Neutral Citation Number: [2023] EWHC 3120 (KB)

Case No: QB-2022-000595

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2023

Before :

THE HONOURABLE MR JUSTICE NICKLIN

- -

Between :

The Duke of Sussex	**Claimant**
- and -	
Associated Newspapers Limited	**Defendant**

- -
- -

Justin Rushbrooke KC and **Jane Phillips** (instructed by **Schillings International LLP**) for the **Claimant**
Andrew Caldecott KC and **Ben Gallop** (instructed by **RPC LLP**) for the **Defendant**

Hearing date: 17 March 2023

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Approved Judgment

This judgment was handed down by the Judge remotely by circulation to the parties and their representatives by email and by release on www.judiciary.uk and to The National Archives. The date and time for hand-down is deemed to be 10:00am on 8 December 2023.

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The Honourable Mr Justice Nicklin :

1. This judgment deals with the Claimant's application for to strike out the Defendant's defence of honest opinion and/or summary judgment against the Defendant in his claim for libel arising from the publication of an article in the online and print editions of the *Mail on Sunday* on 19/20 February 2022 ("the Article"). The Claimant is referred to as "The Duke of Sussex" in the title of this action because that is the name he used on the Claim Form when his claim was issued.

A: Background and previous resolution of preliminary issues

2. The background to the claim is set out in my previous judgment, handed down on 8 July 2022 ([2022] EWHC 1755 (QB)) ("the Preliminary Issues Judgment"), which resolved preliminary issues of the natural and ordinary meaning of the Article, whether the Article is (or includes) a statement of fact and/or expression of opinion, and whether the Article is, in any meaning found, defamatory of the Claimant at common law. The text of the Article is set out in the Appendix to the Preliminary Issues Judgment.

3. For the reasons given in the Preliminary Issues Judgment, the Court resolved those preliminary issues as follows ([26]-[27]):

> "… the natural and ordinary meaning of the Article is as follows:
>
> (a) in his legal claim against the Home Office over the provision of police protection, the Claimant had initially sought confidentiality restrictions that were far-reaching and unjustifiably wide and were rightly challenged by the Home Office on the grounds of transparency and open justice;
>
> (b) the Claimant was responsible for public statements, issued on his behalf, which claimed that he was willing to pay for police protection in the UK, and that his legal challenge was to the Government's refusal to permit him to do so, whereas the true position, as revealed in documents filed in the legal proceedings, was that he had only made the offer to pay after the proceedings had commenced; and
>
> (c) as such, the Claimant was responsible for attempting to mislead and confuse the public as to the true position, which was ironic given that he now held a public role in tackling 'misinformation'.
>
> The underlined passages of the meaning are expressions of opinion, the balance makes allegations of fact. I am satisfied that these meanings are defamatory at common law, albeit only narrowly in respect of (a)."

B: The Claimant reformulates his case

4. Consequent upon the resolution of the preliminary issues, the Claimant was required to amend his Particulars of Claim to align with the Court's decision and the Defendant was ordered to file its Defence.

5. On 15 July 2022, the Claimant duly filed his Amended Particulars of Claim. In this revised statement of case, the Claimant complained only of paragraphs (b) and (c) in the meaning found by the Court. As such, he abandoned his claim in relation to paragraph

(a). Subject only to potential arguments about costs, a claimant is perfectly entitled to revise his claim like this, following the resolution of meaning as a preliminary issue. Parties to litigation are encouraged to focus on the real issue in dispute between them.

C: The Defence

6. The original Defence was filed by the Defendant on 5 August 2022. It was subsequently amended (by consent) on 9 December 2022. In summary, the Defendant denied that the publication of the Article had caused (or was likely to cause) serious harm to the reputation of the Claimant (as required by s.1 Defamation Act 2013) and relied upon a defence of honest opinion, pursuant to s.3 Defamation Act 2013. As it is important to the issues I have to decide, I have set out the relevant paragraphs of the defence of honest opinion (as amended) in the Appendix to this judgment. Although I shall have to look more closely at it later in this judgment, at its heart, the honest opinion defence is based on two public statements issued on behalf of the Claimant concerning his claim for judicial review (see [25] below).

D: The Claimant's Reply

7. Where a defendant relies upon a defence of honest opinion, a claimant is required to file a Reply, specifically setting out his/her case in answer to the defence: CPR PD53B §4.7.

8. The Claimant duly filed his Reply on 29 September 2022. Several of the facts pleaded by the Defendant in support of its honest opinion defence are admitted by the Claimant. Importantly, in the Reply:

    (1) there is no dispute as to the public statements that were issued on his behalf, or that they were issued on his authority;

    (2) it is not contended that the facts relied upon were not sufficiently indicated (as required by s.3(3) Defamation Act 2013);

    (3) the Claimant does not allege that the Defendant did not hold the opinion expressed (so as to defeat the honest opinion defence under s.3(5) Defamation Act 2013).

    (The relevant parts of the Defamation Act 2013 are set out later in this judgment – see [37] below).

9. I have set out the material parts of the Reply in the Appendix to this judgment. A key part of the Claimant's rebuttal of the honest opinion defence is his contention that it was false to say that it was only after he commenced his claim for judicial review that he made an offer to pay for his security.

E: The Application seeking dismissal of the honest opinion defence

10. On 21 November 2022, the Claimant issued an Application Notice seeking to strike out the honest opinion defence pursuant to CPR 3.4(2)(a), alternatively summary judgment dismissing the defence of honest opinion pursuant to CPR Part 24 ("the Dismissal Application"). The grounds of the Dismissal Application were summarised as follows:

> "As to the [striking out application], the Claimant will submit that the facts and matters relied upon by the Defendant in its defence of honest opinion, taken at their highest, do not disclose an arguable defence because they are not capable as a matter of law of satisfying s.3(4)(a) of the Defamation Act 2013. Further or alternatively, and as to [the summary judgment application], the Claimant believes that having regard to the relevant facts, which are either undisputed or not capable of realistic dispute, the Defendant has no real prospect of succeeding in its pleaded defence of honest opinion and knows of no other compelling reason why the issues raised by that defence should be disposed of at a trial."

F: The evidence

11. The Dismissal Application was supported by the second Witness Statement of Jenny Afia, dated 21 November 2022. In answer, the Defendant has filed a witness statement from its solicitor, Alex Wilson, dated 27 January 2023. He has provided further relevant documents. Ms Afia provided a further statement in response. The following paragraphs of this section of the judgment set out the relevant facts drawn from the evidence and documents that have been filed by the parties. These facts are largely common ground between the parties.

12. In January 2020, the Claimant announced his decision to step back from his position as a working member of the Royal Family with effect from April 2020. Up to that point, protective security had been provided for the Claimant and his family ("State security") by specially trained officers from the Metropolitan Police ("MPS"). The Home Secretary is responsible for the policy for State security for the Royal Family, but delegates decisions in individual cases to a committee formerly known as the Royal and VIP Executive Committee, now known as the Executive Committee for the Protection of Royalty and Public Figures ("RAVEC"). Members of RAVEC include various senior officials and representatives from the Royal Household and the MPS.

13. On 13 January 2020, the Claimant had a meeting with, amongst others, his grandmother (the late Queen), his father and his brother to discuss his transition from being a working to non-working member of the Royal Family ("the Sandringham meeting"). At the Sandringham meeting, the Claimant states that he raised concerns about security provision for him and his family and offered personally to reimburse, or proactively to finance, the cost of State security so as not to burden the taxpayer ("the Sandringham offer").

14. Following the Sandringham meeting, on 31 January 2020, Sir Edward Young, the Queen's private secretary, wrote to Sir Mark Sedwill, the Cabinet Secretary, to report on what had been agreed at the meeting. It included the following:

> "**Location and activity**
>
> … During their time in the UK, The Duke and Duchess of Sussex expect to attend public-facing engagements representing the charities and causes which remain dear to them. These engagements would no longer be formally undertaken on behalf of Her Majesty but, given the profile of The Duke and Duchess of Sussex, we would expect they would still attract public attention… In regard to their Commonwealth patronages, although The Duke and Duchess of Sussex will not be formally representing Her Majesty, they will be undertaking work that is closely associated with Her Majesty and which may appear to the public eye to be very

> similar to now. Of course, a number of these patronages have been granted to them by Her Majesty, and which they will continue actively to fulfil. Her Majesty may from time to time invite The Duke and Duchess of Sussex to attend national Royal occasions in their private capacity, and Her Majesty is likely to invite The Duke and Duchess of Sussex to participate in family events in keeping with other non-Working members of the Family.
>
> **Security**
>
> You will understand well that ensuring that The Duke and Duchess of Sussex remain safe is of paramount importance to Her Majesty and her family. Given The Duke's public profile by virtue of being born into the Royal Family, his military service, The Duchess's own independent profile and the well-documented history of targeting of the Sussex family by extremists, it is imperative that the family continues to be provided with effective security. And, of course, the family is mindful of tragic incidents of the past. The discussions to date, including with [the former Chairman of RAVEC], have been useful in making sure that the parameters of the RAVEC process are well understood. Of course, Her Majesty and her family recognise that these are independent processes and decisions about the provision of publicly funded security are for the UK Government, the Government of Canada and any other host Government…"

The letter did not refer to the Sandringham offer.

15. On 10 February 2020, the Claimant emailed Sir Mark Sedwill to raise his concerns about removal of State security. It did not contain an offer by the Claimant to pay for State security or refer to the Sandringham offer. However, the Claimant's case is that the offer to pay was repeated by the Claimant in a meeting he had with Sir Mark Sedwill on 3 February 2020 and was referred to in his email to Sir Edward Young of 16 April 2020 (see §§12.1.2 and 12.2.4 Reply).

16. On 28 February 2020, RAVEC decided that, because of the Claimant's changed role, the provision of State security would no longer be appropriate, on the same basis as before, and would cease no later than 31 March 2020, save in particular and specific circumstances.

17. Following RAVEC's decision, the Claimant visited the UK on two occasions: to attend the funeral of The Duke of Edinburgh, in April 2021, and for a memorial for Diana, Princess of Wales, in June 2021. The Claimant felt that the arrangements for his security during the visit in June 2021 were inadequate.

18. As a result, on 20 September 2021, the Claimant commenced judicial review proceedings ("the JR claim"). In the JR claim, the Claimant sought permission to challenge RAVEC's refusal to continue to provide State security.[1] He relied on three principal grounds. In failing to provide State security, RAVEC was alleged by the Claimant to have:

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[1] Although not strictly relevant to this judgment, as they post-date publication of the Article, there have been two judgments in the JR claim, on 22 July 2022 ([2022] EWHC 1936 (Admin)) and 23 May 2023 ([2023] EWHC 1228 (Admin)).

(1) applied its policies in an overly rigid and/or inflexible manner (Ground 1);

(2) failed to take account of relevant considerations (Ground 2); and

(3) acted unreasonably (Ground 3).

19. In the JR claim, the Claimant contended that the Sandringham offer was one of the relevant considerations which RAVEC had failed to take properly into account under Ground 2. The Claimant accepts that he did not make or mention the Sandringham offer in correspondence with RAVEC and/or the Home Office prior to issuing the JR claim. Nevertheless, the Claimant's case is that he did not know that the Sandringham offer had not been communicated to the Government; he believed it had been (see §12.4 Reply). Sir Edward Young, who attended the Sandringham meeting, was a member of RAVEC.

20. On 15 November 2022, the Claimant provided further information about his statement in the Reply (§12.1.1) that he was "*expected and directed to communicate with RAVEC through the Royal Household*". Asked who had given this direction, when and in what form, the Claimant replied:

> "There was a clear practice, as well as an expectation, that communications to and from RAVEC and the Claimant were to be routed through the Royal Household… [On] one occasion, a specific direction to that effect was given by Sir Edward Young. [The direction] was given at some point after a briefing meeting on 27 January 2020 between the Chairman of RAVEC and the Royal Household private secretaries, including the Claimant's private secretary, Fiona Mcilwham, who was acting on the Claimant's behalf in relation to this matter subsequent to the Sandringham meeting. The Claimant believes that the specific direction from Sir Edward Young … was given orally to Ms Mcilwham."

21. The principal remedy the Claimant sought in the JR claim was a declaration by the Court that the ongoing security arrangements for the Claimant when he was in the UK were unlawful.

22. When it was issued in September 2021, the JR claim originally received no publicity.

23. During the afternoon of 15 January 2022, a *Mail on Sunday* journalist, Kate Mansey, sent an email to Ms Afia and James Holt, Executive Director of Archewell, seeking a comment on a proposed article concerning the JR claim. The material parts of the email were:

> "We understand that:
>
> Lawyers acting for the Duke have written to the Home Office with a pre-action protocol letter – a precursor to a Judicial Review.
>
> That the pre-action protocol was sent in order to challenge the decision taken to remove the Duke's publicly-funded security.
>
> That the Queen has been informed of the matter.

> That the Duke had security provided by the UK government when he returned to Britain for his grandfather's funeral but on his more recent trip (for the Kensington Palace statue unveiling), he was not given the same assistance from the government.
>
> If you have any comment or guidance on the above, please do contact me as soon as you're able."

24. An article was then published at 22.12 on 15 January 2022 in *The Mail on Sunday*, written by Ms Mansey, under the headline: "*Give me back my bodyguards: Prince Harry threatens legal action against the UK Government and demands return of tax-payer funded security two years after Megxit drama began*". A similar article appeared in the print edition of *The Mail on Sunday* on 16 January 2022. The Defendant's case is that this article accurately described the issues in JR claim, albeit Ms Mansey was apparently unaware that the JR claim had been issued back in September 2021. A comment piece appeared alongside the print edition of the article, titled: "*If you want security for the family, make sure your Netflix mates pay for it*".

25. A short time before the publication of this article by the Defendant, the Press Statement and the Background Briefing concerning the JR claim were issued on behalf of the Claimant.

    (1) The Press Statement was in the following terms (with paragraph numbers added in square brackets):

> "[1] Please see the below statement attributable to a Legal Representative for Prince Harry, The Duke of Sussex…
>
> [2] 'Prince Harry inherited a security risk at birth, for life. He remains sixth in line to the throne, served two tours of combat duty in Afghanistan, and in recent years his family has been subjected to well-documented neo-Nazi and extremist threats. While his role within the Institution has changed, his profile as a member of the Royal Family has not. Nor has the threat to him and his family.
>
> [3] The Duke and Duchess of Sussex personally fund a private security team for their family, yet that security cannot replicate the necessary police protection needed whilst in the UK. In the absence of such protection, Prince Harry and his family are unable to return to his home.
>
> [4] The Duke first offered to pay personally for UK police protection for himself and his family in January of 2020 at Sandringham. That offer was dismissed. He remains willing to cover the cost of security, as not to impose on the British taxpayer. As is widely known, others who have left public office and have an inherent threat risk receive police protection at no cost to them. The goal for Prince Harry has been simple - to ensure the safety of himself and his family while in the UK so his children can know his home country. During his last visit to the UK in July - to unveil a statue in honour of his late mother-his security was compromised due to the absence of police protection, whilst leaving a charity event.

[5] After another attempt at negotiations was also rejected, he sought a judicial review in September 2021 to challenge the decision-making behind the security procedures, in the hopes that this could be re-evaluated for the obvious and necessary protection required.

[6] The UK will always be Prince Harry's home and a country he wants his wife and children to be safe in. With the lack of police protection, comes too great a personal risk. Prince Harry hopes that his petition – after close to two years of pleas for security in the UK – will resolve this situation. It is due to a leak in a UK tabloid, with surreptitious (sic) timing, we feel it necessary to release a statement setting the facts straight.'"

(2) The Background Briefing was issued in the following terms (with paragraph numbers added in square brackets):

"[1] Background (to be paraphrased and the information attributed to a spokesperson)

[2] On Judicial Review process:

[3] • A judicial review is a court proceeding that challenges the lawfulness of decisions, acts (or the failures to act) of a public body. They are heard in a branch of the Queen's Bench Division of the High Court called the Administrative Court.

[4] • Judicial reviews are primarily a challenge to the way in which a decision has been made, rather than the conclusion reached. The role of the Court is to examine the decisions of public bodies to ensure that they act lawfully and fairly. It is not the Court's role to re-make the decision being challenged or substitute what it thinks is the 'correct' decision.

[5] • Judicial Review claims have a threshold test before they can proceed, unlike other types of civil litigation.

[6] • The Defendant must file an 'Acknowledgment of Service' and 'Summary Grounds of Resistance' which summarises the grounds for contesting the claim, the legal basis of the defendant's response to the claimant's case and any relevant facts.

[7] • Currently, this is the stage we are in. Because of the lack of State protection (despite The Duke's offer to pay for it) when The Duke was last in the UK, and the fact that the UK Home Office ignored pleas for more help and greater flexibility, on 20 September 2021, legal representatives for The Duke of Sussex applied for permission to bring judicial review proceedings against the Secretary of State for the Home Department.

[8] • The Court will consider whether there is an arguable case for judicial review that justifies full investigation of the substantive merits. Usually this decision will be made without a hearing.

[9] • Where permission is granted, the claim proceeds to a substantive hearing.

[10] On The Duke's claim:

[11] • The decision-making has been unreasonable, opaque and inconsistent. It has taken insufficient account of The Duke's position; undiminished threats; and the impact on the UK's reputation of a senior member of the Royal Family being harmed on UK soil.

[12] • It's simple: The Duke wants himself and his family to be safe and to pay for necessary security, but he can't, unless the UK Home Office approves his offer.

[13] • As it stands, The Duke and Duchess's privately funded US security team is not legally able to fully support the family when they are in the UK. While it is given more flexibility in the US, in the UK this team cannot replicate the standard of security that The Duke should receive from the State.

[14] • In the UK the threat level is particularly high; indeed higher than faced in the US, where not only can more capable private security be deployed, but law enforcement organisations are allowed to be more supportive. In the UK the controversy surrounding The Duke and Duchess of Sussex's departure from full time Royal service, and the hostility of a range of extremist groups and fixated people, makes the environment particularly risky."

26. The release of the Press Statement and Background briefing did stimulate significant media interest.

(1) At 22.04 on 15 January 2022, the Press Association published the following article (repeating the Press Statement virtually word for word), under the headline: "*The full statement on Harry's judicial review bid over his security*":

> "The Duke of Sussex has filed a claim for a judicial review against a Home Office decision not to allow him to personally pay for police protection for himself and his family while in the UK.
>
> A legal representative for the duke said: 'Prince Harry inherited a security risk at birth, for life. He remains sixth in line to the throne, served two tours of combat duty in Afghanistan, and in recent years his family has been subjected to well-documented neo-Nazi and extremist threats.
>
> 'While his role within the institution has changed, his profile as a member of the royal family has not. Nor has the threat to him and his family.
>
> 'The Duke and Duchess of Sussex personally fund a private security team for their family, yet that security cannot replicate the necessary police protection needed whilst in the UK. In the absence of such protection, Prince Harry and his family are unable to return to his home.

> 'The duke first offered to pay personally for UK police protection for himself and his family in January 2020 at Sandringham. That offer was dismissed. He remains willing to cover the cost of security, as not to impose on the British taxpayer.
>
> 'As is widely known, others who have left public office and have an inherent threat risk receive police protection at no cost to them. The goal for Prince Harry has been simple – to ensure the safety of himself and his family while in the UK so his children can know his home country.
>
> 'During his last visit to the UK in July 2021 – to unveil a statue in honour of his late mother – his security was compromised due to the absence of police protection, whilst leaving a charity event.
>
> 'After another attempt at negotiations was also rejected, he sought a judicial review in September 2021 to challenge the decision-making behind the security procedures, in the homes that this could be re-evaluated for the obvious and necessary protection required.
>
> 'The UK will always be Prince Harry's home and a country he wants his wife and children to be safe in. With the lack of police protection, comes too great a personal risk.
>
> 'Prince Harry hopes that his petition – after close to two years of pleas for security in the UK – will resolve the situation. It is due to a leak in a UK tabloid, with surreptitious (sic) timing, we feel it necessary to release a statement setting the facts straight'."

(2) A Tweet was published by Omid Scobie at 22.19 on 15 January 2022:

> "BREAKING: Prince Harry has applied for a judicial review of a Home Office decision not to allow him to personally pay for police protection for himself and his family when they are in the UK, a legal representative for the Sussexes confirms"

Thereafter, Mr Scobie also published paragraphs 2-6 of the Public Statement via his Twitter account.

(3) Further articles were published on 15 and 16 January 2022 by BBC News ("*Prince Harry in legal fight to pay for UK police protection*"); *iNews* ("*Prince Harry files claim against Home Office decision not to allow him to pay for own security on UK visit*"); *The Guardian* ("*Prince Harry files legal claim over right to pay for UK police protection*"); *The People* ("*Prince Harry files legal claim over right to pay for UK protection*"); *The Independent* ("*Prince Harry files claim against Home Office decision not to let him pay for own protection*"); Sky News ("*Prince Harry seeks judicial review after Home Office stops him from paying for police protection in the UK*"); CNN ("*Prince Harry seeks right to pay for UK police protection when in Britain*"); Reuters ("*UK's Prince Harry seeks right to pay for UK police protection*"); Buzzfeed News ("*Prince Harry seeks to pay for UK police protection*"); and NBC News ("*Prince Harry in legal fight to pay for UK police protection*").

27. In paragraph 22 of the Defence, the Defendant contends that these articles suggested, misleadingly, that the JR claim was to RAVEC's refusal to accept the Claimant's offer to pay or contribute towards the cost of State security.

28. On 21 January 2022, Ms Mansey sent a further email to Ms Afia and Mr Holt, headed "*Judicial Review query*" (square brackets in the original):

> "We are planning to run a story about the Judicial Review sought by the Duke of Sussex in the forthcoming edition of *The Mail on Sunday* [Jan 23].
>
> In the statement on Saturday, a legal representative of the Duke's said that in January 2020 at Sandringham, the Duke offered to pay for his protection.
>
> A Press Association story was published around the same time on Saturday, which stated: 'The Duke of Sussex has filed a claim for a judicial review against the Home Office decision not to allow him to personally pay for police protection for himself and his family while in the UK'. We note that this claim was not included in the statement released by the Duke's representative.
>
> Sources close to the process tell us that they have not seen any paperwork to suggest that an offer to pay was made in writing as part of the official Judicial Review process.
>
> In the interests of accurate reporting, we would therefore appreciate your replies to the following questions:
>
> - What are the grounds outlined by the Duke of Sussex and his representatives for seeking Judicial Review?
>
> - What stage has been reached in the Judicial Review process?
>
> - Has a date been set yet for any hearing? If so, when and what type of hearing?
>
> - Is the Judicial Review being sought (a) to challenge the decision to withdraw the Duke's UK police protection; or (b) to challenge a decision that he was not permitted to pay for UK police protection?
>
> - If the latter, when was the Home Office decision made to prevent the Duke from paying for UK police protection?
>
> - During the process of seeking a Judicial Review, did the Duke (or his representatives) make an offer in writing to pay for UK police protection?
>
> - Aside from the verbal offer made by the Duke at Sandringham in January 2020, did the Duke (or his representatives) make a verbal offer to pay for UK police protection to the Home Office/government bodies/any other authorising committee?
>
> - If the offer was made in writing, is there a document or documents which you are able to provide to support the claim?"

29. Ms Mansey received no response to that email, so she sent a further email, during the afternoon of 22 January 2022, advising that her deadline was 8pm that evening "*should*

you wish to guide or comment". No response was sent on behalf of the Claimant. The Defendant published an article on *Mail Online* at around 10pm that evening under the headline: "*Home Office 'will not back down' in extraordinary legal battle over Prince Harry's demand for police protection when he and Meghan visit Britain*" (a similar article appeared in the print edition of *The Mail on Sunday* on 23 January 2022). The article included the following:

> "After we broke the story, an unnamed spokesman acting for Harry said the legal action was over a Home Office refusal to provide police protection to Harry in the UK – even though the Duke had offered to pay for it.
>
> A legal representative said: 'The Duke first offered to pay personally for UK police protection for himself and his family in January of 2020 at Sandringham
>
> 'That offer was dismissed. He remains willing to cover the cost of security, as not to impose on the British taxpayer." But now a senior source has told this newspaper: "I've not seen anything in writing that suggests this is about whether or not he pays for it. It's about whether or not the security is granted here that is the issue'."

30. On 18 February 2022, there was a Case Management Hearing in the JR claim. The written submissions filed by the Secretary of State for the Home Department contained the following paragraph:

> "The Claimant's offer of private funding is irrelevant. First, the offer is now advanced in the Claimant's witness statement and [Statement of Facts and Grounds] but notably it was not advanced to RAVEC at the time of the Claimant's visit to Great Britain in June 2021 or in any of the pre-action correspondence which followed. Secondly, and in any event, personal protective security by the police is not available on a privately funded basis, and RAVEC does not make decisions on the provision of such security on the basis that any financial contribution could be sought or obtained to pay for it."

31. In her witness statement, based on the above facts, Ms Afia stated that the central factual element of the meaning of the Article found by the Court – that the Claimant had stated that "*he was willing to pay for police protection in the UK… whereas the true position… was that he had only made the offer to pay after the proceedings had commenced*" – was false. As set out in his Reply, the Claimant had made an offer to pay for UK police protection for him and his family, in January 2020 at Sandringham (the Sandringham offer). That offer was not accepted, but the Claimant's position is that he remained willing to pay for his security costs incurred by the UK. Ms Afia concluded her statement as follows:

> "… it is the Claimant's case that no honest person could have held the opinion set out in paragraph 11 of the Defence on the basis of the facts relied upon by the Defendant in paragraphs 14 to 24 and the defence of honest opinion falls to be struck out."

Although expressed there in terms of striking out, it is clear the Claimant also contends that the defence of honest opinion has no real prospect of success and should be summarily dismissed under CPR Part 24.

32. In response on behalf of the Defendant, in his witness statement, Mr Wilson, contends that the Defendant has a real prospect of succeeding with its honest opinion Defence. He summarises the Defendant's position as follows:

    (1) The application to dismiss the honest opinion defence rests on a fundamental misreading of the meaning of the Article found by the Court. The reference in paragraph (b) of the meaning to the Government's refusal to allow the Claimant to pay, and to the offer being made only after the proceedings against the Government has started, can only sensibly refer to an offer made to the Government.

    (2) The Claimant's case on the meaning of his own public statements flies in the face of the words used and the resulting publicity.

    (3) The Claimant's counterfactual case, in respect of the meeting with his family at Sandringham, is immaterial. It is not seriously disputed that the Claimant did not convey an offer to pay to the Government at any relevant time. Even if it were material, there are obvious triable issues as to what was said, and its effect.

    (4) The application does not represent a correct approach to an honest opinion defence under s.3 Defamation Act 2013. It ignores other facts legitimately relied upon by the Defendant in its pleaded case including the pre-publication exchanges between the newspaper and the Claimant's solicitors, where questions about the Claimant's public position on the relevant issue were put but ignored.

G: Legal Principles

(1) Striking out

33. The Court can strike out a statement of case (in whole or in part) if it appears that it discloses no reasonable grounds for defending the claim: CPR 3.4(2)(a).

34. Practice Direction 3A gives further guidance:

> "1.6 A defence may fall within r.3.4(2)(a) where –
>
> (1) it consists of a bare denial or otherwise sets out no coherent statement of facts, or
>
> (2) the facts it sets out, while coherent, would not even if true amount in law to a defence to the claim."
>
> 1.7 A party may believe he can show without a trial that an opponent's case has no real prospect of success on the facts, or that the case is bound to succeed or fail, as the case may be, because of a point of law (including the construction of a document). In such a case the party concerned may make an application under r.3.4 or Part 24 (or both) as he thinks appropriate."

35. A striking out application requires analysis of the statement of case, without reference to evidence. Unless demonstrably and patently hopeless, the Court proceeds on the assumption that the relevant factual averments will be established by evidence at trial.

The Court should not be deterred from deciding a point of law; if it has all the necessary materials, it should "*grasp the nettle*". Where a statement of case is found to be defective, the Court should consider whether the defects might be cured by an amendment and, if it might be, the Court should consider whether to give the party concerned an opportunity to amend: ***Morgan -v- Associated Newspapers Ltd*** **[2018] EWHC 3960 (QB)** [39]; ***Duchess of Sussex -v- Associated Newspapers Ltd*** **[2020] EWHC 1058 (QB)** [33(2)].

(2) Summary judgment

36. Unlike striking out applications, the Court can consider evidence on a summary judgment application. The principles to be applied on Part 24 applications are well established: see ***ED&F Man Liquid Products Ltd -v- Patel*** **[2003] EWCA Civ 472** [10]; ***Three Rivers DC -v- Bank of England (No.3)*** **[2003] 2 AC 1** [94]-[96], [158]; ***EasyAir Ltd -v- Opal Telecom Ltd*** **[2009] EWHC 339 (Ch)** [15]; ***AC Ward & Sons Ltd -v- Catlin (Five) Ltd*** **[2010] Lloyd's Rep I.R. 301** [24]; ***Global Asset Capital -v- Aabar Block*** **[2017] 4 WLR 163** [27].

(1) The court must consider whether the claimant has a realistic as opposed to a fanciful prospect of success.

(2) The criterion "real" within CPR 24.2(a) is not one of probability, it is the absence of reality.

(3) At the same time, a realistic claim is one that carries some degree of conviction. This means a claim that is more than merely arguable.

(4) The court must be astute to avoid the perils of a mini-trial on the basis of written evidence and without the usual phases of disclosure and witnesses being cross-examined at trial. But it is not precluded from analysing the statements made by the party resisting the application for summary judgment and weighing them against contemporaneous documents. Whilst disputed facts should generally be assumed in the respondent's favour, in some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporary documents.

(5) If there is a short point of law or construction, and the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it.

(6) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial. The court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case.

(3) Honest Opinion

37. Section 3 of the Defamation Act 2013 provides (so far as 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…
>
> (5) The defence is defeated is the claimant shows the defendant did not hold the opinion."

38. The defence of honest opinion is well recognised in the authorities as a bulwark of free speech. Reflecting that, most recently, in ***Corbyn -v- Millett*** **[2021] EMLR 19** [16], the Court Appeal held that the defence of honest opinion:

> "… must not be whittled away by artificially treating comments as if they were statements of fact. On the other hand, if a person could use this defence as a means of escaping liability for a false defamatory allegation of fact, the law would fail to give due protection to reputation. That is why the statutory defence only applies to a statement which is one of opinion."

39. But where the defence is available, the necessary latitude to protect freedom of expression is afforded principally in two ways.

(1) First, the opinion that the objective "*honest person*" could express under s.3(4) is recognised to be extremely wide. The original name of the defence at common law – "*fair comment*" – was recognised to be a misnomer. To benefit from the defence, the commentator did not have to be fair; s/he simply had to be honest.

(2) The classic statement of the test is that of Lord Keith in ***Telnikoff -v- Matusevitch*** **[1992] 2 AC 343, 354**: "*whether any man, however prejudiced or obstinate, could honestly hold the view expressed by the defendant*". Similarly, the critic "*need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism*": ***Tse Wai Chun -v- Cheng*** **[2001] EMLR 31** [20] approved in ***Joseph -v- Spiller*** **[2011] 1 AC 852** [3]. The ultimate test is honesty, not rationality; whether the defendant *did* hold the opinion, not whether (on the evidence available to her/him) s/he *should* have done: ***Carruthers -v- Associated Newspapers Ltd*** **[2019] EWHC 33 (QB)** [30]. A defendant does not have to persuade the Court to agree with his/her opinion; nor should s/he need to demonstrate "*that honestly*

expressed opinions fall within some elusive nebulous margin of what is 'reasonable' or 'fair'": ***Branson -v- Bower*** **[2002] QB 737** [26].

(3) Second, if established, the defence can only be defeated under s.3(5) if the claimant proves that the commentator did not hold the opinion expressed. Prior to codification of the defence in statute, in ***Cheng*** [79], Lord Nicholls held that "*honesty of belief is the touchstone*" of the defence:

> "Actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not *of itself* defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred." (emphasis in the original)

40. As to the scope of the supporting facts:

(1) The fact(s) relied upon by the defendant for the purposes of s.3(4)(a) must be proved true: ***Riley -v- Murray*** **[2023] EMLR 3** [49].

(2) In general, a defendant does not need to prove the truth of every fact relied upon; one will do, provided it is logically and sufficiently supportive of the defamatory opinion expressed: ***Riley -v- Murray*** **[2022] EMLR 8** [93]-[99].

(3) On a literal construction, the words "*any fact*" in s.3(4)(a) would appear to suggest that proof of any fact will do. That broad construction of s.3(4)(a) has been doubted, including recently (without deciding the point) by the Court of Appeal in ***Riley -v- Murray*** **[2023] EMLR 3** [50]-[59], where two particular constraints were raised.

(i) The first is the need for some nexus to be shown between the subject matter of the statement complained of and additional facts which a defendant seeks to rely on in the pleading: [57].

(ii) Second, where an opinion is expressly and exclusively premised on the truth of a single factual allegation, it cannot be defended if that express basis was "*wholly untrue*" (so-called 'single-fact' cases): [59] and [61]-[62] (see also ***Dyson -v- MGN Ltd*** **[2023] EWHC 3092 (KB)** [97]-[99]).

(4) The omission of a highly relevant fact may undermine the supporting facts to the extent that they are no longer "*true facts*". A "*truly exculpatory*" fact in that sense may well defeat the defence: see the example given by Eady J in ***Branson -v- Bower*** [37]. However, extraneous facts, otherwise relied on by a claimant are irrelevant to the second, objective, question of whether an honest person could hold the opinion based on those facts. As Eady J put it, in ***Branson -v- Bower*** [38]:

> "…that is because the objective test for fair comment is concerned with whether the defendant is able to show that a hypothetical person could honestly express the relevant comment on the facts pleaded and/or proved *by the defendant*" (emphasis in the original).

Adding, a little later [54]:

> "The right to comment freely and honestly is not to be whittled away by detailed and subtle arguments as to how a different commentator might have viewed the facts or given them a different emphasis".

See also ***Carruthers -v- Associated Newspapers Ltd*** **[2019] EWHC 33 (QB)** [28]-[31].

H: Submissions

41. The Claimant submits that this case is straightforward. There is, and can be, no dispute that – by the Sandringham offer – in January 2020, he had offered to pay for State security. It is therefore demonstrably false to state that he had only made such an offer after the JR claim had commenced. In consequence, the factual premise in meaning (b), as found by the Court (see [3] above), is wrong. The Claimant argues that, as was the case in ***Riley -v- Murray***, where a defendant has expressed an opinion that is expressly based on a single factual assertion, a defence of honest opinion that rests on this factual basis must fail if that fact is wrong. These fundamental facts will not change between now and any trial. As such, the Court should grasp the nettle and declare that the honest opinion defence is hopeless.

42. Mr Rushbrooke KC argues that the Defendant has attempted to get around this problem by "*rewriting*" meaning (b) found by the Court to refer to "*an offer made to the Government*". This, he submits, is impermissible. The meaning, as found, does not refer to an offer to the Government, and there is no warrant for such a meaning in the Article. Other media coverage of the Press Statement and Background Briefing is irrelevant, not least because Ms Mansey, in her email on 21 January 2022 (see [26(2)] above), had noted that the Press Statement had not included any suggestion that the Claimant was seeking to challenge RAVEC's refusal of his offer to pay for State security.

43. Further, and in any event, Mr Rushbrooke KC argues that the whole defence of honest opinion rests upon two provably false premises, namely that:

    (1) the Claimant had publicly (and falsely) stated that he had made an offer to RAVEC to pay or contribute to the costs of State security; and

    (2) the Press Statement and Background Briefing (falsely) stated that "*his challenge was to the Government's decision to refuse his offer to pay for police protection*".

44. The Claimant submits that the evidence concerning the statements made by him (or on his behalf) is not going to change. In assessing it, therefore, the Court is in as good a position now as it will be at trial. The Claimant contends that this evidence demonstrates the following facts:

    (1) he made the Sandringham offer in January 2020;

    (2) this was the first time he had made such an offer to pay for his State security;

    (3) the offer was dismissed;

(4) he remained willing to cover the cost of security so as not to impose on the British taxpayer; and

(5) he sought a judicial review in September 2021 to challenge the decision-making behind the security arrangements in the hope that this could be re-evaluated for the obvious and necessary protection that was required.

45. The Claimant submits that nowhere in the Press Statement or the Background Briefing was it stated (either expressly or impliedly) that:

(1) the Sandringham offer had been communicated by or on behalf of the Claimant to the Home Office in January 2020;

(2) the offer to pay had been repeated to the Home Office;

(3) the offer to pay had been rejected by the Home Office in negotiations before the commencement of the JR claim;

(4) he had made an offer to RAVEC to pay or contribute to the costs of State security; or

(5) his legal challenge was to the Government's decision to refuse his offer to pay for State security.

46. In the alternative, if the Background Briefing could be read as implying that the Claimant's legal challenge was to the refusal to accept the Claimant's offer to pay for State security, then that was part of the JR claim under Ground 2.

47. Mr Caldecott KC, for the Defendant, submits that the Defendant's honest opinion defence has a real prospect of success. The meaning of the Article, as found by the Court (see [3] above), was only held to be defamatory because of the criticism in paragraph (c), which the Court held was an expression of opinion. In its Defence (§§14-24), the Defendant has identified the facts upon which it contends, pursuant to s.3(4)(a), an honest person could have held the opinion in paragraph (c) of the meaning. In summary:

(1) RAVEC (under the Home Secretary) is responsible for the publicly funded protective security of the Royal Family and other public figures (§15). As a basic constitutional principle, the Crown cannot exercise those functions personally, or through members of the Royal Household.

(2) The JR claim, brought against the Home Secretary, challenged (a) the decision, in February 2020, that RAVEC would not, from April 2020, continue to provide protective security for the Claimant on the same publicly funded basis as previously; and (b) the decision, in June 2021, not to provide publicly funded protective security equivalent to that provided for the Claimant prior to April 2020 (§21.3.6). The Defendant contends that the JR claim was not, therefore, a challenge to a refusal by RAVEC to accept an offer by the Claimant to pay or contribute to his protective security. The key letter from RAVEC, of 28 February 2020, referred to there being no basis for State security

(i.e publicly funded security) and elicited no response from the Claimant or his advisers (§21.3.2).

(3) The Claimant bears responsibility for the terms in which the Press Statement and Background Briefing were issued (§19) (a point that is admitted by the Claimant (Reply §10)).

(4) The Defendant's case on the meaning of these public statements is as follows:

(i) The public statements must be read in their context, which is the Claimant's public explanation of his reasons for bringing the JR claim.

(ii) Both the Press Statement and the Background Briefing claimed that the Claimant was willing to pay for police protection and that the JR claim was a challenge to the Government's decision to refuse his offer to do so.

(iii) The Press Statement, in referring to a first offer made by the Claimant "*to pay personally for UK police protection for himself and his family in January of 2020 at Sandringham*" meant, in its wider context, that the "offer" had been communicated to the Home Office, in January 2020, and repeated (and rejected by the Home Office) in negotiations before the JR claim, in September 2021 (§20, second sentence). The Defendant argues that this message was "*yet starker*" in the Background Briefing (§20, third sentence). The Press Statement did not identify to whom the Sandringham offer had been made. It described the offer as the "*first*" offer and that it was "*dismissed"*. It also referred to "*another attempt at negotiations*" that had been "*also rejected*". Taken alone, the Defendant contends that must suggest an attempt at negotiations with the Government, as the institution responsible for security and the Defendant to the JR claim (which was the wider context for the public statements).

(iv) Paragraph 7 of the Background Briefing explained the reasons for the JR claim as follows:

> "… Because of the lack of State protection (despite the Duke's offer to pay for it) when the Duke was last in the UK, and the fact that the UK Home Office ignored pleas for more help and greater flexibility, on 20 September 2021, legal representative [sic] for The Duke of Sussex applied for permission to bring judicial review proceedings against the Secretary of State for the Home Department."

The Defendant submits that paragraph 12 could not be clearer:

> "It's simple. The Duke wants himself to be safe and to pay for necessary security, but he can't, unless the Home Office approves his offer."

The only offer referred to in the Public Statement was the Sandringham offer, with the implication that it *was* maintained in subsequent negotiations. Further, the reference to "*The Duke's position*",

in paragraph 11, would clearly be understood to include the offer which is said to be at the heart of the Judicial Review claim ("*It's simple*…" etc.). Mr Caldecott KC argues that it is "*absurd*" to suggest that the public statements, taken as a whole, do not suggest that the offer was made to the Government (§11.1 of the Amended Reply). The Defendant suggests that its case on the meaning of the public statements is "*not merely strongly arguable, but unanswerable*".

(5) In support of its interpretation of the public statements, the Defendant points to the resulting media coverage that had relied upon them (§22), the key message of which was that the Claimant was challenging the Government's refusal to allow him to pay for his State security (see [26] above).

(6) Hours before the release of the Claimant's public statements, Ms Mansey had inquired about the Claimant's pre-action protocol letter in the JR claim (see [23] above). Her email suggested that the Claimant's challenge was to the decision taken to remove his State security. Following the issue of the public statements on behalf of the Claimant, Ms Mansey sent her email of 21 January 2023 (see [28] above), in which she asked what the Defendant suggests were "*highly pertinent questions*", including asking what were the grounds of the JR claim –whether it was to the decision to withdraw State security or a refusal to permit him to pay for it – and whether the Claimant had made an offer in writing to pay for his State security. The Defendant submits that it is significant that those questions went unanswered.

(7) The true position – the Defendant argues – is that no offer to pay for State security was made to the Government (whether RAVEC or the Home Office) prior to the commencement of the JR claim. The Defendant relies upon the statement to that effect in the Home Office's skeleton argument for the hearing on 18 February 2022 (see [30] above), which was the immediate context for the Article. The JR claim was not directed at a decision by the Government not to allow the Claimant to pay for his State security.

48. Mr Caldecott KC argues that the Claimant's arguments on the Dismissal Application proceed by ignoring the words "*and that his legal challenge was to the Government's refusal to permit him to do so*" in paragraph (b) of the meaning. It is only by removing those words that the Claimant's argument becomes tenable. The Claimant does not claim, in his Reply, that the Sandringham offer was made to the Government, and there was no mention of the offer in correspondence with RAVEC and/or the Home Office prior to issue of the JR Claim (see §12.4 Reply). If it is necessary to determine it, the Court on the Dismissal Application cannot resolve any issues concerning the Claimant's belief that the Sandringham offer would have been communicated to RAVEC (see [19]-[20] above). In the JR claim the Home Office stated that the Sandringham offer had not been communicated to RAVEC (see §12.4 Reply).

49. Overall, the Defendant argues that the opinion that it must defend is that set out in paragraph (c) of the meaning. The sting is that the Claimant was responsible for attempting to mislead and confuse the public. If the Court accepts the Defendant's contentions about the meaning of the Public Statement and the Background Briefing, the Defendant has a real prospect of demonstrating that an honest person could have

held this view. This is not a 'one fact' case like ***Riley -v- Murray***, where the failure of the key fact is fatal to the honest opinion defence.

I: Decision

50. This is not the trial of the action. I am considering only whether the Defendant's defence of honest opinion should be struck out or dismissed as having no real prospect of success. I am not, therefore, at this stage making any findings of fact. If this claim proceeds, the Court will make findings of fact at a trial at which all relevant evidence will be considered.

51. The Article that has given rise to this libel action is set out in the appendix to the judgment of 8 July 2022 ([2022] EWHC 1755 QB), but for ease of reference I should set out the following paragraphs of the Article which are of importance to this judgment (with paragraph numbers added in square brackets):

> "[5] When The Mail on Sunday last month revealed that Harry was suing the Government, his spin-doctors swung into action, briefing journalists that Harry was being denied the right to pay for bodyguards.
>
> [6] It led to inaccurate reports across the media, such as the BBC headline: 'Prince Harry in legal fight to pay for UK police protection.'
>
> [7] As documents lodged at the High Court last week show, no such offer to pay was made in the Prince's initial 'pre-action' letters to the Home Office, suggesting he expected British taxpayers to cover it.
>
> [8] The revelations are a crushing rebuttal to Harry's initial public statements that implied he had always been willing to foot the bill…
>
> [10] Home Office lawyers state that it was only in later correspondence that the offer was made.
>
> [11] That led to fury last night that aides acting for Harry sought to confuse the mainstream media's response to the story, ironic given the Prince no has a role with a Silicon Valley firm tackling 'misinformation' online… "
>
> [13] The Duke launched his claim in September, more than 18 months after the Government's RAVEC (Royal and VIP Executive Committee) decided he would be stripped of his full state-funded security.
>
> [14] But court papers reveal that Harry still maintains 'exceptional status', which means he could be afforded protection depending on the nature of his visits, assessed on a 'case-by-case basis'.
>
> [15] Harry argues that 'while his role within the institution has changed, his profile as a member of the Royal Family has not. Nor has the threat to him and his family.'
>
> [16] Yet his initial bid to get the decision overturned did not mention he would pay anything. Court papers say: 'The offer [to pay] is now advanced in the Claimant's witness statement...but notably was not advanced to RAVEC in June 2021 or in any of the pre-action correspondence which followed.'

> [17] It adds that Harry's recent offer to pay is nevertheless 'irrelevant' because 'personal protective security by the police is not available on a privately financed basis, and RAVEC does not make decisions...on the basis that any financial contribution could be sought or obtained to pay for it'.
>
> [18] When The Mail on Sunday first broke the story, lawyers and PR advisers acting for the Sussexes sought to put their own gloss on it.
>
> [19] Just six minutes after The Mail on Sunday's world exclusive, the Press Association, apparently having been given an advanced briefing by Harry's camp, reported that the Duke had offered 'to pay personally for UK police protection' and quoted his lawyer saying: 'He remains willing to cover the cost of security.'
>
> [20] Omid Scobie, a journalist known to be supportive of the Sussexes, also appeared to have been briefed by Harry's team.
>
> [21] Five hours after this newspaper told the Prince's aides we were planning a story, Scobie told his 76,000 Twitter followers: 'Prince Harry has applied for a judicial review of a Home Office decision not to allow him to personally pay for police protection for himself and his family when they are in the UK, a legal representative for the Sussexes confirms.'
>
> [22] Harry's team only responded to this newspaper after this inaccurate version of events had been tweeted…"

52. It is perhaps important, in the context of the current judgment, to explain the parameters of the exercise when the Court determines the meaning of an article. The law requires that, when determining the natural and ordinary meaning of an article, the Court must look only at the article itself. That is to put the Court, so far as possible, in the position of average readers who are likely only to have the article. In this case, readers of the Article could not have been expected to have read, for example, copies of the Claimant's JR claim, or the Press Statement and Background Briefing. When I made my decision as to the meaning of the Article, necessarily I had not seen, or read, any of these documents.

53. When considering the Dismissal Application, the starting point is the meaning of the Article as found by the Court (see [3] above). Following the Claimant's decision to abandon complaint about meaning (a), the remainder has several parts:

(1) meaning (b) contains a series of factual propositions, none of which the Court has found to be defamatory of the Claimant:

(i) "*the Claimant was responsible for public statements, issued on his behalf, which claimed that he was willing to pay for police protection in the UK*";

(ii) "*that his legal challenge was to the Government's refusal to permit him to do so*",

whereas,

(iii) "*the true position, as revealed in documents filed in the legal proceedings, was that he had only made the offer to pay after the proceedings had commenced*";

(2) meaning (c) contains a defamatory expression of opinion, the premise of which were the facts in (b), that: "*the Claimant was responsible for attempting to mislead and confuse the public as to the true position, which was ironic given that he now held a public role in tackling 'misinformation'*."

54. Naturally, these meanings reflect the core messages conveyed by the paragraphs of the Article I have set out ([51] above). For the purposes of this judgment, it is important to recall that, when determining the meaning of the Article, what I said about the core message that was being conveyed. I said this [33]:

> "I have … rejected the Claimant's meaning of '*lying*'. The Article does not make that blunt allegation, whether expressly or by implication. The hypothetical ordinary reasonable reader would understand the difference, as a matter of fact, between '*spinning*' facts and '*lying*'. The former would be a concept familiar to readers; the presentation of true facts (and often the omission of other facts) in a way that is designed to give a positive message but which, overall, is apt to mislead. The Article was clearly alleging that this was an example of '*spinning*'. Some people will think that the practice of '*spinning*' facts is tantamount to, or the equivalent of, '*lying*', but this represents their own value judgment of the practice. The Article was clear what was being alleged; it was the former not the latter."

55. Turning to the Dismissal Application, it has two parts: the strike out application and the summary judgment application. There is a significant overlap. As the decision on the Dismissal Application really turns on the assessment of the evidence, and whether, based on the evidence, the Defendant's defence of honest opinion has a real prospect of success, I will consider the summary judgment application first.

56. The attack by the Claimant on the honest opinion defence is made on a very narrow basis. The Claimant's case is that the defence is hopeless because of the Sandringham offer, made by the Claimant in January 2020. That offer means that the Defendant is bound to fail in demonstrating that "*he had only made the offer to pay [for State security] after the [JR claim] had commenced*". The Claimant makes no challenge, at this stage, to that part of the Defendant's honest opinion defence that relies upon what the Defendant contends was the misleading nature of the Press Release and Background Briefing in the characterisation of the JR claim.

57. As the authorities I have set out demonstrate (see [38]-[40] above), the honest opinion defence is fundamental to the protection of freedom of expression under English law. Save for what have been called 'single fact' cases, it is for the defendant relying upon the honest opinion defence to identify the facts upon which s/he relies under s.3(4)(a). The nature of the defence means that it not generally relevant to point to other facts which may have led the defendant (or the notional honest commentator) to hold a different opinion.

58. The Claimant is seeking to force this claim into a 'single fact' case; the fact being that he had not made an offer to pay for State security prior to the JR claim, which the

Claimant contends is false because he had made the Sandringham offer. In my judgment, that argument fails.

(1) First, it depends upon 'the offer' being wide enough to encompass the Sandringham offer. The Claimant argues that the reference to "*the offer to pay*" in meaning (b) is wide enough to embrace the Sandringham offer and, as such, the factual premise of the opinion must fail. As a matter of construction, I reject that argument. In my judgment, the Defendant has a real prospect of demonstrating that, construed as a whole, meaning (b) can (and should) be read as referring to an "offer" made to the Government, which the Claimant appears to accept the Sandringham offer was not. I accept Mr Caldecott KC's submission that the construction urged by the Claimant is only tenable if the words "*that his legal challenge was to the Government's refusal to permit him to do so*" are excised from meaning (b). The "*offer*" draws its context from the alleged refusal to accept it that is the subject of challenge in the JR claim.

(2) But second, and importantly, insofar as there is any ambiguity in meaning (b), the Defendant is entitled to rely upon its interpretation as part of its ability to select the facts that it wishes to prove true in support of its honest opinion defence (see [40(4)] above). In my judgment, the Defendant is entitled to seek to prove, as a fact, that the Claimant had not made an offer to pay for his State security *to the Government* before the JR claim. It may be that there is no real dispute about the Sandringham offer, but ultimately, it may be found to be irrelevant to the Defendant's defence of honest opinion.

59. Perhaps more importantly, this is not a 'single fact' case. The sting of the defamatory opinion in paragraph (c) of the meaning is that the Claimant was responsible for attempting to mislead and confuse the public about the true position. The Defendant has relied upon the Press Statement and Background Briefing, for which public statements the Claimant was responsible, as the facts supporting the opinion that these were attempts by him to mislead and confuse the public.

60. Based on the Public Statement and the Background Briefing, in my judgment, the Defendant has a real prospect of demonstrating (at least) the following facts in support of its honest opinion defence:

(1) that the Press Statement suggested that, prior to the JR claim, the Claimant had made at least one previous offer to the Government to pay for his State security, which offer(s) had been rejected by the Government;

(2) that the Background Briefing, most clearly in paragraph 12, suggested that the JR claim was a challenge to the Government's refusal to accept the Claimant's offer to pay for his State security; and

(3) that these suggestions were not accurate, or at least did not give the full story.

61. I am also satisfied that the Defendant has a real prospect of demonstrating, at trial, that the contents of the public statements, issued on the Claimant's behalf, and the essential message they sought to project, were misleading in the way identified by the Defendant. Mr Rushbrooke KC, for the Claimant, accepted at the hearing that the description of the JR claim, in the Press Association article (see [26(1)] above), was "*at least arguably*

misleading". That was a realistic concession. In my judgment, the Defendant has, at least, a real prospect of demonstrating that, properly understood, the JR claim was challenging RAVEC's refusal to continue State security for the Claimant and his family; it sought a declaration that these arrangements were unlawful. The Sandringham offer was only a very small part of one of the grounds in the JR claim (being one of several identified factors that, it was alleged, the Government had failed properly to consider).

62. Overall, it is not fanciful that the Defendant will be successful, at trial, in demonstrating that the public statements issued on the Claimant's behalf sought to promote the JR claim as his battle against the Government's (perverse) decision to refuse to allow him to pay for his own security. There is a real prospect that the Defendant will succeed in demonstrating that this was a misleading description of the issues in the JR claim, arguably promoted because it was hoped to show the Claimant's JR claim in a positive light, whereas a portrayal of the JR claim as the Claimant trying to force the Government to reinstate his (tax-payer funded) State security risked his appearing in a negative light. I anticipate that, at trial, the Defendant may well submit that this was a masterclass in the art of "*spinning*". And, the Defendant argues, it was successful in misleading and/or confusing the public. The resulting media coverage relied upon by the Defendant did, indeed, characterise the JR claim as the Claimant's challenge to the Government's refusal of his offer to pay (see [26] above).

63. If the Defendant does establish these facts, then I consider that it has a real prospect of succeeding in demonstrating also that an honest person could have held the opinion that the Claimant was responsible for attempting to mislead and confuse the public as to the true position (and that this was ironic given that he now held a public role in tackling "*misinformation*"). As I have noted above in the context of my decision as to the meaning of the Article, my immediate impression was that it was alleging that the Claimant was guilty of "*spinning*" facts to his advantage; as I suggested in that judgment "*spinning*" can be defined as "*the presentation of true facts (and often the omission of other facts) in a way that is designed to give a positive message but which, overall, is apt to mislead*". Having now seen the sequence of events, in my judgment, the Defendant does have a real prospect of demonstrating that an honest person could have held the view that this was precisely what was being done on the Claimant's behalf.

64. For all those reasons, in my judgment, the Defendant's honest opinion defence has a real prospect of success. The summary judgment element of the Dismissal Application will be refused.

65. I can deal with the application to strike out the defence of honest opinion quite shortly. This application is made under CPR3.4(2)(a). Without consideration of the evidence, I must decide whether the pleaded defence discloses "*no reasonable grounds for … defending the claim*". In my judgment, for the reasons I have explained, it does. The strike out application will therefore also be refused.

Appendix

(1) Relevant paragraphs of the honest opinion defence from the Defence

…

14. The Claimant ceased to be a working member of The Royal Family by agreement, effective from 31 March 2020.

15. The Executive Committee for the Protection of Royalty and Public Figures is commonly referred to as "RAVEC". The Home Secretary, the Defendant in the judicial review proceedings referred to in the articles, is the government minister responsible for publicly funded protective security provided to members of the Royal Family and other public figures. She has delegated her responsibility for the protective security arrangements to RAVEC and is responsible in law for RAVEC's decisions.

16. By a letter dated 28 February 2020 (the 'RAVEC Letter'), the then Chairman of RAVEC informed the Claimant that he would no longer receive publicly funded police protection as enjoyed by him when a working royal, but on a case-by-case basis according to the applicable circumstances.

17. The arrangements in the RAVEC letter were first applied to the Claimant when he visited the United Kingdom in June 2021.

18. On 20 September 2021 the Claimant issued a claim for judicial review, seeking to challenge the decision to apply the security arrangements set out in the RAVEC Letter and their application to him in June 2021 (the 'Judicial Review Claim').

19. The Claimant was responsible for the public statements issued on his behalf by his solicitor, Jenny Afia of Schillings International LLP, on 15 January 2022 (the 'Statements' being the 'Press Statement' and 'Background Briefing' set out in full in Annex A to this Defence and further referred to below) as further evidenced by the following matters:

    19.1. The Statements concerned a matter of self-evident personal sensitivity for the Claimant (litigation against the British Government arising out of his withdrawal as a working member of the British Royal Family) and of obvious public interest. The Statements included personal thoughts and feelings about his family, his hopes, his and their security, and his country. It also accused the Defendant (by implication) of 'a leak with surreptitious timing'. They were therefore self-evidently likely to attract very extensive publicity.

    19.2. The Statements were issued by Ms Afia of Schillings, a solicitor and firm both subject to the regulation of the Solicitors Regulatory Authority and its Code of Conduct (the "SRA Code"). As such, she and her firm Schillings were at all material times subject to an obligation to keep the affairs of their client confidential unless disclosure was required or permitted by law or unless their client consented.

    19.3. Schillings and Ms Afia are specialist solicitors, expert in reputation management. On their website, Schillings state that they work closely with their clients to help them establish their "true narrative".

19.4. At 16:51 on 15 January 2022, Kate Mansey of the Mail on Sunday sent an email to Jenny Afia (the Claimant's Solicitor) and James Holt (the Executive Director of Archewell) seeking comment on a proposed article. That email made clear that the Mail on Sunday's understanding was that the Claimant had sent a pre-action protocol letter as a precursor to a judicial review "in order to challenge the decision to remove the Duke's publicly-funded security". The Claimant and the Duchess of Sussex are the founders of Archewell, which is a corporate vehicle for their commercial and charitable activities. No response to this email was received before publication. Instead:

19.4.1. At a time unknown to the Defendant but before 22:04 on 15 January 2022, and prior to publication of the Defendant's article Prince Harry launches legal action against Government claiming it is 'unsafe' for family to return" on MailOnline at 22:12 on the same date (the '15 January Article'), the Press Statement with the appended Background Briefing was sent to the Press Association. It was also sent in this form to other journalists and media outlets, but not the Defendant. This was done by Ms Afia in conjunction with Archewell, from whom media organisations could also obtain the version with the Background Briefing.

19.4.2. The Press Statement was tweeted by Omid Scobie, a close associate of the Claimant and his wife, at 22:19 on 15 January 2022 as part of a thread with the words (emphasis in the original):

BREAKING: *Prince Harry has applied for a judicial review of a Home Office decision not to allow him to personally pay for police protection for himself and his family when they are in the UK, a legal representative for the Sussexes confirms.*

19.4.3. At 22:32 on 15 January 2022, Ms Afia sent the Press Statement (but not the Background Briefing) to Ms Mansey, after publication of the 15 January Article. The Press Statement was incorporated, in full, in the article in the second edition of the Mail on Sunday at 01:05 on 16 January 2022 and added to the online version of the article at 08:30 on 16 January 2022 with the introductory words: 'Lack of protection stops us coming to UK, says the Duke of Sussex: Statement in full.' No complaint has ever been made about that heading, and the Press Statement continues to be published in full online as part of the 15 January Article.

19.4.4. At 17.11 on 21 January 2022 Ms Mansey sent a further email to Ms Afia and Mr Holt headed 'Judicial Review query' seeking comment on a proposed article in the Mail on Sunday on 23 January 2022. The e-mail is set out in Annex C and included the following questions:

19.4.4.1. "What are the grounds outlined by the Duke of Sussex and his representatives for seeking the Judicial Review?"

19.4.4.2. "Is the Judicial Review being sought a) to challenge the decision to withdraw the Duke's UK police protection or

b) to challenge a decision that he was not permitted to pay for UK police protection?"

19.4.4.3. "If the latter, when was the Home Office decision made to prevent the Duke paying for UK police protection?"

19.4.4.4. "During the process of seeking a Judicial Review, did the Duke (or his representatives) make an offer in writing to pay for UK police protection?"

19.4.5. The email also suggested that Ms Mansey was unaware of the Background Briefing by reason of the following paragraph:

"*A Press Association story was published around the same time [as the Statement was sent to the Mail on Sunday], which stated 'The Duke of Sussex has filed a claim for a judicial review against a Home Office decision not to allow him to personally pay for police protection for himself and his family while in the UK.' We note that this claim was not included in the statement released by the Duke's representative.*"

19.4.6. No reply was received to this e-mail, despite Ms Mansey chasing a response on 22 January 2022 at 14:23, but it is to be inferred that the Claimant would have been made aware of its contents shortly after receipt.

19.4.7. At 22:04 on 22 January 2022 the Defendant published an article on MailOnline with the headline "Home Office 'will not back down' in extraordinary legal battle over Prince Harry's demand for police protection when he and Meghan visit Britain". This article, of which a version was also published in the Mail on Sunday on 23 January 2022, included the following words:

"*After we broke the story, an unnamed spokesman acting for Harry said the legal action was over a Home Office refusal to provide police protection to Harry in the UK – even though the Duke had offered to pay for it.*

A legal representative said: 'The Duke first offered to pay personally for UK police protection for himself and his family in January of 2020 at Sandringham

'That offer was dismissed. He remains willing to cover the cost of security, as not to impose on the British taxpayer." But now a senior source has told this newspaper: "I've not seen anything in writing that suggests this is about whether or not he pays for it. It's about whether or not the security is granted here that is the issue'."

19.4.8. No response to or complaint about this article was received by the Defendant after publication. It is to be inferred that the Claimant would have been made aware of its contents shortly after publication.

19.5. Immediately following publication of the articles complained of, and thereafter, the Claimant's position has been to stand by the Public Statements and not to dissociate himself from them in any way.

20. The Public Statements claimed that the Claimant was willing to pay for police protection in the UK, and that his legal challenge was to the Government's decision to refuse his offer to do so. The Press Statement also stated or clearly implied that the [Sandringham offer] (defined in paragraph 21.2 below) had been communicated by or on behalf of the Claimant to the Home Office in January 2020 and had been repeated (and rejected) by the Home Office in negotiations before the commencement of the Judicial Review Claim in September 2021. That position was adopted in yet starker terms in the Background Briefing. The Defendant will rely in support of this contention on the full terms of the Public Statements and in particular the following passages:

20.1. From the Press Statement (Defendant's emphasis):

20.1.1. "*The Duke **first** offered to pay personally for UK police protection for himself and his family in January of 2020 at Sandringham. That offer was dismissed. He remains willing to cover the cost of security, as not to impose on the British taxpayer*".

20.1.2. **After another attempt at negotiations was also rejected**, he sought a judicial review in September 2021 to challenge the decision-making behind the security procedures, in the hopes that this could be re-evaluated for the obvious and necessary protection required.

20.2. From the Background Briefing (Defendant's emphasis):

20.2.1. "*Because of the lack of State protection (**despite The Duke's offer to pay for it**) when The Duke was last in the UK, and the fact that the UK Home Office ignored pleas for more help and greater flexibility, on 20 September 2021, legal representative [sic] for The Duke of Sussex applied for permission to bring judicial review proceedings against the Secretary of State for the Home Department.*"

20.2.2. "It's simple: **The Duke wants himself and his family to be safe and to pay for necessary security, but he can't, unless the UK Home Office approves his offer.**"

21. The Claimant had only made an offer to pay or contribute to RAVEC and/or to the Home Office, or indicated to them a willingness to do so, after commencing his Judicial Review Claim as recorded in the Secretary of State's Skeleton Argument to which the articles complained of refer and as evidenced by the following matters:

21.1. No "offer to pay", or mention of any willingness to pay or contribute, was conveyed to RAVEC until its inclusion in the Claimant's witness statement and statements of facts and grounds served with those proceedings.

21.2. According to the letter of claim dated 20 February 2022, the Claimant 'asked if he could either pay or make a contribution towards the costs of state security' (the ['Sandringham offer']) at a meeting attended by Her Majesty the Queen, the Prince of Wales, the Duke of Cambridge and officials of the Royal Household

(attending in that capacity) on 13 January 2020 at the Sandringham Estate ('the Sandringham Meeting') and this 'offer' was 'ignored'. As to this meeting:

21.2.1. Her Majesty the Queen, the Prince of Wales and the Duke of Cambridge were not, at the relevant time, members of the RAVEC Committee.

21.2.2. The meeting was not attended by any Government official or representative.

21.2.3. No official present was in attendance in the capacity of a representative of RAVEC. The Claimant did not know at the time that any official of The Royal Household was a member of RAVEC nor could he have believed that he was addressing them (if in attendance) in that capacity.

21.2.4. The written agreement which followed the Sandringham Meeting does not refer to the [Sandringham offer] or contain any mention of the Claimant's willingness to pay or contribute. It recognised that the decision was an independent process for decision by the government (including the government of Canada where the Claimant was then residing).

21.2.5. The letter approved by Her Majesty the Queen dated 31 January 2020 to Sir Mark Sedwill, setting out the detail of what had been agreed between the Claimant and Her Majesty, does not refer to the [Sandringham offer] or contain any mention of the Claimant's willingness to pay or contribute. It too recognised that these were independent processes and decisions for government about the provision of publicly funded security.

21.2.6. According to the Claimant's email to Sir Edward Young of 16 April 2020, the Claimant made clear at the meeting that he and his wife were not in a position to privately fund security arrangements until they were independently earning.

21.2.7 According to the Claimant's Further Information dated 15 November 2015 (sic), during a discussion with Sir Mark Sedwill on 3 February 2020 about the Sandringham 'offer' the Claimant "reiterated his willingness to pay for security if necessary". Such language indicates only a willingness to pay if required to.

21.3. The Claimant did not in any other way make or mention an offer or possible offer to pay or contribute to RAVEC or the Home Office prior to issuing his claim for judicial review:

21.3.1. The Claimant did not make an offer to pay or contribute in his email to Sir Mark Sedwill of 10 February 2020.

21.3.2. The Claimant did not respond to RAVEC's letter of 28 February 2020, setting out the proposed security arrangements, by making any offer to pay or contribute or mention any willingness to pay or contribute. That letter concluded that "there is no basis for publicly-funded

security support for the Duke and Duchess [of Sussex] …". He did not make any offer to pay or contribute or mention any willingness to pay or contribute in any of his own correspondence with relevant RAVEC or Home Office officials concerning his security arrangements.

21.3.3. The Claimant did not make an offer to pay or contribute or mention any willingness to pay or contribute to RAVEC or the Home Office prior to his visits to the UK in April or June 2021 and, in particular, did not make an offer to pay or contribute or mention any willingness to pay or contribute via his solicitors, Schillings, in their correspondence with James Hipgrave between 24 June and 3 July 2021, which raised complaints about the security arrangements being implemented.

21.3.4. The Claimant did not make an offer to pay or contribute or mention any willingness to pay or contribute in the letter sent by his solicitors, Schillings, to Mr Hipgrave on 6 August 2021. Nor did the Claimant make an offer to pay or contribute in response to Mr Hipgrave's reply dated 19 August 2021. That letter refers to "publicly funded security measures".

21.3.5. The Claimant did not make an offer to pay or contribute, nor did he refer to any offer to pay or contribute or enquire as to whether the [Sandringham offer] was known to RAVEC or had been taken into account, in his pre-action protocol letter to the Home Secretary of 23 August 2021 under the Practice Direction for Pre-action Conduct and Protocols and the Pre-Action Protocol for Judicial Review (see, in particular, paragraphs 13 to 15 of that Protocol). That letter defined the "state security" arrangements being challenged as being "publicly-funded security support in Great Britain".

21.3.6. The application for judicial review, as stated above, was directed at (a) the decision in February 2020 that RAVEC would not from April 2020 continue to provide protective security for the Claimant on the same publicly funded basis as previously; and (b) the decision in June 2021 not to provide publicly funded protective security equivalent to that provided for the Claimant prior to April 2020. The decision by RAVEC under review was not therefore a refusal by RAVEC to accept an offer by the Claimant to pay or contribute to his protective security.

22. The Defendant further relies on the extensive articles published here and abroad in reliance on the public statements as listed in Annex B. For reasons of proportionality, the Defendant has selected for inclusion those articles whose headlines alone (quite apart from the text) presented the Judicial Review Claim as challenging a refusal by RAVEC to accept the Claimant's offer to pay or contribute to his protective security.

23. On 24 March 2021 the Claimant announced he had been appointed a Commissioner at the Aspen Institute's Commission on Information Disorder, describing misinformation online as a "humanitarian issue" and saying it was looking forward to "working on a solution-oriented approach to the information disorder crisis".

24. For the avoidance of doubt, as appears from the particulars above, it is the Defendant's position that meaning (b) in the Judge's Order (i.e. the meaning pleaded at paragraph 8.1 of the Amended Particulars of Claim), taken alone is true but that, as is apparent from the Meaning Judgment ([2022] EWHC 1755 (QB)) at [36], that meaning alone is not defamatory. The Defendant does not seek or need to prove that meaning (c) in the Judge's Order (i.e. the meaning pleaded at paragraph 8.2 of the Amended Particulars of Claim) is true as distinct from honest opinion.

(2) Relevant parts of the Reply

…

3. The Claimant responds below to the Defence without prejudice to his right to apply to strike out and/or apply for summary judgment in respect of the defence of honest opinion which is unsustainable on the following principal grounds:

    3.1. The central factual component of the meaning of the Article found by the Court (as set out at paragraph 8.1 of the Particulars of Claim) is that the Claimant was responsible for having issued on his behalf a public statement – namely that "he was willing to pay for police protection in the UK" – which had been revealed to be false by the documents filed in the Judicial Review proceedings in that "the true position" was that "he had only made the offer to pay after the [judicial review] proceedings had commenced".

    3.2. On its face and taken at its highest the defence of honest opinion manifestly fails to establish that the above facts are true: it is incapable of proving that the Claimant had only made an offer to pay for police protection after the judicial review proceedings had commenced, let alone that the documents filed in those proceedings revealed this to be the case.

    3.3. Instead, the said defence depends upon the following premises, namely that:

        3.3.1. the Claimant had publicly stated that he had made an offer to RAVEC to pay or contribute to their costs; and

        3.3.2. the Claimant's Public Statement dated 15 January 2022 and/or the Background Briefing (referred to at paragraph 11.2 of the Particulars of Claim and annexed to the Defence at Annex A) stated that "his legal challenge was to the Government's decision to refuse his offer to pay for police protection".

    3.4. Those premises are false because:

        3.4.1. first, the Claimant had not publicly stated that he had made an offer to RAVEC to pay or contribute to their costs. The Defendant's recharacterization of the Claimant's offer to pay as "the Family offer" (at paragraph 21.2 of the Defence) is a misconceived attempt to get around this fundamental problem;

        3.4.2. secondly, the said statements manifestly did not state, nor did they imply, that the Claimant's legal challenge was to the Government's decision to refuse his offer to pay for police protection.

3.5. On the contrary, and as is clear from any proper reading of the Claimant's Public Statement dated 15 January 2022 and/or the Background Briefing (which speak for themselves and upon the whole of which the Claimant will rely for their full terms and effect), the Claimant did state that:

3.5.1. he made an offer to pay personally for UK police protection for him and his family in January 2020 at Sandringham;

3.5.2. this was the first time he made such an offer;

3.5.3. that offer was dismissed;

3.5.4. he remained willing to cover the cost of security so as not to impose on the British taxpayer;

3.5.5. he sought a judicial review in September 2021 to challenge the decision-making behind the security procedures, in the hopes that this could be re-evaluated for the obvious and necessary protection required.

3.6. Further or alternatively, even if the statements or either of them did imply that the legal challenge was to the Government's decision to refuse his offer to pay for police protection:

3.6.1. it is plain on the face of the legal documents that the Claimant's legal challenge did include, as particulars of Ground 2 of the Non Confidential Statement of Facts and Grounds, the Government's alleged failure to take into account his offer at the Sandringham meeting on 13 January 2020 (the Sandringham meeting) to personally reimburse or prospectively finance the cost of security (see in particular paragraph 53.4 of the Non-Confidential Statement of Facts and Grounds). The statements were not therefore materially misleading, and

3.6.2. such an implication is in any event incapable of providing an adequate basis for the opinion set out paragraph 8.2 of the Amended Particulars of Claim.

3.7. For the avoidance of doubt (although the Defendant does not appear to dispute this), (i) the Claimant had expressed his willingness to pay for police protection at the Sandringham meeting attended by Sir Edward Young (Private Secretary to Her Majesty the Queen) amongst others, and (ii) he never resiled from that position at any time thereafter – on the contrary, prior to the issue of his judicial review proceedings he had complained about the fact that neither Sir Edward Young nor Sir Michael Stevens (Keeper of the Privy Purse) had got back to him about whether he could pay for police protection for himself and his family, despite their having said that they would do so.

3.8. In the premises, and insofar as the statement complained of consists of an expression of opinion, no honest person could have held that opinion on the basis

of the facts relied upon by the Defendant and the defence of honest opinion falls to be struck out.

…

10. As to paragraph 19, it is admitted that the Claimant was responsible for the public statements issued on his behalf dated 15 January 2022 as attached as Annex A to the Defence, although (as the name suggests) the Background Briefing was not a public statement by the Claimant but was provided by his PR representatives, Archewell, to the media along with Claimant's Public Statement in order to supply background information on the judicial review process and the Claimant's claim, if needed. Having regard to the Claimant's admission that he was responsible for the said public statements, it is neither necessary nor proportionate for him to respond to the matters of evidence pleaded under paragraph 19, although as a matter of fact they contain much that is inaccurate and/or irrelevant (in the sense of being incapable of affording "evidence" for the allegation at paragraph 19). In particular, but without prejudice to the foregoing contentions:

    10.1 It is denied that the statements were sent by Ms Afia (or any one else at Schillings) to the media, as alleged at paragraph 19.4.1. Save for the copy of the Claimant's Public Statement that was sent by Ms Afia to Kate Mansey on the evening of 15 January 2022 following publication of the Defendant's article online at 22.12, the said documents were sent by Archewell.

    10.2 At this time Ms Afia was operating under the assumption that Archewell were only providing the Claimant's Public Statement to the media, and not the Background Briefing, and it was for this reason that she only sent the Claimant's Public Statement to Ms Mansey. The allegation pleaded at paragraph 27.2 that the Claimant "deliberately withheld" the Background Briefing from Ms Mansey, is accordingly false, speculatively pleaded and will be relied upon in aggravation of damages.

    10.3 As to paragraph 19.4.2, it is admitted that Omid Scobie tweeted the Claimant's Public Statement at the time alleged, but the allegation that Mr Scobie is a "close associate" of the Claimant and his wife – an allegation whose relevance to paragraph 19 the Defendant has failed and refused to explain – is denied: he is not a close associate of either. Mr Scobie was (and is) the Royal Correspondent for Harper's Bazaar and was included as one of the media organisations and journalists to whom Archewell circulated the Claimant's Public Statement along with the Background Briefing. There were no communications on this subject between the Claimant or his wife and Mr Scobie.

11. Save that it is admitted that the words set out at sub-paragraphs 20.1 and 20.2 are extracts from the Claimant's Public Statement and the Background Briefing, paragraph 20 is denied:

    11.1. It is manifestly untenable to allege that the said statements claimed that the Claimant's legal challenge was to the Government's decision to refuse his offer to pay for police protection in the UK. Neither document made that claim.

    11.2. Nor did either document state or imply that the Claimant's offer to pay for police protection… had been communicated by or on his behalf to RAVEC and/or the Home Office in January 2020 and repeated (and rejected) by RAVEC and//or the Home Office in negotiations before the commencement of the judicial review proceedings in September 2021.

11.3. The Claimant will rely upon the whole of the statements for their full terms and effect, including in particular the following words in the Claimant's Public Statement: "After another attempt at negotiations was also rejected, he sought a judicial review in September 2021 to challenge the decision-making behind the security procedures, etc…", and the first bullet-point in the Background Briefing, commencing "The decision-making has been unreasonable, opaque and inconsistent…".

11.4. In any event, however, even if either document were capable of implying that the Claimant's offer had been communicated to RAVEC and/or the Home Office, or that the Claimant's legal challenge was to the Government's decision to refuse his offer, that fact could not avail the Defendant in its defence of honest opinion: paragraph 3 above is repeated.

12. As to Paragraph 21:

12.1. It is admitted that the Claimant's Confidential Witness Statement and the Non Confidential Statement of Facts and Grounds in support of his claim for Judicial Review refer to the offer to pay for or contribute to police protection which the Claimant had made at the Sandringham meeting (the offer to pay) and that in these documents he made clear to RAVEC and/or the Home Office his continued willingness to pay for or contribute to the cost of such protection in order to keep his family safe. This was in accordance with the Claimant's belief that the offer to pay which he had made at the Sandringham meeting, at which Sir Edward Young was present, had been conveyed to the relevant decision makers prior to their decision to withdraw security protection and that, accordingly, those decision makers were aware of his offer to pay but had failed to take it into account properly or at all. Such belief was entirely reasonable given that:

12.1.1. the Claimant was not provided any or any proper opportunity to make informed representations to RAVEC regarding his future security arrangements or how they would be funded before the decision communicated to the Claimant in the RAVEC Letter was made, but was instead expected and directed to communicate with RAVEC through the Royal Household. He also communicated his concerns to others (in particular Sir Mark Sedwill, the Cabinet Secretary and National Security Adviser), and

12.1.2. the offer was repeated by the Claimant in a meeting he had with Sir Mark Sedwill on 3 February 2020 and was referred to in his email to Sir Edward Young of 16 April 2020.

12.2. As to paragraph 21.2, it is admitted and averred that the quotation from the letter of claim in these proceedings dated 20 February 2022 is accurate and that it accurately records what transpired at the Sandringham meeting. As to this meeting, it is admitted and averred that:

12.2.1. as far as the Claimant can recall the following people were present at the Sandringham meeting which was convened, among other things, to discuss the security arrangements for the Claimant and his family going

forward: Her Majesty The Queen, the Prince of Wales, the Duke of Cambridge, Sir Edward Young, Sir Clive Alderton (the Private Secretary to the Prince of Wales), Simon Case (the Private Secretary to the Duke of Cambridge), Fiona Mcilwham and Samantha Cohen (Private Secretaries to the Claimant) and Sir Michael Stevens.

12.2.2. the Claimant was not told and did not know at the time that any official of the Royal Household was a member of RAVEC, nor therefore did he believe that he was addressing them in that capacity;

12.2.3. neither the written agreement which followed the Sandringham meeting nor the letter sent by Sir Edward Young (approved by Her Majesty the Queen) dated 31 January 2020 to Sir Mark Sedwill and Ian Shugart (Canadian Secretary to the Cabinet) referred to the offer to pay made by the Claimant at the Sandringham meeting. This was wholly unsurprising given the nature and terms of these documents and given the facts and matters set out at paragraphs 12.1 to 12.1.2 above. The Claimant believed and hoped that his offer to pay had been and/or would be communicated to those who were responsible for the decision-making, although it became increasingly clear to him that his concerns, in particular as regards his and his family's security, were not being given proper consideration.

12.2.4. moreover, and consistently with this belief, the Claimant's email to Sir Edward Young dated 16 April 2020 (to which the Defendant pleads specific reference at paragraph 21.2.6), specifically referred to the offer to pay and to the fact that he was still waiting to hear back from Sir Michael Stevens and Sir Edward Young in respect of it.

12.3. Paragraph 21.2.6 is admitted. However, it is misconceived: under the arrangements agreed between the Claimant and the Royal Household, he and his wife were permitted to start working commercially (and therefore to be earning) from the beginning of what was supposed to be a transitional year commencing on 1 April 2020, and he expected that in due course he would be in a position to afford to pay for continued police protection if necessary. It was not his choice, and it was against his wishes, that the protection that he and his family received from the Metropolitan Police was withdrawn as soon as it was, and at very short notice, with effect from 12 April 2020.

12.4. It is admitted that the Claimant did not make or mention the offer to pay in correspondence with RAVEC and/or the Home Office prior to issuing his proceedings for judicial review on 20 September 2021. Paragraphs 12.1 to 12.1.2 above are repeated. The Claimant does not know, and is unable to admit or deny whether his offer to pay (as set out at paragraph 12.1 above) was, in fact, communicated to RAVEC prior to 20 September 2021, however the Claimant notes that, in the Judicial Review proceedings, the Home Office has stated that his offer to pay was not communicated to RAVEC.

12.5. For the avoidance of doubt, it is the Claimant's case that it is irrelevant whether the Claimant did or did not communicate his offer to pay directly to RAVEC and/or the Home Office prior to commencing his judicial review proceedings on

20 September 2021, for the reasons set out above, including in particular the fact that he had never publicly stated that he had.

12.6. As to the application for judicial review, as pleaded above the Claimant's legal challenge did include, as particulars of Ground 2 of the Non Confidential Statement of Facts and Grounds, the Government's alleged failure to take into account his offer to personally reimburse or prospectively finance the cost of security. It is in any event irrelevant whether or not the decision under review was a refusal by RAVEC to accept an offer by the Claimant to pay or contribute to his protective security, not least because the Claimant did not state that it was. Paragraph 11 above is repeated.

12.7. Save as aforesaid paragraph 21 and its sub-paragraphs are denied.

…