applying Charleston, the question of whether two separate articles appearing in the same edition of a newspaper are to be read together or comprise two separate publications depends on whether they are "sufficiently closely connected as to be regarded as a single publication": Dee v. Telegraph Media Group Ltd [2010] EWHC 924 (QB), [2010] E.M.L.R. 20, at [29], Sharp J as she then was.

68. The same approach is applied to the question of whether the hypothetical reader would follow hyperlinks within an electronic publication. In Monroe v. Hopkins, Warby J observed, at [34], that the principles are easier to apply in the case of print publications "than in the more dynamic and interactive world of Twitter, where short bursts of pithily expressed

information are the norm, and a single tweet rarely exists in isolation from others." He added:

> "A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained of, or beforehand, and which form part of what Mr Price has called a 'multi-dimensional conversation'."

69. Modifying the approach in Dee to the online world, Warby J said, at [38], that other material on what was then Twitter but external to the tweet complained of could be treated as part of the context "if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader's view, or in their mind, at the time they read the words complained of".

70. In Falter v. Altzmon [2018] EWHC 1728 (QB), Nicklin J recognised the challenge of applying Charleston to online publications at [12]:

> "The internet provides a degree of challenge to that orthodoxy because it is possible to set out in online publications many hyperlinks to external material. It is perhaps unrealistic to proceed on the basis that every reader will follow all the hyperlinks, but everything depends upon its context. For example, if in a single tweet there is a single statement that says, 'X is a liar' and then a hyperlink is given, it is almost an irresistible inference to conclude that the ordinary reasonable reader would have to follow the hyperlink in order to make sense of what was being said. At the other end of the spectrum, a very long article could contain a very large number of hyperlinks. Only the most tenacious or diligent reader could be expected to follow every single one of those hyperlinks. Such a reader could hardly be described as the ordinary reasonable reader. How many links any individual reader would follow would depend on an individual's interest in or knowledge of the subject matter or perhaps other particular reasons for investigating each of the hyperlinks in question."

71. Nicklin J then cited Warby J's observations in Monroe v. Hopkins and added:

> "15. Monroe v. Hopkins gives very helpful guidance, but it does not extend the principle of Charleston v. News Group into a rigid rule that requires the court, when determining meaning, to include in consideration material that is available to be read or watched by way of hyperlink. What, if I might summarise, I derive from Monroe v. Hopkins is that everything is going to depend upon the context in which material is presented to the reader.
>
> 16. I suppose, ultimately, if it is a matter of dispute, the court is going to have to take a view as to what hypothetical reasonable reader is likely to do when presented by an online publication and the extent to which s/he would follow hyperlinks presented to him/her.
>
> 17. A claimant always has the option in order to make beyond doubt what he or she is relying upon, if necessary, to expressly plead the hyperlinks by way of context. Out of an abundance of caution, a claimant could also plead an innuendo meaning which relies on the hyperlink material as material that at least a large proportion of the readers would have read. That is one practical way of avoiding what may be some uncertainty about the extent to which hyperlinks can be taken into account when determining meaning."

72. In Falter, Nicklin J concluded that he did not, however, have to decide the issue of whether the ordinary reasonable reader would have followed a hyperlink to an interview because he found that the meaning was not affected by the video.

73. Nicklin J returned to the issue in Poulter v. Times Newspapers Ltd [2018] EWHC 3900 (QB). There the publisher argued that two separate articles published both in the print and online editions of the Sunday Times should be read together. In the online editions there were hyperlinks to the other article at the end of each, but there was "no exhortation, direction or even encouragement" to read the other article. He observed, at [24]:

> "Whether readers follow links provided like this is influenced by a number of factors, including: (1) their familiarity with the story or subject matter and whether they consider they already know [what] they are offered by way of further reading; (2) their level of interest in the particular article and whether that drives them to wish to learn more; (3) particular directions given to read other material in the article; (4) if the reader considers that he or she cannot understand what is being said without clicking through to the hyperlink. It might be reasonable to attribute items (3) and (4) to the hypothetical ordinary, reasonable reader, but (1) and (2) will vary reader by reader."

74. In that case, the judge concluded that the links were not sufficiently closely connected as to be regarded as a single publication.

75. In this case, it might be thought that this issue would go to the question of reference since Mr Vince was only named in the hyperlinked Guido Fawkes article. By contrast, there was nothing in Mr Tice's tweet itself to identify that it was about Mr Vince. Further, the Guido Fawkes tweet did not name Mr Vince and, while the embedded video played when the tweet was displayed, Mr Vince's name was still not supplied.

76. While reference presents no difficulty with the second proposed category since such readers would have read Mr Vince's name, his case in respect of the first category of readers is more complicated:

    76.1 First, Mr Vince pleads that, since the video extract played automatically, even those readers who only read the tweet would have identified him, even if only by his appearance and voice. Further, he asserts that the headline identified that the original tweet was about a multi-million-pound Labour donor.

    76.2 Alternatively, Mr Vince pleads a reference innuendo case on the basis that a substantial number of readers would have known that the tweet referred to him upon recognising his image and voice, and knowing that he was a major Labour donor. Such case is put on the basis that:

        a) readers of Mr Tice's tweets would have recognised Mr Vince from previous retweets which clearly identified him;

        b) Mr Tice had appeared together with Mr Vince on various television programmes and clips had been tweeted; and

        c) Mr Vince was in any event well known generally and particularly to those who follow politics and current affairs and to those likely to follow, or be directed to, Mr Tice's tweets.

77. As a matter of law, where a claimant is not named or identified in a statement, reference may still be proved if the publication would reasonably lead persons acquainted with the

claimant to believe that he was the person referred to: Dyson Technology Ltd v. Channel Four Television Corp. [2023] EWCA Civ 884, [2023] 4 W.L.R. 67, at [34] & [38]; Knuppfer v. London Express Newspapers Ltd [1944] A.C. 116, at 119; and Morgan v. Odhams Press Ltd [1971] 1 W.L.R. 1239.

78. Where reference cannot be proved on the application of those principles, a claimant might instead plead a case on the basis of reference innuendo. Such case would depend on proof that the claimant could be identified by particular facts known to certain individuals: see, by way of example, Dyson at [35]. It is essentially the approach that Nicklin J observed might be taken (albeit he was considering meaning more generally) where there is some doubt as to whether hyperlinked material should properly be considered as part of the single publication.

79. Issues as to reference are not well suited for trial by way of preliminary issue: Dyson. In this case, there is, however, no issue:

    79.1 First, the recitals to the master's order recorded Mr Tice's concession that the hypothetical reasonable reader of the tweet who was reasonably acquainted with Mr Vince would understand it to refer to him. That was plainly intended to concede reference in accordance with the common law test.

    79.2 Secondly, Richard Munden, who appears for Mr Tice, expressly conceded reference in his skeleton argument.

    79.3 Thirdly, when the defendant's position was queried in the course of argument, Mr Munden again confirmed that reference is conceded.

    79.4 If more were needed, Mr Tice asserts a natural and ordinary meaning that itself concedes reference.

80. Further, no one has argued that the meaning of Mr Tice's tweet is affected by whether the hypothetical reader clicked on the Guido Fawkes tweet. I have considered the meaning of Mr Tice's tweet both on the basis of considering his tweet together with the displayed Guido Fawkes tweet and the video, and such material together with the hyperlinked Guido Fawkes article. Like counsel, I conclude that consideration of the additional hyperlinked material does not affect the meaning of Mr Tice's tweet. Accordingly, it is not necessary to decide the issue of whether there were one or two publications in order to determine meaning.

81. Equally, no one has argued that the issue needs to be decided to determine whether the first two conditions under s.3 of the Act have been met. Again, I agree with that assessment.

82. For these reasons, and like the judge in Falter, it is not necessary for me to determine the disputed issue of the true extent of the single publication in this case and I decline to do so upon this trial of preliminary issues.

MEANING

Argument

83. Mr Vince pleads the following natural and ordinary, alternatively innuendo, meaning:

> "[Dale Vince]:
>
> (a) supports antisemitism and is therefore antisemitic;

(b) supports the racist murder of Jews because they are Jews; and

(c) supports Hamas, an antisemitic proscribed/outlawed terrorist organisation which murders Jews because they are Jews."

84. He pleads that the reasonable reader would have believed that Hamas is a terrorist organisation that was proscribed or outlawed. Alternatively, a substantial proportion of readers would have known such facts and therefore have so understood the words complained of.

85. Mr Bennett argues that Mr Tice could not have been more emphatic in alleging that Mr Vince was "pro the murderous antisemitic Hamas" and that the prominent headline to the embedded tweet declared with considerable emphasis that Mr Vince had said that "Hamas are freedom fighters". He asserts that there are no curative words that can neutralise such strident allegations in either the embedded video clip or the hyperlinked article.

86. Mr Bennett does not seek any extended meaning from the Guido Fawkes tweet, the video clip or the hyperlink to the full Guido Fawkes article. As he puts it in argument, Mr Tice had "done the damage" with his tweet.

87. Mr Tice argues for two meanings:

87.1 First, he asserts that the natural and ordinary meaning of his tweet was:

> "By his words in the interview shown in the video, the claimant had been shown to hold a favourable view of Hamas, which is a murderous and antisemitic organisation; and this was potentially significant because the claimant was a major donor to the Labour Party."

87.2 Secondly, he also asserts an innuendo meaning in respect of those readers who knew the true nature of Hamas by adding that it was proscribed or outlawed within the UK as a terrorist organisation.

88. Mr Munden argues that Mr Vince's pleaded meaning - that he is himself antisemitic and supports the racist murder of Jews - is strained and unreasonable. He argues that the reasonable reader will have understood "pro Hamas" to be a commentary on the statements made in the video. The words "murderous" and "antisemitic" were clearly attached to Hamas.

89. As to Mr Tice's suggested innuendo meaning, Mr Munden observes that it is asserted on the basis of agreed evidence that a substantial proportion of readers would have extraneous knowledge of the true nature of Hamas. This is not therefore a case where further evidence is required.

Analysis

90. In Monroe v. Hopkins, Warby J described X as a "conversational medium" in which short bursts of pithily expressed information are the norm. In respect of the then limit of 140 characters, the judge observed, at [35], that it would be wrong to engage in an elaborate analysis of a tweet. He said that an impressionistic approach was much more fitting and appropriate, but that such approach must take account of the whole tweet and the context

in which the ordinary reasonable reader would read the tweet. In my judgment, that analysis holds good despite the doubling of the limit for most users to 280 characters.

91. In my judgment, the impression created by the tweet was more than simply that Mr Vince held a favourable view of Hamas but that he supported the group. While it may not be a major leap from expressing support for a murderous and antisemitic terrorist organisation, the tweet did not allege that Mr Vince was himself an antisemite or that he himself supported the organisation's racist murder of Jews.

92. Accordingly, in my judgment, the natural and ordinary meaning of Mr Tice's retweet is that Mr Vince supports the murderous and antisemitic terrorist organisation Hamas.

93. If I am wrong to take judicial notice of the common knowledge that Hamas is a terrorist organisation, then – taking into account the agreed facts – I am satisfied that the article bears such innuendo meaning. This simple fact is agreed and no party has argued that the court requires further evidence before determining the innuendo meaning.

FACT OR OPINION

Argument

94. Mr Bennett argues that Mr Tice's tweet purported to report matters of fact. Further, he relies again on the emphatic tone that asserted that Mr Vince "is" pro Hamas, that he "is" an extremist donor, and that he had said that Hamas "are" freedom fighters.

95. Mr Munden argues that Mr Tice's quote tweet was a textbook expression of opinion in respect of the tweet that was being quoted. He particularly stresses the opening word "so" which, he argues, clearly indicated that what followed was a conclusion drawn from extraneous material; here the Guido Fawkes tweet. Relying on Blake v. Fox [2023] EWCA Civ 1000, [2024] E.M.L.R. 2., he argues that the statement that Mr Vince was "pro Hamas" would inevitably elicit the question: "why are you saying that?" Further, he argues that the word "mmmm" at the end of the tweet suggested that Mr Tice was reacting to the retweeted material that he had found to be interesting.

96. Mr Munden accepts that Mr Tice's tweet contained factual statements about Mr Vince being a major Labour donor and Hamas being murderous. Those are not of course the statements complained of.

Analysis

97. Mr Tice's retweet might more accurately be described as a quote tweet, namely a retweet in which the sender adds his or her own commentary on the subject matter of the original tweet. A quote tweet was considered by the Court of Appeal in Blake v. Fox. Warby LJ observed, at [54],

> "Comments or opinions can take many forms but these were classic instances of the genre. By quote-tweeting Mr Fox's Sainsbury's tweet they set out the facts in clear and unequivocal terms ('see what Laurence Fox has said on Twitter'). The body of the tweet then made various observations about those facts ('mess', 'racist', 'twat', 'proud', 'cringe', 'snowflake behaviour'). 'Twat' was mere vulgar abuse. Some of the other words were not defamatory, or not seriously so ('mess', 'cringe', 'snowflake').

> 'Racist' was used by Mr Blake as an adjective and by Mr Seymour as a noun. But in each case the word in its context was clearly an evaluative statement about Mr Fox's behaviour."

98. Indeed, the more clearly a publication indicates that it is based on some extraneous material, the more likely it is to strike the reader as an expression of opinion: Tripark v. Northwood Hall [2019] EWHC 3494 (QB), at [17], Warby J.

99. In Blake, Warby LJ further considered the statement that the claimant was a racist at [55]:

> "That was an expression of opinion, and obviously so. Accepting Ms Rogers KC's submission on this point, there are some words that almost always signify that they represent the person's opinion. 'Racist' is quintessentially one of those words. It almost invites the question from someone who hears the allegation: 'why do you say that?'"

100. In my judgment, the statement complained of is a statement of opinion:

100.1 Quote tweets are often used to express an opinion on the subject-matter of the original tweet, but the format is not of itself decisive since one could retweet a message adding some new statement of fact to the story.

100.2 Here, the impression created by Mr Tice's words is that he was offering an opinion on the issue raised in the Guido Fawkes tweet.

100.3 Such impression is fortified by Mr Tice's opening word "so", which implies that what follows is a conclusion drawn from the retweeted material.

100.4 As Collins-Rice J put it in Bridgen v. Hancock [2024] EWHC 1603 (KB), this tweet was robust and opinionated reactive political commentary.

INDICATION OF THE BASIS

101. Mr Bennett argues that Mr Tice's tweet was freestanding and that while he might be said to agree with the words set out in the Guido Fawkes tweet, he does not comment upon them or say anything to suggest that he had reached his own conclusion on the basis of the Guido Fawkes tweet.

102. Mr Munden argues that the basis of Mr Tice's opinion was clearly the embedded video and the wording of the Guido Fawkes tweet that referred to the public debate about political donors.

103. The very essence of this statement of opinion was that it was drawn from the material that was retweeted. In my judgment, Mr Tice's tweet indicated that the basis of his opinion was the Guido Fawkes tweet and the 16-second video clip.

DEFAMATORY AT COMMON LAW

104. Mr Tice accepts that even upon his own suggested meaning, the tweet was defamatory. In my judgment, there can be no doubt that the meaning as actually found was likewise defamatory at common law.