Neutral Citation Number: [2025] EWHC 926 (KB)

Case No: KB-2023-002309

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 14/04/2025

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE DBE CB

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Between :

Mr ANDREW BRIDGEN **Claimant**

- and –

Mr MATT HANCOCK **Defendant**

- -
- -

Mr Christopher Newman (instructed by direct access) for the **Claimant**
Mr Aidan Eardley KC (instructed by Reynolds Porter Chamberlain LLP) for the **Defendant**

Hearing date: 12th March 2025

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Approved Judgment

This judgment was handed down remotely at 12pm on 14 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice Collins Rice :

Introduction

1. Mr Bridgen brings a libel claim over a comment Mr Hancock tweeted out on 11th January 2023.

2. By the present application, Mr Hancock seeks an order terminating the claim forthwith, without permitting it to go to trial (or, in the alternative, partially striking it out).

Background

3. At the time, both Mr Bridgen and Mr Hancock were Conservative Members of Parliament. Mr Hancock had served as Secretary of State for Health and Social Care from 2018 to 2021, a period which saw the onset of the national Covid emergency, the rapid UK development of vaccines, and the launch of mass vaccination programmes. Mr Hancock was, and remained, a strong advocate for the individual and public benefits of vaccination. Mr Bridgen was increasingly concerned about the risks and side-effects of Covid vaccination, and, as time went on, that the vaccination programmes might be unethical and unduly influenced by the interests of the pharmaceutical industry. At the end of 2022, he raised the matter in Parliament, including in an adjournment debate.

4. On the morning of 11th January 2023, Mr Bridgen tweeted out a link to an article suggesting a US study indicated links between vaccination and a range of serious adverse health effects. His tweet commented: '*As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust*'.

5. At Prime Minister's Questions later that day, Mr Hancock asked:

> Does the Prime Minister agree with me that the disgusting, antisemitic, anti-vax conspiracy theories that have been promulgated online this morning are not only deeply offensive, but anti-scientific and have no place in this House or in our wider society?

The Prime Minister replied:

> Can I join with my Rt Hon Friend in completely condemning those types of comments that we saw this morning in the strongest possible terms. Obviously, it is utterly unacceptable to make linkages and use language like that, and I'm determined that the scourge of antisemitism is eradicated. It has absolutely no place in our society and I know the previous few years have been challenging for the Jewish community and I never want them to experience anything like that ever again.

6. Immediately afterwards, Mr Hancock tweeted out a video clip of that exchange, underneath the text:

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

This is the tweet of which Mr Bridgen complains in these proceedings.

7. Mr Bridgen had the Conservative whip removed as a result of his own tweet of that morning. The Chief Whip released a press statement the same day:

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

8. Mr Bridgen continued to sit as an independent MP and fought the 2024 general election on that basis, but lost his seat. Mr Hancock left Parliament in 2024 without seeking re-election.

Litigation history

9. Mr Bridgen issued his libel claim on 19th May 2023. He says its motivation, and focus, was the exception he took to what he considered the smear of antisemitism. He makes no other complaint of Mr Hancock's tweet. He told me, through Mr Newman of Counsel, that he had been looking for swift justice to clear his name in good time before the general election. The claim, and particulars of claim, were served on Mr Hancock on 12th September 2023.

10. Mr Hancock considered the claim defectively pleaded. Correspondence between the legal teams ensued, and the parties could not agree a way forward. On 7th December 2023, Mr Hancock issued two applications: (a) to have the claim struck out as not pleading a viable case, and (b) for a trial of the defamation 'preliminary issues'.

(a) The 2023/4 strike-out application

11. These were not necessarily alternative plans. Mr Hancock told me, through Mr Eardley KC, that the purpose of the strike-out application was, if not the termination of the claim, at least bringing the compulsion of the court to bear to ensure that the claim was pleaded with the proper clarity required to make it fair to expect it to be defended. And that is what the records of those proceedings confirm. The possibility of the court ordering amendment of pleadings rather than (immediate) termination of a claim is always present on a strike-out application in any event. Indeed, if a claim *can* fairly be rectified and allowed to go forward, then generally speaking that is what a court should order. (I consider the approach to strike-out applications more fully below.)

12. But because the possibility of termination is also always present on a strike-out application, Nicklin J directed that the strike-out application be heard first, and the

claim's viability decided one way or the other, before the 'preliminary issues' trial was considered for listing.

13. The strike-out application was brought on a specific basis – that the particulars of claim set out no proper case that the tweet complained of '*was published of and concerning the claimant*' – that is, on the issue of '*reference*'. Mr Hancock's tweet did not mention Mr Bridgen by name, and Mr Bridgen needed to set out precisely on what basis he claimed that it would be read and understood to be about him.

14. Where an alleged libel does not name or identify a claimant on its face, there are two possible routes to establishing reference. The first, 'ordinary reference', arises where '*the words used are such as would reasonably lead persons acquainted with the claimant to believe that he was the person referred to*' (*Dyson Technology Ltd v Channel Four [2023] EWCA Civ 884* at [35]). The second, 'reference innuendo', arises where at least *some* readers of the alleged libel, because of particular facts known to *them*, are able to put two and two together and identify what has been published as being about the claimant. Libel pleadings must identify which basis, or bases, are relied on, and the alleged facts supporting that basis.

15. The strike-out application came before Steyn J on 1st March 2024. Mr Hancock argued the claim's defect was mentioning 'innuendo' but setting out no basis on which 'innuendo reference' could properly be established; and Mr Bridgen had no real prospect of establishing 'ordinary reference' on any basis. Mr Bridgen argued he had a real prospect of successfully establishing 'ordinary reference' and the claim could be cured by removing the reference to innuendo. In her judgment handed down on 20th March, Steyn J agreed with Mr Eardley KC's submissions that Mr Bridgen had no real prospect of establishing 'ordinary reference'. She concluded (*Bridgen v Hancock [2024] EWHC 623 (KB)* at [75]):

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

16. In other words, the claim *had* been liable to be struck out as disclosing no viable case on reference, but Mr Bridgen had a real prospect of a successful case on 'innuendo reference' and should be allowed a chance to amend his particulars of claim to set one out properly. Amended particulars of claim were filed (by consent) on 1st May 2024.

(b) The trial of preliminary issues

17. The trial of defamation preliminary issues was listed before me on 12th June 2024. This is a conventional stage in a libel action in which the 'meaning' of the publication complained of is brought into focus for litigation purposes. The 'preliminary issues' in this connection are to do with the inherent qualities of the publication complained of, decided without external evidence but simply on analysis of what has been published. The determination of preliminary issues has important consequences for a libel action, including by confirming the defences that may or may not potentially be available. I handed down my decision on 24th June 2024.

18. My conclusions on the preliminary issues were (*Bridgen v Hancock [2024] EWHC 1603 (KB)*):

> **Decision**
>
> [46] The single natural and ordinary meaning of the publication complained of is as follows:
>
> > **An unnamed MP had said something that morning related to vaccination which was baseless, unscientific, dangerous and offensive, including because its character was antisemitic.**
>
> [47] The underlined words are an assertion of fact. The remainder is an expression of opinion.
>
> [48] There is no dispute between the parties that, in this meaning, the publication is 'of defamatory tendency' at common law, that is to say it *intrinsically* has a tendency substantially to affect in an adverse manner the attitude of other people towards a claimant. I concur. To label speech as antisemitic is to label it as gravely offensive, falling well below the standards expected in our society; it means people would tend to think substantially less well of the speaker.
>
> [49] There is also no dispute between the parties that, to the extent the publication complained of constitutes an expression of opinion, for the purposes of section 3 of the Defamation Act 2013 both the first and the second conditions are fulfilled: the statement complained of indicated, whether in general or specific terms, the basis of the opinion, that is by way of its reference to what had been said '*by a sitting MP this morning*'. I agree with that.

(c) The parties' pleaded cases

19. Following determination of preliminary issues in a libel claim, the usual sequence of events is that it is followed by an amendment of the pleaded claim to reflect the matters determined. The defendant will then file a defence, the first time in the proceedings that a defendant's responsive position is fully enabled and expected. The defence will

respond to the amended claim, and, crucially, the determination of whether what has been said is an assertion of fact or a statement of opinion. Some of the statutory defences to libel are available *only* if a publication has been found to be opinion rather than fact. That is one of the reasons why a determination of preliminary issues is so important for a libel claim. (In practice, cases often settle at this stage as the parties reassess the strength of their respective positions.)

(i) Re-amended particulars of claim

20. Mr Bridgen filed re-amended particulars of claim ('RAPOC') on 15th July 2024. They included particulars of 'innuendo reference'. They pleaded that substantial numbers of those who read Mr Hancock's tweet would have known that Mr Bridgen was the 'unnamed MP' referred to, because they would have known about any or all of (a) Mr Bridgen's adjournment debate speech the month before, (b) Mr Bridgen's own tweet, to which Mr Hancock was referring in his, (c) Mr Bridgen's own tweets identifying himself with the exchange at PMQs to which Mr Hancock was referring, (d) the Chief Whip's press statement about the removal of the whip from Mr Bridgen, and (e) a substantial amount of social media traffic and coverage in the mainstream media of the events of 11th January 2023 – and put two and two together, realising that Mr Hancock's tweet referred to Mr Bridgen.

21. The RAPOC included particulars of 'serious harm'. Section 1(1) of the Defamation Act 2013 provides that '*a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant*'. 'Serious harm' is pleaded in the RAPOC as follows:

> [29] Holding and advocating convictions of anti-semitic ideology are well recognised as justifiable grounds in contemporary British culture for bringing about severe reputational damage.
>
> [30] The following additional particulars of serious harm are provided:
>
> > 30.1 The harm to the Claimant's reputation has been increased by the decision of Mr Hancock not to take the Tweet complained of down following requests made by letter on 23 January 2023 and then (implicitly) in the Claim Form on 19 May 2023 leading to 200,000 further views.
> >
> > 30.2 In terms of the gravity of the imputation, antisemitism is a very damaging allegation given the trauma suffered by the Jewish community during the Second World War.
> >
> > 30.3 In terms of the standing and credibility of the defendant, Mr Hancock was and is a prominent person, an MP and a former minister who under the ministerial code undertook a commitment to honesty in public life meaning that what he says is likely to be taken very seriously by the public.

> 30.4 In terms of the standing or reputation of the Claimant in the eyes of the publishees, as a Member of Parliament, how the public sees the Claimant is important.
>
> 30.5 In terms of the identity of the publishees and their relationship to the Claimant, the 4.4 million users of twitter will include many users who will be members of the public in the UK, some will be the Claimant's constituents or know the Claimant's constituents, and some will be Jewish.
>
> 30.6 In terms of the number of people who read, heard or viewed the defamatory matter, that is currently 4.4 million and growing because the tweet remains up.
>
> 30.7 2024 is an election year and by section 106 of the Representation of the People Act 1983, parliament has formally recognised that the harm done to an MP's reputation by false statements about his character or conduct in the run up to an election is severe.
>
> 30.8 In all the circumstances the tweet was a mass media publication of a very serious defamatory allegation.
>
> [31] The publication of the Tweet complained of has therefore caused and/or is likely to cause serious harm to the reputation of the Claimant.

(ii) Defence

22. Mr Hancock's pleaded defence, filed on 30th August 2024, disputes the claim as regards both reference (at least in part) and serious harm.

23. As regards innuendo reference, the Defence makes limited admissions that some individuals would have had knowledge enabling them to put two and two together and identify Mr Bridgen as the MP referred to in Mr Hancock's tweet. It contends that only readers with knowledge of Mr Bridgen's own tweet could have done so, whether that knowledge was acquired by actually reading that tweet itself or being pointed to it by reading other people's comments (including other MPs') criticising Mr Bridgen's tweet, or by reading media reports of the Chief Whip's press release naming him.

24. As regards serious harm, the Defence criticises the RAPOC for not fully respecting the determined meaning of the tweet complained of, in particular by treating it as an allegation of antisemitism rather than a limited expression of opinion that Mr Bridgen's tweet was '*offensive, including because its character was antisemitic*'. It characterises that as a distinctively different, and less grave, allegation. The Defence denies the reach of publication was as extensive as claimed, points to the ephemeral nature of tweets, and denies the authoritative or influential nature of Mr Hancock's tweet on the subject of antisemitic character or discourse (as opposed to vaccination).

25. Bringing the issues of reference and serious harm together, the Defence makes a point that the vast majority of those readers who were able to work out that Mr Hancock's

tweet was a reference to Mr Bridgen's in the first place, were able to do so because they had already seen or been made aware of the substance of Bridgen's tweet itself. So they would have made their own minds up about it. They would have understood Mr Hancock's comment as '*an expression of opinion made by someone who was evidently a political opponent of the Claimant and with a keen interest in defending the UK government's vaccination programme*'. Their opinion of Mr Bridgen's tweet would in these circumstances not be likely to be influenced by Mr Hancock's comment on it – so Mr Hancock's tweet would be unlikely to have *caused* serious harm to his reputation in the minds of those readers.

26. The Defence also pleads, in the alternative, the statutory defence of 'honest opinion'. Section 3 of the Defamation Act 2013 sets out as follows:

> **3. Honest opinion**
>
> (1) It is a defence to an action for defamation for the defendant to show that the following conditions are met.
>
> (2) The first condition is that the statement complained of was a statement of opinion.
>
> (3) The second condition is that the statement complained of indicated, whether in general or specific terms, the basis of the opinion.
>
> (4) The third condition is that an honest person could have held the opinion on the basis of—
>
> (a) any fact which existed at the time the statement complained of was published;
>
> (b) …
>
> (5) The defence is defeated if the claimant shows that the defendant did not hold the opinion.
>
> …
>
> (8) The common law defence of fair comment is abolished and, accordingly, section 6 of the Defamation Act 1952 (fair comment) is repealed.

27. The preliminary issues determination had already established that the meaning of Mr Hancock's tweet – that Mr Bridgen's tweet was '*offensive, including because its character was antisemitic*' – was a statement of opinion. So the 'first condition' in s.3 was satisfied. It had also established that the 'second condition' was satisfied, because Mr Hancock's tweet referred to what the 'unnamed MP' had said, as being the basis of the opinion. The Defence therefore pleads out Mr Hancock's case that the 'third condition' was also satisfied, and an honest person could have held the opinion in question on the basis of the facts it set out, in the following terms:

[30] An honest person could have held the said opinion on the basis of the following facts, all of which existed at the time the Defendant published the Defendant's Tweet:

30.1 The Holocaust was a genocidal campaign pursued by the government of Nazi Germany between 1941 and 1945 with the aim of systematically eradicating the Jewish population in Germany and German-controlled areas of Europe. Some 6 million Jews were deliberately killed or allowed to die through starvation and forced labour.

30.2 The Covid-19 pandemic began in late 2019 / early 2020 with the virus quickly spreading around the world, killing or threatening the lives of millions. In order to prevent loss of life, to restrict the spread of the disease, and to alleviate the strict 'lock down' measures that were, initially, the only way of protecting the population, governments around the world supported research and development of vaccines. From the point when vaccines became available in December 2020, governments supported mass vaccination programmes, again aimed at saving lives, preventing the spread of disease, and alleviating lock downs.

30.3 As at 11 January 2023, powerful scientific evidence for the benefits, indeed life-saving potential, of vaccination had been placed before the public. There was at the same time evidence for side-effects of different vaccines, mostly mild but in very rare cases serious. Scientific evidence and advice was presented to the public about the relative risks of vaccination and non-vaccination, coming down firmly in favour of vaccination for the overwhelming majority of individuals. Insofar as this may be necessary to support the Defence of honest opinion (the Defendant's primary position being that it is not necessary), the Defendant will invite the Court to take judicial notice of these facts and matters, as it has already done in its Judgment on the trial of preliminary issues.

30.4 At the time of publication, members of the public were still being invited to have Covid-19 vaccinations in order to protect them from infection and to restrict the spread of the disease should it recur.

30.5 As admitted above, Dr Joshua Guetzkow published his article on 9 January 2023 (*the Guetzkow Article*). The Guetzkow Article presented and analysed data concerning adverse events reported between 14 December 2020 and 29 July 2022 experienced by individuals in the US who had received a Covid vaccine. In particular, the Guetzkow Article addressed 'safety signals' (which, in summary, Dr Guetzkow described as reports of adverse events relating to a particular

vaccine that are sufficiently numerous and statistically significant, in comparison to existing vaccines that are accepted to be safe, to raise a concern that the particular vaccine may not be safe). The Guetzkow Article acknowledged that the presence of a safety signal does not mean that an adverse event has in fact been caused by the vaccine. Accordingly, the Guetzkow Article did not attempt to make findings about how many adverse events were in fact the result of a person receiving a Covid-19 vaccine. Neither did the Guetzkow Article suggest that the vaccination programme had been carried out with the intention of harming patients. It was a call for further research into the possible causal links between Covid-19 and adverse events.

30.6 In the Claimant's 8:42 Tweet the Claimant wrote, '*As one consultant cardiologist said to me this is the biggest crime against humanity since the Holocaust*'. He included a link to the Guetzkow Article and also included an incomplete clip of a table from the Guetzkow Article. The incomplete table listed a number of serious health conditions. The implication, in the context of the Claimant's 8:42 Tweet was that these had been caused by Covid vaccines.

30.7 In the premises, an honest person could have expressed the view that the Claimant's 8:42 Tweet was baseless, unscientific, dangerous and offensive, including because its character was antisemitic. In particular:

30.7.1 An honest person could have taken the view that the Claimant's 8:42 Tweet was baseless, in particular because (an honest person may think) the Guetzkow Article provided no support for the contention that the Covid vaccination programme had been criminal and akin to the Holocaust, and the Claimant indicated no other basis for such a claim;

30.7.2 An honest person could have taken the view that the claim that the vaccination programme had been criminal in nature and akin to the Holocaust, was unscientific since (an honest person may think) it received no support from the Guetzkow Article and the Claimant indicated no other basis for such a claim;

30.7.3 An honest person could have taken the view that the Claimant's 8:42 Tweet was dangerous, since (an honest person may think) it had potential to deter members of the public from continuing to have vaccinations;

30.7.4 An honest person could have taken the view that the Claimant's 8:42 Tweet was offensive, in particular

> because it was antisemitic in character, since (an honest person may think) no serious comparison can be drawn between, on the one hand, the Holocaust (a deliberate genocidal campaign which was designed to and did eliminate millions of Jewish people) and the Covid-19 vaccination programmes (a well-intentioned public health initiative). To draw such a comparison (an honest person may think) is to belittle the historic experience of Jewish people.

(iii) Reply to Defence

28. Mr Bridgen filed a Reply on 14th October 2024. At two and a half times the length of the Defence itself, it joins issue with it on a range of grounds, procedural and substantive.

29. On 'reference', the Reply contends that, on the facts and evidence, *every* publishee would have had enough knowledge to piece together that Mr Hancock's tweet referred to Mr Bridgen. On 'serious harm', the Reply contends, among other things, that the gravity of the allegation was '*almost as damaging*' as an allegation that Mr Bridgen was in fact an antisemite; that the Parliamentary context added to the authoritativeness of the allegation; that publishees would *not* in fact have made up their own minds about Mr Bridgen's tweet; that harm by Mr Hancock's tweet could also be inferred from the collapse in Mr Bridgen's vote share at the 2024 general election; that the tweet complained of was not part of a political debate but a deliberate and co-ordinated attempt at a personal smear, trying to shut political debate about vaccines down; and that '*someone who states an opinion makes an implied statement of fact that it is honestly held and that he knows facts which justify his opinion*', which has to be taken into account when its impact is being assessed.

30. On the defence of 'honest opinion', the Reply sets out at some length why an honest person could *not* hold the opinion expressed. An honest person would understand that the Holocaust was not being belittled in Mr Bridgen's tweet, but rather the seriousness of the issue of vaccine safety was being amplified; a named Holocaust survivor was on record as '*drawing parallels between the extreme and discriminatory public health measures during the pandemic and the Holocaust*' and 26 Jewish doctors and medical scientists had signed a letter to the Prime Minister dated 30th January 2023 (a) agreeing Mr Bridgen's tweet was not antisemitic and (b) criticising Mr Hancock for '*weaponization of the important issue of antisemitism*' for the purposes of limiting the free speech of those raising concerns about the efficacy and safety of the vaccines and the ethics of the vaccination programmes. Covid-19 did not kill or threaten the lives of millions, and the government's response was not well intentioned, or 'primarily' driven by the need to save lives, but was motivated by '*the search for financial profit*'. What the public had been told was wrong, selective, misleading and ultimately harmful. The Guetzkow Article was misrepresented in the Defence, and other scientific and medical opinion supported concerns about the vaccination programme.

31. The Reply also sets out that in any event Mr Hancock did not really hold the opinion expressed (the section 3(5) counter-defence). No-one could reasonably think Mr Bridgen's tweet antisemitic in character. Mr Hancock advanced no case as to its truth, and therefore must be taken to know it to be substantially untrue. Instead, Mr Hancock

knew or suspected that Mr Bridgen was right to raise fears about the effectiveness and safety of Covid vaccines and deliberately smeared him with a motive to silence and harm him. Moreover, there is evidence of a wider animus against Mr Bridgen, among unknown third parties.

The present application for a terminating ruling

32. By application notice dated 28th October 2024, Mr Hancock seeks (a) summary judgment in his favour on the whole claim, because Mr Bridgen has no real prospect of succeeding on the issue of serious harm, and/or no real prospect of resisting a finding that the defence of honest opinion applies, and there is no other compelling reason why the issue should be disposed of at trial; or, in the alternative, at least (b) summary judgment in his favour in respect of the pleaded case on section 3(5) of the Defamation Act 2013 (that is, the case that Mr Hancock 'did not hold the opinion' he seeks to defend) – and/or that the case on section 3(5) be struck out – as it has no real prospect of success, the Reply discloses no reasonable ground for bringing it, and/or it is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings.

Legal framework

33. Mr Hancock's application for summary judgment relies on Civil Procedure Rule 24.3, which provides as follows:

> The court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
>
> (a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
>
> (b) there is no other compelling reason why the case or issue should be disposed of at a trial.

34. The proper approach of a court on an application for summary judgment was summarised in *Easyair v Opal [2009] EWHC 339 (Ch)* at [15] as follows:

> i) The court must consider whether the claimant has a 'realistic' as opposed to a 'fanciful' prospect of success;
>
> ii) A 'realistic' claim is one that carries some degree of conviction. This means a claim that is more than merely arguable;
>
> iii) In reaching its conclusion the court must not conduct a 'mini-trial';
>
> iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents;

> v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial;
>
> vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case;
>
> vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case should be allowed to go to trial because something may turn up which would have a bearing on the question of construction.

35. In considering the test of 'no real prospect of success' the criterion is not one of probability, it is absence of reality. The test will be passed if, for example, the factual basis for a claim is entirely without substance, or if it is clear that the statement of facts is contradicted by all the material on which it is based. On the other hand, if reasonable grounds exist for believing a fuller investigation into the facts would add to or alter the evidence available to a trial judge, or if a factual dispute is unlikely to be able to be resolved without reference to further (and especially oral) evidence, then a case should proceed to trial (*Three Rivers DC v Bank of England [2003] AC 1*; *Doncaster Pharmaceuticals v Bolton [2007] FSR 63* at [18]).

36. Mr Hancock's alternative application for partial strike-out of the Reply relies on Civil Procedure Rule 3.4 which provides as follows:

> (1) In this rule … a reference to a statement of case includes reference to part of a statement of case.
>
> (2) The court may strike out a statement of case if it appears to the court –
>
> (a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;
>
> (b) that the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings; or
>
> (c) that there has been a failure to comply with a rule, practice direction or court order.

37. A court will strike out a claim or part of a claim under this provision if it is 'certain' that it is bound to fail, for example because pleadings set out no coherent statement of facts, or where the facts set out could not, even if true, amount to a claim recognisable as such in law. That calls for an analysis of the pleadings without reference to evidence; the primary facts alleged are assumed to be true. It also requires a court to consider whether any defects in the pleadings are capable of being cured by amendment and if so whether an opportunity should be given to do so (*HRH the Duchess of Sussex v Associated Newspapers Ltd [2021] 4 WLR 35 at [11]*; *Collins Stewart v Financial Times [2005] EMLR 5 at [24]*; *Richards v Hughes [2004] PKLR 35*).

38. Steyn J put it this way in her earlier judgment in this case:

> [24] An application under CPR 3.4(2)(a) is not evidence-based. The application falls to be determined on the assumption that the pleaded facts in the Particulars of Claim are true. An application to strike out should not be granted unless the court is certain that the claim is bound to fail: see *Richards (t/a Richards & Co) v Hughes [2004] EWCA Civ 266, [2004] PNLR 35* , Peter Gibson LJ, [22] (citing *Barrett v Enfield London Borough Council [2001] 2 AC 550* at p.557 per Lord Browne-Wilkinson); and the White Book 3.4.2.
>
> [25] Where a statement of case is found to be defective, the court should consider whether that defect might be cured by amendment and, if it might be, the court should refrain from striking it out without first giving the party concerned an opportunity to amend: see the White Book 3.4.2. As Tugendhat J put it, in *Kim v Park [2011] EWHC 1781 (QB) at [40]* ,
>
> > "where the court holds that there is a defect in a pleading, it is normal for the court to refrain from striking out that pleading unless the court has given the party concerned an opportunity of putting right the defect, provided that there is reason to believe that he will be in a position to put the defect right".

Consideration

(a) Preliminary

39. This application asks me to apply the test of '*no real prospect of success*' to (a) Mr Bridgen's pleaded claim on serious harm and (b) his Reply to the Defence of honest opinion. Summary judgment on serious harm would dispose of the entire claim. If the claim is bound to fall at this hurdle, then consideration of the defence of honest opinion does not need to arise; it is the end of the matter. Summary judgment on the honest opinion defence would dispose of the claim also; it is a complete answer to a libel claim where it applies. Terminating Mr Bridgen's case on s.3(5) of the Defamation Act 2013, but not on any other basis, would mean the case going to trial on the three key issues of innuendo reference (so far as not already admitted), serious harm, and the honest opinion defence on its merits. I consider the application, accordingly, in that order of issues.

40. Doing so requires me to maintain a clear focus on two central pillars of the Defamation Act 2013 – the serious harm test in section 1 and the honest opinion defence in section 3. The Defamation Act 2013 was an important piece of law reform. It was an exercise in rebalancing the law of defamation – which is an abridgment of free speech – in favour of allowing a greater margin to freedom of expression. Both section 1 and section 3 are significant parts of that rebalancing.

(b) Summary judgment: serious harm

41. So far as serious harm is concerned, that point was confirmed by the leading authority on section 1, the decision of the Supreme Court in *Lachaux v Independent Print [2020] AC 612*. As such, the Act did two things in this section: introducing a new threshold of seriousness or gravity in the reputational harm with which defamation law was now exclusively to be concerned, and requiring the application of that test to any publication '*to be determined by reference to the actual facts about its impact and not just to the meaning of the words*' ([12]).

42. Lord Sumption JSC also said this, at [14]:

> The reference to a situation where the statement 'has caused' serious harm is to the consequences of the publication, and not the publication itself. It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is 'likely' to be caused. In this context, the phrase naturally refers to probable future harm.

43. Establishing serious harm is therefore an intensely fact specific exercise. It plays out in different ways in different circumstances, as illustrated by the body of caselaw which has developed in the relatively short space of time since *Lachaux* was decided (helpfully

summarised by Nicklin J in *Amersi v Leslie [2023] EWHC 1368 (KB)* at [143]-[163]). I start, however, with some broad and uncontroversial principles.

44. Section 1(1) uses the language of causation prominently ('*caused or is likely to cause*'). The 'serious harm' component of libel therefore contains an important causation element, as with any other tort or civil wrong. A claimant must expect to have to establish a causal link between the item he sues on and serious harm to his reputation, actual in the past or likely in the future.

45. The 'harm' of defamation is the effect of a publication in the mind of a third-party publishee (reader), and thereby on a claimant's *reputation*. It is not constituted by any specific action adverse to a claimant the publishee may take as a result. So the test does not *require* the demonstration of adverse actions by publishees, although such actions may be powerful evidence of the state of a publishee's mind. Instead, it concentrates on whether or how anyone's mind is changed about a claimant *as a result of* reading or becoming aware of the publication complained of.

46. The existence, seriousness and causation of reputational harm, being factual questions, must be established by evidence. The relevant facts *may* be established by evidencing specific instances of serious consequences inflicted on a claimant as a result of the reputational harm. But they do not always have to be. *Lachaux* confirmed that there is no hard and fast rule as to *how* serious harm is to be evidenced.

47. Particularly where mass publication and a general readership rather than individually identified publishees are involved, the test may also be satisfied by inferences of fact, drawn from a combination of evidence about the meaning of the words, the situation of the claimant, the circumstances of publication and the inherent probabilities. Relevant factors may then include: the scale of publication of the statement complained of; whether the statement has come to the attention of at least one identifiable person who knew the claimant; whether it was likely to have come to the attention of others who either knew him or would come to know him in the future; and the gravity of the allegations themselves.

48. Aspects of this kind of inferential evidential process have been explored in more detail in other leading cases. The well-established 'grapevine' or 'percolation' tendencies (*Slipper v BBC [1991] 1 QB 283*; *Cairns v Modi [2013] 1 WLR 1015*) of defamatory publications, particularly online and through social media, may in an appropriate case be factored into inference about scale of publication. Allowance may then be made for the inherent difficulties of identifying otherwise unknown publishees who thought less well of a claimant, since they are unlikely to identify themselves and share that with him. And the likely identity, as well as the numbers, of at least some of a class of publishees may be relevant to the assessment of harm, for example where some individuals may be particularly positioned to lose confidence in a claimant or take adverse action as a result. But these are highly fact-specific matters; the inferences which may properly be drawn in any individual case depend entirely on the circumstances of that case.

49. The case on serious harm Mr Bridgen pleads is a substantially (although not necessarily exclusively) inferential one. He relies on the gravity of the libel, the circumstances and extent of publication (direct and indirect), the relative situations of both Claimant and Defendant, and the inherent probabilities. All of these are challenged in Mr Hancock's

Defence. But my task on this application is not to consider who has the better case at this stage, much less who is more likely to win. My task is to consider whether Mr Bridgen's case is unreal.

50. On the face of it, and within the authorities' matrix of factors capable of raising an inferential case of serious reputational harm, Mr Bridgen's case as pleaded and evidenced so far does not have an obvious quality of unreality. He relies on the gravity of labelling political speech antisemitic in character, notwithstanding the attenuation of the meaning determined from that which he had originally argued for. He sets out evidential groundwork for this being a mass publication case (Mr Hancock's followership, the persistence of the publication to the present day, percolation, and the very high profile of the public exchange at the time). He sets out Mr Hancock's standing and influence more generally. He sets out the political context and the heightened sensitivities of an election year in the wake of a pandemic. He sets out that the publishees would include Mr Bridgen's constituents.

51. Mr Hancock's Defence takes issue with all of this. But I did not understand Mr Eardley KC to be submitting that Mr Bridgen's case fails on its face to plead a *viable* case on serious harm simply in these respects, or that it is *unreal* for him to expect to make good the inferences invited or the underlying evidential basis in their own terms. And in my judgment he was right not to do so. Labelling *political* speech as having an antisemitic character, while falling short of labelling its speaker an antisemite, is realistically capable of being considered a relatively grave libel. It is not unreal to seek to establish this as a mass publication case. It is not unreal to aim to portray Mr Hancock as a person of considerable contextual influence – even if expressing a personal view and not holding himself out as an expert on antisemitic discourse, then nevertheless someone whose judgment on others' political speech carried weight and impact. It is not unreal for Mr Bridgen to seek to portray himself as having sustained serious reputational harm in real life – with real world consequences; that is, that people did in fact think substantially less well of him after the exchange in question.

52. All of this is, in my view, adequately pleaded and consistent with the material on which it is based. That basis is not '*entirely without substance*'. Serious harm is ultimately a factual dispute, intrinsically unsuitable *in a case like this* for mini-trial at an interlocutory stage, and indicating a requirement for resolution on a full argument and evidence basis at trial.

53. Mr Eardley KC's argument is, however, a different one. It is a submission that all of the above is largely irrelevant because it is unreal for Mr Bridgen to hope to establish that any serious harm which may be inferred from that factual and evidential matrix was *caused* by Mr Hancock's tweet at all. He says that is because of a logical fault-line running through his pleaded claim: Mr Bridgen's case on innuendo reference is inconsistent with his case on serious harm. He says Mr Hancock's Defence on this point must succeed, leaving no room for a realistic prospect of success for Mr Bridgen's claim.

54. The Defence, to recap, sets out that the only publishees capable of recognising Mr Hancock's tweet as referring to Mr Bridgen at all – and in whose minds his reputation was therefore *capable* of being harmed in any way *by Mr Hancock's tweet* – were those who were *also* aware directly or indirectly of Mr Bridgen's original tweet. But if they were aware of Mr Bridgen's tweet, they would have made their own minds up about it.

If they thought seriously the worse of Mr Bridgen having become aware of both tweets then the overwhelming probability must be that that was because of Mr Bridgen's own words and not Mr Hancock's opinion of them. There is therefore necessarily a missing causal link in Mr Bridgen's claim.

55. This proposition requires me to go back to Mr Bridgen's pleaded claim on innuendo reference. That relies on a number of factors as enabling at least some and perhaps many or most readers of Mr Hancock's tweet to know it was about him. But central reliance is indeed placed on the publicity and controversy surrounding his own tweet of the '*biggest crime against humanity since the Holocaust*' comment. The evidence before me at present is that that publicity was enormous, and that the widespread criticisms of it either named Mr Bridgen or linked to (or quoted) his tweet directly. That was indeed no doubt how the exchange at PMQs that day came about, as subsequently tweeted out by Mr Hancock – to distance the government of the day, during its declared national health emergency, from the highly publicised and unwelcome comments of one of its own backbenchers, and to do so in the clearest and most high profile terms. The subsequent withdrawal of the Conservative whip, and the accompanying press statement – also relied on in the pleaded case on innuendo reference – were of course themselves the ultimate act of political distancing, and plainly attributable to Mr Bridgen's, not Mr Hancock's, tweet.

56. This case is a species of 'calling out' libel action – where the publication complained of is a social media criticism of a claimant's own words on social media. Any claimant in a 'calling out' case faces the factual and evidential challenge of establishing that any serious harm to their reputation was caused by the calling out, rather than by that which was being called out – that is to say, that it is not ultimately, on a proper analysis, self-inflicted. In this case, Mr Bridgen inevitably faces that task: of establishing that the inferential case on serious reputational harm he seeks to build is properly attributable causally to Mr Hancock's calling out, rather than to his own tweet.

57. This is, moreover, a 'calling out' case which relies on innuendo reference, which in turn is pleaded as *relying* on publishees' *awareness* of that which is called out, whether directly or indirectly, alone or in combination with other factors, to get off the ground in the first place. So it poses the challenge for Mr Bridgen in an especially intense way.

58. The nub of the question on this application therefore is whether this challenge for Mr Bridgen is so acute as to be essentially unanswerable, and to rob his case on serious harm of any real prospect of success. Is there any way out for him from the logical labyrinth in which Mr Eardley KC submits he is necessarily confined? If there is, it must lie in the area which, on Mr Hancock's case, is characterised by people making up their own minds about Mr Bridgen's tweet, and, on Mr Bridgen's case, the influence of the authoritative voice of Mr Hancock. 'Calling out' cases have to explore the *net* effect of the calling out.

59. Here, Mr Newman argues that Mr Hancock does not (and cannot) assert on the facts that *everyone* who became aware of Mr Bridgen's own tweet, or even *most* or *many* people who did, would have spontaneously considered it antisemitic in character, so as to eliminate all possibility that Mr Hancock's tweet was impactful. At the very least, he says, more than one view may properly be available about his own tweet. That is already evidenced in the materials before me at this interlocutory stage – for example the Jewish doctors' letter mentioned above, which said it was not antisemitic and

criticised *Mr Hancock* for weaponizing the language of antisemitism to suppress vaccine criticism. (Indeed, Mr Newman goes a great deal further and asserts that *no-one* could properly and sensibly have thought Mr Bridgen's tweet antisemitic in character. I deal with that proposition more fully below, simply pausing here to observe that it does not necessarily assist Mr Bridgen's case on serious harm to assert that Mr Hancock's aspersion was completely lacking in rational credibility, which must surely diminish its potential for harmful impact.)

60. Mr Newman then relies on what is set out in the Reply about the potential independent power and impact of Mr Hancock's personal intervention on Mr Bridgen's tweet – the 'calling out'. His case is in essence that it was rapid, authoritative and agenda-setting in its very public labelling of Mr Bridgen's tweet as antisemitic in character, including because of the overt association it made with PMQs and therefore affairs of serious national significance, and in repeating it without the cover of Parliamentary Privilege. It was much more than one personal opinion among many. As such, he says the *labelling* itself was capable of creating a predisposition, for readers yet to encounter Mr Bridgen's tweet and make the connection, to think it antisemitic in character when they did so. It was capable of planting that thought in the minds of people who had read Mr Bridgen's tweet but to whom the thought had not independently occurred. It was capable of changing the minds of at least some of those who had formed a different view at first. So on that basis it was capable of founding a realistic basis for a causal link.

61. Serious harm is a matter of fact and evidence, and no less so where it is pleaded on a largely inferential basis. As I have said, I do not regard Mr Bridgen's pleaded *general* case on serious harm, and its factual basis, as having an obvious quality of unreality. On the particular point about causation, and consistency with his pleading of reference innuendo, on balance I reach the same view. It is not *unreal* to plead, and seek to establish, that Mr Hancock's tweet was in all the circumstances sufficiently influential to change readers' minds adversely to Mr Bridgen to a degree capable of crossing the threshold of serious reputational harm. It is more than merely statable or arguable; it carries '*some degree of conviction*' to propose that Mr Hancock's intervention was sufficient of a game-changer on the day to have that kind of effect. There is a discernible evidential basis on which Mr Bridgen could seek to establish (as discussed further below) that Mr Hancock's intervention was very high profile and labelled Mr Bridgen's speech in a way that other commentators of comparable stature did not do, and were perhaps careful not to. Whether or not Mr Bridgen can ultimately make that good will depend on a full interrogation of the facts and evidence, and a contest as to the inferences to which they fairly and properly give rise, of a sort which is only possible at trial. There are in my judgment reasonable grounds for believing a fuller investigation into the relevant facts and evidence than is available or proper on an interlocutory basis could affect the outcome of Mr Bridgen's case on serious harm. That is of course the usual way in which such things are determined.

62. Mr Bridgen's necessary case on reference innuendo, on the factual matrix on which it relies, does, as I have said, inevitably intensify the task of establishing serious harm in this particular 'calling out' case. Mr Eardley KC accurately frames the structural task facing Mr Bridgen in this respect. But I do not think it right to characterise it on this application as a task he has *no real* prospect of succeeding in. Establishing serious harm is, I repeat, an intensely fact-specific, multi-factorial and evaluative matter; the

dispute about it apparent in this case partakes fully of those characteristics, and needs to be resolved at trial on a full argument and evidential basis.

63. I cannot in these circumstances give summary judgment for Mr Hancock on the issue of serious harm. I emphasise, again, that in reaching that conclusion I express no settled view on the respective merits of the parties' *ultimate* cases. Indeed, I am dismissing the application on this ground precisely because I am not fairly able to do that at this interlocutory stage. It is a proper matter for full factual contestation at trial.

(c) Summary judgment: honest opinion

(i) The nature of the defence

64. The statutory defence of 'honest opinion' introduced by section 3 of the Defamation Act 2013 is the second piece of law reform introduced by that Act that I am required to consider on this application. Like the section 1 'serious harm' test, the statutory 'honest opinion' test effected a distinctive rebalancing of defamation law in favour of free speech. Although it has been described as codifying rather than reforming the previous common law defence of 'fair comment', it did so by way of important clarification, not least to its title.

65. As to its distinctive character, I cannot improve on the helpful summary of Nicklin J in *Sussex v Associated Newspapers [2023] EWHC 3120*:

> [38] The defence of honest opinion is well recognised in the authorities as a bulwark of free speech. Reflecting that, most recently, in *Corbyn -v- Millett [2021] EMLR 19* [16], the Court Appeal held that the defence of honest opinion:
>
> > "… must not be whittled away by artificially treating comments as if they were statements of fact. On the other hand, if a person could use this defence as a means of escaping liability for a false defamatory allegation of fact, the law would fail to give due protection to reputation. That is why the statutory defence only applies to a statement which is one of opinion."
>
> [39] But where the defence is available, the necessary latitude to protect freedom of expression is afforded principally in two ways.
>
> > (1) First, the opinion that the objective "honest person" could express under s.3(4) is recognised to be extremely wide. The original name of the defence at common law — "fair comment" — was recognised to be a misnomer. To benefit from the defence, the commentator did not have to be fair; s/he simply had to be honest.
> >
> > (2) The classic statement of the test is that of Lord Keith in *Telnikoff -v- Matusevitch [1992] 2 AC 343,* 354 "whether any man, however prejudiced or obstinate, could honestly hold the

view expressed by the defendant". Similarly, the critic "need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism": Tse *Wai Chun -v- Cheng [2001] EMLR 31* [20] approved in *Joseph -v- Spiller [2011] 1 AC 852* [3]. The ultimate test is honesty, not rationality; whether the defendant did hold the opinion, not whether (on the evidence available to her/him) s/he should have done: *Carruthers -v- Associated Newspapers Ltd [2019] EWHC 33 (QB)* [30]. A defendant does not have to persuade the Court to agree with his/her opinion; nor should s/he need to demonstrate "that honestly expressed opinions fall within some elusive nebulous margin of what is 'reasonable' or 'fair'": *Branson -v- Bower [2002] QB 737* [26].

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

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

[40] As to the scope of the supporting facts:

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

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

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

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

> (ii) Second, where an opinion is expressly and exclusively premised on the truth of a single factual allegation, it cannot be defended if that express basis was " wholly untrue " (so-called 'single-fact' cases): [59] and [61]-[62] (see also *Dyson -v- MGN Ltd [2023] EWHC 3092 (KB)* [97]-[99]).
>
> (4) The omission of a highly relevant fact may undermine the supporting facts to the extent that they are no longer "true facts". A "truly exculpatory" fact in that sense may well defeat the defence: see the example given by Eady J in *Branson -v- Bower* [37]. However, extraneous facts, otherwise relied on by a claimant are irrelevant to the second, objective, question of whether an honest person could hold the opinion based on those facts. As Eady J put it, in *Branson -v- Bower* [38]:
>
> > "…that is because the objective test for fair comment is concerned with whether the defendant is able to show that a hypothetical person could honestly express the relevant comment on the facts pleaded and/or proved by the defendant " (emphasis in the original).
>
> Adding, a little later [54]:
>
> > "The right to comment freely and honestly is not to be whittled away by detailed and subtle arguments as to how a different commentator might have viewed the facts or given them a different emphasis".
>
> See also *Carruthers -v- Associated Newspapers Ltd [2019] EWHC 33 (QB)* [28]-[31].

66. Mr Hancock's defence of honest opinion is pleaded out at [27]-[30] of the Defence; the factual basis relied on appearing in the subparagraphs of [30] set out above. As confirmed in Mr Eardley KC's submissions, the core facts relied on are few, and, he says, incontrovertible. The first is the simple fact of Mr Bridgen's tweet, that a consultant cardiologist had said to him '*this is the biggest crime against humanity since the Holocaust*', where 'this' can be inferred, in the context of a link to the Guetzkow article, to refer at some level to the national and/or international anti-Covid vaccination programmes. The second is the pleaded and admitted summary of the Holocaust as the Nazi genocidal campaign aimed at systematically eradicating the Jewish population in Germany and German-controlled Europe in the 1930s and 40s. The third is a description of government-sponsored programmes of research and development of vaccines and in due course mass vaccinations programmes, presenting the public with scientific evidence of their efficacy and comparatively low risk, together with the fact that at the relevant time members of the UK public were still being invited to have vaccinations on the basis that it would protect them from infection and restrict the spread or recurrence of the disease. On the basis of these undisputed facts, or any one of them, Mr Eardley KC says Mr Hancock is bound to make good the defence.

67. The question for me on this application, again, is whether Mr Bridgen has '*no real prospect*' of defeating that defence. Mr Newman submitted to me that not only did Mr Bridgen have every prospect of defeating it, his prospects were so sure that I should consider not only refusing his application for summary judgment but striking out the defence itself. No formal application to do so was before me. But these submissions set the scene for Mr Newman's multi-dimensional attack on the formulation of the honest opinion defence.

68. Before addressing the issues *material* to the question before me, I have to deal with a number of aspects of Mr Newman's submissions which do not in my judgment fall into that category.

69. In the first place, I understood Mr Newman to suggest, by reference to paragraph 30.7 and 30.7.4 of the Defence, that Mr Hancock was in essence pleading a truth defence under the form of an honest opinion defence. That seems to arise from a simple misreading. The Defence is not in either place asserting that Mr Bridgen's tweet *was* antisemitic in character. It is plainly pleading each time that an honest person could have thought so, quoting the determined meaning.

70. Second, Mr Newman sought to persuade me that, by electing *not* to advance a plain defence that Mr Bridgen's tweet was *in truth* antisemitic in character, Mr Hancock must be held to a position that that was *not true*, and that he knew it was not true or was at least reckless as to its truth or falsity. Mr Newman prays in aid a mid-Victorian criminal libel statute, a number of nineteenth century cases and the criminal appeal case of *R v Wicks [1936] 1 All ER 384* in this connection. I was not assisted by these in my task of applying the Defamation Act 2013. Mr Hancock has not pleaded a truth defence. He does not have to plead to the truth of his opinion. The whole point of the honest opinion defence is that he does not have to. The mere fact that he does not plead to the truth of his opinion is irrelevant to consideration of the statutory honest opinion defence he *does* plead. It does not fix him with any position as to its truth or falsity.

71. Next, Mr Newman sought to characterise the honest opinion defence as nevertheless a defence about honest mistakes – a fallback defence where the truth of a defamatory statement cannot be, or is not being, asserted. That is a fundamental misstatement of the nature of the honest opinion defence, as the authorities analysed in *Sussex v Associated Newspapers* put beyond any debate. It is precisely the error which Mr Newman sought to persuade me Mr Hancock had made – conflating two distinct defences – and it is wrong in law. The honest opinion defence '*must not be whittled away by artificially treating comments as if they were statements of fact*' (*Corbyn v Millet [2021] EMLR 19* at [16]) – or, it might be added, as if they were intrinsically assertions of truth.

72. The honest opinion defence is not a fallback position for defending mistakes, factual or otherwise. It is what it says it is: a broad protection for the expression of *opinions* in their own right. '*The defence of honest opinion is well recognised in the authorities as a bulwark of free speech*' (*Sussex* at [38]). Freedom of expression is itself a fundamental right, vital for democracy and never more so than where political opinion speech is concerned. Here is how the ECtHR put the rationale of the defence – in terms of the Convention right protected in Article 10, and also in terms which are readily referable to the defence in section 3 of the 2013 Act ('*opinion*' can for present purposes be regarded as interchangeable with '*value judgment*'):

> Finally, the court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible to proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by art.10. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive. (*Petrenco v Moldova [2011] EMLR 5* at [56]).

73. The defence is given considerable latitude precisely in order to protect freedom of expression; it is accordingly '*extremely wide*' (*Sussex* at [38]-[39]). It was deliberately clarified as such when the 2013 Act replaced the common law defence of 'fair comment'. An opinion does not have to be true, and it does not have to be careful or researched as to truth, or fair, or reasonable, or rational, to be one an honest person could have held. None of these qualifications may legitimately be read into the legal test.

74. For these reasons, I reject Mr Newman's submissions that the honest opinion defence is defeated by demonstrable untruth, subjective recklessness as to truth or falsity, or even 'malice', to the extent that those submissions involve propositions of law. Mr Newman sought to persuade me that 'malice' can to some extent be read across as a limitation on the defence of honest opinion from its inconsistency with the common law defence of qualified privilege. It cannot. '*…the purposes for which the law has accorded the defence of qualified privilege and the defence of fair comment are not the same. So … examples of misuse of qualified privilege cannot be carried across to fair comment without more ado. Instances of misuse of qualified privilege may not be instances of misuse of fair comment. What amounts to misuse of fair comment depends on the purposes for which that defence exists.*' (*Tse Wai Chun v Cheng [2021] EMLR 31* at [55]). Again, the authorities speak repeatedly, and with one voice, that an opinion may be capable of being held by an honest person, however prejudiced they might be and however exaggerated or obstinate their views. '*… a critic need not be mealy-mouthed in denouncing what he disagrees with. He is entitled to dip his pen in gall for the purposes of legitimate criticism.*' (ibid at [20]; and see the other citations in *Sussex* at [39(2)]).

75. For all these reasons, Mr Bridgen does not, in my judgment, have a real prospect of succeeding in defeating Mr Hancock's defence on any of these grounds. They are bad in law, and mischaracterise the defence.

(ii) Factual basis

76. All of that is, however, consistent with the possible *factual* or *evidential* relevance of a range of considerations going to the question of whether an honest person could hold the opinion expressed. The statutory test is that an *honest* person could have held the opinion, and it is tethered to *factual basis*. So '*…the law protects the freedom to express opinions, not vituperative make-believe*' (*Tse Wai Chun* at [24]). And again, '*actuation*

by spite, animosity, intent to injure, intent to arouse controversy or other motivation, whatever it may be, even if it is the dominant or sole motive, does not of itself defeat the defence. However, proof of such motivation may be evidence, sometimes compelling evidence, from which lack of genuine belief in the view expressed may be inferred.' (ibid at [79]).

77. There are two issues identified here to which evidence at least potentially needs to be applied, and of which evaluative judgment certainly needs to be made: whether *an honest person could* hold the opinion on the basis of any contemporaneous fact pleaded (s.3(4)(a)), and whether a defendant *did* hold the opinion (s.3(5)). Evidence relevant to one may also be relevant to the other, but they are distinct issues and the burden of proof is different. Mr Eardley KC asks me to agree that Mr Bridgen has *no real prospect* of defeating Mr Hancock's honest opinion defence because (a) he has no real prospect of successfully disputing that an honest person could hold the opinion on the factual basis pleaded; and (b) he has no real prospect of showing that Mr Hancock did not in fact hold it.

78. The core factual basis pleaded for defending '*antisemitic in character*' is the fact of Mr Bridgen's tweet – what it says on its face – together with the basic facts of the Holocaust and those of the Covid vaccination programme set out in the Defence at [30]. The fact of the tweet and the basic facts of the Holocaust are not disputed. There is some dispute about the facts of the vaccination programme. But it is not disputed that governments around the world supported research and development of vaccines as a response to the Covid pandemic; they supported mass vaccination programmes once vaccines became available; scientific evidence for the benefits and indeed life-saving potential of the vaccines was placed before the public; the public was given scientific evidence and advice about the relative risks of vaccination and non-vaccination, coming down firmly in favour of vaccination for the overwhelming majority of individuals; and at the time of the tweets in this case, the public was still being advised to be vaccinated in order to protect them from infection and restrict the spread of the virus.

79. Mr Eardley KC says that, although pleaded more broadly, in the end Mr Hancock need establish only the wholly undisputed fact of Mr Bridgen's tweet itself to make good his defence that an honest person could have shared his opinion of it. He points to evidence he already has in the form of the spontaneous opinions independently expressed on social media by other political commentators and parliamentarians; and in the form of a statement put out by the Holocaust Educational Trust on 11th January, *before* Mr Hancock's tweet, condemning Mr Bridgen's tweet in terms of the 'denigration, misuse and abuse' of the Holocaust and antisemitism and that '*for these horrors to be co-opted by anti-vaxxers once again is appalling. Andrew Bridgen's words were highly irresponsible, wholly inappropriate and an elected politician should know better*'.

80. I have had a look at the evidence Mr Eardley KC showed me (holding in mind of course that we are at an interlocutory stage, considering the viability of this claim, not conducting a mini-trial of its merits). It is certainly fulsome in its condemnation of Mr Bridgen's tweet: '*This is disgraceful*'; '*Fake news and scaremongering on vaccines is bad enough but to invoke the Holocaust during the month of Holocaust Memorial Day is despicable*'; '*A lot of Jewish people and other like-minded decent folk would find this incredibly offensive*'; '*There is no possibility that Bridgen can be allowed to stand at the next election. He cannot claim that he didn't realise the level of offence that his remarks cause.*'; '*truly revolting … wild conspiracy theories and incredibly offensive*

comparisons to the Holocaust have no place in British society, let alone parliament'; '*we saw various anti-vac groups compare themselves to victims of the Nazis, it was distasteful then and remains so*' – all of these from serving parliamentarians at the time, across the political spectrum. All of them express opinions that the tweet was deeply offensive and socially or morally unacceptable. None of them (that I have seen) describes it, in as many words, as *antisemitic* (in character). The Holocaust Educational Trust statement does not precisely do so, nor does the '*highly irresponsible and wholly inappropriate*' comment tweet from its CEO. The Chief Whip's statement does not do so ('*crossed a line, causing great offence in the process*') – its focus is on what Mr Bridgen had said about vaccination.

81. To succeed on his application for summary judgment on this point, Mr Hancock has to show *no real prospect* of defeating the defence that an honest person could have, on the pleaded facts, shared the opinion that Mr Bridgen's tweet was not just deeply offensive, improper and inappropriate but *antisemitic in character*. In part that is a matter of evaluation of the content of the tweet in its own terms and context. Mr Hancock pleads that it is to a degree self-evident that an honest person *could* think that '*no serious comparison*' could be drawn between the Holocaust and the Covid vaccination programmes, and that to draw such a comparison, or even mention them in the same breath, '*is to belittle the historic experience of the Jewish people*' – something that *could*, again, be thought by an honest person to be self-evidently *antisemitic in character*. And it is in part, at least potentially, a matter of the evidence that could be expected to be produced to demonstrate that other respected commentators *did* consider it antisemitic in character, or that similar utterances have been so regarded on other occasions. That is evidence not at present before the court.

82. Mr Bridgen's Reply, as pleaded, engages to some extent at least with the evaluative dimension. It is much preoccupied with making a case against the vaccination programmes, and by that means proposing that they could after all be mentioned in the same breath as the Holocaust without belittling the historic experience of the Jewish people. But Mr Bridgen's task is not to defend his own opinion as one an honest person could have held, nor to attack Mr Hancock's opinion by debating its merits. His ultimate task is to counter the proposition that Mr Hancock's opinion is one that an honest person *could have held*. And his task on the present application is to address the proposition that he has no real prospect of doing so successfully.

83. At the same time, it is Mr Hancock's primary task to persuade me on this application that the prospect of his defence being defeated is an unreal one. If I hesitate over that, it is not because of the case Mr Bridgen seeks to build that an honest person could agree – or even could not disagree – with what he said in his own tweet. The former is irrelevant, and the latter is in my judgment a plainly unreal proposition; his own tweet could be, and was, fundamentally disagreed with by many eminently honest people, as to both content and mode of expression. It is instead because Mr Hancock's defence of his *antisemitic in character* opinion relies on evaluative matters, and potentially on evidential matters, and his application is that these should be decided now without a trial. That must necessarily give pause for thought.

84. Demonstrating that an honest person *could* consider Mr Bridgen's tweet on its own terms '*antisemitic in character*' may be a relatively low bar for Mr Hancock to step across: the statutory defence is deliberately '*extremely wide*'. He does not have to show it was a right, considered, fair or reasonable judgment on Mr Bridgen's exercise of

political free speech. He does not ultimately have to show that honest people did share his opinion (although that might be compelling evidence in his favour), simply that they could, and that it has a nexus with (or '*pertinence*' to – *Joseph v Spiller* at [6]) what Mr Bridgen had said. But it remains a meaningful test in law, none the less, with a burden on a defendant to establish it.

85. A critic of another's political speech is entitled to '*dip their pen in gall*', but Mr Bridgen wants to argue that '*antisemitic in character*' is a distinctively toxic and corrosive type of gall in a political context, an epithet understood to be so solemn, momentous and ultimately politically fatal as to be capable of being found at trial to be insufficiently pertinent to what he had himself said. He wants to argue that '*antisemitic in character*' crosses a line between fact-tethered opinion and gratuitous vituperative smear – in the wider context of a difference of political views about something else altogether, namely the merits and motivations of the vaccination programmes. He wants to argue that there is a relevant line that an honest person must recognise between '*incredibly offensive*' to '*a lot of Jewish people and other like-minded decent folk*' and '*antisemitic in character*'.

86. Mr Eardley KC says that sort of argument has no real prospect of succeeding. There is no universal or commonly held view about what constitutes '*antisemitic in character*'. It must be something considerably wider than '*antisemitism*' itself, about which, in any event, views may range over a spectrum of what honest people *could* think, rightly or wrongly. So there must be very considerable latitude indeed within which a view that something is *antisemitic in character* may comfortably locate itself as one an honest person *could* hold, when tethered to a comment mentioning the Holocaust and the Covid vaccination programmes in the same breath, something already evidenced even at this stage to have been widely regarded as deeply offensive and inappropriate. Mr Bridgen's contrary argument is in effect that a spectrum of even so broad a latitude has its limits, and those limits are exceeded when the very special language of *antisemitic* is unwarrantedly 'weaponised' for quite collateral political purposes; and that his own comment was not '*sufficiently supportive*' of Mr Hancock's opinion. He has at least some evidence (the Jewish doctors' letter) to support that.

87. There may or may not turn out to be fine shades of judgment engaged here. The argument Mr Bridgen wants to make that an honest person, probably, *could not* consider his tweet antisemitic in character (however unreasonably) requires him to locate the facts of this exchange of political opinions beyond the far margins of an '*extremely wide*' defence. But I am not persuaded to call his prospects of success unreal or to give Mr Hancock summary judgment on it without the sort of full exploration of where, in all the circumstances of this particular case, those limits properly lie. That requires investigating the precise mechanics of the defence, its application to the facts, and the range of evaluative options properly open to a court in the circumstances. That is only possible at trial. Simply setting out the nature of the disputed issue demonstrates its highly evaluative character, and already enters some way into palpably evaluative 'mini-trial' territory. It is not a matter to be foreclosed on an interlocutory basis.

88. And beyond the bare fact of the exchange, such evidence as I have before me at present is not in my judgment capable of settling this argument definitively in Mr Hancock's favour here and now, because none of the commentators I was shown condemns Mr Bridgen in precisely the way Mr Hancock did, and it is arguable, with a prospect of success carrying what is in my judgment a sufficient degree of conviction, that that *may*

be significant. And even if a trial court were ultimately to find it was not materially assisted by further evidence either way on this matter, nevertheless it remains evaluative and context-sensitive to a degree which would usually be capable of being sufficiently ventilated only on a full argument basis at trial. In my judgment, in the circumstances of this particular contest of political free speech, that is a further, and indeed compelling, reason for this issue to go to trial.

89. I am not in these circumstances persuaded that Mr Hancock is entitled to summary judgment on his defence of honest opinion. There is, in addition, a further compelling reason for not doing so, which has to do with the counter-defence.

(iii) The section 3(5) counter-defence

90. Mr Hancock asks me to give summary judgment on, or to strike out, Mr Bridgen's pleading to section 3(5) of the 2013 Act, on the basis that it discloses no real prospect or basis that the honest opinion defence, if it succeeded on its merits, could be defeated by showing that he did not in any event hold the opinion he professed.

91. The burden of establishing that would be on Mr Bridgen, and he pleads it in his Reply over paragraphs [40]-[61]. Some of that pleading is directed to argument about the Defence's failure to plead truth, to which I have already referred. Some of it is directed to what is said to be the objective unreasonableness of Mr Hancock's opinion, and to establishing that Mr Hancock was motivated to harm Mr Bridgen. And some of it is directed to establishing a '*wider animus against the Defendant*'.

92. As the authorities set out, it is possible, as a matter of law, to base the section 3(5) counter-defence on laying an evidential groundwork from which an inference may properly be drawn that a defendant more probably than not did not genuinely hold the opinion he professed. That groundwork may include evidence as to the objective unreasonableness of that belief, and as to '*actuation by spite, animosity, intent to injure, intent to arouse controversy or other motivation*'. Those matters are not necessarily inconsistent in law with making good the defence on its merits; the defence *may* succeed however unreasonable and/or spitefully intended. And they are at least capable of constituting evidence – '*sometimes compelling evidence*' (Tsai Wai Chun at [79], Sussex at [35]) – that an opinion was not genuinely held.

93. Mr Bridgen's pleading to this sets out a proposition that Mr Hancock's tweet was not intended simply to put clear distance between himself and Mr Bridgen on the issue of the vaccination programmes, but, and specifically by way of the '*antisemitic in character*' condemnation, was a gratuitous bid to silence rather than engage with his criticism, and to achieve his political destruction with language that was not politically survivable. It was not something Mr Hancock genuinely thought, simply something it suited his purposes to say. To that extent at any rate I consider it adequately pleaded and the inferential evidential base adequately set out, in accordance with the authorities cited above.

94. I bear the following in mind. It would not be *incoherent* for a trial judge to find the honest opinion defence made out on its merits, including by reference to its factual basis, but also to find '*antisemitic in character*' an exercise in vituperative rhetoric rather than genuine opinion. That is the internal logic of the statutory defence and counter-defence, and of the authorities which state in terms that the unfairness or

unreasonableness of an opinion, and the ill-will of a defendant, while not inconsistent with an opinion being honestly *available*, may be evidence (even compelling evidence) that it was not in fact held. The counter-defence does not have to show an opinion was '*invented*', as Mr Eardley KC puts it, simply that it was adventitiously appropriated. The strength of Mr Hancock's convictions about the vaccine programme are capable of working both ways – to underscore his genuine convictions about '*antisemitic in character*' also, or to suggest on the contrary that it was merely a rhetorical weapon deployed to a collateral purpose. And in the end, the robustness of Mr Hancock's own evidential case on the one hand, and Mr Bridgen's accusatory case on the other, will have to be tested and adjudicated by a trial judge one way or another.

95. Mr Bridgen's pleading further seeks to buttress his case on Mr Hancock's mindset with what he proposes is '*evidence of a much wider animus against the Claimant showing that people who the Claimant has never met have set out to cause him harm over a long timescale using complex methods*' – again, it is said, to silence his voice on the vaccination programmes. This passage of the Reply ([53]-[61]) is, in my judgment, incapable of supporting the section 3(5) counter-defence because, as it stands, it articulates no connection between Mr Hancock's tweet and this alleged '*wider animus*', which it is recognisably fair for Mr Hancock to be expected to answer on a challenge to his defence, even if it were all true. Mr Bridgen was at the time a Conservative MP and a public figure with prominent and controversial views about the vaccination programmes. It is no surprise whatever to find evidence on social media and elsewhere that both he and his views aroused vehement comment, vehemently expressed – either way – nor that he experienced that subjectively in terms of discernible patterning, including political patterning. In the 21st century that follows as night follows day. But it is not capable without more of implicating Mr Hancock in any such pattern, much less of impugning his genuine holding of the opinion he expressed. Pleading on this basis is certainly bound to fail. And it is likely to obstruct the just and efficient disposal of proceedings for it to occupy the time and attention of a trial court.

96. Whether or not Mr Hancock genuinely espoused the opinion he expressed in the tweet complained of is in the end a matter of fact. What is certain is that all the relevant evidence on which that question would usually fall to be determined is not available at this stage. Mr Hancock has not chosen to put forward any of his own evidence yet beyond asserting, through his solicitor's witness statement, that the tweet complained of '*has at all times conveyed his honestly held opinion*'. That is entirely a matter for him, of course. But whether Mr Bridgen will ultimately succeed on his pleaded case in establishing the fact he alleges is likely to depend on a full examination of the evidence both ways, including how Mr Hancock explains his opinion in due course if he chooses to do so (or the inferences to be drawn if he does not). That is a matter for a trial judge, not for a mini-trial in advance of the evidential situation even being known. I cannot say on the present state of the evidence that Mr Bridgen's case is *unreal*. It indicates the outlines of a case which it would not be unfair to ask Mr Hancock to defend on its merits. So I do not have a proper basis for giving summary judgment for Mr Hancock on the counter-defence without his having either pleaded to or explained in evidence the genuine nature of his own belief.

97. And if the section 3(5) counter-defence is to go to trial on a full evidence and argument basis, that is in my judgment a further compelling reason for the section 3 defence itself to go to trial also. As discussed, the evidence which is relevant to one is capable of

being relevant to the other. It would be artificial, wrong, and unfair – potentially to both parties – to predetermine and foreclose evidentially on the defence at the interlocutory stage when trial of the counter-defence is capable of giving a trial judge a perspective on the defence itself which is not available at present and which could affect the outcome of the trial.

(d) The parties' pleadings

98. I am not going to strike out or give summary judgment against him on Mr Hancock's Defence. No formal application to do so was before me. The Defence is not defectively pleaded, as I have already explained in relation to Mr Newman's criticisms of it relating its failure to plead to the truth of his opinion.

99. Nor is it an abuse of the Court's process or the source of any substantive unfairness to Mr Bridgen. I reject the contention that Mr Hancock's present application for a terminating ruling does not properly fall to be entertained because the matters it raises could and should have been dealt with before Steyn J, or because it is inevitably improper to make successive applications for a terminating ruling. Mr Hancock was entitled to raise the defective pleading of innuendo reference as a threshold issue and he was vindicated in doing so by Steyn J's judgment. It raised a point capable of being dispositive of the entire claim at the very outset, and the precise pleading of amended particulars of claim on this point was highly material to the pleading of the Defence, not least on the issue of serious harm. So he was entitled to seek determinations of both the matter before Steyn J, and the defamation preliminary issues, and await the filing of the RAPOC before filing a Defence responsive to both the judicial determinations and the new pleading. And he was entitled to challenge the new pleading in the Reply on its own terms in this application.

100. Mr Hancock seeks strike-out of the pleading of the section 3(5) counter-defence as an alternative to summary judgment. For the reasons I have already given, there are some aspects of the principal pleading of the Reply to the section 3(4) defence itself which I consider not to disclose reasonable grounds for opposing it. Mr Eardley KC did not formally propose strike out as an alternative to summary judgment on those, and the burden of course remains squarely on Mr Hancock to establish the defence in the first place, so a line by line analysis might have been thought unnecessary or disproportionate to any improvements in the fairness to Mr Hancock of doing so. But the burden is as squarely on Mr Bridgen to plead the counter-defence in the Reply in a manner which is coherent and discloses *only* reasonable grounds for Mr Hancock to respond to it and a court to entertain it.

101. I agree with Mr Eardley KC that there is much in the principal pleading of the counter-defence at [40] of the Reply that is inapt or irrelevant to the task of the pleading. As I have set out, it does in my view contain the essence of a proposition that '*antisemitic in character*' was an opinion so unreasonable, and Mr Hancock's motivation to harm and discredit Mr Bridgen so salient, as to lay the groundwork for an inference that it should be regarded as a smear rather than a genuinely held opinion. But the particularisation of that alleged motivation over [41]-[52], and the glimpse it gives of the sort of evidence on which Mr Bridgen would seek to rely, again contains much that is irrelevant, speculative and unsustainable on its face, if not matters that would positively support a finding on the balance of probabilities that Mr Hancock's expression of opinion was not only heartfelt at the time but continues to be so. And I have already explained why

I agree with Mr Eardley KC that the 'wider animus' pleadings at [53]-[61] are not set out on any basis capable of sustaining the counter-defence or assisting a trial judge to reach any sustainable conclusions on it.

102. I am bound by the authorities to consider giving an opportunity for amendment of pleadings as an alternative to striking them out. I am not persuaded that, in the respects I have identified, there is a real alternative to striking out parts of the pleading of the section 3(5) counter-defence. But it is not a court's task to redraft pleadings. I will, in the circumstances, give Mr Bridgen a limited opportunity to submit revised pleadings on the section 3(5) counter-defence which are abbreviated, focused, and consistent with the indications I have given in this judgment. And of course give Mr Hancock an opportunity to make written submissions as to the success or otherwise with which he has complied with the terms of that limited opportunity.

103. I am also minded, in the interests of the fair, effective and efficient management of the trial to which this case is now set to proceed, to direct that the opportunity be taken to amend the Reply to the section 3(4) defence more generally, to produce a version which is also abbreviated, focused, and consistent with the indications I have given in this judgment.

104. I await the reflections of Counsel on the proposed form of the order giving effect to this judgment.

Decision

105. I am refusing Mr Hancock's application for summary judgment on the issues of serious harm (Defamation Act 2013 section 1) and of his honest opinion defence (section 3). Both of these issues in this case engage matters of fact, evidence and evaluation which ought properly and fairly to be decided at trial and not before. I am not in a position to conclude at this stage that Mr Bridgen's prospects of success on either matter are such as to be determinable now to be '*unreal*', and in any event there are in my view compelling reasons for further investigation at trial and a fully considered judgment thereafter.

106. I am also refusing Mr Hancock's application for summary judgment on Mr Bridgen's pleaded counter-defence that Mr Hancock did not in fact hold the opinion he professed, for the same reason.

107. This claim is therefore set to proceed to the full evidential stages and on to trial.

108. Mr Bridgen's pleading of the counter-defence is, however, defective. I am giving him a limited opportunity to amend it to deal with the problems I have identified. I am also minded to direct he take that opportunity to address other problems with the pleading of his Reply to Mr Hancock's honest opinion defence.