Neutral Citation Number: [2024] EWHC 623 (KB)

Case No: KB-2023-002309

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2024

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

ANDREW BRIDGEN MP	**Claimant**
- and -	
MATTHEW HANCOCK MP	**Defendant**

- -
- -

Christopher Newman (instructed by **Direct Access**) for the **Claimant**
Aidan Eardley KC (instructed by **Reynolds Porter Chamberlain LLP**) for the **Defendant**

Hearing date: 1 March 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 20 March 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

1. This is a defamation claim brought by Mr Andrew Bridgen MP against Mr Matthew Hancock MP, in respect of a Tweet published by the defendant on 11 January 2023. This judgment addresses the defendant's application to strike out paragraphs 7 to 24 of the Particulars of Claim, and consequently the claimant's claim, pursuant to CPR 3.4(2)(a), on the grounds that the claimant has failed to articulate a proper case on reference in his pleading.

The factual background

2. As this is the defendant's strike out application, I have drawn the factual background from the claimant's pleaded case. For the purposes of this application, it is assumed to be true.

3. The claimant is the Member of Parliament for North West Leicestershire, an office he has held since 6 May 2010. He was a Conservative Party MP until 11 January 2023 (POC §1).

4. The defendant is the Member of Parliament for West Suffolk, an office he has held since May 2010. He was a Conservative Party MP until November 2022, and served as Secretary of State for Health and Social Care from 9 July 2018 to 26 June 2021 (POC §2).

5. On 9 January 2023, Dr Guetzkow, a Senior Lecturer in Criminology at the Hebrew University in Jerusalem, published online an article concerning data about deaths and other adverse reactions to COVID vaccines (POC §11). On 11 January 2023, at 08.42am, the claimant published a Tweet which provided a link to Dr Guetzkow's article and stated, "*As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust*" ('the claimant's Tweet').

6. As a result of the claimant's Tweet, the Conservative Party withdrew the party whip from the claimant. The claimant was notified of this in a telephone conversation with the Conservative Party Chief Whip, Simon Hart MP, and a text message sent by Mr Hart immediately following their conversation, at about 11.16am on 11 January 2023 (POC §§1, 16). Following his text message to the claimant, Mr Hart released a press statement in which he said that the claimant's Tweet had "*crossed a line*", "*causing great offence in the process*",

> "As a nation we should be very proud of what has been achieved through the vaccine programme. The vaccine is the best defence against Covid that we have. Misinformation about the vaccine causes harm and costs lives. I am therefore removing the whip from Andrew Bridgen with immediate effect, pending a formal investigation."

7. During Prime Minister's Questions ('PMQs') in the House of Commons on 11 January 2023, at 12.32pm, the defendant asked a question and received a response from the Prime Minister, in the following terms:

> Mr Hancock: "Does the Prime Minister agree that the disgusting antisemitic, anti-vax conspiracy theories promulgated online this morning are not only deeply offensive but anti-scientific and have no place in this House or in our wider society?"
>
> Prime Minister: "I join my right hon. Friend in completely condemning, in the strongest possible terms, the types of comments we saw this morning. Obviously, it is utterly unacceptable to make such linkages and to use such language, and I am determined that the scourge of antisemitism be eradicated. It has absolutely no place in our society. I know the previous few years have been challenging for the Jewish community, and I never want them to experience anything like that again."

(POC §§6 and 20; Response to Part 18 Request, request 1.)

8. At 1.03pm on 11 January the defendant published the Tweet complained of ('the defendant's Tweet) which stated (POC §§6 and 22):

> "The disgusting and dangerous anti-semitic, anti-vax, anti-scientific conspiracy theories spouted by a sitting MP this morning are unacceptable and have absolutely no place in our society".

In addition, below the words "*My question to @RishiSunak in PMQs*" the Tweet linked to a video of the defendant asking a question in Parliament and receiving a response from the Prime Minister, in the terms quoted in paragraph 7 above (POC §6, Response to Part 18 Request, request 2).

9. The reference issue arises because the defendant's Tweet, including the parliamentary question and answer, did not name or otherwise directly identify the claimant (for example, as the MP for North West Leicestershire) as the person the statement was made about.

The procedural history

10. The claimant sent a letter of claim on 23 January 2023. The defendant's response dated 13 February 2023 drew the claimant's attention to the issue of reference in the following terms:

> "Your letter does not explain how readers of our client's tweet would have come to understand it to refer to Mr Bridgen. It says nothing about the essential element in any cause of action for defamation: reference. As you will know from the [Pre-action Protocol], a letter of claim should include 'any facts or matters which make the Claimant identifiable from the statement complained of'. This is a critical omission.
>
> Mr Bridgen is not named or otherwise identified in the tweet itself or in the Parliamentary exchange during PMQs which is

> included in the tweet. While it is for Mr Bridgen to explain his case on reference, not for our client to speculate how he might seek to do so, it appears that no-one could have understood the tweet to be about Mr Bridgen unless they were also aware of Mr Bridgen's tweet and the reaction to it, including the announcement of the removal of the whip from Mr Bridgen, the public criticism of what Mr Bridgen had said, and the exchange in Parliament during PMQs and reporting of it."

11. In response, the claimant stated that "*From the timing and wording of the tweet complained of, Mr Hancock could only have been referring to Mr Bridgen: 'a sitting MP'*"; and asserted that "*anyone following the relevant exchanges on social media could be in no doubt as to the target of the tweet complained of*" (original emphasis). The defendant's letter of 21 March 2023 reiterated that "*it is for Mr Bridgen to set out his case on reference, not for our client to speculate as to how he might seek to do this*".

12. The claim form was issued on 19 May 2023 and served, together with Particulars of Claim, on 12 September 2023.

13. The defendant made a Part 18 request for further information and/or clarification in respect of the Particulars of Claim on 3 October 2023, to which the claimant responded on 26 October 2023. The Part 18 request did not seek clarification of the claimant's case on reference.

14. On 24 November 2023, the defendant wrote to the claimant suggesting that his pleading on reference at paragraphs 7 to 23 of the Particulars of Claim, and, separately, paragraph 24 of the Particulars of Claim, were defective and liable to be struck out. The defendant drew attention to the two ways a claimant may prove reference as identified by the Court of Appeal in *Dyson Technology Ltd v Channel Four Television Corp* [2023] 4 WLR 67, and asserted that the only option in this case was to plead reference innuendo. The defendant's letter stated that the apparent attempt at paragraphs 8 to 23 to set out a reference innuendo was defective, not least, as it was not pleaded that a reasonable reader of the defendant's Tweet would be aware of any of the facts pleaded. The defendant invited the claimant to propose amendments to his Particulars of Claim to remedy the alleged defects.

15. In the same letter, the defendant also indicated his intention to apply for an order pursuant to CPR PD53B paragraph 6 that there be a trial of preliminary issues in order to determine (1) the natural and ordinary meaning of the defendant's Tweet; (2) whether that meaning was conveyed by way of a statement of fact or expression of opinion; (3) if opinion, whether the Tweet indicated the basis of that opinion; and (4) whether the Tweet, in the meaning found by the court, is defamatory at common law.

16. In a response dated 4 December 2023 the claimant indicated he would not be amending his Particulars of Claim. He agreed to a trial of preliminary issues, but only on issues (2) and (3), and to submission of the defence being delayed until the preliminary issues had been determined.

17. The parties agreed to extend time for the Defence to 9 November 2023, and then to 7 December 2023: see the Consent Order approved by Senior Master Cook and sealed on 1 December 2023.

18. On 7 December 2023, the defendant filed an application for a preliminary issues trial, and an application to strike out the claim on the ground the claimant has not pleaded a viable case on reference.

19. On 7 December 2023, Nicklin J gave directions for the hearing of the strike out application. Paragraphs 7 and 8 of his order stated:

> "7. Once the Strike Out Application has been heard and determined, the Court will consider the PIT Application.
>
> 8. The time for service of the Defence is extended until at least 21 days after the Strike Out Application has been heard and determined. The Court will give further directions for the time for filing of a Defence at that Stage."

20. In his reasons, Nicklin J observed:

> "It is not sensible to direct the trial of preliminary issues at the same time as the Strike Out Application. If the Defendant is successful with that Application, subject to any appeal, that will be the end of the claim. Also, there are issues as to reference which mean that any decision as to what, if any preliminary issues should be tried, needs careful thought. So, the Court will proceed in stages."

21. In a letter dated 12 February 2024 the claimant provided a further explanation of his case on reference. In respect of paragraph 24 of the Particulars of Claim, he wrote that he would be happy to amend his Particulars of Claim by removing the heading "*Particulars of Innuendo Meaning*" and substituting the word "*implication*" for "*innuendo*".

22. The defendant responded on 16 February 2024 that he would give serious consideration to consenting to amended particulars of claim (on suitable terms as to costs) and withdrawing the strike out application, if the claimant were to serve draft amended particulars of claim which, so far as the case on reference is concerned, was confined to and properly articulated the following three points:

    i) That a large but unquantifiable number of people who read the defendant's Tweet were also the claimant's followers on Twitter and would therefore have seen the claimant's Tweet;

    ii) That the Tweets listed in paragraph 14 of the Particulars of Claim ('the Criticisms of the claimant's Tweet') each named the claimant as the author of the claimant's Tweet and that a large but unquantifiable number of people who read the defendant's Tweet will also have read one or more of the Criticisms of the claimant's Tweet; and

    iii) That a large but unquantifiable number of people who read the defendant's Tweet will also have read Simon Hart's Press Statement (which named the claimant).

The legal principles regarding striking out

23. CPR 3.4(2)(a) provides that "*The court may strike out a statement of case if it appears to the court - (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim*". This rule enables the court to strike out a statement of case in whole or in part. In accordance with CPR 3.4(7), a defendant who applies to strike out all or part of a claim form or particulars of claim need not file a defence before the hearing.

24. An application under CPR 3.4(2)(a) is not evidence-based. The application falls to be determined on the assumption that the pleaded facts in the Particulars of Claim are true. An application to strike out should not be granted unless the court is certain that the claim is bound to fail: see *Richards (t/a Richards & Co) v Hughes* [2004] EWCA Civ 266, [2004] PNLR 35, Peter Gibson LJ, [22] (citing *Barrett v Enfield London Borough Council* [2001] 2 AC 550 at p.557 per Lord Browne-Wilkinson); and the White Book 3.4.2.

25. Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend: see the White Book 3.4.2. As Tugendhat J put it, in *Kim v Park* [2011] EWHC 1781 (QB) at [40],

> "where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right".

The legal principles regarding identification or reference

26. It is an essential element of the cause of action for defamation that the words complained of should be published "*of and concerning*" the claimant: *E. Hulton & Co v Jones* [1910] AC 20, Lord Loreburn, p.24; *Knupffer v London Express Newspaper Ltd* [1944] AC 116, Viscount Simon LC, pp.118-119. It is therefore necessary for the claimant to plead the facts relied on for the case that the words would have been understood to refer to him.

27. In *Dyson Technology Ltd v Channel Four Television Corporation* [2023] EWCA Civ 884, [2023] 4 WLR 67, Dingemans and Warby LJJ explained, at [34]-[35], that a claimant may be proved to be the person identified or referred to in a statement in two main ways:

    i) **Ordinary reference**: "*The first way is if the claimant is named or identified in the statement or <u>where the words used are such as would reasonably lead persons acquainted with the claimant to believe that he was the person referred to</u>…*" (*Dyson*, [35], emphasis added). In this case, the claimant is not named or identified in the defendant's Tweet: he relies on the words I have underlined. I shall refer to this as the 'acquainted with' test.

ii) **Reference innuendo**: "*The second way is where a claimant is identified or referred to by particular facts known to individuals. This has been called in the textbooks 'reference innuendo' ...*"

28. As Nicklin J observed in *Monir v Wood* [2018] EWHC 3525 at [96]:

> "Understanding the law relating to reference must start with the appreciation of the fundamental principle that the test is objective. The question is whether the hypothetical ordinary reasonable reader (if necessary, attributing knowledge of particular extrinsic facts) would understand the words to refer to the claimant: *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, 1243B, 1245B, *per* Lord Reid; 1261E-F *per* Lord Guest; and 1264A *per* Lord Donovan. In assessing this, the Court adopts the same approach as to the determination of meaning: 1245G *per* Lord Reid."

29. A determination of whether the 'acquainted with' test (which was in issue in *Dyson*) is met is "*both objective and abstract. The court is not engaged in an investigation of what actual viewers [or readers] subjectively knew about the claimant or who they took the statement to be about*": see *Dyson*, [42].

30. Addressing the knowledge to be attributed to the hypothetical acquaintance, when applying the 'acquainted with' test, the Court of Appeal observed that the court imputes to the hypothetical viewer or reader "*some degree of knowledge about the claimant which need not be found within the statement of which complaint is made*" (*Dyson*, [37]). A reader or viewer's "*acquaintance*" with the claimant "*is very likely to include some facts extrinsic to the statement*" (*Dyson*, [41]). Dingemans and Warby LJJ stated at [47]:

> "It is not necessary to reach any general conclusion about the amount of detail which the hypothetical acquaintance would know about the claimant. No doubt the answer will depend on the context. The authorities suggest that, in the case of a company, the person acquainted with the claimant would know when it was incorporated and the general nature of its business activities… <u>It seems likely that in the case of an individual, their age and other outwardly obvious characteristics would be known</u>. We would be inclined to agree with Mr Tomlinson KC that the hypothetical reader or viewer is not to be considered omniscient, or to know full details about the claimant." (Emphasis added.)

31. In *Dyson,* it was common ground that a person acquainted with the corporate claimants would at least have known the facts alleged by them in the introductory averments in paragraphs 1 and 2 of the particulars of claim.

32. In respect of the 'acquaintance test', the Court of Appeal held in *Dyson* at [44]:

> "Where there is room for doubt or dispute about whether the claimant has been identified or referred to without reliance on

> the reader or viewer acquainted with the claimant, it becomes necessary to consider what attributes of the claimant the hypothetical viewer [or reader], acquainted with the claimant, would be deemed to know. The onus must of course lie on the claimant to identify those attributes. The starting point must be to plead the case. This is normally done by way of the introductory averments in the particulars of claim, as it was here." (Emphasis added.)

33. The second main way a claimant may be proved to be the person referred to in a statement is by reference innuendo. The claimant "*must prove that the words … would convey a defamatory meaning concerning himself to a reasonable person possessed of knowledge of the extrinsic facts. This requirement postulates … not merely a reasonable person but also a reasonable conclusion. Mere conjecture is not enough*": *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, 1264 (Lord Donovan, dissenting on the facts). It follows that a claimant cannot rely on extrinsic facts which are incapable of founding a reasonable conclusion that the publication was about the claimant.

34. Ordinarily, to establish reference innuendo, the claimant must identify one or more individuals who read the statement complained of and who knew special facts from which reasonable people would reasonably understand the statement to refer to the claimant. As the test is objective, it is not necessary for the purpose of establishing reference, to prove that the words were in fact understood by one or more identified individuals as referring to the claimant: *Lachaux v Independent Print Ltd* [2015] EWHC 2242 (QB); [2016] QB 402, Warby J, [15]; *Economou v De Freitas* [2016] EWHC 1853 (QB), [2017] EMLR 4, Warby J, [11]; *Monir v Wood*, Nicklin J, [103(i)].

35. In a case of widespread publication, it is open to a claimant to invite the court to infer that there must have been at least some readers who would have known the facts from which an ordinary reasonable reader would conclude that the defamatory publication referred to him.

36. In either case, a claimant who contends that readers with special knowledge would have read the publication as referring to him, must give sufficient particulars of the special facts on which he relies.

37. The pleading requirements are addressed in *Gatley on Libel and Slander* (13th ed. 2022), §28-025, under the heading "*Averment of reference to the claimant*", in the following terms (omitting footnotes):

> "It is an essential part of the claimant's case to show that he is the person referred to by the defamatory words. Accordingly, where it is not absolutely clear on the face of the words that they refer to the claimant, e.g. where he is described by his initial letters, or by a fictitious name, or by the name of somebody else, or where he is not mentioned at all, the claimant should make clear in his particulars of claim the basis on which he claims to have been identified as the subject of the words complained of. He should set out the connecting facts which establish the link between himself and the words used, and he should make plain his case as to the existence of any persons who in fact linked him

> with the words by reason of their knowledge of those connecting facts, although such a case may be based on inference. These matters are material facts which must be pleaded. If the claimant does not plead such facts sufficiently, his claim will be struck out." (Emphasis added.)

38. Duncan and Neill (5th ed. 2020) states at §7.04 (footnotes omitted):

> "Where identification depends on extrinsic facts these extrinsic facts must be pleaded because they form part of the cause of action. In *Bruce v Odhams Press Ltd* [[1936] 1 KB 697] the claimant complained of an article about the smuggling activities of 'an Englishwoman', but did not state in the statement of claim the facts from which it was to be inferred that she was the Englishwoman referred to. The Court of Appeal held that these facts were a material part of her cause of action and should be pleaded. … A claimant whose case on identification is based on extrinsic facts must, as a general rule, identify readers who knew those facts." (Emphasis added.)

39. It is clear that if the claimant contends that readers with knowledge of specific facts would have read the publication as referring to him, he must give sufficient particulars of the facts on which he relies, and make plain his case as to the existence of persons who by reason of their knowledge of those facts linked the words complained of to him. "*But that in itself may not be enough. It may be plain and obvious that no sensible person could, by reason of knowing these facts, jump to the conclusion that the defamatory words refer to the [claimant]*": *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, Lord Reid, 1242B-E.

Admissibility of evidence

40. The claimant, who in this case is the respondent to the strike out application, has served a witness statement and exhibits. I considered it on a provisional basis, but the question arises as to whether it is admissible. The defendant did not seek a formal ruling excluding it, but Mr Aidan Eardley KC submitted that a strike out application is not evidence-based.

41. In *Sussex v Associated Newspapers Limited* [2023] EWHC 3120, Nicklin J observed at [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."

42. The question whether the Particulars of Claim are defective depends solely on an analysis of the pleading. The claimant's evidence is irrelevant, and therefore, inadmissible on that issue. Counsel for the claimant, Mr Christopher Newman, did not seek to persuade me to the contrary.

43. However, if there is a defect, the question arises whether the claimant should be given an opportunity to amend his pleading. As I have said, ordinarily such an opportunity should be given, provided, as Tugendhat J said in *Kim v Park*, "*there is reason to believe that he will be in a position to put the defect right*".

44. *Kim v Park* was a libel claim in which the defect concerned the issue of publication. In circumstances where publication of the articles to readers could not be proved by inference, the claimant could succeed only by calling evidence of publication to identified readers. The claimant told the Master at the hearing of the strike out application that he had witnesses who would testify that they were publishees; and then on receipt of the draft judgment the claimant provided the Master with thirteen witness statements. Tugendhat J held that the Master had taken an unduly restrictive view in saying that those witness statements could not affect his view on the strike out application. The statements demonstrated that in asserting, at the hearing, that he had witness evidence of publication to identified readers the claimant was not engaging in wishful thinking or bluffing. It followed that there was reason to believe the claimant would be able to put right the defect, and so he should have been given an opportunity to amend his pleading.

45. It follows, in my view, and as Mr Eardley accepted, that evidence may be admissible on the question whether, if there is a defect, there is reason to believe the claimant will be in a position to put it right. However, this should not be taken as encouragement to respondents to strike out applications pursuant to CPR 3.4(2)(a) to file witness evidence, as in most cases it is likely to be unnecessary and disproportionate.

46. In large part, the claimant's witness statement consists of submissions on the law. That is material which ought to be in a skeleton argument, if it is relied upon, rather than a witness statement. I have not disregarded any part of the claimant's submissions on the basis that they ought not to have been placed in a witness statement, but I have borne in mind that he has chosen to be represented by Counsel at this hearing and so his legal submissions are contained in the skeleton argument prepared by, and oral submissions made by, his Counsel. A further significant part of the claimant's statement, most notably the section headed 'malice', is wholly irrelevant to the strike out application, at least. However, to the extent that the claimant's statement gives evidence of publishees of the defendant's Tweet, including media organisations, who understood it to refer to the claimant, it is admissible – albeit unnecessary – evidence on the question whether, if there is a defect in the pleading, the claimant should be given an opportunity to amend.

The Particulars of Claim

47. For the purposes of considering this application, the relevant paragraphs of the Particulars of Claim provide:

> "1. The Claimant is and was at all material times the Minister [sic] of Parliament for North West Leicestershire. He was a Conservative Party MP from 6 May 2010 to the 11 January 2023. On 11 January 2023 the Claimant had the whip withdrawn. …
>
> 3. On 11 January 2023, at 13:03hrs, the Defendant published a Tweet from his personal Twitter account (@MattHancock),

> which referred to the Claimant and was defamatory of him ('the Tweet complained of')." (Emphasis added.)

48. Having set out the words complained of, the Particulars of Claim continue:

> "7. The said words referred to and were understood to refer to the Claimant.
>
> **Particulars of Reference**
>
> 8. On 7 December 2022, during Prime Minister's Questions, the Claimant queried the safety and efficacy of the Covid-19 vaccines, relying on data for reported deaths and adverse reactions to the vaccines collected by the US Centres for Disease Control (CDC) and the Vaccine Adverse Event Reporting System (VAERS).
>
> 9. On 13 December 2022, the Claimant was granted an Adjournment debate and made a speech in the House of Commons on potential harms caused by the Covid-19 vaccines. The Claimant published a list of supporting scientific references for his speech on his Parliamentary website a few days later, on 16 December 2022. Cardiologist, Dr Aseem Malhotra, who has over half a million followers on Twitter, tweeted on 14 December 2022 that the Claimant's speech was 'The most important parliamentary speech you will see & it may save your life. MP calls for suspension of mRNA vaccine because of unprecedented harms & little benefit'.
>
> 10. The Claimant's question on 7 December 2022 and his speech in the House of Commons on 13 December 2022 were significant events in the Claimant's political career, leading to an increase in his social media following and establishing the Claimant as an MP with a public commitment to raising questions in Parliament about purported Covid-19 vaccine harms. On 14 December, a day after his speech in the House of Commons, the Claimant tweeted: 'Thank you all so much for your supportive comments about my debate on vaccine harms last night, they have been truly moving. I will, of course, continue raising awareness of vaccine harms and the emerging – and often alarming – evidence linked to them.'
>
> 11. On Monday 9 January 2023, one Dr Joshua Guetzkow, a Senior Lecturer in Criminology at the Hebrew University of Jerusalem, published an article entitled, 'CDC Finally Releases VAERS Safety Monitoring Analyses For COVID Vaccines'. The article analyses the CDC's VAERS safety signal analysis based on reports from 14 December 2020-29 July 2022, stating that the DCD data shows: 'Clear safety signals for death and a range of highly concerning thrombo-embolic, cardiac,

neurological, hemorrhagic, hematological, immune-system and menstrual adverse events (AEs) among US adults'.

12. On Wednesday 11 January 2023, at 08:42hrs, the Claimant tweeted a link to Dr Guetzkow's article from his personal account, @ABridgen, with the words: 'As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust' ('the Claimant's tweet').

13. The Claimant's tweet prompted criticism from some of the Claimant's Parliamentary colleagues and others, who found it distasteful ('criticisms of the Claimant's tweet').

14. At 10:35hrs on 11 January 2023, Simon Clarke MP (Conservative) tweeted 'This is disgraceful'; at 10:26, Christian Wakeford MP (Labour) tweeted 'Fake news and scaremongering on vaccines is bad enough but to invoke the Holocaust during the month of Holocaust Memorial Day is despicable. When is it enough for the Tories to withdraw the whip?'; at 11:11hrs and 11:21hrs, Michael Fabricant MP (Conservative) tweeted 'A lot of Jewish people and other likeminded decent folk would find this incredibly offensive' and 'If this deters people from being vaccinated and causes deaths as a direct consequence, he'll have blood on his hands. His tweets are wholly irresponsible'; at 11:30hrs, Andrew Percy MP (Conservative and Vice-Chairman of the All-Party Parliamentary Group Against Anti-Semitism) issued a statement reported at 11:3) as follows: 'The Holocaust saw the systematic state-sponsored murder of six million Jews and others. To use the Holocaust to promote some conspiracy theory fuelled anti-vaccine nonsense is not only anti-science, it is sick'. At 11:45hrs, Lord Mann, the Government's independent adviser on antisemitism, tweeted: 'There is no possibility that Bridgen can be allowed to stand at the next election. He cannot claim that he didn't realise the level of offence that his remarks cause'. At 12:16hrs, Holocaust Educational Trust CEO Karen Pollock tweeted 'For these horrors to be co-opted by anti-vaxxers once again is appalling. Andrew Bridgen's words were highly irresponsible, wholly inappropriate and an elected politician should know better'.

15. The criticisms of the Claimant's tweet made much of what was described alternatively as its 'offensive', 'sick', 'irresponsible', 'inappropriate', character, but none of the criticisms contain accusations that the Claimant is an anti-Semite.

16. On Wednesday 11 January 2023, at 11:16, the Conservative Party Chief Whip, Simon Hart MP, sent the Claimant a text message about the Claimant's tweet, following a telephone conversation between the Claimant and Mr Hart immediately prior. The text message reads in full:

> 'Andrew. To confirm our conversation of just now. The reference in your tweet to the vax programme being in some ways comparable to the holocaust has caused great offence across the nation as well as amongst colleagues. We have therefore decided to withdraw the whip and will meet to discuss next steps in due course. Simon Hart'.

17. Mr Hart's text message characterises the Claimant's tweet as causing 'great offence' for its (disputed) comparison of the Government's Covid-19 vaccine programme with the holocaust, but makes no allegation that the Claimant is an anti-Semite.

18. Following his text message to the Claimant, Simon Hart released a press statement in which he stated that the Claimant's tweet had 'crossed a line', 'causing great offence in the process'.

> 'As a nation we should be very proud of what has been achieved through the vaccine programme. The vaccine is the best defence against Covid that we have. Misinformation about the vaccine causes harm and costs lives. I am therefore removing the whip from Andrew Bridgen with immediate effect, pending a formal investigation.'

19. Mr Hart's press statement makes no allegation that the Claimant is an anti-Semite.

20. At 12:32, after the commencement of Prime Minister's Questions in the House of Commons, the Speaker of the House called on the Defendant, who proceeded to ask the Prime Minister Rishi Sunak the following question: [Mr Hancock's question (set out in paragraph 7 above) is then quoted].

21. It is not disputed that the Defendant's question was about the Claimant and referred to the Claimant's tweet from earlier the same morning. Any person following the unfolding events of the morning of 11 January 2023, watching the Defendant ask his question at Prime Minister's Questions, would have to have known that the Defendant's question was a reference to the Claimant and the Claimant's tweet, in order to have understood the meaning of the Defendant's question.

22. At 13:03, the Defendant published the Tweet complained of under the caption: 'My question to @RishiSunak in PMQs', with a link to a video of the Defendant addressing the British Prime Minister in the House of Commons. The Defendant essentially reproduced the wording of his earlier question, but with a slight amendment such that the substance of the Tweet complained of additionally contained a clear and direct reference to the Claimant (underlined below):

> 'The disgusting and dangerous anti-semitic, anti-vax, anti-scientific conspiracy theories spouted by a sitting MP this morning are unacceptable and have absolutely no place in our society.'"

49. Paragraph 23, although still under the heading "*Particulars of Reference*", addresses meaning:

> "In the natural and ordinary meaning of the Tweet set out in paragraph 22 above, the words complained of were understood to mean that the Claimant is an anti-Semite."

50. Under the heading "*Particulars of Innuendo Meaning*", paragraph 24 states:

> "A sitting MP who is said to have 'spouted' disgusting and dangerous anti-Semitic conspiracy theories is, by way of innuendo, in agreement with anti-Semitic conspiracy theories and therefore an anti-Semite."

The parties' submissions

51. The defendant acknowledges that the claimant may be able to articulate a viable case on reference. However, he submits that the claimant has not yet done so, despite the invitations from the defendant to do so to which I have referred; and that this is a fundamental failure. As presently formulated, an essential element of the cause of action is not made out on the claimant's pleading. The defendant is entitled to receive a properly articulated pleading. Such clarity is particularly important in this case as once the claim is stripped back to a viable form, the defendant considers that a significant issue on serious harm will arise.

52. Mr Eardley contends that the claimant's submission that this is an ordinary reference case is hopeless. The attributes ascribed to a hypothetical reasonable reader who is acquainted with the claimant lie at the general end of the spectrum. They are matters such as the claimant's name, that he is an MP, and his physical appearance, not specific facts about what the claimant has done, or what has occurred in the claimant's life, over the day or two prior to the publication complained of.

53. The defendant's Tweet refers to a "*sitting MP*". There are 650 MPs. No reasonable reader, upon reading the defendant's Tweet, would have assumed – without knowledge of other facts – that the MP being referred to was the claimant, and not some other MP. Mr Eardley submits that even if (generously) some degree of knowledge of the claimant's political activities and interests were ascribed to the reader, it would still be unreasonable for such a reader to jump to the conclusion again, without knowledge of other facts that, of all possible MPs, the defendant's Tweet was about the claimant.

54. Mr Eardley submits that it is fanciful for the claimant to suggest that his new status as a person from whom the whip had been withdrawn was an attribute, knowledge of which should be ascribed to those acquainted with him, when the defendant's Tweet was published at 1.03pm on 11 January 2023, less than two hours after the whip had been withdrawn at 11.16am that same day. Those acquainted with a person are not

assumed to follow their lives hour by hour. Withdrawal of the whip is a specific fact not a general characteristic or attribute.

55. In relation to the apparent attempt to plead a reference innuendo case at paragraphs 8-22 of the Particulars of Claim, the defendant submits, first, that the pleading is technically defective in that the claimant has pleaded particular facts but failed to aver that such facts were known to one or more readers of the defendant's Tweet, or that reasonable readers who knew such facts would reasonably have understood the defendant's Tweet to be referring to the claimant. Secondly, while the defendant acknowledges that some paragraphs only suffer from this technical defect, and are curable, he submits that in many instances the defects are more fundamental.

56. The paragraphs of the Particulars of Claim that the defendant accepts are potentially capable of being cured by amendment, if the claimant has the necessary evidence to support his case, are paragraphs 11-12, 13-14 and 18. In his skeleton argument, the defendant encompassed paragraphs 15 and 19 within the category that are capable of being cured. However, Mr Eardley clarified that the defendant's case is that those two paragraphs failed to plead any case on reference and should be struck out as irrelevant.

57. Paragraphs 8-10 of the Particulars of Claim recite various parliamentary activities engaged in by the claimant on COVID-related issues, leading up to the claimant's averment that he has been established in the public mind as "*an MP with a public commitment to raising questions in parliament about purported Covid-19 vaccine harms*". The defendant submits that these paragraphs are incapable of being cured by amendment because, even assuming these facts to be true and known to readers of the defendant's Tweet, it does not establish a case on reference with a realistic prospect of success. Given that there are 650 MPs, all of whom are free to express views about vaccines, it is hopeless to suggest that a reasonable reader, aware of the claimant's track-record as a vaccine-sceptic, would, on that basis alone, have understood the defendant's Tweet to be referring to the claimant. The claimant has not pleaded that he is the only MP who has spoken on this issue.

58. Paragraphs 16-17 concern a personal communication between Mr Hart and the claimant. There is no suggestion that the communication was known to anyone who read the defendant's Tweet. The defendant submits that these paragraphs are, therefore, irrelevant to the claimant's case on reference. They are incapable of being cured by amendment and so should be struck out.

59. The defendant submits that paragraphs 20-21 focus on the understanding of people watching PMQs, and so are irrelevant because the claimant's case depends on the understanding of reasonable people who read the defendant's Tweet. The defendant also objects to these paragraphs, and submits they should be struck out, on the basis that the reasoning is circular because it presumes what it seeks to prove, namely that those who heard the defendant's question already knew that he was referring to the claimant.

60. The defendant does not object to paragraphs 22-23, but submits that neither paragraph, despite appearing under the heading "*Particulars of Reference*" provides any such particulars. Paragraph 22 is mere repetition of the words complained of and paragraph 23 is the claimant's pleading of the natural and ordinary meaning of those words. So they do not advance the claimant's case on reference.

61. The defendant's application to strike out paragraph 24 is separate to his case on reference. Despite the sub-heading, in paragraph 24 the claimant has not pleaded an innuendo meaning, that is, he has not pleaded a set of facts that, if known to a reasonable reader, would lead that reader to derive a meaning that is different from the natural and ordinary meaning available to all readers. The paragraph contains argument about the natural and ordinary meaning of the defendant's Tweet. While the defendant would not have brought an application to strike out paragraph 24 if he were not seeking to strike out other parts of the Particulars of Claim, Mr Eardley submits it has no place in a statement of case and so should be struck out.

62. Mr Newman submits that this is (at best) a clarification case, not a strike out case. If the defendant wished for clarification, he should have made a request under CPR Part 18, which would have been answered. It was unreasonable to apply to strike out the claim. In any event, he contends that the claimant has pleaded all the facts he needs to establish his claim at trial.

63. Mr Newman submits that the rules regarding pleading of a reference innuendo case do not apply. They are only apt in a case such as *Baturina v Times Newspapers Ltd* [2011] EWCA Civ 308, [2011] 1 WLR 1526 (albeit that was a *meaning* innuendo case) where the claimant needs to rely on a specific piece of evidence or to identify individual witnesses who would have understood the publication as referring to him. The claimant relies on the 'acquainted with' test and, in particular, on the statement in *Dyson* ([44]) that the attributes which the hypothetical reader acquainted with the claimant would be deemed to know are normally pleaded by way of the introductory averments.

64. The claimant's opening averments (in paragraph 1) plead that he has been an MP since 6 May 2010 and that he was a Conservative MP until he had the whip withdrawn on 11 January 2023; and he gave further particulars regarding the timing of, and reason given for, withdrawal of the whip in paragraphs 16 and 18. The claimant's primary case is that those acquainted with him would have been aware of the loss of the whip. His fallback argument is that they would also have been aware of the reason for the loss of the whip, and the other facts pleaded as particulars of reference.

65. Mr Newman submits that withdrawal of the whip is always a significant public event in UK politics, as it was in this case, leading to a "*furore on twitter*". He contends that anyone acquainted with the claimant would have heard of and taken note of the news that the whip had been withdrawn, with the Conservative Party press statement citing "*misinformation about the vaccine*". In the circumstances which were known to the public of the whip being withdrawn for alleged vaccine misinformation, the hypothetical person acquainted with the claimant would have known the defendant's Tweet was referring to the claimant's Tweet. Given the withdrawal of the whip, and the reason given for it, it was obvious that the defendant's Tweet was about the claimant. The necessary plea is at paragraph 7 of the Particulars of Claim.

66. Mr Newman submits that the hypothetical acquaintance would have known the claimant had lost the whip about an hour before the defendant's Tweet was published. In any event, Mr Newman contends that it is a continuing tort, the defendant's Tweet has never been removed, and so it is wrong to focus on what people would have known at 1.03pm on 11 January 2023.

67. As this is a strike out application, the court should assume that the claimant will succeed in showing that a hypothetical acquaintance who read the defendant's Tweet knew about the withdrawal of the whip. The introductory averments in this case are comparable to those in *Dyson*, albeit that case concerned corporate claimants. Mr Newman contends that the defendant's arguments are a re-run of the arguments that were unsuccessful before the Court of Appeal in that case.

68. In relation to the pleading of "*particulars of reference*" in the Particulars of Claim, Mr Newman submits that the statement of case provides a chronology and tells a story. Paragraphs 8-9 build up to the averment that the claimant is established as "*an MP with a public commitment to raising questions in Parliament about purported Covid-19 vaccine harms*" (POC §10), which the claimant relies on as an attribute that would have been known to the hypothetical acquaintance. Paragraphs 12-13, addressing the claimant's Tweet, are also relied on as attributes the hypothetical acquaintance would know; Mr Newman submits that many people acquainted with the claimant follow him on Twitter (around 76,500 at the time). Paragraphs 13-15 address the "*furore*" on Twitter that followed the publication of the claimant's Tweet, about which acquaintances of the claimant would have known. Paragraphs 16-17 are part of the chronology and, in any event, there is no application to strike out those paragraphs on the basis that they are irrelevant. The further facts pleaded concern the loss of the whip.

69. Although Mr Newman strongly resists the contention that this is a reference innuendo case, he submits that the pleading would suffice if it were. It is unrealistic to suggest that the claimant must plead an overlap between the defendant's Twitter followers and the claimant's Twitter followers, given that these were public events.

70. Mr Newman submits that the evidence shows that on the discrete issue of reference, the claimant is bound to succeed at trial. In support of this submission he has referred to the claimant's witness statement, exhibiting numerous replies on Twitter to the defendant's Tweet which indicate that the reader was aware that it was about the claimant. Indeed, he suggests it is unlikely to be in dispute given that the defendant's own case, as put forward in correspondence, is that "*the basis of the opinion – what Mr Bridgen had said publicly that morning – was indicated in the tweet*".

Decision

71. The defendant's Tweet referred to a sitting MP who was said to have "*spouted*" "*disgusting and dangerous anti-semitic, anti-vax, anti-scientific conspiracy theories*" that morning i.e. on 11 January 2023. It did not identify who, among the 650 sitting MPs, was said to have done so. It is common ground that the fact that the claimant was a sitting MP was an attribute that could properly be ascribed to him for the purposes of the acquaintance test. However, knowledge of that fact alone would not have been sufficient for a reasonable reader of the defendant's Tweet to draw a reasonable conclusion that it was about the claimant. Mr Newman did not seek to suggest otherwise.

72. The claimant's case on reference is dependent on readers of the defendant's Tweet having had knowledge of other facts, mostly concerning what occurred in the period of less than two hours between the publication of the parties' respective Tweets on 11 January 2023, but also extending to knowledge that the claimant had, about a month earlier, raised questions in Parliament about purported Covid-19 vaccine harms. In my

judgment, the claimant's contention that this is an ordinary reference, rather than reference innuendo, case is misconceived. The defendant is obviously right that if a claimant seeks to rely, for the purposes of establishing reference, on specific events that occurred in his life over a matter of hours prior to the publication of the words complained of, that is a reference innuendo case; and he has to comply with the pleading requirements for such a case. On this point, I agree with the defendant's submissions as summarised in paragraphs 52-54 above.

73. As Mr Eardley accepted, in an ordinary reference case, based purely on acquaintanceship, the attributes that would be known to the hypothetical acquaintance can and normally would be pleaded in the opening averments without any requirement to plead a link to those opening averments. But it obviously does not follow that any facts the claimant chooses to plead in the opening averments fall to be treated as attributes that would be known to hypothetical acquaintances.

74. It is not an answer to say, as the claimant does, that at common law (and subject to s.8 of the Defamation Act 2013), each communication of the words complained of is a separate publication, giving rise to a separate cause of action. This was a point Mr Newman relied on in support of the proposition that, in considering whether removal of the whip was an attribute that hypothetical acquaintances should be taken to have known, the court should not focus on the time of the first publication of the defendant's Tweet. However, the publication complained of in the Particulars of Claim is that which occurred at 1.01pm on 11 January 2023, and identification of the claimant falls to be determined by reference to that publication. Moreover, this submission involves treating the claimant's status as an MP who has lost the whip as a matter that, say 6 months or 12 months later could be ascribed as an attribute, even if it had not attained that status on 11 January 2023, and then carving out a cohort of later readers from the generality of those acquainted with the claimant at the time of publication; a case which, if it were permissible, would have to be pleaded.

75. I agree with the defendant that, as presently formulated, an essential element of the cause of action is not made out on the claimant's pleading. The claimant's pleading of reference is defective. However, the pleading is not only capable of being cured, it is highly likely that the claimant would have little difficulty establishing reference innuendo. In those circumstances, despite the claimant's disavowal of any case based on reference innuendo, I have no doubt that the claimant should be given an opportunity to amend. That is an error of analysis which does not warrant striking out the claim. This conclusion does not render this application unreasonable. Reference is an essential element of the cause of action and, despite the defendant's repeated requests to the claimant to amend to provide a proper pleading of reference, the claimant has failed to do so. I agree with Mr Eardley that the defendant is entitled to receive a properly articulated pleading.

76. As the defendant accepts, paragraphs 11-12, 13-14 and 18 are capable of being cured by amendment. In these paragraphs, the claimant has pleaded special facts, namely (i) the time, date and content of the claimant's Tweet; (ii) the time, date and content of criticisms of the claimant's Tweet published by identified others; and (iii) Mr Hart's published statement regarding the claimant's Tweet, announcing the withdrawal of the whip and the reason for it. What the pleading has not done, and what a proper pleading of reference innuendo is required to do, is to plead that those facts were known to one or more identified readers (or that they were so well known among a class or generally

that it can be inferred that some of the readers of the defendant's Tweet will have known them), or that a reasonable reader knowing that fact would reasonably believe the defendant's Tweet was of and concerning the claimant. In relation to the criticisms of the claimant's Tweet, four of the criticisms (three Tweets and a statement) do not refer to the claimant in the words quoted, and the pleading does not identify how a reader would have connected them to the claimant (e.g. the Tweets may have been replies to the claimant's Tweet, or may have quoted it, but if so that is not apparent from the Particulars of Claim).

77. As regards paragraphs 8-10 of the Particulars of Claim, I agree with the defendant that there is no real prospect of the claimant succeeding in the contention that a reasonable reader, aware only of the claimant's track-record as a vaccine-sceptic MP, would understand the defendant's Tweet to be referring to the claimant. Nonetheless, it seems to me that these paragraphs are capable of being cured by amendment because it would be open to the claimant to rely on the matters pleaded in paragraphs 8-10 in *combination* with the other special facts he has pleaded.

78. The personal communication between the claimant and Mr Hart pleaded at paragraphs 16-17 is irrelevant to the claimant's case on reference. The claimant does not contend that it was known to anyone who read the defendant's Tweet. Mr Newman sought to defend it merely as part of the story, but the pleading of "*Particulars of Reference*" should not include paragraphs that are not, on any view, details of the claimant's case on reference. Indeed, paragraph 17 falls into the same category as paragraphs 15 and 19: all three paragraphs are irrelevant, containing what is, in effect, argument about whether the defendant was justified in what he said given what others said (and did not say) about the claimant's Tweet. However, I note that the opening of paragraph 18 identifies the timing of Mr Hart's press release as "*following*" his text message of 11.16 to the claimant. When amending paragraph 18, it would not be objectionable for the claimant to refer to the timing of that personal text message for the purpose of identifying the timing of the press statement on which he relies.

79. I agree with the defendant that paragraphs 20-21, as drafted, focus on the irrelevant understanding of people watching PMQs. In addition, paragraph 21 refers in vague terms to any person "*following the unfolding events of the morning of 11 January 2023*". Mr Newman has referred to press coverage: if it is relied on to show that readers, listeners or viewers of any media publications would have understood, when reading the defendant's Tweet, that it concerned the claimant, such press coverage should be pleaded. However, there could be no objection to the claimant pleading that the defendant's parliamentary question, to which he provided a link in his Tweet, was about the claimant and concerned the claimant's Tweet, and that would have been understood by people who were aware of the specific facts relied on. Moreover, I do not fully accept the defendant's submission that the reasoning in paragraph 21 is circular. While as drafted it contains a presumption, it would be open to the claimant to invite the court to infer that the parliamentary question and Tweet were framed as they were because the defendant anticipated that readers would understand he was referring to the claimant's Tweet, and to rely on that inference in support of the further inference that a substantial number of readers of the defendant's Tweet understood from the specific facts relied on (or a combination of them) that it was about the claimant.

80. Paragraph 22 does not, in fact, give any particulars of reference, and is largely repetitious of paragraph 8; but it does not fall to be struck out pursuant to CPR 3.4(2)(a).

Nor does Paragraph 23 fall to be struck out, as it pleads the natural and ordinary meaning of the words complained of, albeit it would be clearer if it appeared under a new heading as it is not part of the "*Particulars of Reference*".

81. I agree with Mr Eardley that paragraph 24 falls to be struck out for the reasons I have summarised in paragraph 61 above. The claimant acknowledges that the paragraph does not contain "*Particulars of Innuendo Meaning*" (despite the heading) and has indicated his willingness to remove the heading and substitute the word "*implication*" for "*innuendo*". But even with those proposed amendments, the paragraph would still consist of nothing more than submissions regarding the meaning of the words complained of, which have no place in a statement of case.

Conclusion

82. For the reasons that I have given, I will strike out paragraphs 15, 16, 17, 19 and 24 of the Particulars of Claim. Although the claimant's pleading of his case on reference is defective, I will not strike out his claim, but will instead give him an opportunity to amend his Particulars of Claim to remedy the deficiencies I have identified. I will hear Counsel on the precise terms of the Order.