



Neutral Citation Number: [2024] EWHC 1268 (KB)

Case No: KB-2024-000733

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/05/2024

Before :

THE HON. MRS JUSTICE STEYN DBE

Between :

JEREMY VINE **Claimant**
- and -
JOSEPH BARTON **Defendant**

Gervase de Wilde and Luke Browne (instructed by **Samuels Solicitors LLP**) for the **Claimant**
William McCormick KC (instructed by **Simons Muirhead Burton LLP**) for the **Defendant**

Hearing dates: 9 May 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 24 May 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 DBE :

Introduction

1. This is the trial of preliminary issues to determine:
 - i) the natural and ordinary meaning of the words and images complained of in defamation in the draft Amended Particulars of Claim;
 - ii) whether or to what extent the words and images complained of in defamation in the draft Amended Particulars of Claim constitute a statement or statements of fact or opinion; and
 - iii) whether the meanings found are defamatory at common law.

(Although the Claimant’s amended statement of case is in draft, the Defendant has consented to the amendments that are relevant to the determination of meaning.)

2. In addition to the claim for defamation, there are also claims for misuse of private information and harassment, but those causes of action are not addressed in this judgment. The claim is at an early stage: no defence has yet been filed.
3. The Claimant is a presenter, broadcaster and journalist, most well-known as the host of eponymous daily shows on BBC Radio 2 and Channel 5. The Defendant is a former professional footballer and former football manager.
4. All save one of the publications complained of were published on the social media platform now called X (formerly Twitter). Publications (1)-(11) and (14) were posts published by the Defendant between 8 and 12 January 2024, and on 15 March 2024, while publication (12) showed the trending topics on X on 11 January 2024. Publication (13) is a post published on the Claimant’s “GoFundMe” webpage on 15 March 2024.
5. The central allegation is that the Defendant falsely accused the Claimant of having a sexual interest in children. In these proceedings, the Defendant has disavowed any such allegation and denies that is the meaning of any of his posts.
6. In accordance with established practice, I first read, and viewed the videos embedded within, the 14 publications that are the subject of the defamation claim, to form a provisional view as to their meaning, prior to the hearing, and before I turned to consider the parties’ pleaded cases and submissions.

Legal Principles

General approach

7. The Court’s task is to determine the natural and ordinary meaning of the words complained of, which is the single meaning the words would convey to the hypothetical ordinary reasonable reader: *Blake v Fox* [2023] EWHC Civ 1000, [2024] EMLR 2, Warby LJ (with whom Arnold and Nicola Davies LJJ agreed), [19]. The legal principles to be applied when the Court is determining the natural and ordinary meaning of words complained of are well-established and uncontroversial.

8. In *Blake v Fox*, Warby LJ observed at [19]-[21]:

“19 ... That meaning is to be determined objectively by reference to the words themselves. No other evidence is admissible. The author’s intention is irrelevant as is evidence about the meaning that readers actually took from the statement complained of. But the medium of expression and the context in which the words complained of appear are both important.

20 Judges must seek to place themselves in the position of a reader who is neither avid for scandal nor unduly naïve. They should beware of over-elaborate analysis, especially when dealing with postings on social media such as Twitter, which are ‘in the nature of conversation rather than carefully chosen expression’. The meaning that an ordinary reasonable reader will receive from a tweet is likely to be ‘more impressionistic than, say, from a newspaper article’ and ‘the essential message that is being conveyed by a tweet is likely to be absorbed quickly by the reader’. Judges should have regard to the impression the words make upon them. They can take judicial notice of particular characteristics of a given readership if these are matters of common knowledge but should beware of impressionistic assessments of those characteristics. The correct approach, and the established practice, for a judge deciding meaning at first instance is to read or watch the offending publication to capture an initial reaction before reading or hearing argument.

21 These points, and a fuller account of the principles governing the determination of meaning, are all to be found in *Koutsogiannis v The Random House Group Ltd* [2019] EWHC 48 (QB); [2020] 4 WLR 25 [12] (Nicklin J), *Stocker v Stocker* [2019] UKSC 17; [2020] AC 393 and *Millett v Corbyn* [2021] EWCA Civ 567; [2021] EMLR 19 [8]-[9]. The words I have quoted are from *Stocker* [43]-[44] (Lord Kerr, with whom the other Justices agreed).”

9. It is unnecessary to set out the full account of the well-known principles helpfully distilled in *Koutsogiannis*, although I have applied them. Mr de Wilde emphasised the third principle (*Koutsogiannis*, Nicklin J [12(iii)]); and see to the same effect, *Stocker v Stocker* [2019] UKSC 17, [2020] AC 593, Lord Kerr (with whom Lord Reed, Lady Black, Lord Briggs and Lord Kitchen agreed), [35]-[37]:

“The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. A reader who always adopts a bad meaning where a less serious or non-defamatory meaning

is available is not reasonable: s/he is avid for scandal. But always to adopt the less derogatory meaning would also be unreasonable: it would be naïve.”

Context and the approach to posts on X (formerly Twitter)

10. In *Stocker v Stocker* Lord Kerr emphasised the “*considerable importance*” of context, especially when considering social media publications ([40]). At [42]-[43] he quoted with approval paragraph [35] of *Monroe v Hopkins* [2018] EWHC 433 (QB) (see immediately below), highlighting his particular agreement with the observation that:

“it is wrong to engage in elaborate analysis of a tweet ... The imperative is to ascertain how a typical (i.e. an ordinary reasonable) reader would interpret the message. That search should reflect the circumstance that this is a casual medium; it is in the nature of conversation rather than carefully chosen expression; and that it is pre-eminently one in which the reader reads and passes on.”

11. In *Monroe v Hopkins*, Warby J considered the approach to meaning to be applied to publications on Twitter (as it then was), observing:

“34. ... in the more dynamic and interactive world of Twitter, where short bursts of pithily expressed information are the norm, ... a single tweet rarely exists in isolation from others. A tweet that is said to be libellous may include a hyperlink. It may well need to be read as part of a series of tweets which the ordinary reader will have seen at the same time as the tweet that is complained or, or beforehand, and which form part of what [counsel] has called a ‘multi-dimensional conversation’.

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

12. The maximum length of a post on *X* has doubled since *Monroe v Hopkins* to 280 characters, but the character of the medium, and the approach to determining meaning, remain essentially the same. However, as Warby LJ observed in *Blake v Fox* at [67]:

“Account should also be taken of the nature of the particular message. Tweets vary in their length and form. Not all are concise and conversational. A body of extraneous text can be included in a screen shot. And it is well-known that some information is posted on Twitter via threads, composed of

multiple individual posts, which can be serious contributions to knowledge about topics of political or social importance.”

13. As to the characteristics of the readership, “*It does not follow from the fact that tweets are generally read swiftly that their readers are careless, superficial or unsophisticated*” (*Blake v Fox*, Warby LJ, [67]).
14. There is an issue between the parties about the scope of the material that this court should consider as “*context*” when assessing meaning. What should be regarded as matters that were put before the hypothetical ordinary reasonable reader via X? Warby J addressed this issue in *Monroe v Hopkins*:

“37 There has been some debate about another issue: what are the limits of categories (a) and (b) at para 35 above? How much should be regarded as known to a reader via Twitter, or as general knowledge held by such a reader? I am not sure that the answers matter a great deal for the resolution of the question that I am now addressing, or for the outcome of this case overall. But in principle the main dividing lines seem reasonably clear. A matter can be treated as known to the reader if the court accepts that it was so well known that, for practical purposes, everybody knew it. An example would be the fact that the Conservatives formed a government after the 2015 general election. A matter can be treated as known to the ordinary reader of a tweet if it is clearly part of the statement made by the offending tweet itself, such as an item to which a hyperlink is provided. The external material forms part of the tweet as a whole, which the hypothetical reader is assumed to read. ...

38. The third point concerns material on Twitter that is external to the tweet itself. This is perhaps less straightforward. I would conclude that a matter can be treated as part of the context in which an offending tweet if it is on Twitter and sufficiently closely connected in time, content, or otherwise that it is likely to have been in the hypothetical reader’s view, or in their mind, at the time they read the words complained of. This test is not the same as but is influenced by the test for whether two publications are to be treated as one for the purposes of defamation: *Dee v Telegraph Media Group Ltd* [2010] EWHC 924 (QB); [2010] EMLR 501 at para 29 (Sharp J).

39 I would include as context parts of a wider Twitter conversation in which the offending Tweet appeared, and which the representative hypothetical ordinary reader is likely to have read. This would clearly include an earlier tweet or reply which was available to view on the same page as the offending material. It could include earlier material, if sufficiently closely connected. But it is not necessarily the case that it would include tweets from days beforehand. The nature of the medium is such that these disappear from view quite swiftly, for regular users. It may also be necessary, in some cases, to take account of the fact

that the way Twitter works means that a given tweet can appear in differing contexts to different groups, or even to different individuals. As a matter of principle, context for which a defendant is not responsible cannot be held against them on meaning. But it could work to a defendant's advantage." (Emphasis added.)

15. Warby J emphasised in *Monroe v Hopkins* at [40] the need to avoid drawing in as "*context*" things that might or might not have been known to the ordinary reader, as to do so erodes "*the rather important and principled distinction between natural and ordinary meanings and innuendos*". Material that would have been known (or read) by all readers is admissible as context in determining the natural and ordinary meaning, whereas material that would have been known (or read) only by some of them is only admissible if relied on in support of an innuendo meaning. Moreover, if a party wishes to rely upon extrinsic matters as "*context*" then they must be pleaded: *Hijazi v Yaxley-Lennon* [2020] EWHC 934 (QB), Nicklin J, [14] and *Monroe v Hopkins*, Warby J, [41].

Slang expressions

16. The hypothetical ordinary reasonable reader will be taken to know the meaning of slang expressions which are in common, current use. Whereas if the meaning of a slang expression would be known to some people, but incomprehensible to the generality of people, then that meaning can only be relied on by pleading an innuendo meaning. See *Gatley on Libel and Slander* (13th ed, 2022), 3-027 and 3-029; and *Duncan and Neill on Defamation* (5th ed, 2020), 5.40.

Vulgar abuse

17. The Defendant contends that the first 12 publications constitute "*mere vulgar abuse*", conveying no defamatory meaning. The "*principle that 'mere vulgar abuse' is not actionable*" is established (*Blake v Fox*, Warby LJ, [27]), although its application to this case is in dispute. The following summary of the law in *Gatley*, 3-037, was endorsed by the Court of Appeal in *Blake v Fox*:

"Insults or abuse which convey no defamatory imputation are not actionable as defamation. Even if the words, taken literally and out of context, might be defamatory, the circumstances in which they are uttered may make it plain to the hearers that they cannot regard it as reflecting on the claimant's character so as to affect his reputation because they are spoken in the 'heat of passion, or accompanied by a number of non-actionable, but scurrilous epithets, e.g. a blackguard, rascal, scoundrel, villain, etc.' for the 'manner in which the words were pronounced may explain the meaning of the words.'"

18. As Warby LJ observed at [27]:

"This can be seen as a logical consequence of the law's concentration on the impact a statement would have on the ordinary reasonable reader and the way they would treat the

claimant, and a reflection of the importance attributed to context and medium.”

19. A determination that words constitute mere vulgar abuse is “*not so much a defence ... as an aspect of interpreting the meaning of words*”: *Smith v ADVFN plc* [2008] EWHC 1797 (QB), Eady J, [17]. As Eady J noted:

“From the context of casual conversations, one can often tell that a remark is not to be taken literally or seriously and is rather to be construed merely as abuse. That is less common in the case of more permanent written communication, although it is by no means unknown. But in the case of a bulletin board thread it is often obvious to casual observers that people are just saying the first thing that comes into their heads and reacting in the heat of the moment. The remarks are often not intended, or to be taken, as serious.”

20. The question is whether the abusive language, in the context of the publication as a whole, conveys more than insult, and if so, what is the defamatory meaning.

Fact or opinion

21. The principles by which the Court will be guided when determining whether the statement complained of was a statement of fact or opinion are summarised in *Koutsogiannis* at [16], as approved by the Court of Appeal in *Millett v Corbyn* [2021] EWCA Civ 567, [2021] EMLR 19 (Warby LJ, with whom Dame Victoria Sharp PQBD and Sir Geoffrey Vos MR agreed, [12]):

“(i) The statement must be recognisable as comment, as distinct from an imputation of fact.

(ii) Opinion is something which is or can reasonably be inferred to be a deduction, inference, conclusion, criticism, remark, observation, etc.

(iii) The ultimate question is how the word would strike the ordinary reasonable reader. The subject matter and context of the words may be an important indicator of whether they are fact or opinion.

(iv) Some statements which are, by their nature and appearance opinion, are nevertheless treated as statements of fact where, for instance, the opinion implies that a claimant has done something but does not indicate what that something is, i e the statement is a bare comment.

(v) Whether an allegation that someone has acted ‘dishonestly’ or ‘criminally’ is an allegation of fact or expression of opinion will very much depend upon context. There is no fixed rule that a statement that someone has been dishonest must be treated as an allegation of fact.”

22. In *Blake v Fox*, the Court of Appeal commented at [24] that determining whether a statement is one of fact or opinion is “*a highly fact-sensitive process that focuses on the particular statement at issue*”. Warby LJ noted that:

“One factor for consideration is whether the statement contains any indication of the basis on which it is made. At common law a statement that contains no indication of or reference to any supporting facts is liable to be treated as a statement of fact.”

Defamatory at common law

23. In short, a statement is defamatory at common law if it (a) attributes to the claimant behaviour or views that are contrary to the common, shared values of our society (“*the consensus requirement*”); and (b) would tend to have a substantially adverse effect on the way that people would treat the claimant (“*the threshold of seriousness*”): see *Blake v Fox*, Warby LJ, [26]; *Millett v Corbyn*, Warby LJ, [9].

Publication (1): the First 8 January Post

24. The first post complained of in defamation, published on the Defendant’s X account on 8 January 2024 at 12.26pm, was in the following terms (with underlining added to indicate the words complained of):

“@theJeremyVine aka Bike Nonce...
Aka Pedo defender...

@MarinaPurkiss makeup on with a trowel...

@trevmcdonald to be fair, big Trev kept out of it...

You’re obsessed! Just because I pointed out your fascist views.
Forced Vaccinations!

You said it multiple times. Now you’ve changed ya tune. You wrongun’

All because I knocked you back to come on your snide program.

Told you, get bigger. Get better.

Thanks for the publicity. [thumbs up emoji]

@Common_SensePod

[crown emoji]

[Video clip from Jeremy Vine on 5]”

25. The embedded video clip lasts 3 minutes 10 seconds. In it, Jeremy Vine commented that the Defendant has “*always been a bit of a yobbo*”, then showed and read out (describing as “*vile*”) a post on X published by the Defendant which stated:

“How is she even talking about Men’s football. She can’t even kick a ball properly. [shocked and turd emojis]

Your coverage of the game EFC last night, took it to a new low.

Eni Aluko and Lucy Ward, the Fred and Rose West of football commentary. ...”

And then posted a photograph of Fred and Rose West with their faces replaced by those of Eni Aluko and Lucy Ward.

26. In the video clip, the Claimant then showed and read out a post that he had himself published on X which stated:

“What’s going on with @Joey7Barton? I just glanced at the Rose West thing, then the @Gnev2 spat, then his attack on Philip Schofield and the ITV reply ... genuinely, it is possible we are dealing with a brain injury here?”

27. The Claimant commented that the Defendant “*got cross about that*” and responded on X (in a post that was partially shown and read to viewers, with the Claimant commenting that he had not said what he was accused of saying):

“Don’t let @theJeremyVine ever forget this. He’s a fascist.

‘Hold people down and jab them by force!’

What?

How is he still employed?

The gall of the man to say I had a ‘brain injury’”.

The parties’ proposed meanings and submissions

28. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children which leads him to defend paedophiles.

29. The Claimant contends this meaning is factual; the Defendant agrees save to the extent that motivation is asserted, which he contends is a statement of opinion. It is common ground that the Claimant’s meaning is defamatory at common law.

30. The Defendant’s primary submission is that this is vulgar abuse. In the alternative, he contends for the following meaning:

The Claimant was a stupid or worthless person who rode a bicycle and who had defended an adult who had been accused of having a sexual interest in a person under the legal age of consent.

31. The Defendant contends that the underlined words in his meaning are a statement of opinion, but it is otherwise a statement of fact. It is common ground the Defendant's meaning is defamatory at common law.
32. Mr de Wilde contends that for persons of ordinary knowledge the word "*nonce*" is synonymous with "*paedophile*". It is a slang term in common use and known by the general public to signify that a person has a sexual interest in children. That is its current, fixed and literal meaning. In the phrase "*Bike Nonce*" the operative word is "*nonce*". Putting "*bike*" in front of it makes no difference and would have been irrelevant to the hypothetical ordinary reasonable reader's understanding.
33. Mr de Wilde submits that the ordinary meaning is emphasised in this first post by the Defendant combining the allegation that the Claimant is a "*Nonce*" with the separate but related accusation in the next line that he is also a "*Pedo defender*". The hypothetical reader would have understood the latter term to be identifying a tendency to defend paedophiles (plural), rather than identifying a particular act of defending an individual paedophile (singular). The repeated use of the acronym "*aka*" before "*Bike Nonce*" and before "*Pedo defender*" further draws the reader's attention to the connection between those allegations.
34. Although he placed relatively little weight on the phrase "*You wrongun*" in his oral submissions, Mr de Wilde submitted that it would have drawn the reader's attention back to the words "*Bike Nonce*" and "*Pedo defender*". The hypothetical reader would not have thought it was related to the Claimant's views regarding vaccination but would have understood it as indicating that there was something unacceptable and beyond the pale about the Claimant.
35. Mr McCormick submits that this post, and indeed all the publications other than the GoFundMe page and the Lawsuit post, comprised vulgar abuse that conveys no meaning, or none that would be defamatory at common law. The reader would have to be careless, superficial and unsophisticated to think the Defendant was making an allegation of paedophilia, and those are not the characteristics of the ordinary, reasonable reader.
36. In his pleaded case, the Defendant denies that the ordinary reasonable reader of any of the publications would take "*nonce*" as a synonym for "*paedophile*", alleging that "*nonce*" in its natural and ordinary meaning means a stupid or worthless person and is routinely used as a term of abuse based upon that meaning. In any event, the Defendant contends that the context in which the word "*nonce*" was used in each of the publications would have caused the reasonable reader to recognise that the meaning in which it was used was not "*paedophile*".
37. Mr McCormick submits that the primary audience for the Defendant's posts on X comprises his more than 2.8 million followers, who would have been aware of the combative and irreverent nature of his posts. Mr de Wilde responds that this assertion is not pleaded. He acknowledges that at times the Defendant posts material in intemperate terms but submits that at other times he campaigns on issues he considers important, such as public health, vaccination and the role of women in football, and it does not follow from the nature of his posts that nothing he says would not be taken seriously. The hypothetical reader would appreciate the Defendant was merely using the term "*nonce*" as a term of abuse.

38. Mr McCormick contends that the video embedded in the First 8 January Post provides vital context. The hypothetical reader will have the impression that it was part of a “*Twitter spat*”. Even if it is assumed that “*nonce*” is slang for “*paedophile*” or similar, the jocular use of the word “*bike*” is not irrelevant and should not be ignored. It would be seen as abuse posted in the heat of the moment which no one would take seriously, and which has no meaning. The reader would not gain the impression, reading the Defendant’s closing admonition to the Claimant to “*get bigger. Get better*”, and the subsequent “*thumbs up*” emoji, that he was accusing the Claimant of being a paedophile.
39. Mr McCormick accepts that the allegation of being a “*Pedo defender*” is not in the same category. He submits that the person who has read the post and watched the embedded video would understand that this was a reference to the Claimant’s defence of a single individual, Phillip Schofield, who the reader would know has been accused of having a sexual interest in children. No link is drawn between that defence of his friend and any inclinations of the Claimant, and the reader would be struck by the lack of elaboration of the supposed allegation that the Claimant was a paedophile, in contrast with what he wrote about forced vaccinations.

Decision

40. While the Defendant’s posts will have been published to his followers, the way X works means that the readership of these posts would encompass many other users of X, too. In any event, there is no pleaded case as to how the characteristics of the Defendant’s followers, or their knowledge, may have differed from those of X users in general. I apply the approach to ascertaining the meaning of X posts as identified in the authorities to which I have referred.
41. The video embedded in the First 8 January Post forms part of a single publication with the words posted by the Defendant. I agree with Mr McCormick that the video, including the X posts which are shown and read on it, form part of the context for determining the meaning of the words complained of. The Claimant’s objection that this material has not been pleaded as “*context*” is not a valid one, as this material is not extrinsic to the statement of which complaint is made.
42. My initial reaction on reading the First 8 January Post, and clicking on the link to watch the embedded video, was that it meant the Claimant has a sexual interest in children and defends paedophiles. Having considered the parties’ submissions, I remain of the view that the meaning is:
- “The Claimant has a sexual interest in children, and he defends paedophiles.”
43. The word “*nonce*” is a slang term in common use, currently. Its meaning may depend on the context in which it is used, but for persons of ordinary knowledge it is known and understood, primarily, to be synonymous with the word “*paedophile*”, and to indicate that the person who is labelled a “*nonce*” has a sexual interest in children.
44. The strong impression gained by the assertion the Claimant is known as (“*aka*”) “*Bike Nonce*”, followed immediately by the further assertion that he is known as (again, “*Aka*”) “*Pedo defender*”, is that the term “*nonce*” was being used in its primary meaning

to allege the Claimant has a sexual interest in children. While I do not consider that the hypothetical reader, who would read the post quickly and move on, would infer a causative link (i.e. that the Claimant defends paedophiles because he shares the same propensity), the juxtaposition of the words “*Nonce*” and “*Pedo*” is striking and would reinforce the impression that the former was used in the sense of “paedophile”. The reader would have understood that the word “*Bike*” was a meaningless aspect of the accusation, serving only as an indication that this was a label attached to the Claimant, who was known as a cyclist, without detracting from the operative word “*nonce*”.

45. I also agree with the Claimant that the reader would draw the meaning that the Claimant has a tendency or propensity to defend paedophiles. This is the impression gained from the assertion he is known as (“*Aka*”) a “*Pedo defender*”, and from the word “*defender*” which suggests this is something he actively engages in on an on-going basis. While the hypothetical reader would have drawn a connection between this allegation and the Claimant’s reference in the video clip to the Defendant’s “*attack on Philip Schofield*”, it would not have diluted the meaning gained from reading the post. First, there is nothing within the post that would give the reader the impression that this accusation was restricted to what the Claimant had said about Mr Schofield. Secondly, those he is said to have defended are clearly accused of being paedophiles. I agree with the Claimant that there is nothing capable of reducing the meaning to the level of suspicion.
46. The hypothetical reader would not have gained the impression that this was meaningless abuse, in the heat of the moment. The dual allegations concerning paedophilia, and the way in which the Defendant drew distinctions between what he said about each of the presenters, would give the hypothetical reader the contrary impression. Nor would the lack of any stated basis for the allegation give the reader the impression that the allegation was not serious, not least given the Defendant’s assertion that this was known. I reject the contention that this post constituted mere vulgar abuse.
47. The hypothetical reader would understand “*You wrongun*” as relating to the allegation (which the Defendant has acknowledged in these proceedings is baseless) that the Claimant favours forced vaccination. It does not add to, but nor does it detract from, the impression given by the opening two lines. The impression given by the words “*Told you, get bigger. Get better*” are that this is a phrase the Defendant uses, and that it is part of his use of his posts on X as publicity for his podcast. Neither that phrase nor the use of a thumbs up emoji would diminish, for the hypothetical reader, the clear meaning that I have identified.
48. In light of my conclusion as to the meaning of the First 8 January Post, it is common ground that the answers to the second and third preliminary issues are that it was a statement of fact, and it was defamatory at common law.

Publication (2): Second 8 January Post

49. The second post complained of in defamation, published on the Defendant’s X account on 8 January 2024 at 12.30pm, was in the following terms (with underlining added to indicate the words complained of):

“@theJeremyVine oi, bike nonce!

Stop talking about me on your shitty show.

‘Hold people down and force a jab in their arm!’

That’s what you said you little weasel.

Unlucky for you, it’s all recorded for posterity.

And the fact you’ve defended your noncy pal, Schofield. Says a lot about you that.

Stop the gaslighting. No brain injury here pal.

You just don’t like the truth. Government shrill.

Use your program to talk about Israel indiscriminately bombing innocent women and children in Gaza.

And the MSM and ministers silence about a mass genocide [thumbs up emoji]

[crown emoji]”

The parties’ meanings and submissions

50. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children which has led him to defend Phillip Schofield, a fellow TV presenter with the same interest.

51. The Claimant contends this meaning is factual; the Defendant agrees save to the extent that motivation is asserted, which he contends is a statement of opinion. It is common ground that the Claimant’s meaning is defamatory at common law.

52. The Defendant’s primary submission is that this is vulgar abuse. In the alternative, he contends for the following meaning:

The Claimant had defended somebody who had been accused of having a sexual interest in a young person and that this reflected badly upon him.

53. The Defendant contends that the underlined words in his meaning are a statement of opinion, but it is otherwise a statement of fact. It is common ground the Defendant’s meaning is defamatory at common law.

54. Mr de Wilde’s submission as to the meaning and general understanding of the term “*nonce*” applied equally to all the posts in which the Defendant used that term (see paragraph 32 above). Mr de Wilde submits that the meaning that the Claimant has a sexual interest in children was again underlined by the reference to defending “*your noncy pal, Schofield*”. The hypothetical reader would have understood “*noncy*” was a variation of “*nonce*”, and that the Defendant was stating that the television presenter Phillip Schofield has a sexual interest in children. The words, “*Says a lot about you that*” would have been understood to mean that defending Mr Schofield reflected badly

upon the Claimant. Reading between the lines, the hypothetical reader would have drawn the meaning that the Claimant shares the same propensity as the person with whom he associates and is defending.

55. Mr McCormick emphasises that this post was published just four minutes after the First 8 January Post. Both posts were published on the Defendant's X account, and in the circumstances the First 8 January Post (including the video and posts referred to and shown in the clip) form part of the context in which the meaning of the Second 8 January Post should be determined. He contends the plea that the preceding post forms part of the context could hardly be stronger. Whereas Mr de Wilde submits that each post should be treated as free-standing, given that none of the posts are replies or part of a conversation between the parties, and they were not pleaded as context by either party. Mr de Wilde emphasised that where posts have been published to enormous numbers of readers, it is not safe to assume that the hypothetical reader of a later post would have read the preceding posts. Mr McCormick acknowledged that the Court could take into account the number of "*views*" recorded in respect of each post in considering whether earlier posts form part of the context for determination of the meaning of later posts.
56. In support of the contention that this was vulgar abuse, Mr McCormick submits that the hypothetical reader would have recognised that it was part of a continuing stream of abuse directed at the Claimant and posted in the heat of the moment. The opening words "oi, bike nonce!" repeat, in substance, the opening line of the previous post, albeit with a greater degree of assertiveness, and would not be taken as alleging that the Claimant was a paedophile. The hypothetical reader would not think the Defendant was linking the Claimant's defence of Mr Schofield to any similar propensity on the Claimant's part, as opposed to accusing him of defending him because of their friendship.

Decision

57. I agree with Mr McCormick that the First 8 January Post forms part of the context in which the meaning of the Second 8 January Post should be determined. The two posts were very close in time, not least given that the First 8 January Post incorporates a video clip lasting more than 3 minutes, published on the same account and they addressed the same matters. I agree with Mr de Wilde in principle as to the potential relevance of the number of recorded "*views*" in determining whether one post forms part of the context for a later one. But in this instance the First 8 January Post received 659,200 views and the Second 8 January Post received 304,000 views. In the circumstances, I infer that the generality of readers of the Second 8 January Post will have read the First 8 January Post. Although the Defendant's case did not plead that the First 8 January Post is relied on as context in determining the meaning of the Second 8 January Post, and that was an omission, I have taken it into account in circumstances where it is one of the publications complained of and I do not consider that the Claimant has been prejudiced in responding to the submission.
58. Nevertheless, I reject the contention that this is vulgar abuse. Although the tone is abusive, and it is evident the Defendant was aggravated by the suggestion that he had a brain injury, he raised a number of serious subjects such as vaccination and the Government's approach to Gaza, alongside calling the Claimant a "*bike nonce!*" and the accusation concerning Mr Schofield. The hypothetical reader would not have gained the impression that this was meaningless invective hurled in the heat of the moment.

59. My provisional view was that this post meant the Claimant has a sexual interest in children, and for that reason he has defended a celebrity friend who shares the same propensity. Although a little differently worded, this is essentially the same meaning as that proposed by the Claimant. Having considered the parties' submissions, I remain of the view that the meaning is:

“The Claimant has a sexual interest in children, and for that reason he has defended a celebrity friend who shares the same propensity.”

60. As I have said when addressing the First 8 January Post, for persons of ordinary knowledge, the slang term “*nonce*” is synonymous with “*paedophile*”. In the absence of context suggesting that a different meaning is intended, that is the meaning that the hypothetical ordinary reasonable reader would give to the term. There is no context for this post that would suggest a different meaning.
61. Although an allegation regarding forced vaccinations is interposed between the opening exclamation and the accusation regarding Mr Schofield, the post is brief, and the hypothetical reader would be struck by the similarity of the description of the Claimant and of Mr Schofield. The hypothetical reader would be aware that the latter had been the subject of accusations of sexual interest in children. The use of the word “*noncy*” would therefore reinforce the initial impression that in calling the Claimant a “*nonce*” he was accusing him of having a sexual interest in children.
62. The words “*Says a lot about you*” would be understood by the hypothetical reader as implying, especially when taken together with the opening accusation, that the Claimant's defence of Mr Schofield is motivated by the fact that he, too, shares the same sexual interest in children. Reliance on the First 8 January Post as context reinforces the same meaning, given the meaning that I have found that post bears.
63. The words “*for that reason*” constitute an expression of opinion, but the meaning is otherwise factual. I agree with the Defendant that as far as he expressed a view as to the Claimant's motivation for defending Mr Schofield, the statement constitutes an expression of opinion for which he put forward a basis. The meaning I have found is defamatory at common law.

Publication (3): the Third 8 January Post (incorporating the Harris post)

64. In the third post published on the Defendant's X account on 8 January at 12.51pm, the whole of which is complained of in defamation, the Defendant quote posted a post from another X user, @Beanland44, replying to @Joey7Barton and @theJeremyVine ('the Harris post'). The Harris post embedded a smiling image of the Claimant photographed with Rolf Harris and contained the words:

“‘Bike nonce’, lol.”

65. Above the Harris post, the Defendant's post was in the following terms:

“Oh @theJeremyVine

Did you, Rolf-aroo and Schofield go out on a tandem bike ride?

You big bike nonce ya! [bicycle emoji]”

The parties’ meanings and submissions

66. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children which is similar to that of the notorious sex offender and BBC presenter Rolf Harris.

67. It is common ground that the Claimant’s meaning is factual and defamatory at common law. The Defendant has not put forward a meaning: he submits this is vulgar abuse and therefore not defamatory.

68. Mr de Wilde draws attention to the repeated use of the term “*nonce*” in this post. He submits that the defining feature of Rolf Harris is that he is a convicted sex offender. In *Blake v Fox* [2024] EWHC 146 (KB) Collins Rice J referred at [67] to Rolf Harris (among others, including Jimmy Savile: see publication (6)) as “*predatory celebrity paedophiles*” who are among “*the most repellent of bogeymen in the national consciousness*”. While there may have been an attempt at humour in showing the photograph, and the idea that three of them had been on a tandem bicycle ride together was absurd, nonetheless the clear implication was that the Claimant and Mr Harris (along with Mr Schofield) shared the common features of being television presenters with a sexual interest in children.

69. As addressed above, Mr McCormick contends that each of the X posts complained of has all that precede it as part of its context, and Mr de Wilde disputes that contention.

70. Mr McCormick placed heavy emphasis on the abbreviation “*lol*”, which the hypothetical reader would have understood to mean “*laugh out loud*”, or words to that effect. The hypothetical reader would have understood that term as signalling recognition and approval of the humorous epithet “*Bike nonce*”, and would think the epithet was a joke, not a serious allegation of paedophilia. The hypothetical reader would have understood the posting of the photograph of the Claimant with Rolf Harris, a now notorious sex offender, as an attempt to add to the humour of the “*Bike nonce*” monicker by embarrassing the Claimant with an old photograph. Mr McCormick submits that the Defendant’s text (and emoji) would have been understood as taking advantage of the photograph to taunt the Claimant, posing the obviously absurd possibility of the Claimant, Rolf Harris and Phillip Schofield riding a tandem. The hypothetical reader would have understood the final line of the Defendant’s text (including the words “*bike nonce*”) to be the Defendant merely shouting abuse at the Claimant, rather than making a serious allegation.

71. In response, Mr de Wilde submits that humour is not generally a neutralising factor. He relies on the approach to “*words published in jest*” identified in *Gatley*, 3-036. The Defendant can only succeed on his case that this was humour if the hypothetical reader would in no respect have understood the Defendant’s post as an attack on the Claimant’s reputation. If this was an attempt at humour, Mr Barton has played with fire and Mr Vine has been burned.

Decision

72. In light of my initial impression of the Third 8 January Post, and having considered the parties' submissions, the meaning that I find it bears is:
- “The Claimant has a sexual interest in children.”
73. The Third 8 January Post was published 25 and 21 minutes, respectively, after the First and Second 8 January Posts. That is close in time. However, the way X works has the effect that this post is likely to have appeared in different contexts for different users. In any event, it is impermissible to seek to rely on material as “*context*” which was only read by some of those who read this post. That must be the case here because the Third January Post had 2.5 million views, whereas the First and Second 8 January Posts had 659,200 and 304,000 views. Even assuming a complete overlap of readers, on these figures fewer than 13% of readers of the Third 8 January Post would have read both the two earlier posts. Accordingly, I reject the contention that the First and Second 8 January Posts form part of the context for ascertaining the natural and ordinary meaning of the Third 8 January Post.
74. As the authors of *Gatley* observe at 3-037, similar principles apply when considering whether words published in jest are actionable as apply to vulgar abuse, “*the question being whether the circumstances in which the words were used would convey a defamatory imputation to reasonable listeners who heard them*”.
75. The hypothetical reader would understand from the Harris post that the Defendant had previously called the Claimant a “*Bike nonce*”, and that the person posting the Harris post found that amusing. That would be inferred from the quotation marks around those words, the fact that the X user was replying to the Defendant and the Claimant, and posting a photograph of the Claimant with Rolf Harris, a notorious child sex offender. The hypothetical reader would appreciate that the Defendant was not seriously suggesting that the Claimant, Rolf Harris and Phillip Schofield had ridden a tandem bicycle together. The question was facetious. But even an obvious attempt at humour may rest upon a clear factual assumption of the truth of a defamatory imputation. The adage that many a true word is spoken in jest is well known (albeit, as Millett LJ aptly added in *Berkoff v Burchill* [1996] 4 All ER 1008 at 1018, “*many a false one, too*”), and the experience of truth being spoken in laughter is no doubt universal.
76. In the post, the Claimant is repeatedly labelled a “*nonce*”. The primary meaning of that slang term (paedophile: see paragraph 43 above) would be reinforced for the hypothetical ordinary reasonable reader by the association of the Claimant with Rolf Harris, a notorious child sex offender, and with Phillip Schofield, who the reader would be aware has been the subject of highly publicised allegations of having a sexual interest in children.
77. In my judgment, the hypothetical ordinary reasonable reader would understand the post as taunting, scorning and ridiculing the Claimant for his alleged proclivity. The jocular tone might be seen by the ordinary reasonable reader as in bad taste, given the subject-matter, but it would not lead them to understand that no allegation of having a sexual interest in children was seriously being made. Nor would the reader perceive it as meaningless abuse ‘shouted’ in the heat of the moment, as there is nothing in the post that would give that impression.

78. There is no dispute that the meaning I have found is factual and defamatory at common law.

Publication (4): the Fourth 8 January Post

79. The fourth post complained of in defamation, published on the Defendant's X account on 8 January 2024 at 8.58pm, quote posted a post by the Claimant which stated:

“Happy 89th birthday, Elvis.

This was the King at 22, singing live on the Ed Sullivan show”.

The Claimant's post embedded a video of Elvis Presley singing “*Don't be cruel*”, with three male backing singers, on the Ed Sullivan show.

80. Above the Claimant's post, the Defendant wrote the following (the whole of which is complained of):

“Oh wow. @theJeremyVine aka Bike Nonce.

Elvis was a Nonce As well. Priscilla was underage and Elvis has a history of that kind of thing.

Have you been on Epstein Island?

Are you going to be on these flight logs?

Might as well own up now because I'd phone the police if I saw you near a primary school on ya bike.

Ya raving bacon! [bacon emoji]

[crown emoji]”

The parties' meanings and submissions

81. The Claimant contends for the following meaning:

The Claimant has an extraordinarily strong sexual interest in children which informs his interest in Elvis Presley, which led to the Claimant associating with the paedophile Jeffrey Epstein, and which means that young children should be protected from the Claimant by the public contacting the Police about the Claimant's proximity to a primary school.

82. The Claimant's primary case is that the hypothetical reader would appreciate that “*bacon*” was short for the rhyming slang expression “*bacon bonce*” meaning “*nonce*”. In the alternative, the Claimant has pleaded an innuendo meaning, in the same terms as the natural and ordinary meaning for which he contends, for those knowing that expression. However, the Defendant has objected that any innuendo meaning is outwith the terms of the Preliminary Issues, and for that reason the Defendant has not pleaded

to it. Accordingly, the Claimant did not pursue his submissions regarding the *innuendo* meaning at the hearing.

83. The Claimant contends his meaning is factual. The Defendant accepts it is factual save to the extent that the Claimant's meaning refers to any asserted impact on or motivation for any interest of the Claimant's in Elvis Presley or any association with Jeffrey Epstein. It is agreed that the Claimant's meaning is defamatory at common law.
84. The Defendant's primary submission is that this is vulgar abuse. In the alternative, he contends for the following meaning:

The Claimant was a stupid or worthless person who rode a bicycle and who had celebrated the birthday of Elvis Presley, a man who was known or widely believed to have had a sexual interest in girls under the legal age of consent.

85. The Defendant contends that the underlined words in his meaning are a statement of opinion, but it is otherwise a statement of fact. It is common ground the Defendant's meaning is defamatory at common law.
86. Mr de Wilde submits that the Defendant seized on the Claimant's publication of an innocuous post celebrating the birthday of Elvis Presley to allege that Elvis had a sexual interest in children. The hypothetical reader would have understood that was the ordinary meaning of "*Nonce*", reinforced by the statements that "*Priscilla was underage*" and that Elvis "*has a history of that kind of thing*". The words "*As Well*" would be understood as meaning the allegation of having a sexual interest in children applied to the Claimant in just the same way as to Elvis Presley. The hypothetical reader would understand that in referring to "*Epstein Island*" and "*these flight logs*" the Defendant was adding to the mix speculation that there was an association between the Claimant and Jeffrey Epstein, a notorious paedophile and child sex offender, some of whose unlawful activities took place on a private Caribbean island, to which visits were recorded in flight logs. The reference to the Claimant needing to "*own up now*", and the need to contact the police if he was seen near a primary school, would be understood as inviting the Claimant to admit to having a sexual interest in children, and as an assertion that children should be protected from him.

Decision

87. This post was published on the same day as the First, Second and Third 8 January Posts, albeit about 8 hours later. However, although it is fairly close in time, I reject the Defendant's contention that the earlier posts provide the context for determining the meaning of this post. It had 3.4 million views. Even assuming a complete overlap between the readers of the Third and Fourth 8 January posts (which is improbable as the posts are likely to have appeared in different contexts for many different X users, particularly given the scale of publication), at least 900,000 readers of the Fourth 8 January post would not have read the Third 8 January Post. The position is even more stark with respect to the First and Second 8 January Posts which had far fewer views, as identified in paragraph 73 above.
88. The Defendant also sought to rely on another post (referred to as 'the Phone-In Post') which was published the same day, a minute after the Third 8 January Post and about 8

hours before the Fourth 8 January Post. However, the Phone-In Post had about 1.2 million fewer views than the Fourth 8 January Post and so plainly could not have provided the context for the generality of readers. Moreover, the objection that the earlier posts have not been pleaded as context has particular force, in my view, in relation to posts which do not form any part of any of the statements of which complaint is made in defamation. Accordingly, the meaning of the Fourth 8 January Post must be determined on the basis that it was read as a free-standing post.

89. Having considered the parties' submissions, and in line with the initial impression this post made on me, the meaning that I find it bears is:

“The Claimant presents a danger to children, including young children, because of his sexual interest in them.”

90. The hypothetical ordinary reasonable reader would immediately understand that the Claimant was being accused of having a sexual interest in children. That is the first meaning of the slang term “*nonce*” that would come to mind, a term which is applied to the Claimant directly in the opening line and by clear implication in the second line through the use of the words “*As well*”. The primary ordinary meaning would be strongly reinforced for the hypothetical reader first, by the explanation as to the basis for calling Elvis Presley a “*Nonce*” and, secondly, by the reference to “*Epstein Island*”. The hypothetical reader would understand that the allegation being made by the Defendant against Elvis Presley was that he had sexual relations with teenage girls who were under the age of consent. The hypothetical reader would be aware that Jeffrey Epstein has been convicted of child sexual offences, and that such offences occurred on his private island. In my view, the hypothetical reader would not gain the impression that there was in fact any association between the Claimant and Jeffrey Epstein. Rather, the connection being drawn between them in the post is that they are alleged to have a similar sexual interest in children, and so the Claimant is the type of person who might have visited the island.
91. The hypothetical reader would know that primary school children are generally aged between about 4 and 11 years old. The reader would understand the reference to calling the police if the Claimant were seen near a primary school to imply children within that age group would be at risk from him. The reader would readily infer, given the preceding words, that such risk would flow from the Claimant's sexual interest in such children. The fact that the alleged risk was raised on X, rather than with the appropriate authorities, would not lead the reader to conclude it was not meant seriously. The Defendant was not alleging the commission of an offence but publicising an alleged proclivity and risk.
92. I agree with the Claimant that “*bacon*” is short for “*bacon bonce*”, which is rhyming slang for “*nonce*”. However, in my judgment, it is not a phrase in such common usage as to be known and understood by the generality of X users, particularly in the short form “*bacon*”. The hypothetical ordinary reasonable reader would not have attributed particular meaning to the final line. In any event, I do not consider that the meaning of the post would be different for those with knowledge of that phrase, as it is simply a further iteration of essentially the same label that had been applied repeatedly to the Claimant already in this post.

93. I reject the Defendant's contention that this post was mere vulgar abuse. There is nothing in the context, or content, to suggest that the Defendant was hurling angry, but meaningless, abuse in the heat of the moment. On the contrary, the prompt for this post would appear to the reader to be an innocuous post celebrating Elvis Presley's birthday. The terms of the Defendant's post, while abusive, would not come across as angry. He did not apply a tirade of epithets to the Claimant: he applied one ("*nonce*") and that was the focus of the whole post. Nor would the hypothetical reader dismiss it as a jocular post that was not meant seriously. The reader would have understood the Defendant was serious in the accusation he was making against Elvis Presley, and that he was equating the Claimant to him by applying the same label to them both.
94. In my judgment, the Defendant's proposed meaning is unrealistic. I accept that there are circumstances, and contexts, in which the term "*nonce*" may be understood as a general accusation of stupidity or idiocy, or similar. But it could hardly be plainer that, in the context of this post, the Defendant was accusing the Claimant of having a sexual interest in children, including those of primary school age.
95. The meaning that I have found is factual and defamatory at common law.

Publication (5): the First 9 January Post

96. The fifth post, the whole of which is complained of in defamation, was posted on the Defendant's X account on 9 January 2024 at 8.26am. In it the Defendant quote posted a post by @ScottyGoesAgain containing a close-up photograph of the Claimant on a bicycle, wearing a high-visibility jacket and bicycle helmet, facing towards the camera, and bearing the words:

"The lesser-spotted Bike Nonce in his natural habitat"

97. Above the quoted post, the Defendant's post states:

"If you see this fella by a primary school call 999... [Ninja and thumbs up emojis]"

The parties' meanings and submissions

98. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children which means that young children should be protected from him by contacting the Police about the Claimant's proximity to a primary school.

99. It is common ground that the Claimant's meaning is factual and defamatory at common law. The Defendant has not put forward a meaning: he submits this is vulgar abuse and therefore not defamatory.
100. Mr de Wilde submits that, although not named in this post, the Claimant was clearly identifiable by means of his image. The allegation that the Claimant has a sexual interest in children was made by referring to him as a "*Nonce*" and then reinforced by the words suggesting that primary school children require protection from him.

101. Mr McCormick draws attention to the humour in the ornithological riff that is used to describe the photograph of the Claimant, by an X user who clearly saw the humour in the “*bike nonce*” moniker. The Defendant used informal thumbs up and Ninja emojis when saying “*call 999*”. Mr McCormick submits the reader would have to be avid for scandal beyond belief to draw the meaning for which the Claimant contends. Its tone was antithetical to the making of a serious allegation and no reasonable reader would have taken it literally. As above, he also contends that the context includes the posts published on 6 and 8 January.

Decision

102. The First 9 January Post was published more than 21 hours after the First, Second and Third 8 January Posts, on which the Defendant seeks to rely as context. The First 9 January Post received 3.3 million views. For the reasons I have given above, I reject the contention that the First, Second and Third 8 January posts, which had far fewer views, constitute relevant context in determining the meaning of this post. The Fourth 8 January Post had a similar level of views (3.4 million) to the First 9 January Post (3.3 million), and it was posted less than 12 hours earlier. However, given the way in which X works, it does not seem to me that an assumption can safely be made that almost all the readers of the later post would have read the earlier one, given the huge level of publication. In any event, it would not assist the Defendant’s argument to rely on the Fourth 8 January Post alone as context, given the meaning I have found, and the absence of any reference to the accusation of a brain injury, on which the Defendant seeks to rely. In my view, the First 9 January Post should be treated as free-standing in determining its meaning.
103. In line with my provisional view, and having considered the parties’ submissions, I consider that the meaning of the First 9 January Post is:
- “The Claimant presents a danger to young children because of his sexual interest in them.”
104. The assertion that the police should be called if the Claimant (who is clearly identifiable from the photograph) is seen near a primary school is stated in bald terms. The word “*Nonce*”, which the hypothetical reader would understand as synonymous with “*paedophile*”, would immediately strike the hypothetical reader as explaining the asserted need to call the police. Although emojis are a casual form of language, those used by the Defendant do not detract from the seriousness of the message. They would be understood in context as calling on the reader to behave cautiously.
105. I reject the contention that this post was vulgar abuse. There is nothing in the context, or content, to suggest that the Defendant was throwing out meaningless insults in the heat of the moment. Although the Defendant’s Case asserts this post constitutes vulgar abuse, Mr McCormick’s primary focus was on the contention that the reader would have understood the post to have been published in jest, and not meant seriously.
106. The hypothetical ordinary reasonable reader would recognise the flippancy in the “*lesser-spotted Bike Nonce*” post, to which the Defendant replied, and understand the Claimant was being ridiculed. Nevertheless, in my judgment, the hypothetical ordinary reasonable reader of the First 9 January Post as a whole would not have understood the Defendant’s words (and emojis) to be a meaningless joke, and in any event would have

understood them to rest upon a clear factual assumption of the truth of the defamatory imputation that the Claimant has a sexual interest in young children.

107. The meaning I have found is factual and defamatory at common law.

Publication (6): Second 9 January Post

108. The sixth post (the whole of which is complained of) was posted at 9.54am on 9 January 2024. It is a quote post of a post from the X account @Reallogposter, replying to the Defendant, containing an image, which has obviously been digitally edited to look like a photograph of the Claimant (smiling and wearing a bicycle helmet), Jimmy Savile and Richard Branson on bicycles, with the sea and palm trees in the background. Above the image, the Defendant's post states:

“I've dropped and smashed my readers this morning, can anyone tell me if this is a real photograph @theJeremyVine?

If not, how good AI is now? Is this a Deep Fake?

#bikenonces [bicycle emoji]”

The parties' meanings and submissions

109. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children which is similar to that of the notorious sex offender and BBC present Jimmy Savile.

110. It is common ground that the Claimant's meaning is factual and defamatory at common law. The Defendant has not put forward a meaning: he submits this is vulgar abuse and therefore not defamatory.

111. Mr de Wilde submits that the overriding association which attaches to Mr Savile in the mind of the reader is that, after his death, it was established that he was a prolific, predatory sex offender, with a particular interest in children. While the question whether the crudely photo-shopped image was a real photograph would be understood to be facetious, the hashtag was not. The hypothetical reader would understand the Defendant is asserting a connection between Mr Vine and Mr Savile (along with Mr Branson) to the effect that they are both paedophiles.

112. Mr McCormick submits this post, published 90 minutes after the First 9 January Post, would have been read in the context of all the previous posts complained of, as well as the Phone-In Post. He contends that the use of the hashtag “#bikenonces” followed by the bicycle emoji would have been read as an evolution of the words “bike nonce” from previous posts. The hashtag would not have been understood as alleging that the Claimant is a paedophile but rather as another jibe in the same abusive vein as before, based upon any association between the Claimant and bicycles. Mr McCormick emphasises that Mr Branson is also in the image and no impropriety has been alleged against him.

Decision

113. For the reasons I have given above in relation to earlier posts, I reject the contention that the First, Second, Third and Fourth 8 January Posts, or the Phone-In Post, are part of the context for determining the meaning of the Second 9 January Post. The question whether the First 9 January Post should be regarded as part of the context for the Second 9 January Post is more finely balanced given that the former received 3.3 million views, and was published less than an hour and a half before the latter, which received 962,900 views. However, given the way in which X works, it does not seem to me that an assumption can safely be made that almost all the readers of the later post would have read the earlier one, given the high level of publication. In any event, reliance on the earlier post should have been pleaded as context, and it would not assist the Defendant's argument to rely on the First 9 January Post alone as context, given the meaning I have found, and the absence of any reference to the accusation of a brain injury, on which the Defendant seeks to rely. In my view, the Second 9 January Post should be treated as free-standing in determining its meaning.

114. Having considered the parties' submissions, I remain of the view that I provisionally reached on reading this post that it means:

“The Claimant has a sexual interest in children.”

115. I agree with Mr de Wilde's submission as recorded in paragraph 111 above. For the hypothetical ordinary reasonable reader, the presence of a notorious child sex offender in the photograph would reinforce the impression that the word “*nonce*”, within the hashtag “*#bikenonces*”, bears its primary ordinary meaning (see paragraph 43 above). The lack of any prior allegation or evidence against Mr Branson would not detract from this understanding.

116. The hypothetical reader would not have understood this post to be vulgar abuse. There is nothing in the content or context to suggest the Defendant was hurling meaningless insults in the heat of the moment.

117. The meaning I have found is factual and defamatory at common law.

Publication (7): First 10 January Post

118. The seventh post, the whole of which is complained of, was published on the Defendant's X account on 10 January 2024 at 8.08am. It is a quote post of a post from X account @KieronRuss, replying to the Defendant and the Claimant. The quote post states, “*This you @theJeremyVine ya fanny?!! #BikeNonce*” above a cartoon image. Pasted onto one of the figures in the cartoon image is a photograph of the Claimant's face. That figure is wearing a bicycle helmet with a huge cartoon of a camera attached to it, drawn to look like a large eye, and casting a shadow in the shape of a penis. A speech bubble indicates the Claimant saying to a cartoon image of a woman, whose mouth is down-turned and arms are crossed, “*Well, I've bought the bike and I've bought all the kit – how d'ya think I look?*” In the cartoon, a drone is flying at head height.

119. The following words appear in the Defendant's post above the quoted post:

“Beware Man with Camera on his helmets cruising past primary schools.

Call the Cops if spotted! [thumbs up emoji]

@theJeremyVine aka Bike Nonce”

The parties’ meanings and submissions

120. The Claimant contends for the following meaning:

The Claimant has a sexual interest in filming children which means that young children should be protected from him, if necessary by Police action.

121. It is common ground that the Claimant’s meaning is factual and defamatory at common law. The Defendant has not put forward a meaning: he submits this is vulgar abuse and therefore not defamatory.

122. Mr de Wilde contends the hypothetical reader would understand the “*Man with Camera*” is the Claimant, as he is identified by his handle and the photoshopped image of his face in the quoted post. The paedophile allegation is conveyed by calling the Claimant a “*Nonce*”, reinforced by the reference to him “*cruising past primary schools*”. Mr de Wilde submits that a further allegation that the Claimant has a sexual interest in filming children and that he is a danger to children would be conveyed to the reader by the references to him having a “*Camera*” on his helmet and to the “*Cops*”.

123. The Defendant submits this post, published about 22 hours after the Second 9 January Post, would have been read in the context of all the previous posts complained of, as well as the Phone-In Post and a post published about 10 hours earlier, referred to by the parties as ‘the Hopkins Repost’. The Hopkins Repost consists of a post from Katie Hopkins (‘the Hopkins Post’) stating:

“Well done @Joey7Barton

Agreement is NEVER the aim. Let speech run free.

#BikeNonce – greatest hashtag of all time #Schofe
#ITVFootball”

and a video clip in which Ms Hopkins spoke to camera to the same effect as the words above, while standing outside in the countryside. Above Ms Hopkins’ post the Defendant’s post stated:

“Just trying to watch the [football emoji] in [peace emoji]

Nice Scenery. [thumbs up emoji]”

124. Mr McCormick contends that the reference in the Hopkins Post (within the video clip) to “#BikeNonce” as “*possibly the greatest hashtag of all time*” was obviously humorous and did not accuse the Claimant of being a paedophile. Any reader of the First 10 January Post who had read the Hopkins Repost would not take the reference to “*Bike Nonce*” seriously.

125. Mr McCormick submits that it is clear from the cartoon image that the Claimant is being lampooned. The hypothetical reader would understand that the post was mere vulgar abuse, ridiculing and insulting the Claimant. It would not be taken seriously or understood to convey any defamatory meaning.

Decision

126. For the reasons I have given above, I reject the contention that the four 8 January Posts and the Phone-In Post provide context for determining the meaning of the First 10 January Post. As regards the two 9 January Posts, the first received 3.3 million views and the second received 962,900 views, whilst the First 10 January Post received 868,200 views. The First 10 January Post was published about 22 hours after the Second 9 January Post. In my judgment, bearing in mind (i) the way in which X works as discussed above, (ii) the high numbers of views, (iii) the First 10 January Post was not a reply to any of the earlier posts or part of a particular conversation, and (iv) a full day had passed and there is no suggestion that any of the earlier posts would have remained in view on X users' pages, I consider that the First 10 January Post should be treated as free-standing in determining its meaning. In any event, given my conclusions as to the meanings of the earlier posts, treating them as part of the context would not support the Defendant's submissions.
127. Reliance on the Hopkins Repost as context has not been pleaded. In my judgment, that is a significant omission, particularly given that the Hopkins Repost is not complained of in defamation. I am not persuaded that the Defendant should be permitted to rely on the Hopkins Repost in these circumstances. In any event, I would reject the Defendant's contention based upon it. The Hopkins Repost makes no reference to the Claimant. The only person identified is Phillip Schofield. Awareness of that connection between the term "*bike nonce*" and Mr Schofield would have the contrary effect on the hypothetical reader to that for which the Defendant contends.
128. I agree with Mr de Wilde's submissions as summarised in paragraph 123 above. In line with my provisional view, I consider that the meaning of the First 10 January Post is:
- "The Claimant presents a danger to young children because of his sexual interest in them, and in creating images of them."
129. The impression given to the hypothetical reader by the combination of the image (including the outsized camera eye and drone) and the Defendant's words is that the Claimant is predatory and has an interest in creating images of primary school-age children. These features, together with the reference to the police, reinforce the ordinary understanding of the word "*nonce*" as meaning he has a sexual interest in children, and represents a danger to them.
130. I reject the contention that this post would be understood to be either mere vulgar abuse or a joke conveying no defamatory imputation. There is nothing in the content or context to suggest that the Defendant was hurling meaningless insults in the heat of the moment. Nor would the hypothetical reader understand the words and images to be a joke devoid of the clear defamatory imputation that they convey.
131. The meaning I have found is factual and defamatory at common law.

Publications (8), (9) and (10): Second 10 January, 11 January, and Service Posts

132. In respect of the eighth, ninth and tenth posts the Claimant complains of the words “*the Bike Nonce*”, “*#CoVidnonce #bikenonce*” and “*#bikenonce*”, respectively, as shown underlined below.

133. The eighth post is a quote post, published on the Defendant’s X account at 8.50am on 10 January 2024. The post from X account @CharlotteEmmaUK includes a 12-second television clip which begins with a woman saying (the first part of what she has said obviously having been cut off), “... *that has enabled all these players to mince around on football pitches for £12 billion a week...*”. The Claimant can be seen and heard to respond, in an incredulous tone, “... *Angela, we either allow this or we end up holding people down and jabbing them by force*”, to which the woman responded, “*No, you see...*” before the clip cuts off. Above the clip the post states:

“Jeremy Vine.

Never forget these people!

‘We either allow this or we end up holding people down and jabbing them by force’”.

134. The Defendant’s post stated, above the quoted post:

“Has the Bike Nonce had a brain injury?

@theJeremyVine selected amnesia?

This is what you said about Footballers. No?”

135. The ninth post was published on the Defendant’s X account at 10.10am on 11 January 2024. It is a quote post from @JamesMelville with an embedded video showing a 22-second clip of the Claimant arriving outside a vaccination site, expressing enthusiasm at the prospect of being able to obtain vaccination against COVID at last, receiving an injection in a medical clinic, and then speaking to camera while lying down, sounding ill and saying that he is in bed with COVID. Above the video clip appear the words, “*Watch to the end...there’s a plot twist...*” The Defendant’s post, above the quoted post, states:

“Did you cycle to that clinic @theJeremyVine?

#CoVidnonce #bikenonce”

136. The tenth post was published at 6.19pm on 11 January 2024. It stated:

“So @theJeremyVine is suing me... [14 rolling around laughing emojis]

Fella who served me the papers was sound.

Told me he completely agreed with me and to keep going [flexed bicep emoji]

[Crown, ninja and crown emojis]

#bikenonce”

137. Below these words are photographic images of (i) the first page of the Pre-action Protocol for Media and Communications Claims; (ii) part of the first page of the Letter of Claim sent by the Claimant, from which the Claimant’s intention to bring a claim for defamation and harassment appears but not the basis for it; and (iii) a post on the Defendant’s X account (‘the First 6 January Post’), which states:

“Was he (@theJeremyVine) one of the many Government Stooges trying to pressure people to play Russian Roulette with those Covid vaccines Matt?”

138. Those words appear above, and in response to, a post from Matt Le Tissier which states, as far as visible in the embedded image:

“Remember how you spoke about the unvaccinated Jeremy? How would you have felt if someone had [...] you of having a brain injury because of your [...]”.

The parties’ meanings and submissions

139. In respect of each of these three posts, the Claimant contends for the following meaning:

The Claimant has a sexual interest in children.

140. It is common ground that the Claimant’s meaning is factual and defamatory at common law. The Defendant has not put forward any meanings: he submits that each of these three posts is vulgar abuse and therefore not defamatory.

141. Mr de Wilde submits that, without adding colour as the earlier posts had done, in each of these three posts the Claimant was identified as a “*nonce*” (whether that term was preceded by “*bike*” or “*covid*”, or part of a hashtag or not). With respect to the ninth post, he emphasises that the common denominator of the hashtags is the repeated use of the word “*nonce*”. For the reasons summarised at paragraph 32 above, he contends that the hypothetical ordinary reasonable reader would understand that in using that term the Defendant was calling the Claimant a paedophile and alleging he has a sexual interest in children.

142. In relation to each of these posts, too, Mr McCormick submits that the context was all the preceding posts identified above, and he particularly emphasised in his oral submissions the Hopkins Post. Given this context, no reasonable reader would understand the words “*Bike Nonce*” in the Second 10 January Post to be making an allegation of paedophilia. This post was clearly attacking the Claimant for his alleged views regarding the Covid vaccine. The language of that attack was direct and apt to be taken at face value. The reader of the Second 10 January Post would be left with the impression that the real issue being raised was the Claimant’s vaccine comments, not any accusation that he was a danger to children. The reader would spot that there was nothing in the post that could support an allegation of paedophilia and understand that the Defendant was just abusing the Claimant.

143. Mr McCormick submits that the hashtags in the 11 January Post, whether taken alone or in the context of the earlier posts, would have been recognised by the reasonable reader as abuse of the Claimant by the Defendant, and not as making any allegation of paedophilia. The reasonable reader would understand the Defendant was merely abusing the Claimant for his approach to Covid vaccination.
144. Mr McCormick contends that the First Service Post was obviously ridiculing the Claimant's threat of litigation which threat would have been understood to be in respect of posts made by the Defendant since 6 January 2024 (by reference to the photograph of the First 6 January Post). The tone and use of emojis (with which this post is replete), the expressed support for the Defendant by the Claimant's process server, and the Defendant's defiance of the Claimant's solicitors' prohibition on general publication (on the first page of the Letter of Claim) would have emphasised that the Defendant was responding in the same forthright vein as he had previously been posting. In that overall context, Mr McCormick submits the reasonable reader would have recognised the hashtag was part of the Defendant's combative, abusive or humorous response, and was not making any accusation.

Decision

145. For the reasons I have given above, I consider that each of these three posts should be treated as free-standing. Although I recognise that the question whether the First 10 January Post should be regarded as context in determining the meaning of the Second 10 January Post, given that they were published about 40 minutes apart, the reasons that I have given above for rejecting the Defendant's reliance on the earlier posts (including the Phone-In Post and Hopkins Repost) as context apply (see, in particular, paragraphs 88, 113 and 126-127 above).
146. The initial impression I gained on reading the Second 10 January Post, and watching the embedded video, was that the Defendant was berating the Claimant for hypocritically denying that he had supported forced vaccination. The initial impression I gained on reading the 11 January Post, and watching the embedded video, was that the Defendant was ridiculing and abusing the Claimant for encouraging people to get vaccinated against Covid. On reading and viewing both these posts, I gained the impression the Claimant was using the term "*nonce*" in those contexts merely as vulgar abuse, to convey contempt for the Claimant's supposed idiocy, rather than to allege a sexual interest in children.
147. Having considered the parties' submissions, I accept the Defendant's submission that the words complained of in the Second 10 January Post and the 11 January Post are vulgar abuse, conveying no defamatory imputation to the hypothetical ordinary reasonable reader. Save to the extent that I have rejected his reliance on earlier posts, I agree with Mr McCormick's submissions as summarised in paragraphs 142-143 above.
148. However, in line with my initial impression, and having considered the parties' submissions, I reject the Defendant's contention that the words complained of in the First Service Post would have been dismissed by the hypothetical reader as mere vulgar abuse. The hypothetical reader would understand that the Defendant was responding combatively, and with bravado, to being sued by the Claimant for something he had said about him. The hypothetical reader would read between the lines and infer that the Defendant had, and was continuing to, accuse the Claimant of having a sexual interest

in children by calling him a “*nonce*”. The hypothetical reader would infer this allegation was made against the background of a heated disagreement regarding the approach to Covid vaccination, but the words complained of would not come across to the reader as a meaningless insult. Nor would the reader consider them to be a joke conveying no serious defamatory imputation. The numerous emojis in this post convey the impression that the Defendant is happy that he has provoked the Claimant into suing him, not that he intends to level no serious accusation.

149. I agree with the Claimant that the words complained of in the First Service Post mean:

“The Claimant has a sexual interest in children.”

150. This meaning is factual and defamatory at common law.

Publication (11): 12 January Post

151. The eleventh post, published on the Defendant’s X account on 12 January 2024 at 11.40am, embeds a MailOnline article bearing the headline “*BBC star Jeremy Vine made his ten-year-old daughter a company shareholder to help lower his tax bill by channelling funds through private firm*”. Above the article the post states (with the words complained of underlined):

“Fuck him. Fuck his lawyers.

@theJeremyVine

What is this all about Bike Nonce?

[crown emoji]”

The parties’ meanings and submissions

152. The Claimant contends for the following meaning:

The Claimant had brought an unjustified legal complaint over the allegation that he has a sexual interest in children.

153. It is common ground that the Claimant’s meaning is factual and defamatory at common law. The Defendant has not put forward a meaning: he submits this is vulgar abuse and therefore not defamatory.

154. Although the Claimant’s meaning differs from, and is more extensive than, that proposed in respect of publications 8 and 10, in his oral submissions Mr de Wilde addressed this post together with those posts, on the basis that only the words “*Bike Nonce*” are complained of. The Claimant’s written submissions similarly assert that this post contains the paedophile allegation, that is, the assertion that the Claimant has a sexual interest in children.

155. Mr McCormick submits that the context of this post includes the earlier posts referred to above, and two further posts, referred to by the parties as the Second and Third Service Posts. The Second Service Post was published on the Defendant’s X account at 6.42pm on 11 January (receiving 908,900 views) and stated:

“How can you harass someone who follows you?

Who has emailed you countless times asking you on his TV show?

Who you initiated insults with by trying to gaslight. Saying they’d had a brain injury.

Bizarre.

@csokaqc”

156. The Third Service Post was published on the Defendant’s X account at 8.47pm the same day (receiving 1.4 million views). It quote posted a post by @stonehurstoil embedding a video clip and stating “#BikeNonce is trending....” Above the quoted post, the Defendant stated:

“Be careful.

The fella who crashes into cars he could clearly avoid, will sue you if you say some words he doesn’t like.

Eh, Conker bollocks

@the Jeremy Vine”

157. Mr McCormick submits that although the 12 January Post would have been understood to have been prompted by the Claimant having threatened to sue the Defendant, the question “*What is this all about Bike Nonce?*” would not have been understood to relate to the basis of the threatened claim. Rather, that question would have been understood to relate to the subject matter of the article from MailOnline.

Decision

158. For the reasons given above, I reject the Defendant’s contention that the earlier posts provide the context for determining the meaning of the 12 January Post. Nor can the Second and Third Service Posts be relied on as context. Reliance on these posts as context has not been pleaded. That is particularly pertinent given that the Third Service Post, at the time of publication (but no longer) contained a video which has not been put before me.

159. I agree with Mr McCormick that the Claimant’s extended meaning plainly cannot be justified based on the two words complained of, and that the question “*What is this all about...?*” is directed to the MailOnline article concerning the Claimant’s tax affairs. Nevertheless, as a matter of first impression, and having considered the parties’ submissions, in my view, the label “*Bike Nonce*” would not be taken by the hypothetical reader, in this context, to be a meaningless insult but, rather, as bearing its primary meaning. In my judgment, the meaning of the 12 January Post is:

“The Claimant has a sexual interest in children.”

160. This meaning is factual and defamatory at common law.

Publication (12): 11 January Trending Topic

161. The twelfth publication was not posted by the Defendant, but the Claimant alleges he is responsible for it. It consists of X's list of "*Trending topics*". On 11 January 2024, under the heading "*United Kingdom trends*", towards the bottom of the list appear the following words:

“7. Trending
#BikeNonce
Trending with Vine”.

The Parties' meanings and submissions

162. The Claimant contends for the following meaning:

The Claimant has a sexual interest in children.

163. It is common ground that the Claimant's meaning is factual and defamatory at common law.

164. The Defendant contends that this publication bears no meaning concerning the Claimant or, if it does, it is vulgar abuse and therefore not defamatory.

165. Mr de Wilde submits that the Claimant is readily identifiable by his surname alone, given that he presents television and radio shows daily which bear his name. He contends that the hypothetical reader would infer that he was a “#BikeNonce” from the information that the hashtag was trending with his name, and for the reasons summarised at paragraph 32 above, the hypothetical reader would understand that term to mean paedophile.

166. Mr McCormick contends the reasonable reader, who would have been viewing the automatically generated list of trending topics on their bespoke X ‘homepage’, would not have understood the words “#Bikenonce Trending with Vine” to be referring to the Claimant or to be making any allegation (against anyone) of paedophilia. The reader would not know in what context the hashtag and “Vine” were trending together and it would be highly speculative for a reader to jump to the conclusion reflected in the Claimant's meaning.

Decision

167. It is common ground that the 11 January Trending Topic is a free-standing publication. As it would have appeared on the homepages of X users generally, the earlier posts (which would only have been read by some X users) would not have provided context for readers in general.

168. In my judgment, the hypothetical ordinary reasonable reader would have identified the 11 January Trending Topic as concerning the Claimant. The hypothetical reader would understand that the fact the topic is trending suggests it is likely to be about someone famous. The reader would readily draw the conclusion that the topic relates to a famous person with the surname “Vine”. That surname is not particularly common, the Claimant would be very well known to X users, and the hypothetical ordinary reasonable reader would infer, in my view, that the trending topic relates to him.

169. However, I agree with Mr McCormick that the hypothetical reader would have no idea from the words complained of, or their appearance in the context of the trending topics list, why the hashtag and his surname were trending together. While I accept that the slang term “*nonce*” is primarily understood to mean paedophile, as I have said, that is not the only meaning that it can convey, depending on the context. The ordinary reasonable reader would discern that the word “*bike*”, in the abstract context of the 11 January Trending Topic, appears to soften the hashtag, without explaining it. In my view, the reader would have to be avid for scandal to jump to the conclusion that the Claimant was being accused of having a sexual interest in children, in the absence of any knowledge of the underlying story that had led to the topic trending. I agree with the Defendant that the ordinary reasonable reader would not understand the 11 January Trending Topic to bear any defamatory meaning.

Publication (13): GoFundMe Page

170. Publication (13) was published on the Defendant’s GoFundMe Page on 15 March 2024. The headline in large bold font states: “*Championing Justice: Uniting Behind Joe*”. There is then an image of a media headline, in large bold font above separate photographs of the Claimant and the Defendant, which states: “*Jeremy Vine sues Joey Barton after former footballer branded BBC Radio 2 host ‘bike n***e’*”. Beneath this image, in the same smaller, lighter font as the text that follows, the publication states: “*Joey Barton is organising this fundraiser*”.
171. The remainder of the publication states:

“Uniting Behind Joey Barton against Jeremy Vine

In the ever-expanding arena of social media, where reputations are made and shattered in the blink of an eye, one man finds himself in the eye of a storm: Joey Barton, the former footballer whose journey has taken a dramatic turn. Caught in a whirlwind of defamation allegations stemming from allegedly derogatory tweets, Barton stands at the forefront of a battle for justice against none other than Jeremy Vine, a prominent figure in the media landscape.

Known for his skill and tenacity on the football pitch, Barton’s latest challenge transcends the boundaries of sport. It’s a clash of principles, a fight against baseless accusations that threaten to tarnish not just his reputation, but the very fabric of integrity in our digital age.

The recent debacle, sparked by Jeremy Vine’s televised remarks insinuating Barton’s alleged ‘brain injury’, serves as a stark reminder of the power wielded by media personalities and the responsibility that comes with it. Yet, amidst the storm of controversy, Barton stands firm, determined to seek justice and restore his honour.

Why Stand by Joey Barton?

Beyond the headlines and past controversies lies a fundamental truth: the importance of standing up against defamation and injustice. Regardless of personal opinions, Barton's quest for vindication resonates with the core values of fairness and accountability. Every individual, regardless of stature or past transgressions, deserves the right to defend their name and seek restitution for unwarranted attacks, especially when broadcast on a national platform.

In solidarity with Barton's cause, we've launched a GoFundMe campaign to provide crucial support in his legal battle against Jeremy Vine. Every contribution, no matter how small, serves as a beacon of hope in the pursuit of truth. Notably, any damages awarded will be graciously donated to Alder Hey Hospital in Liverpool, exemplifying Barton's commitment to giving back amidst adversity.

Additionally, spreading awareness about this campaign amplifies our collective voice and strengthens Barton's resolve in the face of adversity. Through social media, word of mouth, and grassroot efforts, we can galvanize widespread support for Barton's quest for justice.

Joey Barton's fight against defamation transcends the confines of individuality; it's a testament to the enduring values of integrity, fairness, and accountability. By rallying behind Barton, we send a resounding message that baseless attacks from media figures will not go unchallenged.

Let us stand shoulder to shoulder with Joey Barton in his journey towards vindication, ensuring that the voices of truth and decency prevail in the face of slander and defamation. Together, we can make a tangible difference in the pursuit of justice. Join us in championing the cause of truth today."

172. The draft Amended Particulars of Claim do not identify any particular words within this publication that are complained of. In his oral submissions Mr de Wilde said the whole post is complained of, with particular emphasis on certain features, as identified in his submissions which I address below.

The Parties' meanings and submissions

173. The Claimant contends for the following meaning:

The Claimant has unfairly and unjustly abused his status as a media personality to libel Joey Barton by publishing very serious false and baseless defamatory allegations against him on social media, conduct which is so damaging to Joey Barton's reputation and the public interest that he deserves widespread public support to pursue legal action and hold the Claimant accountable.

174. The Claimant contends this meaning is factual. The Defendant submits the Claimant's meaning is an expression of opinion but accepts that whether fact or opinion it is defamatory at common law.
175. The Defendant contends for the following meaning:
- The Claimant had sued the Defendant for libel after the Claimant had used his position as a prominent personality to falsely insinuate that the Defendant had a brain injury, that the Defendant intended to seek justice in respect of that allegation and this intention was worthy of financial support.
176. The Defendant submits that the underlined words are an expression of opinion, but the statement is otherwise factual; and that only the underlined words are defamatory at common law.
177. It is common ground that the GoFundMe page would be understood to be soliciting financial support for Mr Barton, and that this relates to something that Mr Vine has done to Mr Barton in Mr Vine's capacity as a prominent media personality. Mr de Wilde submits that the "*passing reference*" in the headline to the fact that Mr Vine is suing Mr Barton would not be understood to relate to the content of the remainder of the GoFundMe page, from which it was disconnected, or to give rise to any meaning to the effect that it was Mr Vine who had sued Mr Barton. The reader would understand that it was Mr Vine who was the publisher of false, defamatory and derogatory allegations about Mr Barton, for which Mr Barton was seeking vindication. The reader would understand the "*brain injury*" remarks to be part of the backstory, not that those were the remarks that prompted Mr Barton's pursuit of justice. The reader would understand from the references to the Claimant's prominence, and the allegation that he used a "*national platform*" to make "*unwarranted attacks*", that Mr Vine's conduct towards Mr Barton is alleged to be an abuse of position. Mr Barton uses high-flown and grandiose rhetoric to convey the impression that larger interests are at stake beyond his own reputation, reinforcing the impression that Mr Vine is responsible for large-scale and persistent defamatory publications.
178. Mr de Wilde submits that any attempt to rely on the earlier posts as "*context*" is untenable given that this was a publication on a different platform months after the earlier posts on X. In his oral submissions, Mr McCormick did not dispute the force of this submission, although the Defendant's written submission is that as the GoFundMe Page is a "*pinned post*" on his X account, it should be inferred the reasonable reader of the GoFundMe Page would have read the majority (or all) of the earlier posts identified above.
179. Mr McCormick contends that as this is not a social media publication, a somewhat less impressionistic approach is to be expected of the reasonable reader. However, the reasonable reader would find it difficult to extract meaning from this elaborate and unstructured document that would come across as a rather incoherent stream of consciousness.
180. Mr McCormick submits that the ordinary reasonable reader would not ignore the headline and would understand that Mr Vine was suing Mr Barton for libel. Nevertheless, the reader would gather that the focus is on a potential claim to be brought

by Mr Barton against Mr Vine and infer that this is a plea for funds to enable him to bring a counterclaim. The reader would understand that although there is a purple patch in which the Defendant refers to baseless and defamatory allegations made against him, the focus of his plea for funds is to bring a counterclaim in respect of one specific allegation, namely the allegation of having a brain injury.

181. Mr McCormick contends that the Claimant's pleaded meaning goes beyond the words used in a manner that the reasonable reader would not, in particular the accusation of abuse of position and of having published very serious allegations.

Decision

182. The GoFundMe Page is on a different platform to the X posts, and it was published more than two months later than those posts. I agree with Mr de Wilde that in those circumstances any reliance on the earlier publications as context in determining the natural and ordinary meaning of the GoFundMe Page is misplaced. It is a free-standing publication.

183. The hypothetical reader would not find the GoFundMe Page easy to follow. Mr McCormick's description of it as coming across as a somewhat incoherent stream of consciousness is apt. Nonetheless, in my view, bearing in mind my initial reaction on reading it, and having regard to the parties' submissions, the hypothetical ordinary reasonable reader would take the following meaning from the GoFundMe Page:

“(i) The Claimant has brought a baseless and unfair defamation claim against the Defendant, stemming from allegedly derogatory tweets the Defendant posted on social media. (ii) The Defendant will fight this claim in defence of the public interest, as well as his own reputation. (iii) The controversy was triggered by the Claimant abusing his power as a media personality to falsely insinuate on television that the Defendant has a brain injury. (iv) That is one of the baseless and unwarranted defamatory allegations against the Defendant that the Claimant has broadcast on a national platform, for which the Defendant intends to sue the Claimant to vindicate his damaged reputation. (v) The Defendant's cause is worthy of widespread financial support.”

184. First, in my view, the reader would take on board the message, writ large in the headline, that the Claimant is suing the Defendant in defamation. That headline is not divorced from the text that follows. The opening passage refers to “*defamation allegations stemming from allegedly derogatory tweets*” (emphasis added). In the context of the headline, and bearing in mind the emphasis on the tweets *allegedly* being derogatory or defamatory, the reader would understand the Defendant to be referring tweets he posted for which he is being sued.
185. Secondly, against this background, the reader would understand the second paragraph still to be addressing the Claimant's claim. The “*baseless accusations*” referred to there would be understood to be those made by the Claimant in his defamation claim about the Defendant's tweets. The reader would gather from the references to “*a clash of principles*” and the “*very fabric of integrity in our digital age*”, that the Defendant's

defence of the claim is said to be in the public interest, as well as in defence of the Defendant's own reputation. The message that the claim is unfair is conveyed by the assertion that this is a "battle for justice and fairness against ... Jeremy Vine".

186. Thirdly, the reader would understand from the third paragraph that the trigger for the controversy was the Claimant's "*televised remarks*" alleging the Defendant has a brain injury. I agree with Mr McCormick that the reader would clearly understand those remarks to have been made on television rather than on social media. The reader would understand from the words "*insinuating*" and "*alleged*" in the third paragraph, as well as from the tenor of the GoFundMe Page as a whole, that the allegation of a brain injury was false. Although the term "*abuse of power*" is not used, the reasonable reader would easily infer that in referring not just to the "*power wielded by media personalities*" but also to their concomitant "*responsibility*", the Defendant was alleging an abuse of that power.
187. Fourthly, it would be apparent to the reasonable reader from the third paragraph through to the end of the GoFundMe Page that the Defendant intends to bring a (counter-)claim in defamation against the Claimant. In my view, it would be readily apparent to the reader that the brain injury allegation was not mere background (as the Claimant contends) but would be part of the Defendant's claim. The reader would understand from the reference to that allegation having been "*televised*" that it was encompassed in the reference to "*unwarranted attacks ... broadcast on a national platform*". However, I agree with the Claimant that the hypothetical reader would not understand the Defendant to be referring to only one defamatory allegation. The reader would be struck by the references to "*unwarranted attacks*" (fourth paragraph), "*baseless attacks from media figures*" (seventh paragraph) and "*slander and defamation*" (final paragraph), which clearly suggest that the Claimant has made other unidentified defamatory allegations. These phrases all appear in the context of the passage regarding the Defendant's "*fight against defamation*" (emphasis added), so although he had earlier referred to the Claimant's claim as consisting of "*baseless accusations*", the reader would not understand these later references to "*attacks*" as encompassing the bringing of the Claimant's claim.
188. Fifthly, the reasonable reader would clearly understand the Defendant to be asserting that his cause is a worthy one, meriting widespread financial support. In my view, the reader would not understand the plea for support to be restricted to the proposed counterclaim.
189. The words I have underlined in the meaning identified in paragraph 183 above are expressions of opinion, and the statement is otherwise factual. The following parts of the meaning are defamatory at common law: sentence (i) up to the comma; and sentences (iii) and (iv). In my judgment, the remainder of the meaning is not defamatory, applying the test I have identified in paragraph 23 above.

Publication (14): the Lawsuit Post

190. The last of the publications complained of in defamation is a post published on the Defendant's X account on 15 March 2024 at 10.07pm. This is a quote post of a post by @UnityNewNet which stated, above photographs of the Defendant and of the Claimant:

"Just in [fire emoji]

Jeremy Vine suing Joey Barton after he called him a ‘bike nonce’ and accused him of spreading lies about the Covid jab.”

191. Above this, the Defendant’s post stated:

“He’s really worried, hence the lawsuit [thumbs up emoji]”.

The parties’ meanings and submissions

192. The Claimant contends for the following meaning:

The Claimant has sued Joey Barton for calling him a nonce and alleging that he spread lies about the COVID jab in an effort to suppress the truth of the allegations that the Claimant has a sexual interest in children and has misled the public about the COVID jab.

193. It is common ground that the Claimant’s meaning is factual and defamatory at common law.

194. The Defendant contends for the following meaning:

The Claimant had sued the Defendant for calling him a ‘bike nonce’ and for having accused him of spreading lies about the Covid vaccine because he was very worried about those allegations having been made.

195. The Defendant submits that the underlined words constitute an expression of opinion, the meaning is otherwise factual; and it is not defamatory at common law.

196. Mr de Wilde submits that while the hypothetical reader of the UnityNewsNet post alone might assume that the Claimant had sued because the allegations are untrue, the Defendant’s post turns this on its head. The reader would understand the Defendant to be pleased, and to be promoting the report of the proceedings, because he is happy and confident about his position. He contends that the reader would not need to be avid for scandal to understand this post as meaning that it is the Claimant who has everything to fear because the allegations are true. The combined impact of the Defendant’s promotion of the report, suggestion that the Claimant is really worried, and display of confidence in his own position is to convey the meaning that the Claimant is engaged in an attempt to suppress the truth of damaging allegations about his conduct.

197. Mr McCormick contends that the hypothetical reader would take the Defendant’s post as meaning no more than it says: the Claimant has sued because he is very worried about the allegations. A reasonable reader would understand that it is an entirely natural reaction for a person who has been accused of being a paedophile to be very concerned, even if the allegation is baseless. Only a reader avid for scandal would draw the inference that the Claimant’s worry stems from concern that the truth of the allegations will come out, not least as the reader would realise that suing for libel over an allegation which is a person knows to be true is inherently riskier than suing over an allegation that one knows to be false.

Decision

198. In my judgment, this post must be treated as free-standing, not only for the reasons I have given in relation to earlier posts, but also because it was not published close in time to the other posts on X, appearing more than two months later.
199. I agree with Mr McCormick's submissions, as summarised in paragraph 197 above. The reasonable reader would appreciate that anyone, and particularly anyone in the public eye, would be deeply concerned about such serious allegations being made, irrespective of the lack of basis for them. While the Defendant appears to be relaxed about being sued, the reader would appreciate that he is not the one who has been accused of having a sexual interest in children or spreading lies about the Covid vaccine. In my judgment, it would not be reasonable for the reader to infer that the concern that has prompted the Claimant to sue the Defendant is that true allegations against him have been aired.
200. In line with my provisional view, and taking into account the parties' submissions, in my view the meaning of the Lawsuit Post is:

“The Claimant has sued the Defendant for calling him a “*nonce*” and for alleging that he spread lies about the Covid vaccine because he is very worried that such accusations have been made against him.”

201. In my judgment, this meaning is factual, and it is not defamatory.

Summary of conclusions

202. In summary, for the reasons I have given, the publications bear the following meanings:

Publication (1): “The Claimant has a sexual interest in children, and he defends paedophiles.”

Publication (2): “The Claimant has a sexual interest in children, and for that reason he has defended a celebrity friend who shares the same propensity.”

Publications (3), (6), (10) and (11): “The Claimant has a sexual interest in children.”

Publication (4): “The Claimant presents a danger to children, including young children, because of his sexual interest in them.”

Publication (5): “The Claimant presents a danger to young children because of his sexual interest in them.”

Publication (7): “The Claimant presents a danger to young children because of his sexual interest in them, and in creating images of them.”

Publication (13): “(i) The Claimant has brought a baseless and unfair defamation claim against the Defendant, stemming from allegedly derogatory tweets the Defendant posted on social

media. (ii) The Defendant will fight this claim in defence of the public interest, as well as his own reputation. (iii) The controversy was triggered by the Claimant abusing his power as a media personality to falsely insinuate on television that the Defendant has a brain injury. (iv) That is one of the baseless and unwarranted defamatory allegations against the Defendant that the Claimant has broadcast on a national platform, for which the Defendant intends to sue the Claimant to vindicate his damaged reputation. (v) The Defendant's cause is worthy of widespread financial support.”

Publication (14): “The Claimant has sued the Defendant for calling him a ‘*nonce*’ and for alleging that he spread lies about the Covid vaccine because he is very worried that such accusations have been made against him.”

203. The underlined words in the meanings identified above are expressions of opinion; the words and images complained of are otherwise statements of fact. Each of the above meanings is defamatory at common law, save for publication (14) which is not defamatory and publication (13) to the extent identified in paragraph 189 above. Publications (8) and (9) constitute vulgar abuse and convey no defamatory meaning.