Neutral Citation Number: [2021] EWHC 3437 (QB)

Case No: QB-2019-001964

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2021

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

Rachel Riley	**Claimant**
- and -	
Laura Murray	**Defendant**

- -
- -

William Bennett QC and John Stables (instructed by **Patron Law Limited**) for the **Claimant**
William McCormick QC and Jacob Dean (instructed by **Carter-Ruck**) for the **Defendant**

Hearing dates: 10-12 May 2021

- -

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives and BAILII by email. The date of hand-down is deemed to be as shown above.

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

THE HONOURABLE MR JUSTICE NICKLIN

The Honourable Mr Justice Nicklin :

1. This is the judgment following the trial of the Claimant's libel action. The claim concerns a Tweet posted by the Defendant on 3 March 2019. The judgment is divided into the following sections:

Section		Paragraphs
A.	**The Parties**	**[2]-[3]**
B.	**The Tweets**	**[4]-[24]**
C.	**Determination of the preliminary issues of meaning, fact/opinion and whether defamatory**	**[25]-[27]**
D.	**The Statements of Case**	**[28]-[30]**
E.	**Issues for determination**	**[31]**
F.	**Witnesses at trial**	**[32]**
G.	**Serious harm to reputation: s.1 Defamation Act 2013**	**[33]-[47]**
	(1) Law	[33]-[34]
	(2) Evidence	[35]-[38]
	(3) Submissions	[39]-[41]
	(4) Decision	[42]-[47]
H.	**Truth**	**[48]-[80]**
	(1) Law	[50]-[52]
	(2) Submissions	[53]-[62]
	(3) Decision	[63]-[80]
I.	**Honest Opinion**	**[81]-[102]**
	(1) Law	[85]-[86]
	(2) Submissions	[87]-[91]
	(3) Decision	[92]-[102]
J.	**Publication on a matter of public interest**	**[103]-[131]**
	(1) Law	[103]-[108]

	(2) Submissions	[109]-[119]
	(3) Decision	[120]-[131]
K.	**Remedies**	**[132]-[159]**
	(1) Law	[135]-[137]
	(2) Evidence	[138]-[143]
	(3) Submissions	[144]-[145]
	(4) Decision	[146]-[159]

A: The Parties

2. The Claimant is a television presenter, probably best known for her appearance on the Channel 4 programme, *Countdown*. The Claimant was a regular user of Twitter, the social media platform. In March 2019, she had some 625,000 followers. From September 2018, the Claimant had publicly spoken to condemn what she regarded as the fostering of anti-Semitism in the Labour Party under Jeremy Corbyn.

3. In March 2019, the Defendant was the Stakeholder Manager for the leader of the Labour Party, at that time, Jeremy Corbyn MP. The Defendant was also a user of Twitter. In March 2019, she had some 7,252 followers.

B: The Tweets

4. This libel action concerns a Tweet by the Defendant, but to understand the context it is necessary first to set out two earlier Tweets; one by Owen Jones, *The Guardian* journalist, and the other by the Claimant.

5. On 10 January 2019, Owen Jones posted the following message on Twitter referring to an incident in which an egg had been thrown at Nick Griffin, the former leader of the British National Party:

6. At around 15.30 on 3 March 2019, Jeremy Corbyn was assaulted with an egg whilst he was visiting the Finsbury Park Mosque. A member of Mr Corbyn's team apparently detained the assailant, and he was subsequently arrested. Media reports of the incident

started to appear from around 16.30 on 3 March 2019. At 17.25 *The Guardian* reported that a man had been arrested for hitting Mr Corbyn with an egg. A party source, quoted in the article, said that Mr Corbyn had not been injured and had continued his visit following the incident.

7. At 18.16, the Claimant posted the following Tweet ("the Good Advice Tweet"):

8. The Claimant was referring to the incident involving the assault on Mr Corbyn earlier that afternoon, but only a reader of the Good Advice Tweet who was aware of the assault on Mr Corbyn would have understood the reference from the Claimant's use of the egg, and a rose, to depict the Labour Party.

9. One person who did understand this reference in the Good Advice Tweet was the Defendant. At 20:10, the Defendant posted the following Tweet in reply to the Good Advice Tweet:

The Claimant did not reply to that Tweet. In her evidence at trial, the Claimant stated that she did not recall whether she had seen this Tweet but she was unaware of who the Defendant was.

10. The Defendant posted two further responses to other Tweets:

i) At 20.37, she replied to @Problemspartof:

> "… She was referring to Jeremy eg. saying if Jeremy doesn't want eggs thrown at him he should stop being a Nazi. This both implies (a) that he's a Nazi and (b) that he deserved the violent assault he received today."

ii) At 20.40, she replied to @Problemspartof and @briantaylor56:

> "The context is that Jeremy was attacked today. She is saying if Jeremy doesn't want eggs thrown at him he should stop being a Nazi. This both implies (a) that he's a Nazi and (b) that he deserved the violent assault he received today."

11. At 21.03, the Defendant posted a further Tweet ("the Defendant's Tweet"):

12. The Defendant's Tweet did not reply to, quote Tweet, or otherwise include (for example by screenshot) the Good Advice Tweet. That is going to be a point of some significance in this case. In her evidence at trial, the Defendant stated that the reason she had not quote-Tweeted or otherwise included the Good Advice Tweet was that she did not want to "*drive additional traffic*" to the Good Advice Tweet. Whatever the motivation, in practical terms, it meant that the Good Advice Tweet was not immediately available to anyone reading the Defendant's Tweet. Unless the reader manually searched through the Claimant's Tweets, s/he would be entirely dependent upon the Defendant's description of the Good Advice Tweet to understand what the Claimant had said.

13. The Good Advice Tweet and the Defendant's Tweet provoked a large number of responses (see further [36] below).

14. The Defendant relies upon direct responses to, and quote-Tweets of, the Good Advice Tweet to demonstrate, she contends, that a significant number of people interpreted the Good Advice Tweet to mean that Jeremy Corbyn deserved to be attacked because he was a Nazi. Mr McCormick QC identified these responses in two Appendices to the Defendant's skeleton argument for trial. By way of example, and selected from the immediate responses to the Good Advice Tweet on 3 March 2019, the Defendant relies upon the following:

    i) (@p_m_b): "*When you have to resort to this, you've lost the debate. @RachelRileyRR condoning violence against the leader of the opposition, a sitting elected MP, because he's on the left and she's on the right. Awful. @channel4 should review this behaviour*".

    ii) (@pagster57): "*Wow! Rachel Riley calling Jeremy Corbyn who'd just been attacked, a Nazi. Are you going to act in this @Channel4? This is dangerous*".

    iii) (@StopCityAirport): "*This is abhorrent. The suggestion that Corbyn is a Nazi because an egg was thrown at him. This is Hate Speech. This is the subtle nuances that make evil become the norm. Awful. Shameful. Desperate.*"

    iv) (@CallumMilburn24): "*I agree with almost all of the constructive criticism surrounding the Labour Party and Anti-Semitism but this is outrageous. Insinuating Corbyn is a Nazi is losing touch with reality.*"

    v) (@RIGIDDOGMA): "*Cheering on far-right violence is it?*"

    vi) (@moroniscarrot): "*Both calling the leader of her majesty's opposition a nazi and celebrating a physical assault on him inspired by such rhetoric? That's a really good look that. Very moral high ground.*"

    vii) (@blazerunner): "*Riley should face criminal charges for incitement. At the very least she should be cautioned by police concerning her attitude to the Leader of the Opposition*".

    viii) (@ClaireTromans): "*Imagine being the kind of person to celebrate an almost 70-year-old man being hit in the head. Just imagine*".

    ix) (@a_nitak): "*Revealing your true colours here Rachel. Condoning violence? Quite disgusting*".

    x) (@TheEmanFifty): "*A 69-year-old man gets punched and you condone such actions? Stay away from the crack pipe Riley and stick to the calculator*".

    xi) (@beverlydawnrose): "*Corbyn's fought for equality for all people his whole life and was physically assaulted today, while visiting a mosque. You're applauding his assault & calling him a Nazi. What? You're reported*".

15. On the other hand, the Claimant can point to responses to the Good Advice Tweet – usually responding to other comments criticising the Claimant – that show that the reader understood the message it conveyed differently:

i) (@iainl7): "*Nobody's gloating at Corbyn getting egged. It's a bad thing that undermines the very serious claims against him. However, an awful lot of people are gloating at Jones's fetish for political violence coming back to bit him*".

ii) (@GeneralWoundwort): "*I didn't read it as that but as tongue-in-cheek highlighting [Owen Jones'] sanctimony over this. If you don't want your preferred public figures egged, don't justify egging public figures you dislike…*"

iii) (@DisraeliRascal): "*She didn't label him a nazi… what is it with twitter: she highlighted a clear hypocrisy*".

iv) (@Cameleopardisuk): "*The fact that you can't see how this is a jab at the lefts (sic) hypocrisy its incredible. If its (sic) wrong to throw an egg at someone you agree with its wrong to do it to someone you disagree with – simple.*"

v) (@LBuhmgravy): "*How so? Rachel has just used Owen's remarks about a similar situation! She isn't throwing the egg or calling Corbyn a Nazi! Careful! With your 2+2 making 5 is it actually you likening Jezza to a Nazi…* [and then in response to another reply that has been deleted] *Is she? Or is she showing Owen Jones justifying violence from the left not so very long ago?*"

vi) (@lucid_leigh): "*You're being intentionally obtuse, her argument is that you shouldn't throw eggs at anybody. Everyone is entitled to protection of the law and it's not for Owen Jones to decide who should and shouldn't be assaulted*".

vii) (@DruPKok): "*I think she's pointing out the hypocrisy of Owen's position rather than either calling Corbyn a Nazi or supporting egg throwing. Why are Corbyn supporters being wilfully blind [to] Owen Jones' tweet…?*"

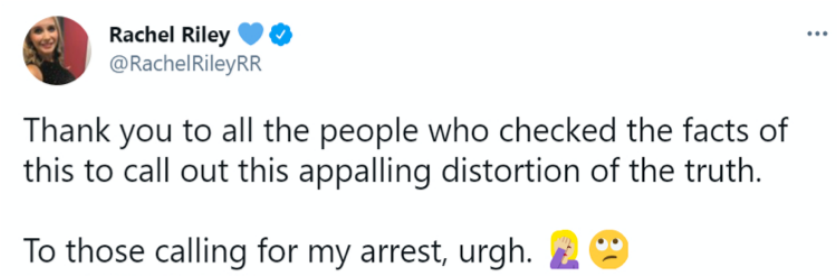
viii) (@JamesCleverly) (then Deputy Chairman of the Conservative Party): "*Seems a lot of people can't tell the difference between advocating eggs being thrown at people (which I am not) and me supporting RR in highlighting hypocrisy (which I am). Don't throw eggs at people, even if you disagree with them (in case you're not sure of my views on this).*"

ix) (@FoundLozzed): "*For those who are so wound up, they 'twang' when they walk, this reads as 'Owen Jones is a hypocrite'. Nothing more, nothing less…*"

x) (@GracePetrie): "*I don't believe that Rachel Riley thinks Corbyn is a Nazi. I think the inference she has made is hyperbolic. People will take her at her word on both sides, awful things will be said about her by his defenders and him by hers, and things will get steadily, relentlessly worse*".

xi) (@oddjob_sean1): "*Hypocrisy. Dictionary result for hypocrisy. Noun: hypocrisy; plural noun: hypocrites. The practice of claiming to have higher standards or more noble beliefs than is the case. AKA Owen Jones tweet in January Rachel Riley pointed out*".

16. At 00.17 on 4 March 2019, the Claimant responded to the Defendant's Tweet by 'quote-Tweeting' it:



The Twitter analytics data for this message is still available for this Tweet. It was seen by around 550,000 people, of whom some 24,500 interacted with it in some way. A point made by the Defendant at trial was that the effect of the Claimant's decision to 'quote-Tweet' the Defendant's Tweet was to give it greater prominence because it enabled a reader of the Tweet to click through to the Defendant's Tweet and engage directly with it.

17. At 07.38 on 4 March 2019, the Defendant replied to the Claimant's Tweet:

The Claimant did not respond to this further Tweet from the Defendant on Twitter.

18. The Defendant's Tweet is no longer available. When the Defendant awoke on 4 March 2019, she found she had been sent many abusive messages in response to the Defendant's Tweet. In her witness statement for trial, she summarised allegations calling her a "*stupid little girl*", "*racist fat filth*", "*vile*", "*lying idiot*" and "*lying bitch*". In response, the Defendant deactivated her Twitter account, at around 9am on 4 March 2019, and, on 15 March 2019 she deleted her Tweet. It is common ground that from the point at which the Defendant suspended her Twitter account, the Defendant's Tweet would no longer have been available on Twitter (unless it was available as a screenshot posted by another user).

19. At 10.12 on 4 March 2019, the Claimant re-Tweeted a post by Stephen Pollard, the then editor of the *Jewish Chronicle.* Mr Pollard had posted a screenshot of the Defendant's Tweet with the message:

> "Laura Murray appears not only to have deleted the tweet but to have suspended her account. Just to be helpful… here is the tweet she posted and has now removed. Remember, this woman work for Corbyn. She lied about @RachelRiley and attacks her as 'dangerous and stupid'."

In her re-Tweet, the Claimant added the comment:

> "Nice getting to know who's libelling you better. Laura Murray 'Stakeholder manager to Leader of the Opposition at Labour Party'. Lovely."

20. At 16.44 on 4 March 2019, the *Jewish Chronicle* Tweeted that the Claimant had instructed solicitors to pursue a libel claim against "*Corbyn staffer Laura Murray*". In her evidence, the Claimant denied that she had spoken to anyone at the *Jewish Chronicle* or announced that she was intending to sue the Defendant. She stated that she thought that she had contacted her solicitor to seek advice about the Defendant's Tweet, but had taken no steps towards proceedings at that stage. The *Jewish Chronicle* must have obtained the story from another source.

21. At 16.48, the Claimant re-Tweeted a post which suggested that the Defendant was moving to the complaints team in the Labour Party "*to help them clear anti-Semitism cases*", and added the comment:

> "The same woman who called me dangerous and stupid for talking about antisemitism yesterday?! What seriously? Is that how she got the job?! Can't be true?!"

22. The deletion of the Defendant's Tweet means that the Twitter analytics data, which would have given reliable evidence as to the extent of direct publication of the Defendant's Tweet, is no longer available. It also effectively deleted the replies and quote Tweets that other Twitter users had contributed following publication of the Defendant's Tweet.[1] Some replies have nevertheless been found and I will identify some of these later in the judgment.

23. There has been some criticism of the Defendant for the deletion of the Defendant's Tweet, including a substantial section in Mr Bennett QC's written trial submissions. I do not consider that this criticism is justified. Although there was some suggestion, on Twitter, that the Claimant was going to sue the Defendant for libel (see [20] above), a letter of claim was not sent until 28 March 2019. It specifically requested the deletion of the Defendant's Tweet, and did not require that the Defendant should preserve any documents or more specifically the Twitter analytics data. As a matter of fact, the Defendant's Tweet had already been deleted by this stage, and with it the analytics data. Mr Bennett QC suggested that, as the analytics data had been destroyed, the Court ought not to "*feel constrained in reaching conclusions as to the scale [of publication] by reason of the absence of the [data]*" and that the Court ought to draw inferences about the scale of publication.

---

[1] The deletion of the Tweet does not actually delete the responses/quote-Tweets. These will still exist on the platform, but they will no longer appear in a convenient thread under the deleted Tweet. In theory, responses and quote-Tweets from the deleted Tweet could still be found, but (unless a screen shot of the original message has been posted) the deleted Tweet will no longer appear (sometimes making it difficult to identify whether the response or quote-Tweet was connected to the deleted Tweet).

24. As I have said, I do not consider that the Defendant is open to any legitimate criticism for the loss of the Twitter analytics data following her deletion of the Tweet. No letter of claim had been received by this point and proceedings had not been commenced. Whilst, in the absence of the analytics data, the Court can draw sensible inferences from evidence it accepts as reliable, Mr Bennett QC appeared to be urging some form of rough-and-ready judicial guesswork as a penalty for the Defendant having caused the loss of the analytics data. I will approach the task of assessing the scale of publication by assessing the evidence I have.

C: Determination of the preliminary issues of meaning, fact/opinion and whether defamatory

25. The Claim was commenced on 31 May 2019. As is now common in defamation proceedings, a direction was made for the trial of preliminary issues of (1) the natural and ordinary meaning of the Defendant's Tweet; (2) whether it conveyed a statement of fact or expression of opinion; and (3) whether the meaning found was defamatory of the Claimant. In a judgment handed down on 24 April 2020 ([2020] EMLR 20), I determined the preliminary issues as follows [25]:

> "(i) The natural and ordinary meaning of the [Defendant's Tweet] is:
>
> (1) Jeremy Corbyn had been attacked when he visited a mosque.
>
> (2) The Claimant had publicly stated in a tweet that he deserved to be violently attacked.
>
> (3) By so doing, the Claimant has shown herself to be a dangerous and stupid person who risked inciting unlawful violence. People should not engage with her.
>
> (ii) Paragraphs (1) and (2) are statements of fact. Paragraph (3) is an expression of opinion.
>
> (iii) Paragraphs (2) and (3) are defamatory at common law."

26. In reaching the conclusion that meaning (2) was a statement of fact, I rejected the Defendant's contention that the ordinary reasonable reader would have understood the Defendant's Tweet, in this respect, to be an expression of opinion: her summary or description of the Good Advice Tweet (see [22] and [27]). An application for permission to appeal the determination of the preliminary issues was refused by the Court of Appeal on 27 August 2020. For the purposes of this judgment, and as will become apparent, the finding that the meaning (2) was a statement of fact is of some importance.

27. In this judgment, I will refer to the meaning in paragraph (2) as "the Factual Allegation" and the meaning in paragraph (3) as "the Opinion".

D: The Statements of Case

28. On 27 April 2020, the Claimant served Amended Particulars of Claim reflecting the Court's decision on the preliminary issues.

29. On 26 May 2020, the Defendant filed her Defence. In summary:

    i) it was denied that publication of the Defendant's Tweet had caused or was likely to cause serious harm to the Claimant's reputation, as required by s.1 Defamation Act 2013;

    ii) meanings (1) and (2), found to be allegations of fact, were substantially true, and the Defendant had a defence under s.2 Defamation Act 2013;

    iii) meaning (3), found to be an expression of opinion, was the Defendant's honest opinion, and the Defendant had a defence under s.3 Defamation Act 2013;

    iv) the Defendant's Tweet was a publication on a matter of public interest and was protected under s.4 Defamation Act 2013; and

    v) the Defendant's Tweet was protected by qualified privilege being a reply to the attack made in the Good Advice Tweet.

30. The Claimant filed a Reply on 24 June 2020. In summary:

    i) in response to the denial that the Claimant could demonstrate serious harm to reputation as a result of publication of the Defendant's Tweet, in a Schedule to the Reply, the Claimant identified responses to the Defendant's Tweet that had been posted on Twitter and Facebook.

    ii) in answer to the defence of truth, the Claimant stated:

> "The Claimant's oblique reference in [the Good Advice Tweet] to the egg attack on Mr Corbyn did not comment on that incident in its own terms, still less did it signal approval of the attack, as the Defendant implies, but drew attention to Owen Jones's selective support for acts of violence against politicians. The Defendant knew that the Claimant had not stated that Jeremy Corbyn deserved to be violently attacked";

    iii) in respect of the honest opinion defence, that (a) the defence could not succeed unless the defence of truth in respect of meaning (2) was made out; and (b) the Defendant did not hold the Opinion when the Defendant's Tweet was published;

    iv) in relation to the public interest defence, that (a) the statement complained of was not and did not form part of a statement on a matter of public interest; and (b) any belief that publication of the Defendant's Tweet was in the public interest was not reasonable; and

    v) in respect of the reply to attack qualified privilege defence, the defence was not available because the Defendant was under no proper duty, whether as a response to the Good Advice Tweet or otherwise, to publish the Defendant's Tweet.

E: Issues for determination

31. The issues I must resolve are as follows:

i) has the Claimant demonstrated that publication of the Defendant's Tweet has caused or is likely to cause serious harm to her reputation as required by s.1 Defamation Act 2013? If so,

ii) has the Defendant demonstrated that the Factual Allegation is substantially true under s.2 Defamation Act 2013;

iii) has the Defendant demonstrated that the Opinion is protected as honest opinion under s.3 Defamation Act 2013;

iv) has the Defendant demonstrated that the Defendant's Tweet was a publication on a matter of public interest under s.4 Defamation Act 2013; and

v) if the Claimant succeeds on liability, what remedies should she be granted.

The reply to attack qualified privilege defence was not pursued by the Defendant at trial.

F: Witnesses at trial

32. Although there are many issues to be resolved in this case, few of them depend upon resolution of any dispute of fact or conflict in the evidence between the witnesses who were called to give evidence at the trial. The Claimant and Defendant gave evidence, and both were cross-examined. Some of the cross-examination of the Claimant concerned matters that have very little to do with the issues I have to decide. There was no suggestion put to either witness that she was not telling the truth in her evidence. I am satisfied that both witnesses were truthful, and both were doing their best to assist the Court in their evidence. Largely, the key evidence is contained in documents. Insofar as I need to resolve any disputes of fact, my conclusions are stated below.

G: Serious harm to reputation

(1) Law

33. Section 1(1) Defamation Act 2013 provides:

> "A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant."

34. Following the Supreme Court decision in ***Lachaux -v- Independent Print Ltd*** **[2020] AC 612**, I take the summary of the relevant principles from ***Turley -v- Unite the Union*** **[2019] EWHC 3547 (QB)**:

> [107] … The Supreme Court held:
>
> (i) s.1 raised the threshold of seriousness above the tendency of defamatory words to cause damage to reputation; the application of the test of serious harm must be determined "*by reference to actual facts about its impact and not just to the meaning of the words*": [12]-[13].

(ii) Reference to the situation where the statement "*has caused*" serious harm is to the consequences of publication, and not the publication itself [14]:

> "It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated."

(iii) Reference to the situation where the statement "*is likely to cause*" serious harm was not the synonym of "*liable to cause*" in the sense of the inherent tendency of defamatory words to cause damage to reputation: [14].

(iv) The conditions under s.1 must be established as facts [14] and "*necessarily calls for an investigation of the actual impact of the statement*": [15]; a claimant must demonstrate as a fact that the harm caused by the publication complained of was serious: [21].

(v) If serious harm could be demonstrated simply by the inherent tendency of statements to damage reputation, little substantive change would have been effected by the Act [16]:

> "The main reason why harm which was less than 'serious' had given rise to liability before the Act was that damage to reputation was presumed from the words alone and might therefore be very different from any damage which could be established in fact. If, as Ms Page submits, the presumption still works in that way, then this anomaly has been carried through into the Act. Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement."

(vi) A claimant may produce evidence from publishees of the statement complained of about its impact on them, but his/her case does not necessarily fail for want of such evidence; inferences of fact as to the seriousness of harm done to reputation may be drawn from the evidence as a whole [21].

(vii) In Mr Lachaux's case, the finding that serious harm had been proved was based on a combination of (a) the meaning of the words; (b) the situation of the claimant; (c) the circumstances of publication; and (d) the inherent probabilities.

(viii) A judge's task is to evaluate the material before him/her and arrive at a conclusion, recognising that this is an issue on which precision will rarely be possible [21].

(ix) The judge can consider the impact of the publication upon people who do not presently know the claimant but might get to know him/her in the future [25].

[108] At first instance in ***Lachaux***, Warby J expressed his conclusion on s.1 as follows:

> [65] In summary, my conclusion is that by section 1(1) of the 2013 Act Parliament intended to and did provide that a statement is not defamatory of a person unless it has caused or will probably cause serious harm to that person's reputation, these being matters that must be proved by the claimant on the balance of probabilities. The court is not confined, when deciding this question, to considering only the defamatory meaning of the words and the harmful tendency of that meaning. It may have regard to all the relevant circumstances, including evidence of what has actually happened after publication. Serious harm may be proved by inference, but the evidence may or may not justify such an inference.

[109] Finally, and consistently with Lord Sumption's analysis in ***Lachaux***, there are three further relevant principles:

(i) In an appropriate case, a Claimant can also rely upon the likely 'percolation' or 'grapevine effect' of defamatory publications, which has been "*immeasurably enhanced*" by social media and modern methods of electronic communication: ***Cairns -v- Modi*** **[2013] 1 WLR 1015** [26] *per* Lord Judge LCJ. In the memorable words of Bingham LJ in ***Slipper -v- British Broadcasting Corporation*** **[1991] 1 QB 283, 300**:

> "… the law would part company with the realities of life if it held that the damage caused by publication of a libel began and ended with publication to the original publishee. Defamatory statements are objectionable not least because of their propensity to percolate through underground channels and contaminate hidden springs."

(ii) It is well-recognised that a claimant may struggle to identify, or to produce evidence from, all those to whom an article was published and in whose eyes the claimant's reputation was damaged: ***Doyle -v- Smith*** **[2019] EMLR 15** [122(iv)]; ***Sobrinho -v- Impresa Publishing SA*** **[2016] EMLR 12** [48]; ***Ames -v- Spamhaus*** **[2015] 1 WLR 3409** [55].

(iii) Assessment of harm to reputation has never been just a 'numbers game': "*one well-directed arrow [may] hit the bull's eye of reputation*" and cause more damage than indiscriminate firing: ***King -v- Grundon*** **[2012] EWHC 2719 (QB)** [40] *per* Sharp J. Very serious harm to reputation can be caused by publication to a

relatively small number of publishees: ***Sobrinho*** [47]; ***Dhir -v- Sadler* [2018] EWHC 2935 (QB)** [55(i)]; ***Monir -v- Wood* [2018] EWHC 3525 (QB)** [196].

(2) Evidence

35. The investigation of the actual impact of the Defendant's Tweet is somewhat hampered by the absence of analytics data from Twitter as to the extent of publication of the Defendant's Tweet (and posted responses/replies to it). This means that evidence that could have been important on the issue of harm to the Claimant's reputation is not available.

36. Nevertheless, the Claimant has identified and relied upon various pieces of evidence, including posts on social media responding to the Defendant's Tweet, in support of her case on serious harm to reputation:

    i) There are at least two screen shots of the Defendant's Tweet which show that it had been re-Tweeted at least 1,585 times, liked by 4,932 people and provoked 736 responses. It is not known when these screen shots were taken, but it must have been at some point prior to the deletion of the Defendant's Tweet on 15 March 2019 (see [18] above).

    ii) The evidence as to the period immediately following its posting at 21.03 demonstrates that, by 21.20, the Defendant's Tweet had been re-Tweeted 91 times and received 208 likes. Another screenshot demonstrates that, in the period of about an hour after the Defendant's Tweet, there had been 363 re-Tweets, 981 likes and 50 responses. By just after midnight, the Defendant's Tweet had received 94 responses, 661 re-Tweets and 1,764 likes.

    iii) Responses to the Defendant's Tweet, in the 2 hours after it was posted, included the following:

        a) (from @SouthwoldL10): "*Why are the police not questioning this has been?*";

        b) (from @MrsDPTrellis): "*Isn't that criminal hate speech?*";

        c) (from @gangleri2000): "*Rachel Riley should be given an ASBO*";

        d) (from @beverlydawnrose): "*Today I unblocked Rachel Riley briefly just to report her and would ask as many people as possible to do the same. Applauding a physical attack on Jeremy Corbyn, a lifelong campaigner for equality, should be enough to get her off twitter – I would hope*";

        e) (from @JackRussellsMom): "*Rachel Riley needs to be arrested for some of the hate she's tweeted. She's disgusting*";

        f) (from @blazerunner): "*Riley should face criminal charges for incitement. At the very least she should be cautioned by police concerning her attitude to the Leader of the Opposition*"; and

g) (from DaEqualityBear): "*Wower's (sic) I really disagree with Corbyn, I also think anyone making comments like that Rachel really are dangerous, it's almost incitement, and it's dangerous*";

iv) The Defendant's Tweet was also posted by users of Facebook:

a) On 3 March 2019, at 22.16, Ian Humphries posted the Defendant's Tweet with the comment: "*Disgusting from Rachel Riley*" ("the Ian Humphries Post"). Replies to this post on Facebook included: "*There should be an outcry for her to be sacked from Countdown… She should be sacked for 'bringing Countdown into disrepute'*"; "*I hope this has been reported*"; and "*She should be arrested for inciting racial hatred*".

b) On 3 March 2019, at 22.32, Dilys Hadley shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*I hope that her words were reported to the police as hate crime. And that everyone boycotts her and her programme*".

c) On 3 March 2019, at 22.54, Mark Strawbridge posted the Defendant's Tweet without comment. Replies to this post on Facebook included: "*So now they are encouraging violence against Corbyn. She should lose her fucking job*"; and "*More than her fucking job, her liberty too she has saught (sic) to incite violence…*". The responses, however, show that not all readers responded in this way. The first comment inquired: "*Did she really say that?*", and later a reader posted: "*As vile as Ms Riley is, this is not what she said. She screenshot an Owen Jones tweet from January about eggs being thrown at someone who behaves like a Nazi and her comment was 'good advice'*".

d) On 3 March 2019, at 23.02, Leah Levane posted the Defendant's Tweet, with the comment: "*This is appalling. Jeremy Corbyn gets attacked while visiting his local Mosque (it's the Annual Open Mosque Day in the UK) and this is the response of those who oppose him! I'm never glad when anyone gets assaulted…*".

e) On 3 March 2019, at 23.34, Jacqueline Walker shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*I had heard the name, but I don't watch TV so didn't really know much about her. After Googling her, I am appalled, she's a big name on BBC. The BBC should sack her, they are fast enough at getting rid of other celebrities who step out of line, and rightly so. The public licence fee pays her wages, if I had a license (sic) I'd be straight onto the BBC about this*" (another poster points out that the Claimant in fact appears on Channel Four); "*She should be charge with incitement. She is radicalising thugs like the one that attacked the leader of Her Majesty's Opposition with his fist. The thug that attacked the Labour leader should have the years ahead in jail to consider his actions, but so too should those who incited his… violence*"; "*Isn't that incitement to violence?*"; "*Time for her to be charged with inciting hatred and unrest*"; "*She should be reported to the police under the prevention of harassment*

act"; "*She should be locked up and the key should be thrown away*"; "*She should be sacked from her job, horrible little mare!*"; and "*Stick to shitty Countdown Rachel Riley and take your vile comments with you*".

f) On 4 March 2019, at 00.21, John Clements shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*She should stick to maths. I for one will never watch either version of Countdown again until she is sacked*"; "*This bitch needs a visit from the police*"; "*She should be sacked by channel four*"; and "*String her up*".

g) On 4 March 2019, at 01.15, Liz Roberts shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*Riley needs to be sacked from Countdown… That's not appropriate behaviour. It really shows what kind of woman she really is*".

h) On 4 March 2019, at 06.42, Janet Field posted the Defendant's Tweet with the comment: "*Disgusting inciteful threatening behaviour from Rachel Riley. Needs police intervention*" ("the Janet Field Post"). Replies to this post on Facebook included: "*Inciting violence. What a wicked idiot*", "*Hope the Police are looking into her*"; "*Should be sacked immediately*"; "*Well I hope she's going to be interviewed by the police for inciting violence*"; and "*This is surely a tweet to (sic) far for Rachel Riley. Get rid now*".

i) On 4 March 2019, at 07.33, Kevin Fuller posted the Defendant's Tweet with the comment: "*She is effectively inciting violence using hate speech about our Jezza.*" Replies to this post on Facebook included: "*Jeremy should file a complaint to the police about her this is inciting violence against him,… what a nasty person she is*"; "*She might be good at numbers but that's the extent of her talents… inciting violence is not a good look and she should apologise!!*"; "*She should be sacked from her position, absolutely vile*."

j) On 4 March 2019, at 10.05, Mick Shaw shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*Instigating criminal behaviour unlawful please sue*"; and "*I think she should be taken to court what a vile creature she [has] turned out to be*".

k) On 4 March 2019, at 10.41, Carolyn Marsden shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*She's not right in the head!!!*"; "*Is that not inciting violence and therefore an offence?*"; "*But [they] won't she will be on all over the media and they will make excuses for her vile statement and nothing will come from it because they take care of their own*"; "*Her comments need reporting, They are hate speech!!!*"; and "*She's clearly not stupid, which is even more worrying. I could be more forgiving of a genuine idiot, who lacked the intellectual equipment to tell right from wrong*".

l) On 4 Mar 2019, at 10.38 and 11.09, Jane Wilson shared the Ian Humphries Post on Facebook without comment. Replies to this post on Facebook included: "*Inciting violence me thinks!*"; "*I will find the tweet and report it, if it is still there*"; "*She really is a piece of work… vile woman and by this tweet is encouraging hatred and violence… she should be sacked*"; "*Just goes to prove behind a doe-eye sweet smile lies an evil piece of work… it always comes out in the end*"; "*I saw it, it was disgusting. She has also been reported to Channel 4!*"; "*Should she keep her job on countdown???*"; and "*… to think the silly mare even attending University*". Again, at least one reader took a different view, posting: "*As much as I despise Rachel Riley, it was actually a retweet from Owen Jones… She didn't call Jeremy a Nazi. As I said, I don't like the woman but saying she called Jeremy a Nazi is not true*".

m) On 4 March 2019, at 15.04, Gigi Camille shared the Ian Humphries Post and commented: "*Then she should be prosecuted for incitement*". Replies to this post on Facebook included: "*She should be sacked from her job on Countdown*".

n) On 4 March 2019, at 15.19, Carole Hope shared the Janet Field Post on Facebook without comment. Replies to this post on Facebook included: "*Oh she's not stupid at all and she knows exactly what she is doing and I'm really concerned that channel 4 actually employ someone with such right wind dangerous views*"; and "*She's inciting hate, is that no a criminal offence or maybe it's only if its (sic) against a tory*".

37. Assessment of whether the Defendant's Tweet caused serious harm to the Claimant's reputation is potentially complicated, evidentially, by two particular matters:

i) Shortly after the Good Advice Tweet appeared, on 3 March 2019, Owen Jones posted on Twitter;

a) at 19.03, he quote-Tweeted the Good Advice Tweet and made a comment directed at the Claimant:

> "A Brexiteer protester threw an egg at Jeremy Corbyn outside the same mosque which was attacked in 2017 by a far right terrorist, whose main motive was murdering Corbyn himself.
>
> The tweet you're quoting refers to Nick Griffin **an actual Nazi**. You're in the absolute gutter."

b) at 19.08, he Tweeted:

> "If @RachelRileyRR thinks it's acceptable to compare refusing to condemn an anti-fascist egging a Nazi with a rightwing protester egging Corbyn – who she is de facto calling a Nazi – outside a mosque targeted by a far right terrorist who wanted him dead, she has no moral compass."

c) at 19.11, he Tweeted what appears to be a screenshot of the Good Advice Tweet with a response, "*Shame it wasn't a brick*", with the comment:

> "Oh look, here's @RachelRileyRR's charming followers fantasising over right-wing protesters throwing bricks at Jeremy Corbyn. You must be so proud."

ii) The Claimant posted a Tweet, at just after midnight on 4 March 2019, denouncing the Defendant's Tweet as an "*appalling distortion*" (see [16] above).

38. Owen Jones has over a million followers on Twitter. As the Claimant stated in her evidence, the effect of Mr Jones' Tweets, in response to the Good Advice Tweet, was to cause something of a 'pile on' (the social media phenomenon of someone highlighting a post or individual in circumstances where that person's followers are likely then to post criticism of the post/individual). At the relevant time, in matters concerning the Labour Party and particularly support for Mr Corbyn, Mr Jones and the Claimant were likely to be perceived as coming from opposing camps.

(3) Submissions

39. In support of the Claimant's case that the Defendant's Tweet has caused serious harm to her reputation, Mr Bennett QC relies upon three matters: (1) the seriousness of the defamatory imputations; (2) the scale of publication; and (3) actual evidence of harm to the Claimant's reputation.

40. In respect of the seriousness of the allegations, Mr Bennett submits that the allegation that someone has stated publicly that a politician deserved to be violently attacked was very serious. At the time of the Defendant's Tweet, the murder of the MP Jo Cox, in June 2016, would have very much been a matter of real public concern. Mr Bennett QC submits that the allegation would have carried weight because of the Defendant's position in the Labour Party. The evidence of the extent of publication on Twitter alone (as demonstrated by the responses, likes and re-Tweets – see [36(i)] above) demonstrates a solid basis on which the Court can infer serious harm to reputation. But there is also the evidence that, shortly after publication, the Defendant's Tweet is then shared on Facebook, a separate platform. Mr Bennett submits that the reactions of individuals to the Defendant's Tweet, captured in real time, on Twitter and Facebook, is clear evidence of serious reputational harm and these responses will represent only a fraction of those who would have concluded the same about the Claimant but did not publicly voice their thoughts.

41. The Defendant accepts that the natural and ordinary meaning of the Defendant's Tweet, found by the Court, contains serious allegations against the Claimant. But she contends that the Claimant cannot rely upon evidence of reputational harm caused by her decision to 'quote-Tweet' (and thereby republish) the Defendant's Tweet (see [16] above). The Defendant contends that at least some of the responses, likes and re-Tweets of the Defendant's Tweet will have been caused by the publication of the Claimant's Tweet at 00.17 on 4 March 2019.

(4) Decision

42. I have deliberately limited the evidence I have set out above, relevant to the issue of serious harm, to restrict it to evidence which I am satisfied can be directly linked to the Defendant's Tweet. Such is the nature of social media, that very quickly discussion can fragment, with users commenting upon the contributions of others. In part, this is simply the modern version of the well-recognised 'percolation' or 'grapevine' effect in the spread of defamatory allegations, and some of this is properly to be regarded as the harm to reputation arising from the original publication. Nevertheless, the Court must take care to ensure that the relevant harm to reputation has been caused by the publication complained of.

43. It is not necessary for me to resolve the Defendant's argument that she is not responsible for further publication of the Defendant's Tweet caused by the Claimant's decision to quote-Tweet it (at 00.17 on 4 March 2019), because I am quite satisfied that the evidence demonstrates that serious harm to the Claimant's reputation had been caused prior to this point. As s.1 is a threshold issue, once it has been surmounted by a claimant, it is not necessary to consider by what margin. This is a matter, if it is reached, that would be relevant to damages.

44. Taking the snapshot at midnight following the Defendant's Tweet, it had received 94 responses, 661 re-Tweets and 1,764 likes. Although not in the league of mainstream media publications, that is evidence of significant publication. It is a reasonably safe assumption that most of those who re-Tweet or like a Tweet agree with its message. As the essential message of the Defendant's Tweet was the Opinion that the Claimant was "*as dangerous as she is stupid*", agreement with this strongly suggests that those who liked or re-Tweeted the Defendant's Tweet accepted, as true, the Factual Allegation. In my judgment, on its own this evidence would provide a solid basis on which to infer serious harm to reputation, but the Claimant's evidence goes further and demonstrates actual instances of reputational harm.

45. The evidence of responses to the Defendant's Tweet, on both Twitter and Facebook, is set out in [36(iii) and (iv)] above. This is clear, contemporaneous, evidence of the impact of the defamatory sting of the Defendant's Tweet. The evidence of the Defendant's Tweet being posted on Facebook shows how effectively, and very quickly, defamatory publications can be republished and the harm to reputation spread. In just over an hour following publication of the Defendant's Tweet, the Ian Humphries Post published the Defendant's Tweet on Facebook. Within 24 hours, the Ian Humphries Post was shared, and the Defendant's Tweet further republished, by nine other Facebook users. At each stage, the evidence supports the conclusion that serious reputational harm was being caused to the Claimant's reputation. The value of this evidence is not only its cogency on the issue of reputational harm, but also because it is unconnected with the Claimant's quote-Tweet of the Defendant's Tweet at 00.17 on 4 March 2019 (see [16] above).

46. In ***Turley***, I referred to similar evidence produced by the Claimant in the following terms [114(ii)]:

> "The Claimant has produced evidence of actual harm to reputation caused by the publication of the Article... This is clear evidence of what has been described in previous cases as "*tangible adverse consequences*"; adverse reactions to the

> publication expressed on social media, or other "*visible re-publication and comment*": ***Ames*** [55]. Further, those who publicly commented adversely by posting comments under the Article will inevitably represent only a fraction of those who will have held similar views having read the Article, but who did not want to post them publicly ..."

The same is true here. To the extent that there is evidence that some readers did not think the less of the Claimant having read the Defendant's Tweet (e.g. the posted comments at the end of [36(iv)(c)] above), this does not mean that the Defendant's Tweet has not caused serious harm to the Claimant's reputation; it simply shows that the harm is less extensive than otherwise it might have been. This is not a case in which the Defendant could realistically hope to demonstrate, by evidence, that readers of the Defendant's Tweet did not believe its contents or otherwise think less of the Claimant, and the Defendant did not attempt to do so.

47. In my judgment, and evaluating the totality of the evidence, the Claimant has demonstrated, as a fact, that the harm caused to her reputation by publication of the Defendant's Tweet (including the identified republication for which the Defendant is responsible) was serious. The Claimant has satisfied the requirements of s.1 Defamation Act 2013.

H: Truth

48. The Defendant has advanced a defence of truth in respect of the Factual Allegation (see Section C: [25]-[27] above). In other words, she contends that the allegation that the Claimant had publicly stated in a tweet that Jeremy Corbyn deserved to be violently attacked was (and is), as a matter of fact, substantially true. When considering this defence, it is important to note that the Defendant's argument that this was an expression of her opinion, was previously rejected by the Court, for the reasons explained in the judgment dated 24 April 2020.

49. The Defendant's truth defence, pleaded in the Defence and advanced at trial, is:

    i) that the Good Advice Tweet: "*(a) meant; (b) was capable of meaning; (c) was capable of being understood to mean; and/or (d) would have been understood to mean by some or all the people who read it, that Mr Corbyn deserved to be violently attacked*" and that the meaning "*substantially conveyed*" by the Good Advice Tweet was that Mr Corbyn deserved to be violently attacked; and/or

    ii) that it was reasonable for a reader of the Good Advice Tweet to understand and/or interpret it to mean that the Claimant was stating that Mr Corbyn deserved to be violently attacked.

(1) Law

50. Section 2(1) Defamation Act 2013 provides:

> "It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true."

51. Again, there is little dispute as to the key principles that apply to a defence of truth under s.2. Mr McCormick QC referred to my summary of the law from ***Turley*** [125]:

> "(i) The defendant has to establish the "*essential*" *or* "*substantial*" *truth* of the sting of the alleged libel: ***Bokova -v- Associated Newspapers Ltd*** **[2019] QB 861** [28(i)].
>
> (ii) The court should not be too literal in its approach. Proof of every detail is not required where the relevant fact is not essential to the sting of the publication. The task is "*to isolate the essential core of the libel and not be distracted by inaccuracies around the edge – however extensive*"*:* ***Bokova*** [28(ii)].
>
> (iii) In deciding whether any given defamatory imputation is substantially true, the court will have well in mind the requirement to allow for exaggeration, at the margins, and have regard in that context also to proportionality. Having regard to its overall gravity and the relative significance of any elements of inaccuracy or exaggeration, has the substantial sting been proved? It is no part of the court's function to penalise a defendant for sloppy journalism – still less for tastelessness of style: ***Turcu -v- News Group Newspapers Ltd*** **[2005] EWHC 799 (QB)** [105] and [111] *per* Eady J."

52. There is, however, a substantial dispute as to one legal principle: the proper approach to determining the meaning of the Good Advice Tweet and whether the 'single meaning rule' should apply.

(2) Submissions

53. Unusually for a defamation claim, the basic facts relevant to the defence of truth are not disputed. What the Claimant said in the Good Advice Tweet is a matter of record. On the issue of truth, both what the Claimant *intended* to convey in the Good Advice Tweet, and what the Defendant understood it to mean, are not relevant. Although the Claimant was asked some questions on this issue during her cross-examination, the Defendant does not advance any case, under her truth defence, as to the intended meaning of the Good Advice Tweet.

54. Mr Bennett QC, for the Claimant submits that, in the determination of the Defendant's truth defence, the meaning of the Good Advice Tweet falls to be construed, objectively, in accordance with the established rules of determining meaning in defamation claims (see e.g. ***Koutsogiannis -v- The Random House Group Limited*** **[2020] 4 WLR 25** [11]-[17]). He contends that application of those principles would lead the Court to attribute a single meaning to the Good Advice Tweet and that the Court should then determine the defence of truth by reference to the single meaning found. He relies upon the endorsement of the single-meaning rule in Lord Neuberger's judgment in ***Oriental Daily Publisher Ltd -v- Ming Pao Holdings Ltd*** **[2013] EMLR 7** [141]-[142].

55. Mr McCormick QC argues that this would be the wrong approach. He submits that the Court has the task of determining whether the Defendant's description of what was published by the Claimant in the Good Advice Tweet is substantially true. He relies upon the evidence in responses to the Good Advice Tweet as demonstrating that a significant number of people did interpret the Claimant's words in substantially the same way that the Defendant did and expressed in the Defendant's Tweet.

56. Mr McCormick relies upon criticism of the single meaning rule as artificial (see e.g. ***Bonnick -v- Morris*** **[2003] 1 AC 300** [20]-[21] *per* Lord Nicholls and ***Stocker -v- Stocker*** **[2020] AC 593** [33]-[34] *per* Lord Reed). Further he argues that the Court of Appeal, in ***Ajinomoto Sweeteners Europe SAS -v- Asda Stores Ltd*** **[2011] QB**, refused to extend the rule to the tort of malicious falsehood, with Rimer LJ noting that "*if the single meaning rule did not exist, I doubt if any modern court would invent it, either for defamation or for any other tort*". Subsequently, and following ***Ajinomoto***, the Court of Appeal has held that, for the purposes of malicious falsehood, the question is whether "*a substantial number of persons would reasonably have understood the words to have such a meaning*": ***Cruddas -v- Calvert*** **[2014] EMLR 5** [30] (see also ***Tinkler -v- Ferguson*** **[2019] EWCA Civ 819** [29]).

57. Mr McCormick contends that the approach to determining meaning in malicious falsehood claims is now very similar to the test that used to be applied in defamation claims as to the capacity of words to bear a particular meaning, described by Sedley LJ in ***Berezovsky -v- Forbes Inc*** **[2001] EMLR 45** [16] as a determination: "*not what the words mean but what a jury could sensibly think that they meant. Such an exercise is an exercise is generosity, not parsimony*". Relying upon observations in ***McAlpine -v- Bercow*** **[2013] EWHC 1342 (QB)** [7] *per* Tugendhat J; ***Monroe -v- Hopkins*** **[2017] 4 WLR 68** [35] *per* Warby J; and ***Stocker -v- Stocker*** [43]-[46] *per* Lord Kerr, Mr McCormick submits that posts on a medium like Twitter are "*particularly susceptible to disagreement between reasonable people as to their meaning*". Fundamentally, he submits that extending the application of the single meaning rule to the determination of a defence of truth would be to use it for a purpose for which it is not suitable and doing so would unduly limit freedom of expression.

58. The key authority upon which Mr McCormick places substantial reliance is the decision of Haddon-Cave J in ***Begg -v- BBC*** **[2016] EWHC 2688 (QB)**.

59. ***Begg*** was a libel claim that arose from an edition of the *Sunday Politics* television programme broadcast by the BBC. The words complained of are set out in the judgment: [3]. The BBC advanced a defence of justification (truth). At trial, the Judge determined the natural and ordinary meaning of the words complained of in the programme was [73]:

> "(1) The Claimant is an extremist Islamic speaker who espouses extremist Islamic positions.
>
> (2) The Claimant had recently promoted and encouraged religious violence by telling Muslims that violence in support of Islam would constitute a man's greatest deed."

60. The BBC's defence of justification included reliance upon various speeches, given by the Claimant. An issue for determination was whether these speeches substantially proved true the meaning that the Claimant had promoted and encouraged religious violence and, more generally, whether he was an extremist Islamic speaker who espoused extremist Islamic positions. The Judge explained his approach to determining the meaning of the speeches relied upon by the BBC as follows (emphasis added with underlining):

[59] I turn to consider the legal principles applicable to the second exercise, namely to establishing the meaning of previous speeches and utterances relied upon in support of a defence of justification. I am grateful to Mr Caldecott QC and Ms Jane Phillips for their helpful note on this topic, with which Mr Bennett did not demur.[2]

[60] The objective of the first exercise is to determine the artificial 'single' meaning which the law requires to be attributed to the [words complained of in the broadast]. The first exercise is artificial in the sense that in real life there is rarely a 'single' meaning and different people may reasonably interpret words in different ways. The rationale for this search for the 'single' meaning is elucidated in the well-known passage from Diplock LJ's judgment in ***Slim -v- Daily Telegraph*** **[1968] 2 QB 157 at 171-2**…

[61] The objective of the second exercise is not so linear, or otherwise constrained by the 'single' meaning rule. The Court has far more flexibility. The reason is that the Court is concerned with a quite different exercise, namely simply deciding whether the defendant has proved the 'sting' (i.e. of the 'single' meaning established in the first exercise) to be 'substantially true'. In so doing, the Court does not have to find a 'single' meaning or even a range of reasonable meanings in relation to every disputed passage. The Court simply has to decide whether a section of the audience would reasonably take the words spoken to convey a particular message. Thus, if the Court were to conclude that at least a section of the audience would reasonably take the Claimant's words to carry a particular message, that would be sufficient to support a finding that his words conveyed that message, even if it could not be said with certainty that the words were understood or conveyed the same message to everyone present.

[62] I summarise below the extent to which the [criteria from ***Jeynes -v- News Magazines Limited*** **[2008] EWCA Civ 130**] set out above have any utility in the second exercise:

(1) Principle (1) of ***Jeynes***, *i.e.* reasonableness, is clearly key in the second exercise.

(2) Principle (2) is relevant but not the caution in the last two lines.

(3) Principle (3) is applicable: over-elaborate analysis is to be avoided. It is important to judge the degree of attentiveness which any particular speech is likely to attract and approaching its gist with that degree of attention to detail in mind. A Muslim audience is always likely to be attentive to what a Chief Imam says on matters of guidance; but there is likely to be a qualitative difference between (a) an annual dinner, (b) a session like the Deviant Groups whose purpose was "*primarily educational*" and where those attending can be assumed to have come because they had a particular interest in the

---

2 I was provided with a copy of this note during the trial. In it, the BBC's Counsel submitted that the single meaning rule did not apply to determination of the meaning of the Claimant's speeches. Beyond Diplock LJ's general criticism of the artificiality of the single-meaning rule from ***Slim -v- Daily Telegraph*** **[1968] 2 QB 157, 171-172**, no other authority was identified to support the submission as to the relevance or applicability of the single-meaning rule to the issue of the meaning of the speeches.

subject, (c) a religious lecture and (d) those taking the trouble to listen to or watch the Claimant's speeches on the web or YouTube. An audience is also likely to be particularly attentive to answers given to questions from fellow members of the audience.

(4) Principle (4) is applicable: the issue is what meaning his words in their proper context conveyed, not what the Claimant intended to say. The test of meaning is objective. The clearer the message, the less likely it becomes that the Claimant did not intend it.

(5) Principle (5) ('the speech must be read as whole') is applicable to the second exercise but in a more nuanced or flexible way. The principle has particular utility in the first exercise in order to ensure that 'bane and antidote' are taken together. But because the Court is not searching for a 'single' meaning, the principle is less efficacious in the second exercise. The Court is under no rigid obligation to approach the speech as a whole. However, if the Claimant makes an assertion in one passage and clearly qualifies it in another, the qualification would clearly be relevant and has to be taken into account, judging the relative strength of the primary message compared with qualification.

(6) Principle (6) is relevant. Audiences vary. An ordinary viewer of a BBC television programme will be different from those attending an educational or religious lecture.

(7) Principle (7) is relevant (see the principle of reasonableness (1) above).

(8) Principle (8) is primarily applicable to the first exercise. However, in the second exercise, the Court could when considering the range of reasonable meanings of a particular passage, decide that any particular passage bears a clear meaning which all or almost all present would draw. But ultimately it must be borne in mind that the second exercise is concerned with determining whether the sting is 'substantially true'.

61. The Judge then considered each of the speeches ([134]-[334]), making findings in respect of the meaning of each speech, before finding that BBC's defence of justification succeeded "*overwhelmingly*": [365]-[373].

62. Based on this authority (particularly the underlined section above), Mr McCormick submits that the Court can, and should, consider whether a section of those who read the Good Advice Tweet would reasonably have understood the words to convey the meaning that the Claimant had publicly stated in a tweet that Jeremy Corbyn deserved to be violently attacked. He argues that, for this purpose, the Court can, and should, consider the evidence of how people *did* understand the Good Advice Tweet. Mr McCormick acknowledges that the evidence that the Court has – in the form of responses to the Good Advice Tweet – could not be called a "*representative sample*", but he suggests that it is reasonable evidence of the range of interpretations that readers put on the Good Advice Tweet. Relying on the principles from the law of passing off, he contends that such evidence is admissible and that, although it is ultimately a matter for the Court's assessment, the Court can take into account evidence of how words have

been understood by "*rational readers*"[3]: see ***Clark -v- Associated Newspapers Ltd*** **[1998] 1 WLR 1558, 1568C-E** *per* Lightman J.

(3) Decision

63. The starting point, for the assessment of any defence of truth, is the imputation that the defendant seeks to prove as substantially true. This is the defamatory imputation that the Court has found the publication to bear. Together with the extent of publication, it is the measure of the objective harm to the Claimant's reputation caused by publication of the imputation. A successful defence of truth means that the Court is satisfied, on evidence, that this objective harm to reputation is substantially justified.

64. In this case, the Court has ruled that the imputation, for these purposes, is the Factual Allegation:

> "The Claimant had publicly stated in a tweet that [Jeremy Corbyn] deserved to be violently attacked."

65. It is important to note that this imputation has three key elements: (1) a public statement in a tweet; (2) that Jeremy Corbyn deserved to be attacked; (3) violently.

66. Mr Jones, in his original Tweet had stated that if a person did not want eggs thrown at him/her, then "*don't be a Nazi*". The Claimant had responded in the Good Advice Tweet: "*Good advice*". The Defendant's Tweet added the specific elements of violence and that Mr Corbyn "*deserved*" to be attacked, which are both reflected in the meaning found by the Court.

67. The parties' arguments on the Defendant's truth defence have focused on whether it is appropriate to apply the single meaning rule to the interpretation of the Good Advice Tweet. I have reached the conclusion that, at least on the facts of this case, Mr Bennett's argument that the single meaning rule should be applied to the Good Advice Tweet, must be rejected, but that Mr McCormick's submissions must also be rejected.

68. The starting point is that, notwithstanding criticisms of its artificiality, the single meaning is rightly applied to the objective natural and ordinary meaning of a publication so as to provide a "*practical and workable*" solution to ascertaining (a) the objective harm done to reputation; and (b) the proper parameters of the defence of truth: see discussion in ***Berezovsky -v- Forbes*** [12]-[14].

69. However, the single meaning rule is not applied (fully or at all) in other areas of defamation where to do so would not be appropriate.

    i) The single meaning rule was not applied directly when considering a *Reynolds* privilege defence: ***Bonnick -v- Morris***. That is because the issues raised under that defence were different. In a *Reynolds* defence, the primary consideration was the state of mind of the defendant publisher and the meaning that s/he intended (or at least recognised) would be conveyed by a publication. Depending upon the facts of the case, the objective meaning of the publication *might* be relevant to the responsibility of the journalist: see discussion in

---

[3] To be contrasted with "*morons in a hurry*": ***Morning Star Co-Operative Society Ltd -v- Express Newspapers Ltd*** **[1979] FSR 113, 117** *per* Foster J.

Lord Nicolls' judgment in ***Bonnick -v- Morris*** [24]-[25] and Eady J's remarks to similar effect in ***Jameel -v- Wall Street Journal Europe SPRL*** **[2004] EMLR 11** [70].

ii) For similar reasons, the single meaning rule does not apply to any assessment of meaning in the context of a plea of malice: ***Loveless -v- Earl*** **[1999] EMLR 530, 538-539** *per* Hirst LJ:

> "… it is very important to contrast the test for meaning on the one hand and the test for malice on the other. Meaning is an objective test, entirely independent of the defendant's state of mind or intention. Malice is a subjective test, entirely dependent on the defendant's state of mind and intention. Thus, in a case where words are ultimately held objectively to bear meaning A, if the defendant subjectively intended not meaning A but meaning B, and honestly believed meaning B to be true, then the plaintiff's case on malice would be likely to fail."

70. Properly understood, ***Begg*** is an example of the Court not applying the single meaning rule, in the context of an assessment of a defence of truth, because it was not appropriate to do so on the facts of that case. As is clear from Haddon-Cave J's judgment, the question to be resolved at the heart of the BBC's truth defence was whether the claimant's speeches, relied upon by the defendant, had promoted and encouraged religious violence.

71. I do not accept Mr McCormick's submission that the underlined passage from [61] sets out a general rule applicable to all cases where the meaning of a publication is relevant to a plea of truth. The Judge's modification of the ***Jeynes***' principles in [62] demonstrates that his approach was case specific. Whether a finding that at least a section of the publishees reasonably understood the relevant publication to convey a particular meaning will be sufficient to prove the substantial truth of an imputation will be case specific and will depend on the parameters of the relevant truth defence.

72. The fundamental issue that I must resolve is whether the Defendant has shown that this defamatory imputation found by the Court in the Factual Allegation is substantially true.

73. It might be thought that the defence of truth has an unpromising start. The Good Advice Tweet, taken at face value, plainly does not state that Jeremy Corbyn deserved to be violently attacked. Whether it does so depends on whether such a meaning is inferred or detected as having been implied (a point that the Defendant's contemporaneous Tweets demonstrate she clearly appreciated – see [10] above), but it is clear from its terms that the Good Advice Tweet was not meant to be read simply at face-value.

74. The evidence of reactions to the Good Advice Tweet shows that, whilst *some* people appeared to understand the Good Advice Tweet in the way described in the Defendant's Tweet, *other* people did not. To that extent, the evidence supports the conclusion (which is obvious anyway) that the Good Advice Tweet was open to more than one interpretation and was therefore ambiguous. The Good Advice Tweet could be (and was) read as suggesting that there was an element of hypocrisy/inconsistency in Owen Jones' original Tweet: that whether the throwing of eggs at politicians was acceptable depended on whether the target's views were regarded as objectionable.

Alternatively, the Good Advice Tweet could be (and was) read in a similar way to the Defendant's interpretation; that Jeremy Corbyn was a Nazi and he too deserved to be similarly attacked.

75. The important point is that, in her choice of words, and particularly the decision not to include the Good Advice Tweet in the post, the Defendant's Tweet removed that important ambiguity. Instead, the Defendant pronounced what the Claimant had said in the Good Advice Tweet *as a matter of fact*. That decision led to the Defendant's Tweet being published (and republished) to people who were therefore unaware that what they were being told was only one *interpretation* of what the Claimant had said in the Good Advice Tweet. As the evidence from the responses to the Defendant's Tweet demonstrates, most if not all of the people who had read it, took it at face value; that the Claimant had said what she was described by the Defendant as having said.

76. As I have sought to demonstrate above, the authorities establish that whether the single meaning rule should be applied, very much depends on why the meaning of the words is relevant to the issue to be resolved. Here, it is not appropriate to impose an artificial single meaning on the Good Advice Tweet. To do so, would stifle the very important fact that it was ambiguous. I therefore reject Mr Bennett's submission that the single meaning rule should be applied.

77. Nevertheless, the Defendant's defence of truth fails. What the Defendant stated, as a matter of fact, in the Defendant's Tweet is not substantially true; it was at best half the story, presented to readers of the Defendant's Tweet as if it was the full story. Critically, it took away the important fact that what the Good Advice Tweet said was a matter of interpretation or opinion, upon which reasonable views could differ, and replaced it with the Defendant's unequivocal statement of what it meant as a matter of fact. In doing so, the Defendant's Tweet was a misrepresentation of what the Claimant had said in the Good Advice Tweet.

78. The position in which the Defendant finds herself could easily have been avoided. If she had said, in the Defendant's Tweet, for example, that the Claimant had posted a Tweet which was capable of suggesting, or implied, that Jeremy Corbyn deserved to be violently attacked then she may well have had a viable defence of truth (or honest opinion). But she did not do this. She took upon herself the burden of describing, as a matter of fact, what the Claimant had said and failed because she removed the element of ambiguity. Worse, she added the two elements that the Claimant had stated that Mr Corbyn "*deserved to be violently attacked*". By doing so, the Defendant put forward the very worst construction that could be put upon the Good Advice Tweet and stated, as a fact, that this was what the Claimant had said.

79. These are not trivial differences, or ones that could be excused as small errors of detail, or exaggeration, within the permitted parameters of a defence of truth. There is a significant and material difference, not least in terms of likely harm to reputation, between offering *an* interpretation of what someone has said, and pronouncing unequivocally *the* interpretation, as a review of the responses to the Defendant's Tweet more than demonstrates (see [36(iii)-(iv)] above). If anyone is guilty here of misapplying a single meaning, it is the Defendant.

80. I accept that Twitter is a fast-moving medium, and the law recognises that this must be reflected in the Court's assessment of the objective meaning of Tweets. But, beyond

that, defamation law makes little accommodation for those who post on Twitter impetuously. For them, a modern reworking of a familiar maxim would be: Tweet in haste, repent at your leisure (as most defamation cases involving Twitter appear to bear out). The Defendant has failed to prove the truth of the Factual Allegation.

I: Honest Opinion

81. The Court determined, as a preliminary issue, that the second defamatory element of the Defendant's Tweet was the Opinion:

> "By [acting in the manner alleged in the Factual Allegation], the Claimant has shown herself to be a dangerous and stupid person who risked inciting unlawful violence. People should not engage with her"

82. In respect of this part of the defamatory imputation, the Defendant has relied upon a defence of honest opinion under s.3 Defamation Act 2013.

83. In her Defence, the honest opinion defence is advanced in the following terms:

> "14. The statement complained of indicated (in general and/or specific terms) the basis of the opinion, namely:
>
> 14.1 the politically motivated attack on Mr Corbyn (with an egg) at a Mosque that had taken place that same afternoon;
>
> 14.2 the [Good Advice Tweet]; and
>
> 14.3 the Defendant's understanding of the meaning and/or effect of the [Good Advice Tweet].
>
> 15. An honest person could have held the opinion on the basis of any fact which existed when the Tweet was published including the following…

The Defence then set out the facts relied upon as facts upon which an honest person could have held the opinion. Principally, these repeated the particulars of truth together with some further facts relied upon to demonstrate that attacks on politicians were a matter of substantial public concern, particularly following the murder of MP Jo Cox on 16 June 2016.

84. In her Reply, the Claimant contended:

i) the honest opinion defence could not succeed if the truth defence to the Factual Allegation failed; it was the express premise for the Opinion; and

ii) the Defendant did not hold the Opinion.

(1) Law

85. Section 3(1) Defamation Act 2013 provides (so far as is material):

> (1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.

> (2) The first condition is that the statement complained of was a statement of opinion.
>
> (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.
>
> (4) The third condition is 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;
>
> (b) anything asserted to be a fact in a privileged statement published before the statement complained of.
>
> (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.
>
> …
>
> (8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed.

86. The Defendant has not made any submissions on the principles of law that apply. The Claimant referred me to some passages from *Duncan & Neill on Defamation* and authorities cited there (5th edition, 2020).

(2) Submissions

87. There is no dispute between the parties that s.3(2) is satisfied. The Court determined this at the trial of the preliminary issues.

88. As to s.3(3), Mr Bennett QC, for the Claimant, submits that the basis of the opinion was not properly indicated in the Defendant's Tweet. The Defendant cannot rely on the Good Advice Tweet (in paragraph 14.2 of the Defence) as that was only available elsewhere. The reader of the Defendant's Tweet only had the Defendant's summary of what the Claimant was alleged to have said. The Defendant's reliance on her "*understanding*" of the Good Advice Tweet (paragraph 14.3 of the Defence) is self-serving and impermissible. Mr Bennett submits that an opinion itself cannot itself be based upon an opinion held by the Defendant.

89. Mr McCormick QC contends that the second condition is met. The Defendant's Tweet did indicate in general terms the basis of the opinion.

90. As to the final condition, under s.3(4)(a), Mr Bennett QC accepts that a defendant does not have to demonstrate reasonableness. The subsection reflects the old common law test of "*whether any man, however prejudiced and obstinate, could honestly hold the view expressed by the defendant*": ***Telnikoff -v- Matusevitch*** **[1992] 2 AC 343, 354g** *per* Lord Keith. However, where the factual premise for the opinion stated in the words complained of is not demonstrated to be true, then an honest person could not express the opinion sought to be defended.

91. Mr McCormick argues that the issue is not determined by the fate of the truth defence to the Factual Allegation. He submits that the third condition requires proof of facts on which an honest person could have held the opinion expressed. All that the Defendant needs to establish is that an honest person could have expressed the Opinion based on the terms of the Good Advice Tweet. The reaction to the Good Advice Tweet more than demonstrates that an honest person could have expressed the Opinion.

(3) Decision

92. It is common ground that s.3(2) is met. In my judgment, so too is s.3(3). The Defendant's Tweet does indicate, clearly, the basis of the expressed opinion. The issue (at this stage) is not whether the factual premise is right, but whether it was sufficiently indicated. It was.

93. The real battleground is s.3(4)(a). The authors of *Duncan & Neill,* in paragraph 13.24, observe the following as to s.3(4)(a) (with footnotes omitted):

> "Read literally, this means of satisfying the principal condition would seem to represent a significant extension of the latitude conferred on defamatory expressions of opinion by the common law. Like the common law, this paragraph of the subsection insists that the fact (or facts) on which the opinion is based must have existed at the time when the statement complained of was published. It is also implicit that the defendant must prove the truth of the fact on which they rely or, if they rely on more than one fact, of at least one of those facts. It seems equally clear that the fact(s) relied on by the defendant must bear some relation to the opinion expressed, for otherwise an honest person could not have held it."

94. In the footnotes, the authors refer to the following paragraphs from my decision in ***Morgan -v- Associated Newspapers Ltd*** **[2018] EWHC 3960 (QB)**:

> [63] I shall start by dealing with the point on the proper ambit of the facts that can be relied upon to support a defence of honest opinion. The points argued by Ms Evans as to the proper construction of s.3 are interesting. An alternative view is argued by the authors of *Blackstone's Guide to the Defamation Act,* 2013 (Oxford University Press) in paragraphs 4.47-4.50.
>
> [64] I do not need to decide the point, but I would be inclined to accept the view of the authors of the *Blackstone's Guide*. If the section now permits a commentator to get all the facts to the publication wrong and yet still to have available a defence of honest opinion if another entirely unrelated fact could be proved true and upon which an honest person could express the opinion, this would represent a radical change in the law. Paragraph 22 of the Explanatory Notes as I have already noted states that condition three under s.3 was "*intended to retain the broad principles of the common law defence*" not overturn them in key respects.

95. The authors of the *Blackstone's Guide* referred to, in paragraph 4.50, state:

> "It may be argued that the reference, in s.3(4)(a), to '*any* fact' as being available as support for the opinion on the part of an honest person, means what it says, and that the fact(s) relied on to support the opinion need not be the fact(s) indicated in the statement complained of as the basis of the opinion, or be linked to them in any

> way. It is, however, suggested that there must be *some* relationship between the fact(s) indicated as the basis for the opinion and the fact(s) relied on to support it. It cannot have been intended that an opinion expressed on wholly false facts can be supported on an entirely different basis. Otherwise, for example, a person could be accused of dishonesty, or of being a danger to the public, on the basis of some recent alleged, but entirely false, conduct in his or her public capacity, and the comment could be defended as one which could be held by an honest, but prejudiced, obstinate, etc. person, on the basis of some conduct in a wholly different and private capacity, years previously. The change in the law would be a radical one, and it is significant that the parliamentary history of the provision, and para 22 of the Explanatory Notes, clearly suggest that condition 3 'is intended to retain the broad principles of the current common law defence'. There is nothing to suggest that the change from 'a fact' in the draft Bill to 'any fact' in the Act was intended to have this radical effect, rather than to reinforce the intention that not all of the facts indicated in the statement complained of as the basis for the opinion need be shown to be true. It is suggested that the position is made clearer when this point is considered in relation to s.3(4)(b): it cannot be the case that a defendant could publish an opinion based on wholly false facts, and then defend it as one which an honest person could have held on the basis of a privileged statement published perhaps years previously, and nowhere referred to or indicated in the statement complained of."

96. Certainly, at common law, on this aspect of the defence of honest opinion, the position was well settled. The opinion had to be based either on facts which were proved true or protected by privilege. If the facts upon which the opinion purported to be founded were not proved to be true, or published on a privileged occasion, the defence of fair comment was not available: ***Tse Wai Chun -v- Cheng*** **[2001] EMLR 31** [18] *per* Lord Nicholls. As authority for this proposition, Lord Nicholls relied upon ***London Artists Ltd -v- Littler Grade Organisation Ltd*** **[1969] 2 QB 375** in which Edmund Davies LJ had stated (at 395c-e):

> "… fair comment is available as a defence only in relation to facts which are either (a) true, or (b) if untrue, were published on a privileged occasion: see ***Mangena -v- Wright*** **[1909] 2 KB 958** and ***Grech -v- Odhams Press Ltd.*** **[1958] 2 QB 275**. Leaving aside privilege, which does not now arise for consideration, if the alleged facts relied upon as the basis for comment turn out to be untrue, a plea of fair comment avails the defendant nothing, even though they expressed his honest view. As was pointed out in ***Lefroy -v- Burnside (No.2)*** **(1879) 4 LRIr 556, 565**, the very nature of the plea
>
> > 'assumes the matters of fact commented upon to be somehow or other ascertained. It does not mean that a man may invent fact, and comment on the facts so invented, in what would be a fair and bona fide manner on the supposition that the facts were true.'
>
> A man may be led to invent quite honestly and without realising that he is doing so, by mistake, through ignorance or prejudice, or (as probably occurred in the present case) under the stress of emotion. But, whatever the source of error, the defence 'does not extend to cover misstatements of fact, however bona fide': see ***Thomas -v- Bradbury, Agnew & Co. Ltd.*** **[1906] 2 K.B. 627, 638**".

97. The requirement, under common law, that a defendant must prove the facts that underpinned an expressed opinion has been accepted by the ECtHR not to be incompatible with Article 10: ***Alithia Publishing Co Ltd -v- Cyprus*** **(App. No. 17550/03)** [69].

98. My observations in ***Morgan*** were *obiter*; the defence was struck out for other reasons. Here the point calls for decision. If s.3(4)(a) permitted a defendant to succeed with a defence of honest opinion where the expressed premise of a stated opinion was false, then that would represent a fundamental (and radical) departure from the settled position at common law. The facts of this case demonstrate this clearly. The Defendant's Tweet contained a statement of fact – the Factual Statement – which was the express basis for the stated Opinion. The meaning found by the Court made this clear, by the inclusion of the words "*by so doing…*" I have found that the Defendant has failed to establish that the factual premise for her opinion – the Factual Statement – was true. At this point, the Defendant's honest opinion defence simply collapses, for the reasons explained by Edmund Davies LJ in ***London Artists -v- Littler***.

99. In my judgment, the section quoted from *Blackstone's Guide* correctly summarises the position. The subsection has not revolutionised the defence of honest opinion. In line with development of the common law, s.3(4)(a) permits a degree of latitude in the proof of facts upon which an honest person could have held the expressed opinion (and it was this latitude which meant that s.6 Defamation Act 1952 could be repealed without replacement, see paragraph 28 of the Explanatory Note). It does not provide an escape route for defendants who have expressed an opinion upon stated facts they cannot prove to be true.

100. For these reasons, the Defendant's honest opinion defence fails.

101. In light of this, it is not necessary for me to consider the Claimant's plea that the Defendant did not actually hold the Opinion. However, as the point was not abandoned at trial, in fairness to the Defendant, I should shortly state my conclusion on this point. An allegation under s.3(5) that the Defendant did not hold the opinion is tantamount to a plea of malice, reflecting the position as it was at common law. Malice is a serious allegation. It requires a clear pleading and cogent evidence. The Claimant has advanced neither.

102. The Defendant was not effectively challenged on her evidence that she did hold the Opinion. Frankly, Mr Bennett QC lacked an evidential basis upon which to do so, and quite properly he did not try. In my judgment, the Defendant did honestly hold the Opinion. However, the basis on which she expressed that opinion was flawed and, for the reasons I have explained, her honest opinion defence has failed. This is no reflection upon the Defendant's honesty. I have already stated that I am satisfied that the evidence of both the Claimant and Defendant was truthful (see [32] above).

J: Publication on a matter of public interest

(1) Law

103. Section 4 of the Defamation Act 2013 provides:

> (1) It is a defence to an action for defamation for the defendant to show that—

(a) the statement complained of was, or formed part of, a statement on a matter of public interest; and

(b) the defendant reasonably believed that publishing the statement complained of was in the public interest.

(2) Subject to subsections (3) and (4), in determining whether the defendant has shown the matters mentioned in subsection (1), the court must have regard to all the circumstances of the case.

(3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.

(4) In determining whether it was reasonable for the defendant to believe that publishing the statement complained of was in the public interest, the court must make such allowance for editorial judgement as it considers appropriate.

(5) For the avoidance of doubt, the defence under this section may be relied upon irrespective of whether the statement complained of is a statement of fact or a statement of opinion.

(6) The common law defence known as the Reynolds defence is abolished.

104. The key authorities on the proper interpretation of s.4 are ***Economou -v- de Freitas*** **[2019] EMLR 7**; ***Doyle -v- Smith*** **[2019] EMLR 15**; ***Turley -v- Unite the Union*** **[2019] EWHC 3547 (QB)**; ***Hijazi -v- Yaxley-Lennon*** **[2021] EMLR 7**; and the important Supreme Court decision in ***Serafin -v- Malkiewicz*** **[2020] 1 WLR 2455**. Since the trial in this claim, on 1 July 2021, I handed down judgment in the case of ***Lachaux -v- Independent Print Ltd & Another*** **[2022] EMLR 2**. As the decision applies the existing legal principles, I did not seek any further submissions from the parties, and neither party has sought an opportunity to make any further submissions on the ***Lachaux*** decision.

105. There are three issues for the court to determine under s.4(1):

i) was the statement complained of, or did it form part of, a statement on a matter of public interest? If so,

ii) did the defendant believe that publishing the statement complained of was in the public interest? If so,

iii) was that belief reasonable?

- ***Economou*** [87].

106. The terms of s.4(2) make clear that an assessment of the public interest defence under s.4 requires a consideration of all the circumstances. The defence is not restricted to conventional journalists or publishers but is available "*to anyone who published*

material of public interest in any medium": ***Economou*** [80]. In ***Economou*** [110], Sharp LJ explained:

> "… This defence is not confined to the media, which has resources and other support structures others do not have. Section 4 requires the court to have regard to all the circumstances of the case when determining the all-important question arising under section 4(1)(b): it says the court must have regard to all the circumstances of the case in determining whether the defendant has shown that he or she reasonably believed that publishing the statement complained of was in the public interest. In my judgment, all the circumstances of the case must include the sort of factors carefully identified by the judge, including, importantly, the particular role of the defendant in question. The statute could have made reference to the *Reynolds* factors in this connection, but it did not do so. That is not to say however, that the matters identified … may not be relevant to the outcome of a public interest defence, or that, on the facts of the individual case, the failure to comply with one or some of the factors, may not tell decisively against a defendant. However, even under the *Reynolds* regime, as Lord Nicholls made clear, the weight to be given to those factors, and any other relevant factors, would vary from case to case. As with *Reynolds* therefore, with its emphasis on practicality and flexibility, all will depend on the facts."

107. Providing they are not treated as any sort of 'checklist', the now familiar ten illustrative factors, identified by Lord Nicholls in ***Reynolds -v- Times Newspapers Ltd* [2001] 2 AC 127, 205**, remain potentially relevant when assessing whether a defendant's belief that publication was in the public interest was objectively reasonable. In ***Serafin***, Lord Wilson traced the legislative history of s.4 through the post-*Reynolds* authorities in [57] to [59], and observed in [60]:

> "In [***Flood -v- Times Newspapers Ltd* [2012] 2 AC 273**] ..., the defendant published an article taken to mean that there were reasonable grounds to suspect that the claimant, a police officer, had corruptly taken bribes. The allegation was false. This court held that the defendant nevertheless had a valid defence of public interest. Lord Phillips of Worth Matravers, the President of the court, said at [26] that in that case analysis of the defence required particular reference to two questions, namely public interest and verification; at [27] that it was misleading to describe the defence as privilege; at [78], building on what Lord Hoffmann had said in the ***Jameel*** case at [62], that the defence normally arose only if the publisher had taken reasonable steps to satisfy himself that the allegation was true; and at [79] that verification involved both a subjective and an objective element in that the journalist had to believe in the truth of the allegation but it also had to be reasonable for him to have held the belief. Lord Brown at [113] chose to encapsulate the defence in a single question. 'Could', he asked, 'whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?'. Lord Mance at [137], echoing what Lord Nicholls had said in the ***Reynolds*** case at p.205, stressed the importance of giving respect, within reason, to editorial judgement in relation not only to the steps to be taken by way of verification prior to publication but also to what it would be in the public interest to publish; and at [138] Lord Mance explained that the public interest defence had been developed under the influence of the principles laid down in the European Court of Human Rights."

108. Mr McCormick has relied upon Warby J's observations in ***Barron -v- Vines*** **[2015] EWHC 1161 (QB)** as to the importance of not allowing "*the law of defamation to stifle political debate*": [45]; and that it is a matter of "*high importance to afford political speech protection from the chilling effects which the law of defamation can have*": [59].

(2) Submissions

(a) Was the statement complained of, or did it form part of, a statement on a matter of public interest?

109. Based on the authorities of ***Flood***, ***Serafin*** and ***Turley***, Mr McCormick submits that whether a statement was on a matter of public interest is to be interpreted broadly, excluding only matters which are "*personal and private*". This is an objective assessment. The Defendant's Tweet was, he argues, "*self-evidently on a matter of public interest*".

110. Mr Bennett contends that the Defendant's Tweet was not a meaningful contribution to public discourse and "*there is not a public interest in one member (from a particular political faction) of Twitter telling other members of Twitter that her opinion is that the Claimant (who is perceived to be from another faction) is dangerous etc.*" He submits that the Defendant's Tweet was published as part of a 'pile on' against the Claimant started by Owen Jones' Tweet, at 19.03, stating that the Claimant was "*in the absolute gutter*" (see [37(i)(a)] above).

(b) Did the Defendant believe that publishing the statement complained of was in the public interest?

111. The Defendant's evidence, at trial, was that she read the Good Advice Tweet and thought that the Claimant was "*endorsing and encouraging*" the attack on Jeremy Corbyn; that this was "*reckless and irresponsible*", "*deliberately provocative*" and "*sent a dangerous message to the wider world and was a dangerous and stupid thing to do*". Mr McCormick points to the Defendant's Tweets, in the period 20.10 to 20.40 (see [9]-[10] above), as providing contemporaneous support of what she thought about the Good Advice Tweet. The Defendant monitored reaction to the Good Advice Tweet during the evening and saw several replies which made points similar to the ones she later expressed in the Defendant's Tweet. Her evidence at trial was that she believed that her Tweet was in the public interest.

112. In his written submissions before trial, Mr Bennett did not appear to attack the Defendant's claim that she believed the publication of the Defendant's Tweet was in the public interest. He reserved most of his fire for the final issue: whether the belief was reasonable. Similarly, when he cross-examined the Defendant, Mr Bennett did not challenge the Defendant on her belief that posting the Defendant's Tweet was in the public interest.

(c) Was that belief reasonable?

113. As with most s.4 defences, this is where the main battleground lies.

114. In her Defence, the Defendant relies on the following particular matters:

i) that she reasonably believed that the Good Advice Tweet:

a) meant and/or would be understood by some (if not most) readers of the tweet to mean that the Claimant was stating that Mr Corbyn deserved to be violently attacked (because he is a Nazi);

b) publicly encouraged violent attacks against Mr Corbyn, who had already been a target for death threats; and

c) demonstrated that the Claimant was playing a dangerous and unhealthy role in public life;

ii) that she had made clear that the Defendant's Tweet was in response and/or was a reaction to a Tweet posted by the Claimant following the attack on Jeremy Corbyn that same day, and that therefore readers could, if they wished, easily identify and review the Good Advice Tweet;

iii) that the Good Advice Tweet conveyed her interpretation of the meaning and effect of the Good Advice Tweet, "*rather than being a quotation or verbatim or literal account of the words used by the Claimant*" and that her interpretation "*is supported by the fluid, hyper-impressionistic way in which readers consume Twitter*"; and

iv) that she reasonably believed that it was important that she respond to the Good Advice Tweet by pointing out what she believed to be its lack of justification and dangerous implications.

115. In her Reply, the Claimant largely contended that the matters relied upon by the Defendant were irrelevant. As to a positive case in rebuttal, the Claimant contended:

> "The Defendant conducted no research in order to verify whether her allegations were true or not. This was necessary given the seriousness of the accusations which she had made against the Claimant. In particular, she did not contact the Claimant in order to ascertain her version of events as to why she had published the [Good Advice Tweet] and what she had meant by it. Therefore, it was not reasonable for the Defendant to reach the conclusions set out in the words complained of."

116. In his submissions, Mr McCormick argues that there is no substance to the complaint that the Defendant did not contact the Claimant before publishing the Defendant's Tweet. First, this is not to be regarded as a requirement of the s.4 defence: ***Serafin*** [76]. Second, the Defendant did send a response to the Good Advice Tweet at 20.10 (see [9] above), to which the Claimant did not respond, which substantially contained the same allegation as later conveyed in the Defendant's Tweet. Third, this was not a case in which it was necessary to attempt to obtain a comment from the subject of the proposed publication. The basic facts – the attack on Jeremy Corbyn and the Good Advice Tweet – were not capable of any dispute.

117. More broadly, the Defendant relied upon the evidence from several Tweets that demonstrated that other people had reached a similar conclusion as to the meaning of the Good Advice Tweet. The Claimant had been criticised by others, principally Owen Jones, but she had not, until the morning of 4 March 2019, put forward any explanation

for what she had meant by the Good Advice Tweet if it was not the interpretation that the Defendant and others had put upon it.

118. As to criticism that the Defendant should have quote-Tweeted, or otherwise have included, the Good Advice Tweet in the Defendant's Tweet, Mr McCormick submits that the Defendant's reason for not doing so – to avoid driving further traffic to the Good Advice Tweet – was not unreasonable and was an exercise of "*editorial judgment*", to which the Court should afford respect.

119. In his written submissions, Mr McCormick's final paragraph submitted:

> "… a finding that it was unlawful for the Defendant to state her understanding of the Good Advice Tweet, to criticise the Claimant for her conduct, and to urge her followers not to engage with her would be a restriction on freedom of speech not only unnecessary in a democratic society, but contrary to its basic principles."

(3) Decision

(a) Was the statement complained of, or did it form part of, a statement on a matter of public interest?

120. The Defendant has demonstrated this element of the s.4 defence. The Claimant's Good Advice Tweet was published on Twitter, on a public platform, and was intended by the Claimant to be read both by her large number of followers and more widely. The Claimant was well aware that her words, in the Good Advice Tweet, were likely to provoke public comment and engagement. Comment upon, or response to, the Good Advice Tweet was a matter of public interest. It was certainly not a "*personal and private*" matter.

(b) Did the Defendant believe that publishing the statement complained of was in the public interest?

121. I am also satisfied that the Defendant has demonstrated this element of the s.4 defence; indeed, her evidence on this point was not challenged by the Claimant.

(c) Was that belief reasonable?

122. In my judgment the Defendant has failed to demonstrate that her belief was reasonable.

123. My conclusion in the meaning judgment was [29]:

> "An imputation that a person had publicly supported a violent attack on someone is plainly defamatory at common law; it is conduct which would substantially affect, in an adverse manner, the attitude of other people towards the Claimant or have a tendency so to do. Had it stood alone, the description of the Claimant as 'dangerous' and 'stupid' would also have been defamatory, but the gravity of the defamatory meaning is largely supplied by the allegation of fact rather than the expression of opinion based upon it."

This was not a trivial allegation, but one of some seriousness. I have found that the publication of the Defendant's Tweet has caused serious harm to the Claimant's

reputation. The people who relied upon the Defendant's Tweet as a description of what the Claimant had said were misled.

124. The most significant factor, in my assessment, is the failure of the Defendant to include the Good Advice Tweet in the Defendant's Tweet. I accept the Defendant's evidence that she did not do so because she did not want to drive further traffic to it, but this cannot be a good enough reason for depriving readers of the Defendant's Tweet of accurate information about, and the proper context of, the Good Advice Tweet. In ***Turley***, I observed that "*it can never be in the public interest for a journalist to misrepresent in an article the information or evidence that s/he has obtained*": [153]. The Defendant is not a journalist, but this fundamental principle applies equally to her or anyone else seeking to avail themselves of a s.4 defence in answer to a defamation claim. A person who misrepresents the material they have is likely to find it difficult to establish that s/he reasonably believed that the resulting inaccurate publication was in the public interest.

125. That is the position here. Essentially, in the Defendant's Tweet, the Defendant misrepresented what the Claimant had said in the Good Advice Tweet. I do not accept that the decision not to include the Good Advice Tweet, or accurately to describe what it said, was an exercise in editorial judgment that can excuse this critical failure. The effect was not trivial, it was significant. It prevented readers of the Defendant's Tweet understanding what the Claimant had actually said and that what the Defendant was offering was her interpretation of it. As the reactions to the Good Advice Tweet demonstrate, some readers might nevertheless have shared the Defendant's view, but critically, others would not have done.

126. I do not accept that any real weight can be attached to what is contended to be the "*fluid, hyper-impressionistic way in which readers consume Twitter*". If that is advanced as an explanation for the Defendant's failure to appreciate that the Good Advice Tweet was capable of another interpretation, then that only serves to emphasise the importance of not depriving your readers of the source material you are interpreting. The contemporaneous Tweets of the Defendant (see [10] above) demonstrate an awareness that she was offering *an* interpretation of the Good Advice Tweet. Within 30 minutes, the Defendant's Tweet had converted that into the *only* interpretation.

127. I broadly accept Mr McCormick's submissions that this was not a case in which the failure to put the allegation to the subject of the publication would have been particularly significant. Certainly, had the Defendant included the Good Advice Tweet in the Defendant's Tweet, her s.4 defence would not have failed for want of putting the allegation to the Claimant. But then, had she taken this step, she would almost certainly have succeeded with her honest opinion defence and therefore had no need to rely on a s.4 defence.

128. As I have already noted (see [12] above), the failure to include the Good Advice Tweet, or otherwise indicate clearly that the Defendant's Tweet was her deduction, conclusion or inference as to what the Claimant had said in the Good Advice Tweet, has had serious implications for each of the defences relied upon by the Defendant. I reject the Defendant's submission that my rejection of each of the defences represents an unjustifiable restriction of her freedom of expression. English law provides several safeguards for those who publish defamatory statements. But, consistent with the proper respect for Article 8, which includes protection of reputation, freedom of expression is

not an unqualified right. The English law of defamation seeks to strike a fair balance between these competing rights. In addition to the threshold requirements a claimant must surmount (including s.1 Defamation Act 2013), several substantive defences are available.

129. Warby J's observations in ***Barron -v- Vines*** are a valuable and timely reminder of the importance of political speech, which will always be accorded proper weight, but it is not a trump card where other rights are engaged. Proper respect for freedom of expression under the defamation law in England & Wales is achieved by the established safeguards and available defences, seen as a whole package. In ***Barron -v- Collins*** **[2015] EWHC 1125 (QB)** Warby J explained [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."

130. It is not a failure of the law of defamation if a person, by her actions or omissions, deprives herself of these defences. Fundamentally, for the reasons I have explained in this judgment, the Defendant misrepresented what the Claimant had said. That misrepresentation, which could easily have been avoided if the Defendant had included the Good Advice Tweet in her post, has been fundamental in my rejection of each of the substantive defences advanced by the Defendant.

131. It need not have been so. The evidence in this case provides hundreds of examples of people who were able to – and did – criticise the Claimant for posting the Good Advice Tweet; and, in turn, evidence of others criticising them for failing to understand that the Good Advice Tweet was pointing out hypocrisy. Each reader was free to make up his/her own mind about what the Claimant had said or meant in the Good Advice Tweet and to express their honest opinion on it. Providing it was clearly expressed as opinion, and they were honestly expressing their views, none of those individuals had reason to fear that they might be liable under the law of defamation. The Defendant has fallen foul of the law because, by not setting out the Good Advice Tweet, she instead took on the burden of describing, as a fact, what the Claimant had said in it. In doing so, she materially misrepresented what the Good Advice Tweet said, and, in the process, she defamed the Claimant and left herself with no viable defence.

K: Remedies

132. In her Claim Form and Particulars of Claim, the Claimant originally sought remedies of damages and an injunction. Yet, even by the time of the issue of the Claim Form, on 31 May 2019, the Defendant had already deleted the Tweet and there is no evidence to suggest that, unless an injunction is granted, she threatens to publish the same or any similar allegations. Realistically, in light of this, Mr Bennett QC rightly did not pursue a claim for an injunction at the trial. That leaves the remedy of damages.

133. In her Particulars of Claim, the Claimant relied on several matters in aggravation of damages:

i) that the Claimant had campaigned actively against anti-Semitism in the Labour Party;

ii) the Defendant bore animus towards the Claimant because she believed that the Claimant's campaigning was causing harm to the Labour Party and, particularly, Jeremy Corbyn; and

iii) the Defendant knew that the Claimant had not acted in the manner alleged in the Tweet and she posted the Defendant's Tweet to undermine the Claimant and limit the damage she was causing to the Labour Party and Mr Corbyn.

In summary, that is tantamount to an allegation of malice arising from an improper motive.

134. In her Defence, the Defendant denied this alleged 'improper motive' and denied that she held any animus towards the Claimant. The Defendant also set out matters upon which she wished to rely in mitigation of damages, including:

i) the "*overwhelming majority*" of people to whom the Tweet was published will have read it through direct republication by the Claimant (particularly the Tweet at 00.17 on 4 March 2019 – see [16] above and the re-Tweet of Stephen Pollard's post – see [19] above);

ii) the limited time that the Defendant's Tweet was published before it was removed from Twitter and subsequently deleted;

iii) on 31 March 2019, the Claimant re-Tweeted a "*false, defamatory, and highly damaging allegation*" about the Defendant from the anonymous Twitter account "GnasherJew" to the effect that the Defendant had concluded, in her role in the Labour Party, that certain actions of people in the party were not anti-Semitic ("the GnasherJew Tweet").

(1) Law

135. Neither party has identified the general legal principles that inform the assessment of an award of damages in a defamation case. This may be because the basic principle is uncontroversial. A successful libel claimant is entitled to recover, as general compensatory damages, such sum as will compensate him or her for the wrong he has suffered. I can take Warby J's summary of the approach from ***Barron -v- Vines*** **[2016] EWHC 1226 (QB)**:

> [20] The general principles were reviewed and re-stated by the Court of Appeal in ***John -v- MGN Ltd*** **[1997] QB 586** … Sir Thomas Bingham MR summarised the key principles at pages 607—608 in the following words:
>
> > "The successful plaintiff in a defamation action is entitled to recover, as general compensatory damages, such sum as will compensate him for the wrong he has suffered. That sum must **[1]** compensate him for the damage to his reputation; **[2]** vindicate his good name;

> and **[3]** take account of the distress, hurt and humiliation which the defamatory publication has caused. In assessing the appropriate damages for injury to reputation the most important factor is **[a]** the gravity of the libel; the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be. **[b]** The extent of publication is also very relevant: a libel published to millions has a greater potential to cause damage than a libel published to a handful of people. **[c]** A successful plaintiff may properly look to an award of damages to vindicate his reputation: but the significance of this is much greater in a case where the defendant asserts the truth of the libel and refuses any retraction or apology than in a case where the defendant acknowledges the falsity of what was published and publicly expresses regret that the libellous publication took place. It is well established that **[d]** compensatory damages may and should compensate for additional injury caused to the plaintiff's feelings by the defendant's conduct of the action, as when he persists in an unfounded assertion that the publication was true, or refuses to apologise, or cross-examines the plaintiff in a wounding or insulting way. Although the plaintiff has been referred to as 'he' all this of course applies to women just as much as men."

[21] I have added the numbering in this passage, which identifies the three distinct functions performed by an award of damages for libel. I have added the lettering also to identify, for ease of reference, the factors listed by Sir Thomas Bingham. Some additional points may be made which are relevant in this case:

(1) The initial measure of damages is the amount that would restore the claimant to the position he would have enjoyed had he not been defamed: ***Steel and Morris -v- United Kingdom*** **(2004) 41 EHRR** [37], [45].

(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

(3) The impact of a libel on a person's reputation can be affected by:

a) Their role in society. The libel of Esther Rantzen [***Rantzen -v- Mirror Group Newspapers (1986) Ltd*** **[1994] QB 670**] was more damaging because she was a prominent child protection campaigner.

b) The extent to which the publisher(s) of the defamatory imputation are authoritative and credible. The person making the allegations may be someone apparently well-placed to know the facts, or they may appear to be an unreliable source.

c) The identities of the publishees. Publication of a libel to family, friends or work colleagues may be more harmful and hurtful than if

it is circulated amongst strangers. On the other hand, those close to a claimant may have knowledge or viewpoints that make them less likely to believe what is alleged.

d) The propensity of defamatory statements to percolate through underground channels and contaminate hidden springs, a problem made worse by the internet and social networking sites, particularly for claimants in the public eye: ***C -v- MGN Ltd*** (reported with ***Cairns -v- Modi*** at **[2013] 1 WLR 1051**) [27].

(4) It is often said that damages may be aggravated if the defendant acts maliciously. The harm for which compensation would be due in that event is injury to feelings.

(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages. But it is not permissible to seek, in mitigation of damages, to prove specific acts of misconduct by the claimant, or rumours or reports to the effect that he has done the things alleged in the libel complained of: ***Scott -v- Sampson*** **(1882) QBD 491**, on which I will expand a little. Attempts to achieve this may aggravate damages, in line with factor (d) in Sir Thomas Bingham's list.

(6) Factors other than bad reputation that may moderate or mitigate damages, on some of which I will also elaborate below, include the following:

a) "*Directly relevant background context*" within the meaning of ***Burstein -v- Times Newspapers Ltd*** **[2001] 1 WLR 579** and subsequent authorities. This may qualify the rules at (5) above.

b) Publications by others to the same effect as the libel complained of if (but only if) the claimants have sued over these in another defamation claim, or if it is necessary to consider them in order to isolate the damage caused by the publication complained of.

c) An offer of amends pursuant to the Defamation Act 1996.

d) A reasoned judgment, though the impact of this will vary according to the facts and nature of the case.

(7) In arriving at a figure it is proper to have regard to (a) Jury awards approved by the Court of Appeal: ***Rantzen***, 694, ***John***, 612; (b) the scale of damages awarded in personal injury actions: ***John***, 615; (c) previous awards by a judge sitting without a jury: ***John***, 608.

(8) Any award needs to be no more than is justified by the legitimate aim of protecting reputation, necessary in a democratic society in pursuit of that aim, and proportionate to that need: ***Rantzen*** ... This limit is nowadays statutory, via the Human Rights Act 1998.

136. Mr McCormick QC relies on the principle, from ***Pamplin -v- Express Newspaper Ltd*** **[1988] 1 WLR 116, 120**, that damages may be reduced (even to a nominal sum) taking into account any partial justification. Relying upon ***Flymenow Ltd -v- Quick Air Jet Charter Gmbh*** **[2016] EWHC 3197 (QB)**, he also contends that culpable conduct of the claimant which provokes publication of the words complained of may also have the effect of reducing damages (again even to a nominal amount).

137. Counsel have also referred to the Court of Appeal's decision in ***Campbell -v- News Group Newspaper Ltd*** **[2002] EMLR 43**. This was the defendant's appeal against a jury's award of £350,000 damages in a libel action. The claimant appeared in the Court of Appeal in person. As noted in the headnote, the claimant had been involved in serious misconduct up to and during the trial, including procuring his son and his son's partner to make false statements, making a serious attack on the honesty of an innocent third party and seeking to implicate two solicitors in the most serious professional misconduct. The appeal was allowed and an award of £30,000 was substituted for the jury's award. The judgment in the Court of Appeal was given by Schiemann LJ and included the following paragraphs on the issue of the Claimant's conduct and mitigation of damages:

> [32] If a defendant's conduct "both up to and including the trial itself" may aggravate damages because of its effect on a claimant's feelings…, can a claimant's conduct up to and including the trial reduce damages? This question is not concerned with the effect under ***Pamplin*** (above) of evidence establishing a partial justification of the defamation, although if the claimant was at such pains, as the newspaper's case alleges, to disclaim the Bober video tape, that speaks volumes for the prejudice which he must have realised that its genuineness would cause to his claim. The present question concerns the relevance, if any, of wholly disreputable conduct which was established in the course of determining the issues in the litigation itself. We have no doubt that such conduct is relevant and that, in a case where it is as severe as it is here, it is of the utmost relevance. In ***Broome -v- Cassell & Co.*** **[1972] AC 1027**, Lord Hailsham said this, at 1071f–1072a:
>
> > "Quite obviously, the award must include factors for injury to the feelings, the anxiety and uncertainty undergone in the litigation, the absence of apology, or the reaffirmation of the truth of the matters complained of, or the malice of the defendant. The bad conduct of the plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being 'at large.' In a sense, too, these damages are of their nature punitive or exemplary in the loose sense in which the terms were used before 1964, because they inflict an added burden on the defendant proportionate to his conduct, just as they can be reduced if the defendant has behaved well—as for instance by a handsome apology—or the plaintiff badly, as for instance by provoking the defendant, or defaming him in return. In all such cases it must be appropriate to say with Lord Esher MR in ***Praed -v- Graham,*** **24 QBD 53, 55**:
> >
> > '… in actions of libel … the jury in assessing damages are entitled to look at the whole conduct of the defendant'

> (I would add personally 'and of the plaintiff') 'from the time the libel was published down to the time they gave their verdict. They may consider what his conduct has been before action, after action, and in court during the trial.'

[33] It would be an affront to justice if a claimant's own disreputable conduct—here established in, and directed to improving materially the outcome of, the litigation itself—had to be ignored in assessing the damages that the claimant would otherwise merit for a defamation which could be shown to have injured his reputation prior to the libel.

(2) Evidence

(a) Seriousness of the allegation

138. I have set out above (see [123] above) my assessment of the seriousness of the allegation. It is not suggested that it is anywhere close to the gravest allegations that can be made.

(b) Extent of publication

139. Following the deletion of the Defendant's Tweet and the loss of the Twitter analytics data, reliable evidence of the extent of direct publication of the Defendant's Tweet is not available. Nevertheless, there is reliable evidence that establishes the minimum number of publishees was at least 4,932 (the number of likes captured on a screenshot of the Defendant's Tweet – see [36(i)] above). To that must be added:

    i) the further direct republication of the Defendant's Tweet both on Twitter (by at least 1,585 re-Tweets) and on Facebook (see [36(iv)] above) for which the Defendant is responsible as representing the natural, probable and foreseeable consequence of the original publication; and

    ii) the likely grapevine/percolation effect, the capacity for which is significantly increased on social media due to the ease with which posts can be quickly and easily disseminated.

140. Excluding republication of the Tweet caused by the Claimant's own re-Tweets of it, and doing the best I can on the evidence I have, in my judgment it is likely that the Defendant's Tweet was published to between 10,000 and 15,000 people. That is of an equivalent scale to the likely readership of the print edition of a local regional newspaper.

(c) Harm to reputation and effect on the Claimant

141. I have been satisfied, on the evidence, that the Claimant has demonstrated that the publication of the Defendant's Tweet has caused serious harm to the reputation of the Claimant (see Section G: [33]-[47] above). But this is a threshold issue, and I must consider also consider any particular evidence of reputational harm.

142. The Claimant gave some evidence of adverse consequences which she attributed to the Defendant's Tweet. She complained that she had received a large amount of abuse, which was of a level of seriousness that she was visited at home by police officers.

The Claimant's evidence was that the abuse and threatening messages that she received were all-consuming and that she found it difficult to concentrate on her work and led to sleepless nights. The Claimant also became the target of a concerted campaign to get her dismissed from her job with Channel 4 on the grounds that she had advocated violence. The Claimant had an "*uncomfortable*" meeting, at her instigation, with the Head of Daytime Programming at Channel 4 on 7 March 2019, to discuss complaints received about the Good Advice Tweet. The Claimant states in her evidence that, although Channel 4 accepted her explanation that the Defendant had misrepresented what she had said in the Good Advice Tweet, she nevertheless felt vulnerable.

143. As the Claimant recognises, however, it is very difficult to demonstrate that these consequences were caused by the Defendant's Tweet, as opposed to other factors. First, and perhaps of most significance, criticism of the Claimant for the Good Advice Tweet had been led by Owen Jones (see [36(i)] above) before the Defendant's Tweet was posted, and he had vastly more followers than the Defendant. Not all of the blame (or even most of it) for the way in which the Good Advice Tweet was interpreted can be laid at the feet of the Defendant. The social media 'pile on' was largely caused by Owen Jones' posts; the Defendant had a very minor role by comparison.

(3) Submissions

144. Mr McCormick's main submission, on the issue of damages is that the posting of the Good Advice Tweet was "*profoundly irresponsible*". Relying principally on ***Flyemenow***, he contends that the Claimant's conduct "*is such that only contemptuous damage could ever be appropriate*".

145. Mr Bennett contended that the Claimant is entitled to substantial damages arising from the seriousness of the allegation and the extent of publication. He submits that the Defendant cannot rely upon the re-Tweet by the Claimant of the GnasherJew Tweet (see [134(iii)] above) because she could have brought a Part 20 claim for defamation if she contended that she had been defamed by the Claimant.

(4) Decision

146. This case is unusual. It turns, largely, on two Tweets: the Good Advice Tweet and the Defendant's Tweet. I have found that the publication of the Defendant's Tweet has caused serious harm to the Claimant's reputation, and I have rejected the Defendant's defences. Having established the elements of the tort of libel, the Claimant is therefore entitled to a sum in damages.

147. I reject the Claimant's case that the Defendant was motivated by any improper purpose in posting the Defendant's Tweet. I am satisfied that the Defendant acted honestly (see also [102] above). She made a mistake in the Defendant's Tweet by not including the Good Advice Tweet.

148. I reject the submission that the GnasherJew Tweet has any mitigating effect on damages. Even after cross-examination of the Claimant on this point, I am left uncertain as to what, precisely, is being alleged as the act of misconduct. There is force in Mr Bennett QC's submission that, if the GnasherJew Tweet is alleged to be false and defamatory, the proper way of having that issue resolved was to bring a counterclaim in respect of it. Pleading it as an alleged act of misconduct, relevant to damages, risks

the introduction of satellite disputes of fact which the law relating to evidence admissible in mitigation of damages strives to keep within clear and proper bounds. Whatever wrongdoing is alleged from the GnasherJew Tweet, it is a long way from the sort of the sort of "*discreditable conduct*" of a party during the proceedings which would justify a reduction of damages under the principles in ***Campbell***.

149. Mr McCormick QC relied upon the ***Flymenow*** case. In that case, the claimant brought a libel claim over a notice published by the defendant that suggested that the claimant was insolvent, in the sense that it was unable to pay its bills when due. Following a trial, the defendant's defences, including a defence of truth, were dismissed. The unusual feature of the case was the fact that the claimant had been responsible for giving the defendant the impression that it was insolvent by failing to pay monies owed to it. Warby J found that the claimant "*deliberately failed to discharge it debts knowing that they were due and payable [and]… repeatedly lied to [the defendant] in order to fob him off*": [94]. Although the Judge rejected the defendant's defences, he awarded only £10 damages. He explained his reasons as follows:

> [125] In my judgment, the appropriate way in which to reflect the fact that the claimant led the defendant to believe it was insolvent is to take this into account on the issue of damages. It is one of four factors that lead me to the conclusion that the appropriate course in this case is, as Mr Bennett submits, to award only minimal damages. The other three factors are (i) the significant extent to which the defendant has proved the truth of the defamatory meanings of the words complained of; (ii) the claimant's dishonest behaviour in 2013; and (iii) the claimant's disreputable and, ultimately, dishonest conduct of its case, including at this trial.
>
> [126] … [W]here partial justification is established the claimant is only entitled to be compensated for damage which the court finds was probably caused by the libellous part of the publication. Here, the partial justification of the words complained of has the effect of substantially reducing what would otherwise be the award. The claimant falls to be compensated as a company that was not insolvent, but had failed to pay its debts to the defendant over many months, was perilously close to insolvency, and was financially risky to do business with.
>
> [127] The award would nonetheless have been in the modest five figure range but for the other three factors I have mentioned. A company that is falsely accused of being insolvent would not ordinarily have its damages reduced to a negligible level just because it was in some lesser form of financial difficulty, and had unjustifiably delayed payment of some of its debts. This case, however, is highly unusual. In the process of attempting to prove insolvency, and successfully proving the matters it has established, the defendant has incidentally proved that the claimant behaved disgracefully in fobbing it off with a series of dishonest excuses. Those are facts which are properly before the court, which ought to be taken into account in mitigation of damages, pursuant to the principle summarised in ***Pamplin***. They also fall to be taken into account as directly relevant background context under the *Burstein* principle (***Burstein -v- Times Newspapers Ltd*** **[2001] 1 WLR 579** (CA)). These are facts which go to a relevant sector of the claimant's business reputation, and show that it is undeserving of a sum which would

> appear to the outside world to represent substantial vindication of its reputation.
>
> [128] So also do the facts that I have summarised about the way this action has been conducted by the claimant company. It has emerged that a central element of its case was false from the beginning and should have been recognised as such by the company's principal, Mr Whitney. He has given false evidence and, as I find, continued to stand by the original case after he realised that it was false. Those too are disreputable facts that are properly before the court, which logically affect the extent to which the claimant is entitled to the vindication of its reputation through an award of damages. The propriety of this approach appears to me to be supported by the decision at trial in ***Joseph -v- Spiller*** **[2012] EWHC 2958 (QB)**.
>
> [129] Returning to the claimant's behaviour in causing the defendant to believe that the claimant was insolvent, it seems to me that this is properly considered as evidence of the claimant's own conduct which goes to mitigate or reduce damages. This category of evidence is discussed in the 12th edition of Gatley at paragraph 33.51 and following. The editors express the view that "conduct" in this context "relates in particular (but not exclusively) to activities which can be causally connected to the publication of the libel of which the claimant complains, such as direct provocation..." The present case is perhaps not easily categorised as one of "provocation". The cases cited in the textbook do not appear to include any involving facts akin to those of the present case, nor have any such been cited in argument; but that does not affect the principle. In my judgment, in this case, (a) the claimant's conduct can be properly said to have played a part in causing the publication complained of, and (b) the claimant's conduct in that regard is culpable to a degree that makes it just to reduce damages. This is conduct that is directly related to the sector of the claimant's reputation that was wrongfully damaged by the words complained of, and reduces damages on that account.

150. In ***Joseph -v- Spiller***, Tugendhat J found for the claimant in a libel action but awarded only nominal damages, of 1 pence, because the claimant had fabricated part of the claim for special damages.

151. The full passage from *Gatley*, referred to by Warby J, under the heading "*Claimant's own conduct: relevance in assessment of damages*", is as follows (with footnotes omitted):

> "The conduct of the claimant is a factor that the court can take into account when assessing damages, but 'conduct' in this context relates in particular (but not exclusively) to activities that can be causally connected to the publication of the libel of which the claimant complains, such as direct provocation. It might exceptionally include more broadly provocative actions by the claimant. It may also include behaviour which is an abuse of process."

152. The authority cited for the final sentence was ***Joseph -v- Spiller***, and for the preceding sentence the decision of Morland J in ***Godfrey -v- Demon Internet Ltd (No.2)*** (unreported, 23 April 1999). That was a judgment on an application for permission to amend to add particulars of alleged conduct of the claimant – consisting of his postings online – in mitigation of any damages. The Judge noted the paucity of authority on the

issue of a claimant's conduct being relied upon in mitigation of damages, but identified dicta of Lord Radcliffe in ***Dingle -v- Associated Newspapers Ltd*** **[1964] AC 371, 395** and Lord Hailsham LC in ***Broome -v- Cassell & Co*** **[1972] AC 1027, 1071** where the latter said:

> "The bad conduct of the Plaintiff himself may also enter into the matter, where he has provoked the libel, or where perhaps he has libelled the defendant in reply. What is awarded is thus a figure which cannot be arrived at by any purely objective computation. This is what is meant when the damages in defamation are described as being 'at large'."

153. Based on these authorities, the Judge granted permission for the amendments and observed:

> "… it could well be submitted that [the Plaintiff's] postings are puerile, unseemly and provocative. In effect they invite vulgar and abusive response. As Mr Barca put it these posting are designed to tempt people to overstep the mark and defame the Plaintiff so that he can sue. If I do not allow the amendments sought there is a real danger that the Trial Judge (by agreement trial is by Judge alone) might award damages which were not rightly proportionate to the true injury suffered by the Plaintiff."

154. ***Godfrey -v- Demon*** was considered by the Court of Appeal in ***Burstein -v- Times Newspaper Ltd*** **[2001] 1 WLR 579**. May LJ said this about the decision:

> [26] *Gatley on Libel and Slander*… suggests that admissible conduct of the plaintiff might include more broadly provocative actions by the claimant. Mr Rushbrooke on behalf of the defendants in the present case based his initial submissions on this possibility. He submitted that the claimant's conduct as pleaded in the particulars should be seen as generally provocative and offensive and that evidence in support of it should be admitted on those grounds. He suggested that Morland J's decision in ***Godfrey -v- Demon Internet Ltd (No.2)***…, could be seen, if necessary, as an example of proper controlled enlargement of the scope of conduct by the claimant admissible in the reduction of damages. If it were necessary, as I think it is not, to confine the question in the present case to provocation by the claimant or conduct which is causally connected to the publication of the libel, I am inclined to think that the ambit of this class of admissible conduct should be confined to exceptional cases in which provocative conduct of the claimant would be admissible even though it did not directly or exclusively provoke the defendant. ***Godfrey -v- Demon Internet Ltd (No 2)*** was, I think, such an exceptional case...
>
> [27] It will be seen that the decision was based on causative provocation in exceptional circumstances, even though some or all of the plaintiff's provocative publications were not directed specifically against the defendant. The decision was also based—correctly, in my view—on the fact that the plaintiff's postings were germane to the defamatory posting the subject of his claim.

155. Although posting the Good Advice Tweet could not be described as "*bad conduct*" of the Claimant, it properly falls to be characterised as provocative, even mischievous.

It was calculated to provoke a reaction and it did. As the Claimant would readily have appreciated, the words she used in the Good Advice Tweet invited and required interpretation; read only in their literal sense they were meaningless. As explained in more detail above, there were two obvious meanings: the hypocrisy meaning or the meaning that suggested that Jeremy Corbyn deserved to be egged because of his political views. I am quite satisfied, on the evidence, that the Claimant was aware that the Good Advice Tweet was capable of being read in both senses. She may have intended the first, but she was certainly not blind to the second. It is telling that, in her re-Tweet at 16.48 on 4 March 2019, the Claimant suggested that she had been called "*dangerous and stupid for talking about antisemitism yesterday*". That was a reference back to the Defendant's Tweet and the Good Advice Tweet. But the Good Advice Tweet could only sensibly be regarded as concerning anti-Semitism if it was construed in the meaning of Jeremy Corbyn deserving to be egged because of his political views.

156. What impact should this aspect have on the damages award? This case has none of the additional features identified by Warby J in ***Flymenow*** [125] and it is not a case of the Claimant having abused the process of the Court or fabricated evidence, as in ***Joseph -v- Spiller***. It would not be right to award the Claimant only nominal damages.

157. In my judgment, however, there is a clear element of provocation in the Good Advice Tweet, in the sense that the Claimant must have readily appreciated that the meaning of the Good Advice Tweet was ambiguous and could be read as suggesting, at least, that Jeremy Corbyn deserved to be egged because of his political views. In the context of her own high-profile campaign against anti-Semitism in the Labour Party, the risk of the Good Advice Tweet being read in that way was obvious. In that respect, the Claimant can hardly be surprised – and she can hardly complain – that the Good Advice Tweet provoked the reaction it did, including the Defendant's Tweet. Those are matters which are properly to be taken into account when fixing the appropriate award of damages, whether under the 'provocation' principle or, if necessary, under ***Burstein*** as being matters directly relevant to the contextual background in which the Defendant's Tweet came to be published.

158. This is not a case in which the damages award has an important role to play in vindicating the Claimant's reputation. The Good Advice Tweet was ambiguous. The Defendant's Tweet misrepresented it. This judgment, and the reporting of it, rather than reports of a simple figure of compensation, will make clear the vindication to which the Claimant is entitled.

159. Reflecting those factors, together with the seriousness of the allegation and the extent of its publication, I consider that the appropriate sum to award in damages is £10,000.