Neutral Citation Number: [2023] EWHC 482 (KB)

Case No: QB-2021-004234

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/03/2023

Before:

HIS HONOUR JUDGE LEWIS
(Sitting as a Deputy Judge of the High Court)

- -

Between:

MIQDAAD VERSI	**Claimant**
- and -	
MOHAMED HUSAIN (AKA ED HUSAIN)	**Defendant**

- -
- -

Mark Henderson (instructed by **Rahman Lowe Solicitors**) for the **Claimant**
Gervase de Wilde (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing dates: 17 November 2022

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Approved Judgment

This judgment was handed down remotely at 10.30am on [date] by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HIS HONOUR JUDGE LEWIS

His Honour Judge Lewis :

1. The claimant is the former director of media monitoring at the Muslim Council of Britain and describes himself as a campaigner in his own right against Islamophobia, particularly with regards to the representation of Muslims.

2. The defendant is an author, academic and an adviser to western governments on Islamist extremism, terrorism and national security.

3. The claimant has sued the defendant for libel in respect of a tweet posted by the defendant on 21 November 2020 ("the Tweet").

4. The claimant issued proceedings on 17 November 2021, a few days before the expiry of the limitation period. He seeks damages of at least £25,000 and an injunction preventing republication of the words complained of, or similar words defamatory of the claimant.

5. On 28 April 2022, Nicklin J directed that there be a trial of the following preliminary issues pursuant to CPR 3.1(2)(i) and (j) and CPR PD 53B para 6: (i) the natural and ordinary meaning of the statement complained of; (ii) whether the statement complained of is (or includes) a statement of fact or opinion; and (iii) whether the statement is defamatory of the claimant at common law.

The Tweet

6. The Tweet was a "quote tweet" in which the defendant republished an earlier tweet of the claimant, with his own comment added.

7. A copy of the Tweet as it would have appeared to readers is set out in the schedule to this judgment. The text was as follows:

> "Pipe down, you
> pro-Hamas
> pro-Iran
> pro-gender discrimination
> pro-blasphemy laws
> pro-secretarian
> anti-Western
> 'Representative' of an Islamist outfit.
>
> [Embedded tweet in box] *Miqdaad Versi – 1h*
> Why does Fraser Nelson – a man who as editor
> is accountable for so much anti-Muslim hate
> propagated in the Spectator – think it is
> appropriate to explain Islamophobia to a Muslim woman?...
> **Show this thread"**

The meanings proposed by each party

8. The claimant says the natural and ordinary meaning of the Tweet was that:

> "the claimant is an Islamist who supports a violent, fundamentalist, separatist and repressive agenda aimed at imposing Islam on society by force. He is a terrorist sympathiser and a sectarian bigot who endorses hatred and violence between Shia and Sunni Muslims. He is intolerant of other religions and other strands of Islamic belief, including of mainstream Muslims, and supports the subjugation of women. His beliefs are incompatible with modern western democratic values, and he promotes enemies of the west."

9. The claimant says that there was no qualification to the allegations made, which were presented as statements of fact. He says the meaning is defamatory at common law.

10. The defendant says the natural and ordinary meaning, read in context, was that:

> "(i) the claimant advocates for the interests of an Islamist organisation, and has expressed views which are supportive of Hamas, Iran, gender discrimination, blasphemy laws, sectarianism, and which are anti-Western; and
>
> (ii) that such advocacy and views, as expressed by the claimant, are objectionable and undermine the legitimacy of the claimant's own participation in public debate."

11. The defendant says that the words underlined are an expression of opinion, with those parts that are not underlined being statements of fact. He denies that the meaning is defamatory at common law.

12. In response to the defendant's pleaded meaning, the claimant agrees that the Tweet necessarily conveys, as a statement of fact, that the claimant has expressed views which are supportive of Hamas, Iran, gender discrimination, blasphemy laws, sectarianism, and which are anti-Western. The claimant says that this in itself is defamatory at common law, as is the allegation that he is an Islamist, particularly when read in the context of the other factual statements made.

Other material

13. There is a dispute between the parties about the scope of the material that this court should consider as "context" when assessing meaning. The relevant legal principles were summarised by Nicklin J in ***Riley v Murray*** **[2020] EWHC 977 (QB)** at [16]:

> "[16] … the following material can be taken into account when assessing the natural and ordinary meaning of a publication:

> i) **matters of common knowledge**: facts so well known that, for practical purposes, everybody knows them;
>
> ii) **matters that are to be treated as part of the publication**: although not set out in the publication itself, material that the ordinary reasonable reader would have read (for example, a second article in a newspaper to which express reference is made in the first or hyperlinks); and
>
> iii) **matters of directly available context to a publication**: this has a particular application where the statement complained of appears as part of a series of publications – e.g. postings on social media, which may appear alongside other postings, principally in the context of discussions.
>
> [17] The fundamental principle is that it is impermissible to seek to rely on material, as "context", which could not reasonably be expected to be known (or read) by all the publishees. To do so is to "erode the rather important and principled distinction between natural and ordinary meanings and innuendos": Monroe -v- Hopkins [40]. When I considered this principle very recently, I explained that the distinction was between "material that would have been known (or read) by all readers and material that would have been known (or read) by only some of them. The former is legitimately admissible as context in determining the natural and ordinary meaning; the latter is relevant only to an innuendo meaning (if relied upon)" (emphasis in original): Hijazi -v- Yaxley-Lennon [2020] EWHC 934 (QB) [14]."

14. In the earlier case of ***Monroe v Hopkins*** **[2017] EWHC 433 (QB)**, Warby J (as he then was) had considered the extent to which external material should be considered as directly available context when the case involves a publication on Twitter. Warby J said:

> "[38] … This is perhaps less straightforward. I would conclude that a matter can be treated as part of the context in which an offending tweet 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.…
>
> [39] I would include as context parts of a wider Twitter conversation in which the offending tweet appeared, and which the representative hypothetical ordinary reader is likely to have read. This would clearly include an earlier tweet or reply which was available to view on the same page as the offending material. It could include earlier material, if sufficiently closely connected. But it is not necessarily the case that it would

> include tweets from days beforehand. The nature of the medium is such that these disappear from view quite swiftly, for regular users…."

15. The Tweet was a "quote tweet", and it included part of a tweet sent by the claimant about Fraser Nelson at 8.38pm on 21 November. The full tweet read as follows:

> "Why does Fraser Nelson – a man who as editor is accountable for so much anti-Muslim hate propagated in the Spectator – think it is appropriate to explain Islamophobia to a Muslim woman?
>
> And why would citing a pro-Saudi pro-Netanyahu Person who works with Richard Kemp, help? [person shrugging emoji]"

16. The claimant's 8.38pm tweet was itself a quote tweet, embedding and responding to a tweet sent by Fraser Nelson, editor of the Spectator, at 11.21am on 21 November 2020:

> "Macron's speech was defending, not attacking, Islam. It is an important point, explained by Ed Hussain [the defendant] here [Link to Spectator article]

17. Mr Nelson's tweet was also a quote tweet, in which was embedded a tweet sent by Zarah Sultana MP at 2.42pm on 20 November 2020:

> "From the dissolution of France's largest anti-Islamophobia NGO to its use of prejudicial & divisive language, I share the concerns of human rights defenders about the frightening direction of President Macron's government.
>
> We must condemn Islamophobia & all forms of racism."

18. The claimant has produced two printouts of a twitter thread that the claimant has described as "the thread that would appear" if a reader clicked on the Tweet ("the Thread"). The first printout shows what the reader would have seen without clicking on further links, whereas the second printout shows the text that the reader would see if he or she were to click on each message contained within the Thread.

19. The Thread includes three tweets by the claimant sent at 8.52pm, 8.58pm and 9pm that evening ("The Three Tweets"). All three were sent on the same thread:

    a. The tweet at 8.52pm said "Citing fringe figures within Muslim communities who are pro-Netenyahu, who do propaganda for the Saudi regime & who pal around people like Richard Kemp, really isn't as impressive as you think.". The tweet included an "image collage", comprising (i) a tweet from the Jewish Chronicle promoting an article by the defendant; (ii) a tweet by the defendant from September 2020 in support of #SaudiNationalDay; and (iii) an advert for

an event at which the defendant and Colonel Richard Kemp would be discussing "new alliances for a new future".

b. The tweet at 8.58pm said "For those who don't know Kemp, see here". This was a quote tweet. The quoted tweet had been sent by the claimant in January 2020 and read "the Jewish Chronicle continues in its anti-Muslim positioning, now praising Colonel Richard Kemp & claiming "no comments made by Colonel Kemp could reasonably be interpreted as "Islamophobic" [link]. It's not difficult to show why they were wrong". There is then an image collage, comprising four images of tweets sent by Richard Kemp.

c. The tweet at 9pm said "For the Spectator's history in articles about Islam & Muslims, see this thread and the embedded thread in the reply to this". This was a quote tweet. The quoted tweet had been sent by the claimant himself on 31 October 2019 and contained criticisms of Fraser Nelson, and what he considers to be racist and Islamophobic articles published in the Spectator. The embedded tweet included a hyperlink, "Show this thread", which, if clicked, would have taken the reader through to three other tweets posted by the claimant in 2019.

20. The defendant says that all the material just identified is relevant context, either on the basis that it is part of the publication complained of (*Riley*, category ii), or that it is directly available context (*Riley*, category iii). In particular, it is said that:

a. The claimant's tweet of 8.38pm "Why does Fraser Nelson…" falls within category ii, being material that was incorporated into the Tweet.

b. Mr Nelson's tweet falls within category ii, having been built into the claimant's tweet of 8.38pm. It is said this would have been understood by the reader as the subject of, and prompt for, the claimant's attack on Mr Nelson and the defendant.

c. Ms Sultana MP's tweet falls within category ii and/or iii. It is part of the publication because it is embedded in Mr Nelson's tweet. Alternatively, it is directly available context since it was the prompt for the subsequent tweets. It is said that the parties were effectively engaged in a discussion prompted by President Macron's policies.

d. The Thread, including the Three Tweets, and all the additional material identified above that can be accessed by clicking on them (including, for example, the material from 2019) is part of the publication. The defendant says that if the claimant's tweet of 8.38pm is material that would have been read by the reader, then the full thread and its content must be too. Alternatively, this additional material is context under category iii: the defendant's followers would, given that the defendant was quoting and responding to the claimant, have been interested in the background, and the claimant himself positively invited readers to follow the claimant's thread to these sub-tweets.

21. The claimant says that the same conclusion is reached on the issue of meaning and the other preliminary issues, regardless of whether some, or all, of the further material just identified is taken into account. None of the material relates to the imputation of the Tweet. It is said that one approach the court might take is to conclude that it is unnecessary to decide this point, given that none of the additional material affects the meaning.

22. Without prejudice to this position, the claimant says that the Tweet does not direct the reader to follow the hyperlink and it cannot reasonably be contended that "all readers" would do so when the Tweet appeared in their timeline. If the reasonable reader would have done so, then the claimant accepts he or she would have seen the content of the Thread. The claimant says that such a reader would not, however, have clicked further into the thread, for example viewing the old 2019 material.

23. Neither party appears to know the time at which the Tweet was posted. The claimant's pleaded case is that the Tweet was posted around 8.30pm. The defendant's statement of case admits this, but then goes on to state that the Tweet contained the 8.38pm tweet ("Why does Fraser Nelson…"), which was "published around one hour before", suggesting the Tweet was published around 9.38pm. Given the information available, the claimant's position in respect of the Thread (paragraph 18 above), and that the Tweet appears to have been sent in response to the Three Tweets, it likely the Tweet must have been published after the Three Tweets, so sometime after 9pm.

24. The extent to which hyperlinked material can be considered in respect of meaning is fact sensitive and depends on the context in which words were published. The use of the words "pipe down" in the Tweet suggests that it is being sent in response to something said by the claimant. It seems to me to be almost an irresistible inference to conclude that the ordinary reasonable reader would follow the hyperlink in the Tweet to understand what was being said. When they did so, they would have seen:

    a. The full text of the Claimant's tweet of 8.38pm, starting "What does Fraser Nelson…", which included the embedded tweet from Fraser Nelson.
    b. The Three Tweets.
    c. The other tweets identified by the claimant in the Thread.

25. I am sure some users may well have then clicked through to see some of the underlying material. I do not, however, think it can be inferred that the ordinary reasonable reader would proceed to work through all of the messages in the Thread, and click on any further links. Twitter is a fast-paced medium. Users generally look at tweets fleetingly. By clicking the hyperlink on the Tweet, the reader would have seen sufficient information to understand what the Tweet was saying, and would not have looked further.

26. I do not, therefore, consider the tweet from Ms Sultana MP, or the additional material referred to in the Three Tweets, to form part of the publication, or relevant context, when considering the meaning of the Tweet. I do not think those additional materials assist in determining meaning in any event.

Legal principles – meaning

27. 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 to bear.

28. I must first read the words complained of to form a provisional view about meaning, before turning to the parties' pleaded cases and submissions, see ***Tinkler v Ferguson*** **[2020] EWCA Civ 819** at [9].

29. In ***Jones v Skelton*** **[1963] 1 WLR 1362** the Privy Council explained what is meant by a natural and ordinary meaning:

> "The ordinary and natural meaning of words may be either the literal meaning or it may be an implied or inferred or an indirect meaning: any meaning that does not require the support of extrinsic facts passing beyond general knowledge but is a meaning which is capable of being detected in the language used can be a part of the ordinary and natural meaning of words. …. The ordinary and natural meaning may therefore include any implication or inference which a reasonable reader guided not by any special but only by general knowledge and not fettered by any strict legal rules of construction would draw from the words." per Lord Morris at 1370.

30. The long-established principles to be applied when reaching a determination of meaning were re-stated by Nicklin J in ***Koutsogiannis v Random House Group Ltd*** **[2019] EWHC 48 (QB)** at [12]:

> "(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 (eg 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 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)."

31. In ***Stocker v Stocker*** **[2019] UKSC 17**, Lord Kerr considered a claim arising out of social media – in that case, Facebook. He noted that when considering the meaning of words complained of: "the court's duty is to step aside from a lawyerly analysis and to inhabit the world of the typical reader of a Facebook post. To fulfil that obligation, the court should be particularly conscious of the context in which the statement was made, …" [38].

32. Of relevance to this case, the court in ***Stocker*** noted the following in respect of determining meaning in social media claims:

    a. Context is a factor of considerable importance [40].

b. The hypothetical reader should be considered to be a person who would read the publication and react to it in a way that reflected the circumstances in which it was made [39].
c. The way in which the words are presented is relevant to the interpretation of their meaning. A judge tasked with deciding how a Facebook post or a tweet on Twitter would be interpreted by a social media user must keep in mind the way in which such postings and tweets are made and read [40]-[41].
d. It is wrong to engage in an over-elaborate analysis of a tweet: "The imperative is to ascertain how a typical (ie an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on" [43].
e. Users of social media scroll through quickly. They do not pause and reflect and ponder what meaning the statement might possibly bear: "Their reaction to the post is impressionistic and fleeting" [44].

Political speech

33. The defendant says the fact that the Tweet comprised political speech is relevant when the court is determining whether the statement published comprises opinion or fact, and the natural and ordinary meaning.

34. The fact that speech is political does not of itself require any special approach to deciding its meaning: ***Thompson v James*** **[2014] EWCA Civ 600** [26]- [27] (Longmore LJ). It is, however, important to recognise that there is a particular need to avoid over-analysis when determining the meaning of political speech: ***Waterson v Lloyd*** **[2013] EWCA Civ 136** (Laws LJ).

35. In ***Ware v French*** **[2021] EWHC 384 (QB)**, Saini J acknowledged that although political speech does not require special rules of interpretation, a political context nevertheless has an impact on the way in which the question of meaning must be approached. In those proceedings, Saini J accepted that reasonable readers would appreciate that "political discourse is often passionate and is not as precise as, say, financial journalism" [9].

36. In ***Barron v Collins*** **[2015] EWHC 1125 (QB)**, Warby J considered a claim brought following a party conference speech. He noted at [28] that:

> "… it is important to have in mind from the outset the nature of the occasion, and the audience. The statements complained of were part of a rallying call to the 'party faithful' and the speech was made to audiences, reasonable members of which can be taken to have understood, and made allowance for the fact, that political expression will often include opinion, passion, exaggeration, and even inaccuracy of expression."

37. It does not follow, however, that the court should take a different approach when considering meaning or whether a statement is opinion or fact. In ***Barron,*** Warby J said:

> "[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."

Meaning

38. The claimant puts his case on meaning as follows:

a. The reference to being pro-Hamas would have been understood by the ordinary reasonable reader as saying the claimant has expressed views which are supportive of a terrorist organisation. Mr Henderson says that it is a matter of common knowledge that Hamas means "terrorism sympathiser" and the Tweet imputes support for Islamist terrorism. He says that what was published is suggestive of criminality, or at least condoning terror and the gravest possible form of criminality.

b. The reference to being pro-Iran, taken together with the reference to being pro-Sectarian and anti-Western, would have been understood by the ordinary reasonable reader as saying that the claimant is a sectarian bigot who endorses hatred and violence between Shia and Sunni Muslims. Mr Henderson says it is a matter of common knowledge that sectarianism in this context is a reference to the dispute between Shia and Sunni Muslims.

c. The reference to being pro-gender discrimination, taken together with the reference to being anti-Western, would have been understood by the ordinary reasonable reader as saying that the claimant supports the subjugation of women.

d. Taken together, the references to being pro-Hamas, pro-Iran, pro-gender discrimination, pro-blasphemy laws, pro-Sectarian and being anti-Western would have been understood by the ordinary reasonable reader as saying the claimant's beliefs are incompatible with modern western democratic values.

e. The reference to being pro-Hamas and pro-Iran would have been understood by the ordinary reasonable reader as saying that the claimant promotes enemies of the West.

f. The reference to Islamist in the final line will be understood in the context of the other matters conveyed. Mr Henderson says it is a matter of common knowledge for the ordinary reader that Islamist in this context means dangerous views which are bigoted and prejudicial and support violence and dictatorship.

g. In respect of the reference to being a 'representative' of an Islamist outfit, the claimant says the word 'outfit' suggests an informal and/or militaristic group, not a legitimate organisation, with the scare quotes used on the word 'representative' signifying an ironic or inaccurate use of that word. The combined effect gives the impression that the claimant is not performing a representative function for a legitimate organisation, and in context, it conveys that he is an Islamist who has expressed his Islamist views.

39. In respect of the imputation of terrorism, Mr Henderson sought to refer to legislation on proscribed terrorist organisations: on the date the Tweet was published the military wing of Hamas was proscribed, but the political side of the organisation was not (although it since has been). Mr Henderson acknowledged, however, that this material is not admissible in respect of meaning, and that it cannot be said that the reasonable ordinary reader would be aware of the relevant legal provisions.

40. The defendant's case on meaning:

a. Mr de Wilde says that the claimant's pleaded meaning is extraordinarily strained and unrealistic. He says that the reader with an unrestrained appetite for scandal would still not derive from the Tweet the allegations of religious repression, terrorist sympathies and support for violence.

b. The defendant's case is that the court should take a more literal and straightforward approach to meaning, and avoid over-elaborate analysis, especially in the context of a political debate. The defendant's proposed meaning is far closer to the one that would be arrived at by the ordinary reasonable reader casually following a conversation on a fast moving online medium such as Twitter.

c. There is no innuendo meaning pleaded in respect of terrorism. The reader would have to have extrinsic knowledge of the link between either the country or organisation and historic acts of terrorism to understand the words as set out in the claimant's meaning. The same is true in respect of "hatred and violence between Shia and Sunni Muslims".

41. When considering meaning, the hypothetical reader is taken to be representative of those who would read the publication in question, which in this case is likely to be someone interested in the debate on the politics of the Middle East. The parties to this case both appear to be active participants in such a debate, and so the ordinary reader of the Tweet is likely to have some understanding, in broad terms, of the issues.

42. The claimant has not pleaded an innuendo meaning. He relies on facts being within the common knowledge of the ordinary reader of the Tweet – matters the claimant says are so well known that, for practical purposes, everybody knows them.

43. I accept that in terms of matters of common knowledge for the ordinary reasonable reader of the Tweet, they will have known that Hamas is a controversial, militant Islamist organisation known for its links to violence. Whilst some readers may also have been aware of its links to terrorism, and the dispute between Shia and Sunni Muslims, I am not satisfied it could be said that all readers would have been. It would though have been common knowledge that Iran is a repressive state.

44. The Tweet would have been read quickly by the ordinary reader. Whilst they would also have clicked through and read the underlying Tweet, they would then have moved on to other messages. They would have seen that this was a spat between two people with opposing views on the politics of the Middle East. They would have seen both parties adopting the confrontational approach to debate that is often seen on Twitter, including making personal attacks. They would have considered briefly what was said, and not sought to break down or analyse the words in much detail.

45. I agree with Mr de Wilde that the claimant's pleaded meaning is extraordinarily strained and unrealistic. It would require the ordinary reader to have applied a significant level of thought and analysis to what was being said. It would also involve an unrealistic amount of "reading between the lines", looking for the worst possible meanings. For example, just because somebody has expressed views that are supportive of Hamas, it does not follow that the reader would assume they are a "terrorist sympathiser", and just because someone has expressed sectarian views, it does not follow that the reader would jump to the conclusion that they endorse violence.

46. The meaning put forward by the defendant is, however, too literal. In my view, the meaning conveyed by the Tweet does not just come from looking at each line in isolation. The statements need to be read cumulatively, recognising that they are explaining why the defendant believes the claimant needs to "pipe down".

47. Whilst some of those statements on their own may be unobjectionable, taken together they imply that the claimant holds extremist views, and not merely views that the defendant disagrees with. This is reinforced by the inclusion of the word "Islamist". I acknowledge that this is a term that means different things to different people, however in the Tweet it is used as part of the pejorative term "Islamist outfit".

48. I am satisfied that the natural and ordinary meaning of the Tweet is as follows:

    a. The claimant has expressed views that are supportive of the repressive regime in Iran, gender discrimination, blasphemy laws and sectarianism and which are anti-Western.

    b. The claimant has expressed views that are supportive of Hamas, a militant Islamist group with known links to violence.

    c. The claimant holds extremist, Islamist views. His endorsement of such views is so objectionable that he has no place participating in this public debate.

Fact or opinion?

49. The relevant law was summarised by Nicklin J in ***Koutsogiannis*** at [16].

50. I agree with both parties that the Tweet contains statements of fact, namely that the claimant has expressed views that are supportive of Hamas, Iran, gender discrimination, blasphemy laws and sectarianism and that he has been the representative of an organisation.

51. Whilst the term "anti-Western" could be taken in some contexts as a value judgement on the claimant's views, in this case it was included within a list of factual matters, and I agree with the parties that it would be understood to be a statement of fact.

52. Stating or implying that someone holds extremist views may be a statement of fact, or of opinion. It will depend on context. It is important to remember that the Tweet was sent as part of a debate on Twitter on the politics of the Middle East in which participants were expressing their opinions on the views of others. The Tweet would have been understood by the ordinary reader as being the author's evaluation of the claimant's public statements. It was a comment, or expression of opinion, on the views expressed by the claimant.

53. I am satisfied, therefore, that the *statement complained of* comprised factual statements about the claimant, and an opinion in respect of them. If looked at in terms of the natural and ordinary meaning, limbs (a) and (b) are statements of fact, whereas (c) is an expression of opinion.

Defamatory?

54. In ***Millett v Corbyn*** **[2021] EWCA Civ 567** at [9], Warby LJ summarised the principles to be applied when determining whether a meaning is defamatory at common law:

> "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 WLR 68 [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 WLR 1985 [98] (Tugendhat J)"

55. The claimant says that the Tweet is plainly defamatory in common law, even if one just looks at the factual statements on their own. Mr Henderson says it cannot be the

case that the defendant can simply publish with impunity these very serious charges that the claimant says are utterly false, including six factual "imputations".

56. The defendant denies that his meaning is defamatory at common law. His case is put as follows:

a. The Tweet formed part of a discussion on Twitter. Within this discussion, the claimant published tweets that contained a series of trenchant criticisms of the views of the defendant and individuals and entities with whom the defendant is associated.

b. The subject matter of the Tweet is a form of political speech. The defendant says it is wholly unsuitable as the basis for this defamation claim, which is an attempt to stifle legitimate criticism of, and comment on the claimant's views by the defendant, one of his political opponents. In a pluralist modern democracy it is not and should not be held to be defamatory to attribute to a person views which diverge from the mainstream, such as those identified in the Tweet, but which are nonetheless not subject to universal condemnation or disapproval.

c. The defendant's challenge was to the objectionable quality of the claimant's own views. It was not defamatory because the defendant is advancing a criticism as to the *effect* of the claimant's views, and the words say nothing about the claimant's character or conduct which would lower him in the estimation of right thinking people generally.

d. Whether the claimant's views and advocacy generally are acceptable, or whether they are objectionable to the extent that they undermine the legitimacy of the claimant's own participation in public debate is, again, and in this specific context, a classic value judgment.

57. We live in a modern, diverse society which recognises the importance of freedom of thought, and of expression. Whilst there is a broad consensus within society on matters such as the rule of law, on many issues of public policy there is not. Our democratic process relies on robust debate and discussion and allowing the free expression of views. Not all views will be mainstream, and at every election there are candidates who stand on platforms that reflect the range of views in society, including from both ends of the political spectrum. Ordinarily, right-thinking members of society generally would not think less of someone for simply expressing their views on a matter, or disagreeing with another.

58. A statement about someone's views is only defamatory if it attributes views that would lower a person in the estimation of "right-thinking people generally", and a statement is not defamatory if it would only tend to have an adverse effect on the attitudes to the claimant of a certain section of society, see ***Monroe*** at [50]. In ***Monroe***, Warby J explained that the judge's task is to determine whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society [51].

59. The defendant says that the meaning is not defamatory at common law because the defendant is advancing a criticism as to the effect of the claimant's views. The same

point was raised in ***Mughal v Telegraph Media Group Limited*** **[2014] EWHC 1371 (QB)**. Tugendhat J considered that the claimant's views were not violent views but were ones which tended nevertheless to have dangerous consequences. That was not defamatory of the claimant since the criticism was as to the effect of his views, and not of his character. This is not the position here. The criticism being made is of the claimant's views, not the effect of those views. Furthermore, it was a criticism of the claimant having expressed those views.

60. In this case I am satisfied that the natural and ordinary meaning conveyed by the Tweet was defamatory by the standards of the common law.

61. Whilst stating that a person holds some of the views identified in the Tweet would not in itself be defamatory, the Tweet needs to be looked at in its entirety. Right thinking members of society generally would deplore those who express views in support of Hamas, as a militant Islamist group with known links to violence. It is also contrary to the common or shared values of our society to express extremist views that are so objectionable as to undermine the legitimacy of the claimant's own participation in public debate. Attributing such views to the claimant would lower a person in the estimation of "right-thinking people generally". The imputation is one that would tend to have a substantially adverse effect on the way that people would treat the claimant, and their attitude towards him.

SCHEDULE