IN THE HIGH COURT OF JUSTICE **QB-2019-001964**
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

B E T W E E N: -

RACHEL RILEY **Claimant**

-and-

LAURA MURRAY **Defendant**

SKELETON ARGUMENT FOR THE DEFENDANT

Trial of Preliminary Issues (for determination on the papers)

Number in square brackets (other than references to authorities) refer to the pagination of the Hearing Bundle. "C" is the Claimant. "D" is the Defendant.

List of suggested pre-reading

1. D suggests, if time allows, the following documents for pre-reading:
   a. order of Master Yoxall, dated 11.10.19 [1-4];
   b. Claim Form [5-6];
   c. Particulars of Claim [7-10];
   d. D's Statement of Case on the Preliminary Issues [11-14];
   e. Witness statement of D (20.12.19) [15-24];
   f. Article published in *The Guardian* online on 03.03.19 at 17:25: '*Man arrested after allegedly hitting Jeremy Corbyn with an egg*' [53];
   g. C's tweet on 03.03.19 at 6:16 PM [26];
   h. Tweet of Andy M on 03.03.19 at 6:20 PM [27];
   i. D's tweet on 03.03.19 at 8:10 PM [33];
   j. D's tweet on 03.03.19 at 21:03 [35] (the tweet complained of);
   k. C's tweet on 04.03.19 at 12:17 AM [36];
   l. D's tweet on 04.03.19 at 7:38 AM [37].

Introduction

2. By her claim form, dated 31.05.19, C brings a claim for damages (including aggravated damages) and an injunction for defamation, arising out of the publication by D of a tweet on 03.03.19 [35].

3. By order of Master Yoxall, dated 11.10.19 ("the Order"), [1-4], the following Preliminary Issues are to be determined at the Preliminary Issues Trial:
   a. The natural and ordinary meaning of the statement complained of, and any innuendo meaning;
   b. Whether that meaning(s) convey(s) a statement of fact or of opinion, or else in part a statement of fact and in part of opinion;
   c. Whether the meaning(s) convey(s) a defamatory tendency at common law.

4. The case for C on Issue (a) is set out in her Particulars of Claim at paragraphs 4-5 [8]. The case for D on Issues (a)-(c) is set out in her Statement of Case on the Preliminary Issues [11-13].

5. The Order provided for disclosure and exchange of witness statements in the last two months of 2019. Only D served a witness statement [15-24].

6. C identifies the "Publication complained of" as being a single tweet which D posted at 9.03pm on 3 March 2019 [7]. D pleads the wider context of the publication [11-12].

Summary of D's position

7. As set out in her Statement of Case, D submits that the natural and ordinary meaning of the statement complained of is:

> *Following an attack on Jeremy Corbyn by a Brexiteer, the Claimant had posted a tweet which meant that Jeremy Corbyn deserves to be violently attacked because he is a Nazi.*
>
> *It was dangerous and stupid of the Claimant to post such a tweet.*

As a result, the Defendant's followers should not reply or respond to the Claimant's tweets on such matters.

8. It is D's case that the statement complained of was a statement of opinion and not a statement of fact.

9. It is D's case that the statement complained of did not convey a defamatory tendency.

Outline

10. This skeleton argument addresses the following matters / issues:

    a. Material facts;
    b. Relevant legal principles:
        i. the law governing the determination of meaning with particular reference to online publications, and including the role of context and the characteristics of the typical reader in identifying the ordinary meaning;
        ii. the differentiation of opinion from fact;
        iii. defamatory tendency.
    c. Submissions on:
        i. the natural and ordinary meaning of the publication in context;
        ii. C's pleaded innuendo meaning and the disclosure relating to it;
        iii. whether the statement complained of is a statement of fact or opinion,
        iv. whether the statement complained of is defamatory at common law.

(a) Material facts

11. At the material time, D was the Stakeholder Manager at the Leader of the Opposition's office (LOTO). On 3 March 2019, at about 3.52pm, the Leader of the Opposition, Jeremy Corbyn was visiting the Finsbury Park Mosque as part of the 'Visit My Mosque Day' initiative when he was struck on the head

by a man holding an egg, and a member of his staff detained the assailant. The news broke on the Internet shortly afterwards and D began receiving messages about it via the LOTO staff WhatsApp group [45-50]. Mr Corbyn left the mosque with a police escort at 6.30pm

12. At 6.16pm, C tweeted a comment on the attack. Her tweet 'quote tweeted' a tweet by the left wing commentator Owen Jones, about an attack on former British National Party leader Nick Griffin, which had stated "*Oh: I think an egg was thrown at him actually. I think sound life advice is, if you don't want eggs thrown at you don't be a Nazi. Seems fair to me*." Above that quote, C wrote "*Good advice*." followed by red rose (referencing the Labour Party) and egg (referencing the attack) emojis which made clear that her tweet related to the attack on Mr Corbyn [26].

13. Reaction included a follower of C tweeting "*Shame it wasn't a brick*" [27] and several critical tweets from Owen Jones [28-32].

14. At 8.10pm, D tweeted in reply to C's tweet, stating that "*You are publicly encouraging violent attacks against a man who is already a target for death threats. Please think for a second about what a dangerous and unhealthy role you are now choosing to play in public life.*" [33]

15. At 9.03pm, D sent a second tweet to her own followers (i.e. not by way of reply to C) which stated: "*Today Jeremy Corbyn went to his local mosque for Visit My Mosque Day, and was attacked by a Brexiteer. Rachel Riley tweets that Corbyn deserves to be violently attacked because he is a Nazi. The woman is as dangerous as she is stupid. Nobody should engage with her. Ever.*" [35] She sent only one tweet in between those two tweets [34].

16. After D had gone to sleep [23], C 'quote tweeted' D's second tweet to C's followers with the comment "*Thank you to all the people who checked the facts of this to call out this appalling distortion of the truth. To those calling for my arrest, urgh*." [36]

17. Upon waking and seeing C's tweet, D replied to C at 7.38am stating "*Your tweet said "good idea" to the words "if you don't want to get egged, don't be a Nazi". The obvious interpretation of that is that you're saying Corbyn is a Nazi and it's a good idea to punch him. If you meant something different, please clarify it?*" [37].

(b) Relevant legal principles

(i) Meaning

18. Meaning rests on how the statement complained of will be understood by the hypothetical ordinary and reasonable reader of the publication in its context.

19. In *Koutsogoiannis v Random House Group* [2019] EWHC 48 (QB) [2020] 4 WLR 25, Nicklin J summarised the principles relating to meaning at [11]-[12].

20. In *Stocker v Stocker* [2019] UKSC 17 [2019] 2 WLR 1033, Lord Kerr, giving the judgment of the Court, emphasised the importance of context in social media defamation claims. (The case was characterised by the Court of Appeal in *Tinkler v Ferguson* [2019] EWCA Civ 819 as having "*laid down that the context of publication was all-important*" [15].)

21. Lord Kerr adopted as the starting point the guidance in *Jeynes v News Magazines* [2008] EWCA Civ 130 given by Sir Anthony Clarke MR at [14].

22. Lord Kerr explained the approach to context as follows:

> 39. The starting point is the sixth proposition in *Jeynes* - that the hypothetical reader should be considered to be a person who would read the publication - and, I would add, react to it in a way that reflected the circumstances in which it was made. It has been suggested that the judgment in *Jeynes* failed to acknowledge the importance of context - see *Bukovsky v Crown Prosecution Service* [2017] EWCA Civ 1529; [2018] 4 WLR 13 where at para 13 Simon LJ said that the propositions which were made in that case omitted "an important principle [namely] … the context and circumstances of the publication …".

40. It may be that the significance of context could have been made more explicitly clear in *Jeynes,* but it is beyond question that this is a factor of considerable importance. And that the way in which the words are presented is relevant to the interpretation of their meaning - *Waterson v Lloyd* [2013] EWCA Civ 136; [2013] EMLR 17, para 39.

41. The fact that this was a Facebook post is critical. The advent of the 21st century has brought with it a new class of reader: the social media user. The 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.

42. In *Monroe v Hopkins* [2017] EWHC 433 (QB); [2017] 4 WLR 68, Warby J at para 35 said this about tweets posted on Twitter:

> "The most significant lessons to be drawn from the authorities as applied to a case of this kind seem to be the rather obvious ones, that this is a conversational medium; so it would be wrong to engage in elaborate analysis of a 140 character tweet; that an impressionistic approach is much more fitting and appropriate to the medium; but that this impressionistic approach must take account of the whole tweet and the context in which the ordinary reasonable reader would read that tweet. That context includes (a) matters of ordinary general knowledge; and (b) matters that were put before that reader via Twitter."

43. I agree with that, particularly the observation that it is wrong to engage in elaborate analysis of a tweet; it is likewise unwise to parse a Facebook posting for its theoretically or logically deducible meaning. 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.

44. That essential message was repeated in *Monir v Wood* [2018] EWHC (QB) 3525 where at para 90, Nicklin J said, "Twitter is a fast moving medium. People will tend to scroll through messages relatively quickly." Facebook is similar. People scroll through it quickly. They do not pause and reflect. They do not ponder on what meaning the statement might possibly bear. Their reaction to the post is impressionistic and fleeting. Some observations made by Nicklin J are telling. Again, at para 90 he said:

> "It is very important when assessing the meaning of a Tweet not to be over-analytical. … Largely, the meaning that an ordinary reasonable reader will receive from a Tweet is likely to be more impressionistic than, say, from a newspaper article which, simply in terms of the amount of time that it takes to read, allows for at least some element of reflection and consideration. The essential message that is being conveyed by a Tweet is likely to be absorbed quickly by the reader."

45. And Nicklin J made an equally important point at para 92 where he said (about arguments made by the defendant as to meaning), "… these points only emerge as a result of close analysis, or someone pointing them out. An ordinary reasonable reader will not have someone by his/her side making points like this."

The context of a publication on Twitter

23. Where one or other party seeks to rely upon context supplied by another article, and its relevance as context is disputed, *Duncan and Neill* states that "It is submitted that the correct question in such cases is whether, having regard to all the circumstances, it is to be inferred that the publishees of the statement complained of will also have read or seen or heard the material which is relied on as context" (para 5.27).

24. The test for what will constitute the online publication for the purposes of determining meaning was considered at length by Warby J in *Monroe,* (cited by Lord Kerr in the passage above) where he explained that "*Special characteristics should only be taken into account if they are matters of common knowledge, agreed, or proved: McAlpine [58], Simpson v MGN Ltd [2015] EWHC 77 (QB) [10]*". In the *Simpson* case (an appeal was allowed on different grounds), Warby J had held that "*The court can take judicial notice of facts which are common knowledge, but facts which are not need in principle to be admitted or proved, not assumed*", which was cited again in *Lord Sheikh v Associated Newspapers* [2019] EWHC 2947 (QB) for the proposition that "*A court needs to be wary of drawing on its own knowledge of, let alone subjective opinions about, particular publications, in the absence of evidence*." [44].

25. In *Monroe*, Warby J expanded on the "Principles [as] applied to Twitter":

> 34. These well-established rules are perhaps easier to apply in the case of print publications of long standing such as books, newspapers, or magazines, or static online 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. 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".

26. Warby J concluded 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*." [38]. As to "*material on Twitter that is external to the tweet itself*", he considered that:

> 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. It may also be necessary, in some cases, to take account of the fact that the way Twitter works means that a given tweet can appear in differing contexts to different groups, or even to different individuals. As a matter of principle, context for which a defendant is not responsible cannot be held against them on meaning. But it could work to a defendant's advantage.

27. That approach to context online was further considered by Nicklin J in *Falter v Altzmon* [2018] EWHC 1728 (QB). He observed that:

> 11. … *Charleston & News Group Newspapers* comes from a different era where print copies of newspapers were essentially the main medium through which people were defamed. In such cases it was relatively straightforward, given that the totality of what was provided to the reader was readily available, to treat the ordinary reasonable reader as having read the entirety of an article including its text, headline, text, furniture, things like that.
>
> 12. The Internet provides a degree of challenge to that orthodoxy because it is possible to set out in on-line 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.

28. Having considered Warby J's guidance referred to above, Nicklin J concluded that: *"What … I derive from Monroe v Hopkins is that everything is going to depend upon the context in which material is presented to the reader"* [15] and suggested that "*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"* [16].

Context distinguished from Innuendo meaning

29. An innuendo meaning is distinguished from the ordinary and natural meaning of the publication, in that it is conveyed only to readers with special knowledge. However, the fact that a meaning depends upon some knowledge beyond what is set out in the publication does not of itself make the meaning an innuendo meaning. It is only if the knowledge is not general

knowledge that it is necessary to plead an innuendo meaning. The Court will determine where the dividing line should be drawn between what is general knowledge available to the ordinary reader of the particular publication and what is special knowledge unknown to the ordinary reader but known to a proportion of the readership (large or small).

30. In *McAlpine v Bercow* [2013] EWHC 1342 (QB), Tugendhat J examined the characteristics of the hypothetical reader of Ms Bercow's Tweets for the purpose of discerning the ordinary meaning of the tweet complained of. After quoting *Jeynes*, he said:

> 58. It is important in this case to stress point (6) [from *Jeynes*: "The hypothetical reader is taken to be representative of those who read the publication in question."] The Tweet was not a publication to the world at large, such as a daily newspaper or broadcast. It was a publication on Twitter. The hypothetical reader must be taken to be a reasonable representative of users of Twitter who follow the Defendant. What the characteristics of such people might be is in part agreed, and in part for submissions by the parties as to what I should infer from what is agreed.
>
> 59. The Defendant's tweets which are in the court bundle include a number which relate to politics or current affairs as well as a number which do not. Because of that, and because of her political links, Sir Edward submits that followers of the Defendant probably included a significant number who shared her interest in politics and current affairs. A significant number retweeted the Tweet to their own followers. The fact that the Defendant's followers use Twitter implies that they like to be up to date with such matters. I did not understand Mr McCormick [for the Defendant] to dispute this, and I would infer that it is the case.
>
> …
>
> 61. There are, of course, also references in the newspaper reports I have quoted above to Twitter being used in this way in this very case. Examples are the "*frenzy of unsubstantiated speculation on social networking sites, with several politicians being named as the likely subject*" … and the tweets of which *The MailOnline* published images ….

31. Tugendhat J was able to conclude that "*In my judgment followers of the Defendant on Twitter probably are very largely made up of people who share her interest in politics and current affairs*" and "*probably are people who*" had a detailed knowledge (which the Judge set out) of the developing news story

[81]. (He found in the alternative that it bore a defamatory innuendo meaning [91]).

32. The Judge must determine any dispute about whether the knowledge is general knowledge in the sense that it is likely to be known to the ordinary or typical reader of the posts in question, or special knowledge (known only to a section, in practice a minority, of that readership).

(ii) Whether the meaning is fact or comment

33. In *Koutsogoiannis* (above), Nicklin J summarised the principles drawn from the authorities at [16].

34. In the Court of Appeal's judgment in *Butt v SSHD* [2019] EWCA Civ 933 [2019] EMLR 23, handed down shortly afterwards, Sharp LJ set them out at [34]-[39].

35. In that case, the basis of the opinion that Dr Butt was an extremist hate preacher was referenced very briefly indeed. Reference to Dr Butt's views "*on the record*" [49] was deemed to be sufficient, notwithstanding the manifest inability of the publishee to form his own assessment based on that unparticularised reference. Sharp LJ adopted Nicol J's assessment at first instance that:

> "Since the subject matter of the press release was the risks posed by speakers on university campuses, the reader would understand this to be a reference to the Claimant's publicly expressed views on social, religious, political or moral issues, since these are the kinds of matters which would be likely to be debated at a university or college. The allusion to the Claimant's publicly available views was brief, but then so too was the allusion to the works of Lord Kemsley in *Kemsley v Foot* and, as *Joseph v Spiller* made clear, it is not necessary for the defendant to have specified the foundation for his comment with such clarity that the reader can make his own assessment of the comment's validity." [49]

36. Sharp LJ held that "*the statement about Dr. Butt would still be defensible as honest opinion, even if, contrary to my view, it was to be regarded as an inferential one of fact, rather than an evaluative judgment*" [51].

37. The fact that the speech is political is relevant, within proper bounds, to determining whether the meaning is of fact or of opinion, see *Barron v Collins* [2015] EWHC 1125 (QB), per Warby J:

> 53… 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...

(iii) Defamatory at common law

38. As Lord Sumption (giving the judgment of the Supreme Court) pointed out in *Lachaux v Independent Print*, "Tugendhat J [in *Thornton v TMG* [2011] 1 WLR 1985] held that in addition to the procedural threshold recognised in Jameel, there was a substantive threshold of seriousness to be surmounted before a statement could be regarded as meeting the legal definition of "defamatory"." This was one of the bases upon which he considered that the Court of Appeal's interpretation of the serious harm test, by which it was ordinarily sufficient to identify a seriously defamatory imputation, did not strengthen the common law test sufficiently to be a plausible interpretation. It is a reminder that the common law threshold has itself been heightened shortly prior to the enactment of the 2013 Act. The fact that serious harm is no routinely determined at a Preliminary Trial following the Supreme Court's judgment means that the new threshold of seriousness imposed by Tugendhat J and endorsed by the Supreme Court retains its relevance as a safeguard to defendants.

39. D further submits that the common law test for a cause of action in defamation should be informed by the protection of political speech conferred by the common law and Article 10, especially when the speech which is the subject of proceedings is simply a statement of the defendant's opinion, and especially where the basis of that opinion is sufficiently

identified as to enable the publishee to make their own assessment (something which is not otherwise necessary to establish that a statement is one of opinion – above).

(c) Submissions

(i) Meaning

40. Whether read in isolation or in its proper context, the tweet D posted on 03.03.19 at 21:03 would be understood by the ordinary reasonable reader to contain the following statements:
    a. The first sentence contained the statements that on that day (i.e., 03.03.19) (i) Jeremy Corbyn had gone to his local mosque for Visit My Mosque Day, and (ii) was attacked by a Brexiteer.
    b. The second sentence contained the statements that (i) C had posted a tweet that day (following the attack on Jeremy Corbyn); and that (ii) C's tweet meant that Mr Corbyn deserved to be violently attacked because he is a Nazi;
    c. The third, fourth and fifth sentences contained the statements that (i) C was as dangerous as she is stupid; and, as a result, (ii) nobody should ever engage with her.

41. As to (a): the first sentence is clearly a straightforward statement (of fact) about an event which had taken place that day viz., the attack on Jeremy Corbyn and the circumstances in which it took place.

42. As to (b): the ordinary, reasonable reader on reading the second sentence (quickly and impressionistically) would understand it to mean that C had posted a tweet following the attack on Jeremy Corbyn which was concerned with and commenting on the attack on Mr Corbyn. The reader would appreciate that D was not reproducing C's tweet by, for example, "quote-tweeting" it or by setting it out in D's tweet. It would be clear to the ordinary, reasonable reader that D was describing / summarising the meaning and effect of C's tweet. The ordinary, reasonable reader would understand that

it was setting out D's impression of what C's tweet was conveying. They would understand D's tweet to mean that C had posted a tweet (following the attack on Jeremy Corbyn) which (in D's view) meant (or conveyed) that Jeremy Corbyn deserves to be violently attacked because he is a Nazi.

43. As to (c): the ordinary, reasonable reader would understand the third, fourth and fifth sentences of D's tweet to set out D's reaction to, and views on, the conduct of C in posting the tweet she did about the attack on Jeremy Corbyn. They would understand D to be saying that in posting such a tweet, C's behaviour was dangerous and stupid and that as a result D's followers should not engage with C by replying or responding to C's tweets on such matters. The use of the word 'Ever' (on its own) would be understood to be simply emphasising the point that her followers should not engage with C on these matters.

Relevant context

44. The context in which D's tweet was published and the characteristics of D's followers are of obvious importance, as reflected in the authorities. They are addressed in evidence in D's witness statement at paras 16-30 [19-23] (see also para 35 in the course of responding to C's pleaded innuendo meaning). That evidence is, in D's submission, clearly admissible, and not only on the question of innuendo meaning. The meaning that an ordinary, reasonable reader would derive from D's tweet (as set out above) is simply reinforced when the tweet is read in its proper context. It does not lead to a different meaning.

45. The proper context is as follows:

    a. The attack on Jeremy Corbyn on 03.03.19

    On 03.03.19 at shortly before 4pm, Jeremy Corbyn was violently attacked and was hit on the head by an assailant holding an egg.

b. The reporting of that attack in the media
See, for example, the article published in *The Guardian* online [53].

c. C's tweet on 03.03.19 at 6:16 PM [26].

C's tweet on 03.03.19 at 6:16 PM 'quote-tweets' a tweet posted by Owen Jones on 10.01.19 at 10:14 am. C quoted Owen Jones' tweet in which he said: "*Oh: I think an egg was thrown at him actually. I think sound life advice is, if you don't want eggs thrown at you, don't be a Nazi. Seems fair to me*". Owen Jones' tweet was not referring to Jeremy Corbyn and pre-dated by 2 months the attack on Jeremy Corbyn.

C's tweet quoted the tweet posted by Owen Jones and added the words: '*Good advice.*", and two symbols / images (i) a red rose; and (ii) an egg. C's tweet was obviously and inescapably a reference to the fact that an egg had been used to hit Jeremy Corbyn. That was clear from C's use of the red rose (which is the Labour rose) and the image of an egg and the fact that she was 'quote-tweeting' the tweet of Owen Jones a well-known high-profile supporter of the Labour Party.

The message of C's tweet was clear. Owen Jones' advice that "*if you don't want eggs thrown at you, don't be a Nazi*" was "*Good advice*" for Jeremy Corbyn and which he should heed i.e., if Jeremy Corbyn does not want to have eggs thrown at him (as had happened a couple of hours earlier when he was hit with an egg) he should not (according to C) be a Nazi.

d. D's reply to C's tweet on 03.03.19 at 8:10 PM [33]

In reply to C's tweet of 6:16 PM, D said: "*You are publicly encouraging violent attacks against a man who is already a target for death threats. Please think for a second about what a dangerous and unhealthy role you are now choosing to play in public life*." [33]

e. D's tweet on 03.03.19 at 9:03 PM [35].

D's tweet was directed to her own followers: "*Today Jeremy Corbyn went to his local mosque for Visit My Mosque Day, and was attacked by a Brexiteer. Rachel Riley tweets that Corbyn deserves to be violently attacked because he is a Nazi. The woman is as dangerous as she is stupid. Nobody should engage with her. Ever*." [35]

f. D's tweet on 04.03.19 at 7:38 AM [37]

D posted a reply to C having quote tweeted D's second tweet to C's followers overnight describing it as "*an appalling distortion of the truth*" [36]: "*Your tweet said "good idea" to the words "if you don't want to get egged, don't be a Nazi". The obvious interpretation of that is that you're saying Corbyn is a Nazi and it's a good idea to punch him. If you meant something different, please clarify it?*" [37]

46. D's first tweet is plainly part of the context, and so in effect part of the publication (see, in the context of print, Warby J in *Yeo v TNL* [2015] 1 WLR 971: "*Normally, where an earlier article is relied on as relevant to meaning, it will be pleaded by way of context;' in effect, as part of the publication complained of*" [134]) D confirms in her statement (para 30) that she posted only one other tweet between her first and second tweets, which is the tweet at [34].

47. Were one to posit the ordinary, reasonable reader reading all three tweets on 4 March, then the third tweet also, of course, becomes part of the context.

48. Meaning rests on how the statement will be understood by the typical (i.e. ordinary reasonable) reader of the publication, which can only be judged in context and by reference to that reader's characteristics. Evidence is not necessarily excluded about the characteristics: see the passages above from Tugendhat J in *McAlpine* and Warby J in *Monroe* and *Sheikh*, each citing his judgment in *Simpson.*

49. Nor is evidence about context excluded. In this case, the context, as pleaded by D, in which the words complained of were published, includes, in addition to the above:

a. A violent attack by a Brexiteer on Jeremy Corbyn whilst he was visiting his local mosque for Visit My Mosque Day on 3 March 2019 (the attack was at approximately 3.52pm), and the publicity concerning that assault. (Given that D was a staffer in Mr Corbyn's office whose political profile was in line with his, it can be inferred that her typical follower would be someone who shared that support for Mr Corbyn and would have a particular interest in this news.)

b. The tweet posted by C at 6.16pm on 3 March 2019 following, and in response to, the attack on Jeremy Corbyn, including C quote tweeting a tweet posted by Owen Jones on 10 January 2019 at 10.14 am [26].

c. Responses to C's tweet amongst her followers including a tweet posted at 6.20pm on 3 March 2019 stating "*Shame it wasn't a brick*" [27].

d. Responses to the C's tweet by other Twitter users, including Owen Jones [28-32].

50. All these Tweets fell within context of the Twitter publication as explained in *Monroe* at [39], which "*would clearly include an earlier tweet or reply which was available to view on the same page as the offending material*" and "*could include earlier material, if sufficiently closely connected*" although "*it is not necessarily the case that it would include tweets from days beforehand*".

51. D's meaning (set out at para 7 above) more accurately discerns the ordinary meaning than the formulation pleaded by C (or the different formulation in her letter of claim [93]). C's pleaded meaning recognises that D's second tweet conveyed that C's tweet meant that Mr Corbyn deserved to violently attacked. That is correct and reflected in D's meaning above. C is wrong to try to attach, in effect, a spin on the word "*deserved*" as meaning that C "*supported*" the attack. The word "*deserved*" is an ordinary English word that

does not require a further word added by way of purported definition in order to discern the meaning conveyed to her typical Twitter follower.

52. C adds hyperbole to the meaning by stating that C was alleged to have "*incite[d] unlawful violence and thuggery*". What "*thuggery*" adds to (or detracts from) "*unlawful violence*" is unclear. It is superfluous or obfuscatory. Its inclusion serves no purpose other than tautological rhetorical flourish.

53. If C "*incites unlawful violence*", over and above opining that Corbyn deserved what happened, then that would on the face of it involve a serious criminal offence. There is no proper basis for supposing that D's tweets conveyed this allegation to their typical reader.

54. Lord Kerr in *Stocker* (above) rightly emphasised the importance of considering the typical reader of a social media publication. His judgment, however, should not be misconstrued as suggesting that there is but a single ordinary and reasonable social media reader with one set of characteristics reading every form of social media from every author. While some features of social media are shared to some degree across platforms, clearly (given the proportion of the population using social media in some way) people with very different characteristics read the same and different forms of social media in differing ways.

55. The authorities referred to above demonstrate the relevance of the characteristics of the defendant's followers. Pertinently for present purposes, the typical Twitter follower of a staffer such as D in a senior politician's office (someone who will be followed largely by activists sharing the politics of her employer) will not be assumed to read D's tweets in the same way as might a typical friend read a personal Facebook page, or a typical fan read a celebrity's Instagram story.

56. In this case, one starts by considering the characteristics of the typical follower of D's tweets. The evidence of this is set out in D's witness statement. There is no other evidence beyond the tweets.

57. There is no reason to believe that the typical reader, likely to a reasonably knowledgeable, informed and interested political activist, would understand from the tweet that C, a well-known TV presenter whose following and profile dwarfed that of D, would actually have exposed herself to criminal proceedings by inciting violence against the Leader of the Opposition. That this would be conveyed in a tweet expressed in those terms is as implausible as the claimant in *Stocker* having disclosed an attempted murder via a Facebook post. Her typical follower would understand the tweet to convey D's view of what C tweeted. What the reader thought of C's conduct if D's tweet drew it to his attention is a different matter and not part of the ordinary meaning.

58. The same applies to the words "so beyond the pale that people should boycott her". D was speaking to her followers who were a tiny fraction of C's following built primarily on her TV celebrity status rather than her virulent criticism of the Leader of the Opposition as a racist and akin to a Nazi.

59. The way in which C's pleading identifies the meaning in the ordinary language used by C and then adds layers of elaboration and escalation calls to mind Sir David Eady's concern in *Daryanani v Ramnani* [2017] EWHC 183 (QB): "*As May LJ noted in Alexander v Arts Council of Wales [2001] 1 WLR 1853, at [41], libel pleaders never seemed content to say that the words in issue mean what they say; a pyramid of insulting paraphrases had to be erected on them*" [4]. The expanded meaning that C pleads merits May LJ's observation that ""*it seems to me that this means what it says – an expression which libel pleaders never seem to use*" (*Alexander* at [41]).

60. Notably, on the other hand, C's meaning overlooks the concern conveyed by D about C having drawn a comparison between Mr Corbyn and a Nazi, perhaps because it illuminates the context in which the tweet would be understood rather than C's unrealistic deductions to create an accusation of crime.

Innuendo meaning

61. Under "Particulars of innuendo", C pleaded that

> 5. The words complained of were published on Twitter. Users of Twitter use the word "engage" to mean to interact with another user, whether by reading their tweets, liking their tweets, retweeting their tweets and so on. Therefore all or a substantial number of the publishees would have understood the words complained of to bear the meaning set out immediately above.

62. The first sentence is uncontentious. The second sentence makes a generalised assertion about how “users of Twitter use the word “engage””, suggesting that C avers that the typical, i.e. ordinary reasonable user would so understand the word. The final sentence refers back to the meaning pleaded in the preceding paragraph, presumably to the part that “she is so beyond the pale that people should boycott her and her tweets”. Yet on the basis of C’s innuendo meaning, the meaning would not extend to “boycotting her” but only, at most, her tweets in the sense of not reading, liking or retweeting them.

63. In any event, there is no evidence that the proportion of Twitter users who will recognise the special meaning of ‘engagement’ would, if they read D’s tweet at all, understand her to be using it in that special sense. D’s witness statement explains, on the contrary, that:

> 34. I am aware that there is a particular meaning of the word ‘engagement’ which is used by those who work in social media, such as marketing professionals who promote their brand or organisation over Twitter. This meaning refers to “retweets”, “likes” and “responses” to tweets. That is reflected in the Claimant’s disclosure, including the details of the Twitter Engage app.
>
> 35. However, I did not use the word engagement in this sense. I am an active participant on social media outside of work. However, this is not part of my job and I have never worked as a social media professional. My interaction with my followers leads me to believe that they tend to be people who share my politics, rather than people who work in social media.

64. C has served some Internet print outs by way of disclosure in relation to her pleaded innuendo meaning of “engagement” [67-91]. However, these are

quite consistent with D's evidence as to why the social media specialist use of "engagement" as a measure of audience reach is not reflective of the way in which D communicated with her followers. They consist of Twitter advice on how to increase engagement and hone the results for different industries [74] and an app, Twitter Engage, for "*creators, influencers, and public figures*" [76]. While C may fall within that group, D does not. C has also disclosed advice from a copywriter to assist with "*how your Twitter presence fits into your overall business model*" [87], similarly irrelevant to D and her followers. Notwithstanding C having pleaded an innuendo meaning, C has served no evidence in support of it and her disclosure in reality supports D's evidence to the effect that C's meaning would be clear to those involved in building brand profiles on social media rather than to ordinary users.

(ii) Fact or opinion

65. The first sentence of D's tweet on 03.03.19 at 21:03 is a statement of fact viz that Jeremy Corbyn had gone to his local mosque for Visit My Mosque Day and was attacked by a Brexiteer.

66. The remaining sentences of the tweet complained of are all statements of opinion. They set out D's opinion about the meaning and effect of the tweet that C posted on 03.03.19 at 6:16 PM and D's views on C's behaviour in posting such a tweet and how her followers should react to C's behaviour.

67. In accordance with para 4 of Master Yoxall's order [2], D has addressed in her witness statement and in her pleading "what the basis for that opinion is". In its proper context, D's tweet indicates the basis of the opinion including, (i) the politically motivated attack / assault on the Leader of the Opposition at a Mosque; (ii) the tweet posted by C; and (iii) responses to C's tweet.

68. It was entirely clear firstly that D was commenting on C's tweet and secondly that the tweet it was referring to had been posted by C that same day. There was therefore "*the clear identification of the subject of the criticism*" (*Greenstein v Campaign Against Antisemitism* [2019] EWHC 281 (QB) at

[31]). It is not necessary that the reader can himself assess the basis of the opinion, but it is relevant that the reader in this case could easily do so.

69. The follower of D's tweets would understand that C was a vociferous opponent of Mr Corbyn, (illustrated in her later portrayal of him as a racist along with his associates apparently [66]); and that these tweets were a strong reaction by one of Mr Corbyn's staff after C portrayed him as a Nazi deserving of attack. Like in *Greenstein*, where even 'bare comment' was held to be opinion, the critical context "*was a very public dispute about alleged anti-Semitism in the Labour Party*" [41].

70. The adjectives "*dangerous*" and "*stupid*" are themselves a powerful indication to the reader that what is being expressed is a strong opinion rather than a statement of fact. It is no bar to a statement being opinion that the statement is a strong one. That is demonstrated by the statements held to be opinion in cases such as *Butt* ("*a hate speaker and an extremist*" [23]) and *Greenstein* ("*anti-Semitic; …had lied to the Charity Commission*" [42]).

(iii) Defamatory tendency

71. D submits that in view of the tweet being part of a statement of opinion on a matter of high controversy with a basis that the reader could readily assess for himself, the *Thornton* threshold of seriousness is not satisfied.

72. The ordinary, reasonable reader of the tweet complained of would understand that D was commenting on and expressing her opinion about C's tweet and would not think less of C (to the extent necessary) at least not without first reading C's tweet and reaching their own conclusion about C.

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RACHEL RILEY v LAURA MURRAY (QB-2019-001964)

DEFENDANT'S REPLY TO CLAIMANT'S SKELETON ARGUMENT

Paras refer to C's Skeleton unless otherwise stated, square brackets are to Bundle.

1. C accepts (notwithstanding the pejorative references to "*fellow-travellers*") that the ordinary reasonable reader will be taken to be one of D's followers. They can be inferred to be quite familiar with Twitter and with politics to wish to follow a full-time political staffer with no public profile (unlike that of C).
2. C's case fails even reading D's second tweet in isolation. C argues that nothing in D's tweet points to any other relevant material (para 6). That requires her to submit that D quoted C's tweet. She did not. The tweet is clearly describing D's interpretation of what C has tweeted in response to the attack on Jeremy Corbyn. It is not purporting to quote C's tweet (whereas D's first (8.10pm) tweet did so by replying to it, so that C's tweet would be shown with it). The difference is illustrated by what C is compelled to aver that D actually stated, namely that "*C physically tweeted "that Corbyn deserves … Nazi*"." (para 27) But the quote marks are added by C, precisely to change the meaning, as is the phrase "*physically tweeted*". The reader would recognise that were D quoting C, she would simply have done so.
3. On context, C ignores D's first tweet [33], notwithstanding the (undisputed) evidence that D posted only one tweet [34] between them (WS, para 30 [22]).
4. Para 9 is mistaken: the issue is to discern the ordinary meaning conveyed to D's typical follower. It is not an innuendo issue, so D need not prove that "*all or a section*" of readers would understand the context pleaded. The question is what the ordinary reasonable follower of D will view as context. That is for the Court to judge in light of the materials and the characteristics of D's followers. In a Twitter case, the Judge will form his own view on the evidence of what should be treated as context. Either party is at liberty to present such evidence. Only D has done so to explain the tweets that form the context of the post. C's claim that "*it is difficult to envisage*" (para 14.4) more than one tweet being read together, in the absence of a link or thread, fails to take account of "*the more dynamic and interactive world of Twitter, **where … a single tweet rarely exists in isolation from others***" where context "*could include earlier material, if sufficiently closely connected [b]ut **it is not necessarily the case that it would include tweets from days beforehand***" (*Monroe* @ [34] and [39] emphasis added).

5. Reading a single tweet in isolation is not how the typical reader consumes social media, and Twitter does not publish individual tweets as self-contained publications. It is C's unreal approach that leads her to ask if other tweets form "*part of the tweet as a whole*" (para 10.2). The real question is to identify the context of the WCO for the typical (i.e. ordinary reasonable) Twitter user following D. Here, the WCO are referring to what another user has just tweeted, as would anyway be obvious from D's 8.10pm tweet. What the ordinary reasonable reader is taken to read does not require evidence that all/most actual readers did so, any more than is evidence generally required that the ordinary reasonable reader will have read the context.

6. D's typical follower would understand that D was conveying her interpretation of C's tweet, rather than quoting it, and could refer to C's twitter page if not already aware of the controversy on Twitter (e.g. through Owen Jones' intervening tweets [28-32]). C gives no explanation of why the reader would think that D was referring to a <u>different</u> tweet when it is common ground that C sent no other tweet responding to the attack that day, so it was obvious that was the one referred to. (And C still offers <u>no alternative interpretation to D's</u>, even now, of what her tweet might mean.)

7. C is wrong to say that anything the typical reader reads after reading the WCO is irrelevant (para 14.5), particularly where the WCO refer to another tweet. Any claimant can restrict the WCO, but not, on first principle, the context/publication.

8. C argues that D's typical follower will not <u>read</u> C's tweet because D has advised them <u>not to read it</u> (para 18). Yet (without notice) C abandons her innuendo case in her PoC [8] (which D's evidence [23-24] refuted) that 'engage' includes reading as well as responding to tweets, thereby removing the basis for C's submission.

9. As to **fact/ opinion**, C's claim that the second sentence is fact is based on arguing that it is quotation rather than interpretation (see para 2 above). C says that the reader will not think that it is opinion because C's tweet is "*so different*" (para 27).

10. Disagreement with the interpretation does not turn opinion into fact. The reader is given the basis for the opinion, namely what C has tweeted about <u>the attack that day on Mr Corbyn</u>, to which D's (factual) first sentence refers. C does not deny that she tweeted about the attack. It is no more required that the reader <u>agree</u> with D about her interpretation of what C has tweeted in response to the attack (or even reads it) than it is required that the reader agrees with (or even consults) the works of Lord Kemsley or the "*on the record*" views of Dr *Butt* (see C's skl, paras 35-36).

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